

The Insurance Act 2015

What it means to you

Giving information to insurers

You have always been under a Duty of Disclosure to pass on to insurers all information which you know (or ought to know in the normal course of business) which would influence insurers when assessing whether to accept your insurance and if so at what price and terms.

The problem for you is knowing what information – material facts – would influence an insurer and what information you should come across in the normal course of your activities.

The Act has created a new Duty of Fair Presentation. You must still give insurers all information which will influence their assessment of your business but The Act is very clear about the types of things this encompasses and what you can assume the insurer already knows.

In addition there is a new requirement for you to make a 'reasonable search' for the information, not just rely on your own knowledge. The Act requires all senior management to be involved in providing information and also anyone outside your organisation who may have some knowledge of your business which would influence insurers – insurance brokers are obviously included in this but IT consultants, external accountants, HR consultants, H&S consultants are also examples (and not an exhaustive list!)

The Act is also very specific about declaring information that you suspect is available but haven't asked for in case it is not positive – you cannot turn a blind eye.

If you are not sure whether you need to disclose something, you must give enough information initially for the insurer to identify if they need more information from you.

Examples of things that may be material and you should disclose:

- Special or unusual facts about your risk
- Any particular concerns which have led you to seek insurance cover
- Anything which someone in your field of activity would understand as being something which should be declared in a fair presentation

You do not have to declare anything which reduces your risk but as these are things which may improve your terms or reduce your premium we strongly recommend that you do declare them.

Breaching your Duty

At the moment, a breach of the Duty of Disclosure on your part gives the insurer the right to void your policy cover and walk away from the contract as though it had never existed: the breach doesn't have to have been deliberate, relate to a loss or have caused any issue to the insurer – a breach is a breach.

Under The Act, if an insurer can prove that a breach was Deliberate or Reckless, they still have the automatic right to void the policy and keep the premium.

In the event that the breach was unintentional or accidental there is a range of remedies:

- If the insurer would not have entered the policy on any terms they can void the cover but must return the premium
- If they would have entered the policy on different terms they can amend the wording retrospectively back to inception and claims made in the interim will be re-assessed in light of the new wording
- If they would have charged a higher premium they can reduce any claim payment (including adjusting settled claims) by a corresponding proportion to the underpayment of premium and charge an additional premium to the end of the contract

Policy Terms

The Act has abolished Basis of Contract clauses, these were phrases on proposal forms and policies which effectively made all the information into contractual warranties. If any information was wrong the insurer could void the whole contract, even if it has no bearing on any losses.

A Warranty is a term in an insurance contract which must be strictly complied with. Under current legislation, the only remedy for any breach of warranty has been to void the policy completely, even if the breach of warranty is not related to any claim which has occurred or can be rectified.

Under The Act changes if a warranty is breached, the cover will be suspended and once the breach is rectified the cover will resume. If a claim occurs during the period of suspension which is not related to the breach, cover will apply.

The Act has extended this to include any clauses which have the same effect as warranties, such as Conditions Precedent to Liability (which state that something must/must not be done in order for liability to exist under the policy).

Warranties which 'go to the heart of the contract' (e.g. Territorial Limitations) are not amended and retain their full force.

Insurers can decide to opt out of the provisions of The Act and continue to include warranties and retain the right to void cover in the event of a breach but this must be clearly stated and brought to your attention prior to the contract being agreed.

If you have any questions or concerns please contact us. If any of your business contacts haven't heard about this yet please give them our details.

S-Tech Insurance Services Ltd
154-156 Victoria Road, Cambridge, CB4 3DZ
Tel: +44 (0)1223 445453
triciak@s-tech.co.uk
www.s-tech.co.uk

S-Tech Insurance Services Ltd is authorised and regulated by the Financial Conduct Authority

S-Tech