

Client Briefing - Insurance Act 2015

It has always been a principle of arranging insurance that clients have an obligation to tell their insurers 'material facts'. These are matters which insurers are entitled to know to enable them to decide whether they wish to provide cover for the risks you want to insure and if so, at what terms and conditions.

The principle was supported by what is now the rather outdated Marine Insurance Act 1906.

This legislation will be replaced soon by the Insurance Act 2015 effective from 12th August 2016.

The new Act will modernise insurance law and aims to make it easier and fairer for clients to have claims settled.

However, the Act introduces new levels of professionalism expected by all parties to an insurance contract for business insurance which will directly impact upon you and ourselves as your brokers.

The main issue to be aware of is the duty to make a 'Fair Presentation' when arranging your insurance. This means you and we have an obligation to disclose material matters which you (and if appropriate your colleagues, fellow management team) ought to know.

In return, the Act imposes greater onus upon insurers to behave fairly and reasonably when you make a claim.

Examples of what must be disclosed at the start of cover or at renewal:

-  Things which you know about which are material to arranging the insurance.
-  Things which if relevant, other senior management know.
-  Information which can be revealed by a reasonable search.

Examples of customer knowledge not required to be disclosed:-

-  Information your insurer already holds.
-  Information which reduces the risk.
-  Matters of common knowledge.

To assist your understanding of what might be construed as a material fact some specific examples are detailed below:-

-  Any amendment to your business activities
-  Acquisition of new premises or changes of occupancy
-  Changes to processes or practices in the storage of hazardous goods

-  Installation, alteration or disconnection of fire and/or security systems including the loss of police response
-  Amendments to your pattern of overseas trading particularly if you intend to trade with customers in the USA or Canada
-  Business acquisitions and changes of ownership
-  All motoring convictions, particularly any involving drink driving, dangerous driving and driving without insurance or offences that have resulted in licence suspension
-  Any disabilities that could impair driving e.g. epilepsy, diabetes, heart conditions etc.
-  All criminal offences, prosecutions, bankruptcy or insolvency of partners or directors

Please note this list is by no means exhaustive. If you are in any doubt whether something is a material fact please contact us for guidance.

To ensure you do not breach the new legislation we have a few recommendations:-

DO:	DO NOT:
<ul style="list-style-type: none">• Tell us anything you believe may be relevant• Complete and return promptly any questionnaires or declarations we may ask you to complete.• Make sure you have checked with other colleagues or senior management if there is additional information to tell us about.• Keep a record of all correspondence relative to arranging your insurances.• Pay your premium promptly.• Ensure you notify any possible claims to us promptly and in line with policy terms.• When comparing our recommendation with alternatives check that alternative insurers have not 'contracted out' of their obligations under the new legislation.	<ul style="list-style-type: none">• Attempt to conceal any relevant information.• Make any assumptions about what is material.• Falsely answer any questions.• Leave any questions unanswered.• Overlook checking with colleagues for information you may not be aware of.• Ignore requests for further information to be provided.

POSITIVE OUTCOMES

Providing you fulfil your obligations under the new legislation you can expect some positive outcomes.

For example, providing you do not act in a deliberately reckless way:-

-  Insurers cannot make any statement made by you before cover starts into a contractual condition and part of the terms of the contract.
-  Insurers will no longer be able to repudiate a claim for breach of a warranty unless the breach can be shown to be relevant to the loss e.g. Failure to comply with an alarm setting warranty will have no bearing upon a flood claim. *
-  Insurers cannot rely upon non-compliance with a policy warranty if you can show failure to comply could not have increased the risk to them. *
-  If you cannot comply with a warranty e.g. alarm warranty, cover can only be suspended for the period of the failure of compliance with the warranty. *
-  Insurers can only limit their liability for a claim where there is non-disclosure or misrepresentation of material facts, in proportion to the amount of premium they charged compared with what they would have charged had there been full disclosure.
-  Further legislation effective in 2017 – The Enterprise Act – will make insurers liable for damages for late payment of claims if your business suffers as a result of their unreasonable behaviour.

Please note if it can be shown that you have made a deliberate or reckless failure to disclose issues of relevance insurers may avoid the policy.

* These assume that the insurer has not “contracted out” of the provisions of the Act.

HOW WE WILL HELP

Some of these issues may seem to be a burden upon you and create uncertainty about how your insurances will be affected.

Please do not worry. This is not the intention. We want to help you and if you have any concerns please contact us.

The background to the legislation is to achieve fair outcomes for all parties providing all parties act in an honourable and reasonable way.