



Insurance Act 2015

The Insurance Act 2015 (the Act) represents the most significant change to the law governing commercial insurance which has been in force since the Marine Insurance Act of 1906. It received Royal Assent on the 12th February 2015 and will come into effect from 12th August 2016.

The new legislation updates the legal framework so it is more appropriate for modern business requirements, making it simpler and easier to get claims paid and to ensure insurance contracts are fit for purpose.

Overall it is expected that businesses will get a much fairer outcome when they submit a claim but only if certain elements of the Act are followed and complied with.

Duty of Fair Presentation of Risk

The core requirement of a fair presentation is still to share all material facts it knows or ought to know, accurately and in good faith however it also introduces some new approaches to how the material information is gathered.

It is worth highlighting that the test of materiality remains unchanged from the Marine Insurance Act 1906: 'It would influence the judgement of a prudent insurer in determining whether to take the risk, and if so, on what terms.'

The Act requires of a business a "Reasonable Search" to build a picture of your risk, including but not limited to the relevant knowledge of senior management regarded as the key individuals who run the business, any member of an internal risk and/or insurance team together with external knowledge of third party organisations such as your insurance broker, accountants, solicitors, IT Providers etc.

Business knowledge which must be included:

- Senior Management knowledge
- Insurance and risk team
- Broking team knowledge
- Information from reasonable search

Nature of Presentation:

- Clear and accessible disclosure of material risk information
- Sufficient information to put a prudent insurer on notice to make further enquiries

The presentation of information to underwriters must be presented in a clear indexed structure that is easy to navigate and include relevant signposting and the flagging of important points to Insurers. Data dumping is prohibited.

Bridge will not be relying on past presentations or information we currently hold and will therefore begin the search process early. We would expect access to relevant individuals to ensure we put together a fair presentation of the risk for your approval and for onward presentation to underwriters. Underwriters would expect to have sufficient time to make further enquiries if there are obvious omissions, questions or gaps in the information provided.

Warranties and Terms not relevant to the Loss.

We have always felt the application of warranties to be unfair and have fought against these over the years on our clients' behalf – trying to have these removed wherever possible.

The Act makes it fairer to clients with cover being suspended during a breach of warranty rather than all cover being forfeited.

Furthermore Insurers will no longer be able to rely on non-compliance with any term of the policy to decline a claim if the Policyholder can demonstrate that said non-compliance did not increase the risk of the loss that occurred in the circumstances it did.

Proportionate Remedies

When a breach of policy terms applies as regards non-disclosure under current law the two options for an insurer is to either pay the claim or not to pay the claim.

The Act allows insurers to have the additional option of a proportionate settlement – for example if the insurer would have wanted double the premium if they had known about a certain material fact that had not been disclosed they would pay 50% of the claim or alternatively charge the extra premium, however it is at the insurers discretion to choose which proportionate remedy to apply.

Should a Policyholder deliberately or recklessly fail to make a fair presentation then Insurers may avoid the policy and retain any premium and recover any amounts paid in claims and/or expenses.

In the event of an unintentional and accidental failure to make a fair presentation by a Policyholder Insurers may avoid the policy and return any premium charged but recover any amounts paid in claims and/or expenses or continue with the policy but on different terms and/or apply an additional premium.

Get in touch

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Insurer's knowledge not required to be included:

- Insurer information accessible to the underwriter
- Information an underwriter dealing with that type of business is expected to know
- Common knowledge

Preparations to make:

- Audit trail of how risk information is put together and from whom.
- Material accuracy and complete information in good faith
- Flag changes and differences
- Well structured information
- Ongoing notification of changes
- Additional enquiries (begin reasonable search)
- Build on existing processes