The Insurance Act 2015 – What Insurance Buyers Need to Know

What is it?

The Insurance Act 2015 is a result of a fundamental review of insurance law that should lead to fairer outcomes to customers. It will help to modernise the insurance industry and improve the service that brokers and insurers provide to our customers. The Act aims to make recovery from insurers simpler and fairer in the event of a claim. The most significant change in the new law is that insurers were previously able to avoid an entire policy if there had been a non- disclosure of material information. With the Insurance Act there is a new system of proportionate remedies in place.

A new legal framework will be in place for every business insurance policy placed, renewed or amended after **12th August 2016.**

Why are we telling you about this?

The Act directly addresses the contract you enter into with your insurer**. BUT** in addressing simplicity it does so on the basis that you as a customer makes a **"fair representation of risk information".**

The existing obligations of good faith and accuracy of material information will remain **BUT** there are two key elements that we must draw your attention to:

        Reasonable Search

1. You must make adequate enquiries within your business to identify and verify that information relevant to the risks concerned is disclosed.

    a. This must include knowledge of "senior management" of your business and those involved in buying insurance (including us as brokers)

    b. Reasonable enquiries must also be made of any relevant third parties involved with your business, including external consultants, contractors and anyone insured by the policy.

2. **Clear and Accessible**

    a. Risk information should be clearly seen by insurers and brokers and not masked in large amounts of information.

    b. You must highlight unusual activities and /or known areas of concern that could affect risk**.**

Customer's Procedures for buying insurance to comply with the Act should:

1) Ensure clear understanding is made of the risks to be insured

2) Document the process of compiling and presenting risk information to your broker and any concerns or shortcomings

3) Understand who counts as senior management, who is responsible for insurance buying and who has relevant information

4) Clarify sign off arrangements

5) Start the process early enough to give your broker time to understand and place your covers

6) Engage fully with your broker and understand whether insurers have "contracted out "of any aspect of the Act

What else do you need to know?

Insurer Remedies

An insurer must show that it would have acted differently if the policyholder had made a fair representation. Unless there has been deliberate or reckless behaviour (that means an insurer could still avoid a policy) insurers are able to apply terms with hindsight and past, present and future claims will be dealt with as if such terms applied to the policy. Critically, if a higher premium would have been charged, any claims can be reduced proportionately. Some insurers have "contracted out" of this element and replaced this with adjusting the premium due to facts that come to light. So, customers choosing to pay the increased premium have claims settled in full.

Warranties and Conditions

The 2015 Act abolishes "basis of contract" clauses – statements of facts in a proposal for insurance into strict warranties. In the event of a breach of a warranty an insurers liability will be merely suspended rather than discharged. In practical terms it will often fall to the customer to prove that a breach has been rectified.

The customer is helped by preventing risk mitigation terms being applied where they are irrelevant.

Insurers cannot contract out of "basis of contract" clauses.

Fraudulent Claims

The 2015 Act clarifies the remedies an insurer has when a policyholder submits a fraudulent claim. The policyholder will forfeit the whole of that claim and insurers may terminate the policy with effect from the date of the fraudulent act, but previous claims are unaffected.