

## The Insurance Act 2015 - A Brief Guide for Clients

The Insurance Act 2015 (“IA15”) applies to any policy that is arranged, amended or renewed after 12th August 2016 and is the first major change to insurance law since the Marine Insurance Act 1906. It aims to promote greater fairness in the insurance market by redressing the imbalance of rights between insurer and the insured in several key areas.

### WHAT DOES IA15 MEAN FOR YOU, THE POLICYHOLDER?

- A new duty of ‘fair presentation’ for policyholders.
- Proportionate remedies for insurers for non-disclosure or misrepresentation.
- Fairer application of warranties and other terms.
- Proper remedies for fraudulent claims.

NB. Insurers can contract out of IA15.

### Duty of disclosure and a fair presentation of your risk

*A fair presentation discloses, in a reasonably clear and accessible manner, every material circumstance which is known or ought to be known by your senior management, or those responsible for arranging the insurance following a reasonable search. A fair presentation provides sufficient information to put insurers on notice to make further enquiries.*

- **Information supplied to insurers needs to be clear and accessible.** Mass data dumps of information are unlikely to meet the policyholder’s obligations and care will be needed to ensure that the risk profile is concise but clear.
- **A reasonable search for relevant information is required including questioning senior management.** An audit trail should be retained to evidence the enquiries made internally in case you need to prove to insurers that the presentation is fair.
- **Consider who should be classed as ‘senior management’.** If a dispute with insurers arises over a claim you may need to prove that the scope of internal enquiries was appropriate to meet the standards required of a ‘fair presentation’.

Depending on the size and complexity of your organisation, particularly if you have several offices or branches overseas, **this may mean that you need to start your renewal process much earlier.** You may also need to educate staff to report issues appropriately, and update your management information/ reporting systems.

If your information is **incomplete**, this should be also be disclosed to the insurer.

It may be useful to discuss the information that you have with us and to agree what additional information might be needed along with deadlines for submitting this.

### **Proportionate remedies apply for the insurer for material non-disclosure or misrepresentation**

If you deliberately or recklessly make a material non-disclosure or misrepresentation, the insurer can still 'avoid' (cancel) the policy from inception.

Where non-disclosure or misrepresentation is innocent:

- **If the insurer would not have entered the contract had they been aware of all the facts**, they must return the premium in full.
- **If the insurer would have entered the contract but on different terms** then they should treat the policy as though those terms had always been in place, for example by increasing the premium or excesses or by applying appropriate policy conditions.
- **Where the insurer would have charged a higher premium for the insurance**, they can reduce claims payments accordingly.

### **Warranties**

- **If you breach a policy warranty**, your insurer's liability will be suspended but if the warranty is remedied, the insurer must resume cover for the risk. Some insurers are using wide 'conditions precedent' clauses which may negate this benefit – you will need to study wordings carefully and obtain advice from your broker.
- Breach of a warranty will only prevent insurers from paying a claim if it had a causative effect on the loss.

### **Fraudulent claims**

- The insurer will not be liable to pay a fraudulent claim.
- The insurer is under no obligation to refund premiums paid and can give notice to terminate the contract from the time of the fraud but not retrospectively.

### **Contracting out**

Insurers can decide to contract out of the IA15, which will mean that some of the beneficial changes to you may not apply, but they must make this clear before you agree to proceed with a quotation. Again brokers should check wording with you and advise.

### **Claims Payments**

Claims payments should not be unreasonably delayed or withheld, nor valid claims mishandled.

**You can find out more about the Insurance Act 2015 and its impact on policyholders, like you, by taking a short online training course kindly supplied by Browne Jacobson solicitors. The course can be accessed [here](#).**