



The Insurance Act 2015 – A New Dawn ?

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- New duty of fair presentation for non-consumers
- Proportionate statutory remedies partially replace avoidance
- “Basis” clauses abolished
- Remedies for breach of warranty etc. constrained
- Insurers’ remedies for fraudulent claims stated
- Contracting out possible for non-consumers if transparency requirements are met
- Defects remedied in the Third Party (Rights Against Insurers) Act 2010

- Replaces the existing duties in relation to disclosure and representations contained in sections 18, 19 and 20 of the Marine Insurance 1906 Act.
- disclosure of every material circumstance which the insured knows or ought to know; **OR**
- ***“disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstance” s.3(4)(b))***

A fair presentation is one which makes the required disclosure:

- *“in manner which would be reasonably clear and accessible to a prudent insurer” 3(3)(a)*
- *“in which every material representation as to a matter of fact is substantially correct” 3(3)(b)*
- *“in which every material representation as to a matter of expectation or belief is made in good faith” 3(3)(c)*

“In the absence of enquiry” the insured is not required to disclose:

- Circumstances diminishing the risk – s.3(5)(a)
- What the insurer knows, ought to know or is presumed to know - s.3(5)(b)(c)&(d)
- *“something as to which the insurer waives information”* s.3(5)(e)

- *“an individual knows only (a) what is known to the individual, and (b) what is known to one or more of the individuals who are responsible for the insured’s insurance” s.4(2)*
- *“An insured who is not an individual knows only what is known to one or more of the individuals who (a) are part of the insured’s senior management or (b) responsible for the insured’s insurance.” s.4(3)*

- *“an individual is responsible for the insured’s insurance if the individual participates on behalf of the insured in the process of procuring the insured’s insurance” s.4(7)*
- *“ ‘senior management’ means those individuals who play significant roles in the making of decisions about how the insured’s activities are to be managed or organised” s.4(8)*

“Whether an individual or not, an insured ought to know what should reasonably have been revealed by a reasonable search of information available to the insured (whether the search is conducted by making enquiries or by any other means)” s.4(6)

- *“...an insurer knows something only if it is known to one or more of the individuals who participate on behalf of the insurer in the decision whether to take the risk, and if so on what terms...” s.5(1)*
- *“an insurer ought to know something only if (a)an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in [5(1)], or (b)the relevant information is held by the insurer and is readily available to an individual mentioned in [5(1)]...” s.5(2)*

*“an insurer is presumed to know—
(a) things which are common knowledge, and
(b) things which an insurer offering insurance of the
class in question to insureds in the field of activity in
question would reasonably be expected to know in the
ordinary course of business” s.5(3)*

Qualifying Breach: *“The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer—*

(a) would not have entered into the contract of insurance at all, or

(b) would have done so only on different terms” s.8(1)

- *“A qualifying breach is either (a) deliberate or reckless, or (b) neither deliberate nor reckless.” s.8(4)*
- *“A qualifying breach is deliberate or reckless if the insured (a) knew that it was in breach of the duty of fair presentation, or (b) did not care whether or not it was in breach of that duty.” s.8(5)*
- The burden of proof is on the insurer.
- Similar regime for contractual variations.

- If Qualifying Breaches were deliberate or reckless the remedy is avoidance, with premium retained by the insurer (Schedule 1, para 2)
- If Qualifying Breaches were neither deliberate nor reckless, but the insurer would not have entered into the contract on any terms in the absence of the breach, the remedy is avoidance with return of premium (Schedule 1, para 4)

- If Qualifying Breaches were neither deliberate nor reckless and “*the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires*”. (Schedule 1, para 5)



- *“In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.” (Schedule 1, para 6)*

$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

- Basis clauses abolished by s.9
- Discharge of liability for breach of warranty abolished by s.10(1)
- s.33 and 34 of the Marine Insurance Act 1906 amended
- *“An insurer has no liability under a contract of insurance in respect of any loss occurring, or attributable to something happening, after a warranty (express or implied) in the contract has been breached but before the breach has been remedied.”* s.10(2)

“But subsection (2) does not apply if—

(a) because of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract,

(b) compliance with the warranty is rendered unlawful by any subsequent law, or

(c) the insurer waives the breach of warranty” s.10(3)

*“a breach of warranty is to be taken as remedied—
(a) in a case falling within subsection (6), if the risk to which the warranty relates later becomes essentially the same as that originally contemplated by the parties,
(b) in any other case, if the insured ceases to be in breach of the warranty.” s.10(5)*

In respect of terms requiring compliance which would tend to reduce risk of loss of a particular kind, at a particular location or at a particular time “*other than a term defining the risk as a whole*”:

“If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured...shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.” s.11

- An insurer can recover any sums paid in respect of “a *fraudulent claim*”, which is forfeited.
- An insurer can by notice treat the contract as terminated from the time of the fraudulent act, relieving it of liability arising from “*relevant events*” occurring thereafter. Premium is retained.
- Liability for “*relevant events*” occurring before the fraudulent act remains (other than for the forfeited claim) s.12

- s.13 Allows an insurer to rely on s.12 where a fraudulent claim is made by an insured who is not party to the contract
- The insurer can treat the cover for the fraudulent insured only as having been terminated at the time of the fraudulent act.
- Cover remains for innocent parties
- Overlays common law rules

- Contracting out is an option for non-consumer contracts, except for the prohibition of basis clauses.
- Contract terms placing the insured in a worse position than that provided for by the Act will only be effective if the insurer satisfies the “*transparency requirements*”.
- Settlements are excluded from the effect of the Act.

- “*sufficient steps to draw the disadvantageous term to the insured’s attention*” before agreement s.17(2), unless the insured has “*actual knowledge of the disadvantageous term*” s.17(5)
- The term “*must be clear and unambiguous in effect*” s.17(3)
- “*the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account*” s.17(4)

Policies and variations agreed from 12 August 2016



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Thank you

Any questions?

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