

Welcome to this lecture from the Insurance Institute of London



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INSURANCE CONTRACTS ACT 2015

- Last in series of new acts from Law Commissions' insurance law reform project:-
 1. *Third Party (Rights against Insurers) Act 2010*
 2. *Consumer Insurance(Disclosure and Representations) Act 2012*
 3. *Insurance Act 2015*
- All based on extensive market consultation.
- All widely supported. Reflect best practice.
- All passed through Law Commission procedure for uncontroversial bills.
- All UK wide.

KEY REFORM TOPICS

- Pre-contract duty of disclosure – new duty of “fair presentation”.
- Proportionate remedies for breach.
- Basis of contract clauses abolished.
- New remedies for breach of warranty.
- “Irrelevant” risk mitigation terms ineffective.
- Clarifies insurer’s remedies for fraud.
- Implements 2010 Third Party Rights Act.
- Is default scheme – parties can contract on different terms.

DUTY OF FAIR PRESENTATION (1)

- Question of substance and form.
- Insured must:-
 1. Disclose all “material circumstances” knows or ought to know or
 2. Provide sufficient information to put underwriter on notice to ask further questions.
- Insured may not “data dump”.
- Insured ought to know what its senior management, persons arranging insurance e.g. (broker/risk manager) knows and what would reasonably have been revealed by reasonable search.

DUTY OF FAIR PRESENTATION (2)

- Insured does not have to disclose a circumstance if insurer knows it, ought to know it or is presumed to know it. That means:-
 - Insurer knows what is known to underwriters/agents – (not senior management).
 - Insurer ought to know what should have been passed on to underwriters or what it holds in its systems provided “readily available”.
 - Insurer presumed to know common knowledge and what underwriters writing that class of business should know.

INSURERS' REMEDIES

- “Deliberate or reckless breach” – insurer can avoid policy and keep premium.
- All other breaches:-
 - a) If the insurer would have imposed additional terms/additional limits – these are imposed from inception and /or
 - b) If the insurer would have charged a higher premium claim is reduced pro-rata (average).
- NB. No “innocent non-disclosure”.

WARRANTIES AND SIMILAR TERMS

- Basis clauses abolished – cannot contract out.
- Warranty becomes suspensive condition – cover is suspended but breach can be remedied and cover restored.
- Insurer cannot rely on warranty or other risk mitigation term if insured shows non-compliance “would not have increased the risk of the loss which actually occurred in the circumstances in which it occurred”.
- Does not apply to a term which defines risk as a whole.

INSURERS' REMEDIES FOR FRAUD

- Breach of utmost good faith – avoidance only. Courts not follow.
- New remedy - forfeiture of entire claim.
- Insurer not liable to pay claim including any honest part.
- Insurer remains liable to pay previous genuine claims.
- Insurer has option to terminate policy from date of fraud.
- Insurer can keep premium.
- Codifies current law.

CONTRACTING OUT

- Cannot contract out of basis clause provision or if policyholder is consumer (warranties/fraud) unless favourable to consumer.
- If a term places a business policyholder in a worse position then insurers must:-
 - take sufficient steps to bring term to policyholder's attention and
 - ensure term is clear and unambiguous.
- Flexible test. More required for SME/direct sales than for broked or sophisticated market.

QUESTIONS FOR UNDERWRITERS

- Do we want to contract out?
 - If so for what and when? There is some cost as need to bring to attention of policyholder and draft clear terms.
- Fair presentation. Opportunity to agree what information required by class/by policyholder.
- Training. Will underwriters ask necessary questions? Do they have at least average knowledge for class underwriting?
- Knowledge of agents (surveyors/loss adjusters) – is information which should reasonably be passed to underwriter actually being passed? Claims department?

QUESTIONS FOR UNDERWRITERS

- Systems. What information is held? Can it be accessed? Legacy system problems will not attract sympathy in future.
- Remedies – evidence of what would have done.
- Warranties – are they needed? Act imposes limitations and potential litigation.
- Use exclusion clauses?
- Opportune time to review policy wordings.

QUESTIONS FOR POLICYHOLDERS AND BROKERS

- Requirement for reasonable search – is there an adequate process? Board involvement?
- Complex presentation requires signposting – no data dumps.
- Must answer questions correctly – check information given to underwriter (many do not).
- “Expectations and beliefs” must be in good faith – evidence to support statements?
- Broker not obliged to disclose confidential information from unconnected party – is that understood?
- Will this lead to policyholders placing more value on insurance? Opportunity and threat for broker.

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