

Life, critical illness and disability claims

P62: October 2015 edition

Web update 2: 19 October 2016

Please note the following update to your October 2015 edition of the **P62** study text.

Chapter 1, section C, page 1/10

The following text has been amended, with the change shown in **bold**:

Insurance Act 2015:

This Act **came** into force in August 2016.

Consumer Rights Act 2015:

This Act **consolidates** previous legislation regarding consumer rights including the Sale of Goods Act 1979, Unfair Terms in Consumer Contracts Regulations 1999 and the Supply of Goods and Services Act 1982.

The following text has been added:

Enterprise Act 2016:

This Act comes into force on 4 May 2017 and will insert a requirement into all insurance contracts that insurers must pay any sums due to their insureds within a 'reasonable time'. While some restriction of these provisions may be possible for non-consumer contracts it will not be possible to contract out of them for consumer contracts.

Chapter 5, section C, page 5/9

The following text in the 'Activity' box, under '2014 definition', has been amended, with the change shown in **bold**:

- Typical clinical symptoms (for example, characteristic **chest** pain).

Chapter 15, section A, page 15/6

The following text has been amended, with the change shown in **bold**:

A deliberate or reckless misrepresentation is defined as existing when:

- the consumer knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading; and
- the consumer also knew that the matter to which the misrepresentation related was relevant to the insurer, or **did not care that it was**.

Chapter 15, section A, page 15/9

Please delete the following text:

Insurance Act 2015 change

If you are planning to sit your exam **before** 1 October 2016, **you will not** be examined on section A7.

If you are planning to sit your exam **on or after** 1 October 2016, you **will be** examined on section A7.

Even if you are planning to sit your exam before 1 October 2016, you are encouraged to read section A7 in order to develop an understanding of the new position.

Chapter 15, section A, page 15/10

The following text has been amended, with the change shown in **bold**:

The Insurance Act 2015 makes a series of significant reforms to the law relating to commercial (non-consumer) insurance contracts. The Bill received Royal Assent in February 2015; however, most of the provisions **came** into force in August 2016.

Chapter 15, section E, page 15/15

Please delete the following text:

However, the FOS has the power to consider cases outside these time limits in exceptional cases.

And replace with:

However, the FOS has the power to consider cases outside these time limits subject to agreement by the insurer and this is recognised by the Alternative Dispute Resolution Directive implemented by the UK on 9 July 2015

Please delete the following text:

The FOS will reach its decision based on what is fair and reasonable in all the circumstances, taking into account the law, FSA rules and good industry practice.

And replace with:

The FOS will reach its decision based on what is fair and reasonable in all the circumstances, taking into account the law, FCA rules and good industry practice. The ADR Directive requires the FOS to answer complainants within 90 days of receiving the claim file.

Chapter 15, section G, page 15/18

The following text has been inserted after the core principles of the DPA 1998:

The EU's new **General Data Protection Regulation [GDPR]** came into force on 25 May 2016 and it will supplement the provisions of the 1998 Act.

The decision to leave the EU on 23 June now means the GDPR will not apply directly. However, if data is transferred to the UK from within the EU, the UK will have to meet EU standards of protection. UK businesses offering goods or services within the EU will also have to comply with the GDPR. So while there may be some room for flexibility as to the details, the UK's decision to leave the EU will not make much difference.

The key provisions of GDPR include the following elements:

- It introduces a right to be forgotten such that individuals can request erasure of their data in certain situations – for example where consent is withdrawn or where no legal ground for processing the data continues to exist.
- Further obligations on companies to demonstrate compliance with the Regulations.
- Data breaches must be dealt with without delay and if at all possible within 72 hours of knowledge of the breach. Delays to notification will require a justification
- Greater sanctions for data breaches can be imposed – up to 4% of the annual worldwide turnover.
- Companies must appoint a Data Protection Officer.

Chapter 15, section G, page 15/21

The following section has been inserted as G5:

The **Insurance Act 2015** came into force on 12 August 2016 and applies to all classes of non-consumer insurance. It is closely associated with the reforms introduced by the Consumer Insurance (Disclosure and Representations) Act 2012.

The Act introduces the following changes for non-consumers:

- A duty of fair presentation, replacing the duty of disclosure.
- The concept of proportionate remedies where the duty of fair presentation is breached.
- Downgrading the seriousness of a breach of warranty such that it does not automatically discharge the insurer from liability.

Chapter 15, section G, page 15/22

The following section has been inserted as G7:

The **Enterprise Act 2016** comes into force on 4 May 2017. It will insert a requirement into all insurance contracts that insurers must pay any sums due to their insureds within a 'reasonable time'. While some restriction of these provisions may be possible for non-consumer contracts it will not be possible to contract out of them for consumer contracts.

The Act outlines the following factors that can be taken into account when deciding what constitutes a 'reasonable time'.

- The type of insurance.
- The size and complexity of the claim.
- Compliance with any statutory or regulatory rules or guidance.
- Factors outside the insurers control.

An action to claim damages for late payment of an insurance claim must be brought within 1 year from the date on which the insurer paid the claim.