

# Insurance Act 2015

Changes to commercial policies with effect from the 12<sup>th</sup> August 2016

Lloyd & Whyte

## What is the Insurance Act 2015?

The Insurance Act is a legal framework affecting every commercial insurance policy placed, renewed or amended and came into effect on 12 August 2016.

It modernises insurance law and aims to make recovery from insurers simpler and fairer in the event of a claim.

## What are my responsibilities?

You have a duty under the Insurance Act 2015 to make a fair presentation of the risk to insurers. This duty applies when you take out your insurance cover, when any changes are made to your policy mid-term and when you renew your insurance.

## Critical Changes

- The existing obligations of **good faith** and ensuring **accuracy of material information** both remain.
- The Act, however, also specifies what you must do for a presentation to count as fair.

## What is fair presentation?

A fair presentation is disclosure of risk information in a manner that is **reasonably clear and accessible**; including every material fact, which is known or ought to be known by an insured's **senior management**, or those responsible for arranging the insurance, following a **reasonable search**.

## What is a material fact?

A 'material fact' is a circumstance or information which could influence the judgement of a prudent insurer in determining whether to take on a risk and on what terms.

You must ensure that all material facts are substantially correct and not misleading, and any information which is a matter of expectation or belief (e.g. an estimate or forecast) is provided in good faith and not misrepresented.

You should advise us of any particular concerns which led you to seek insurance cover and any special or unusual facts relating to the risk.

Examples of the type of information that should be disclosed include but are not restricted to:

- Incidents and circumstances that could have led to a claim
- Security information about your property
- Sufficient sums insured to prevent underinsurance

## Who are deemed as senior management?

Individuals who play significant roles in the running of the business and making decisions regarding the insurance cover and process. This includes your company's principals, directors, partners, practice managers and shareholders.

## If in doubt - disclose!



This is not a complete list; if you are unsure whether something should be disclosed then please contact us.

Call us on **01823 250700**.

## What is the definition of a reasonable search and reasonably clear and accessible information?

- A "reasonable search" means you must make adequate enquiries within your business to identify and verify information relevant to the risk(s) concerned.
- You must also include all relevant knowledge of the "senior management" of the business and those involved in buying the insurance.
- Reasonable enquiries must also be made of relevant third parties involved with the business, including external consultants, contractors and anyone insured by the policy.
- "Clear & Accessible" means the clarity of presentation and how able insurers are to assess the risk. There is a requirement to adequately highlight unusual activities and/or known areas of concern that could affect the risk.

## What could happen if I do not make a fair presentation?

If you deliberately or recklessly fail to make a fair presentation of the risk, the insurer may:

- Void the policy and retain the premium
- Recover any amounts they have paid (e.g. claims) or expenses they have incurred

If an insured's failure to make a fair representation is not deliberate or reckless, then the insurer may do one or more of the following, depending on what they would have done if they had known the material facts when they agreed to offer the insurance:

- Declare your policy void (treating your policy as if had never existed)
- Change the terms of your policy
- Apply Proportionate Remedy

## What is a Proportionate Remedy?

If an insured's failure to make a fair representation is not deliberate or reckless and the insurer would have charged an additional premium if they had been aware of the relevant material facts; then the insurer has the right to reduce the amount to be paid on any claim during the period of cover in proportion to the amount of premium that would have been charged.

For example, if the proportionate reduction in claim remedy was applied to a £5,000,000 claim where the premium underpayment was £10,000 (representing 50% of the insured premium), the insured's claim would be reduced by 50% (i.e. £2,500,000). Previous and subsequent claims may also be reduced in the same manner, leaving the insured with reduced cover.

## Basis of contract clauses

The Act no longer allows basis of contract clauses. These clauses had the effect of turning information the insured provided to the insurer, into warranties, which meant that incorrect information, regardless of triviality or relevance to the risk, would lead to a policy being terminated.

## Warranties

Warranties are terms in your policy that require you to do something. Previously, if you had not complied with a warranty, your insurer was discharged from liability. Under the new Act, non-compliance will lead to warranties being treated as **suspensive conditions**.

## Suspensive conditions

- An insurer's liability will only be suspended for loss occurring or attributed to something happening during the period the insured is in breach of a warranty
- An insurer's liability will be re-instated after the breach is remedied

It is important you understand that; if your insurer requires you to do or have certain things in place, you ensure that you have reviewed and understood what these warranties, conditions and obligations are in order to benefit from the cover provided.

## Remedies for fraudulent claims

Under the Act, where a fraudulent claim is made, the insurer may:

- Refuse to pay the claim and recover any expenses or sums they have paid in respect of that claim; and
- Treat the policy as having terminated from the date of the fraudulent act and retain any premium paid under the policy

Genuine claims made before the fraudulent act will not be affected.

Any more questions?



We have provided you with limited information on the changes applicable to your policy.

For further information please contacts us on **01823 250700**.