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The Insurance Act 2015

What changed at a glance ...

Introduction

The Insurance Act 2015 became law on 12 August 2016. It represents the most significant change to insurance contract law in this country for over 100 years. The Act is about insurers, brokers and policyholders working together effectively to deliver more reliable insurance placement. What it aims to bring is greater fairness, transparency and certainty to policyholders and that can only be a good thing as we at Gallagher strive to deliver the best possible outcome for our clients.

Essentially the act modernised the rules that govern insurance agreements within UK commercial insurance. This involved changes to wordings for policies—specifically when it comes to the disclosure of details. The changes have had a significant impact on how insureds and insurers approach policies, creating new duties which insurers and policyholders must comply with.

The Insurance Act 2015 applies to all policies governed by the laws of England and Wales, Scotland and Northern Ireland that are placed (or varied) after 12 August 2016.

The majority of the Act only applies to non-consumer insurance contracts as the existing Consumer Insurance (Disclosure & Representations) Act 2012 has previously addressed duty of disclosure for consumers.

Blocks of flats are considered commercial buildings for insurance purposes.

We have produced this guide to help our customers dealing with non-consumer insurance contracts, which includes blocks of flats. If you have any queries please call your Gallagher business contact who will be happy to help.

What the Act changed

Duty of Fair Presentation

The 'duty of disclosure' has been replaced with a 'duty of fair presentation', which means that before taking out insurance, policyholders need to make a 'fair presentation of the risk' to the insurer. Broadly, this means giving to the insurer in a clear and accessible manner, accurate details of matters that would affect their underwriting decision.

The insurer will ask for more information if required, however, policyholders do not need to tell them information that is considered common knowledge. This applies to non-consumer insurance only (consumer duties of disclosure are governed by the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA)). Please note that the duty of good faith continues such that every material representation as to a matter of expectation or belief should be provided in good faith.

Remedies for Breach of Duty of Fair Presentation

Avoidance of an insurance policy as the only remedy for breach in respect of the duty of fair presentation is abolished. That means that in the past a policy might have been cancelled back to its start date with all claims refused, if not all of the material information had been shared or if some of it was incorrect, even when this was unintentional. A wider range of less draconian remedies are now available to an insurer. For example, the insurer can walk away from the policy and keep premiums from the policy inception—but ONLY if it can prove a deliberate or reckless breach of fair presentation.

For a non-deliberate or non-reckless breach, there are multiple remedies available but the responsibility lies with the insurer to show how they would have behaved if they had known all of the material information:

- Insurer would not have written risk: if the insurer would not have written the risk, the insurer can void the policy but MUST refund all premiums from inception.
- Higher premium originally chargeable based on the breach data: if the insurer would have charged a higher premium, the insurer can then reduce a claim settlement accordingly.
- Application of new or different terms (e.g., conditions and exclusions, not premiums): if the insurer would have included new terms, or imposed different terms, the extra terms can be applied retroactively and the policy honoured under those new terms.

Warranties & Basis of Contract Clauses

Basis of contract clauses was abolished. A basis of contract clause converts statements made during the presentation of a risk into a warranty. Warranties are terms in the policy that require a policyholder to do something e.g., setting the burglar alarm when the premises are closed.

Previously, if a policyholder had not strictly complied with a warranty then the law said the insurer was discharged from all liability. This meant that, even if a policyholder had set their burglar alarm on the day of the theft but didn't always set it, some insurers could have refused to pay the claim on the basis that the policyholder had not previously complied with the warranty.

The 2015 Insurance Act is much fairer because in the same circumstances, so long as the burglar alarm was on at the time of the theft, the claim would be paid. Therefore, a breach of warranty can be remedied, following which full cover resumes and a breach of warranty will not allow the insurer to decline a claim if the insured can show that the breach did not increase the risk of the loss which has in fact occurred.

Remedies for Fraudulent Claims

The Act sets out the remedies available for fraudulent claims, including termination of the policy from the time that the fraudulent claim was made.

Contracting Out

For non–consumer insurance, insurers can contract out of the Act, except in respect of the provisions relating to basis of contract clauses. Any term of a policy which is more disadvantageous to an insured than the regime in the Act will require 'contracting out'. If an insurer is contracting out, this means that any such term, in order to be effective, must be brought specifically to the attention of the policyholder or the policyholder's broker before the contract is entered into and must be clear and unambiguous. Contracting out is only permitted for non-consumer insurance and any contracting out wording must satisfy certain transparency obligations.

Would you like to talk?

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