



The Insurance Act 2015

Glossary of some important insurance terms.

YOU MUST READ THIS DOCUMENT

**If you fail to take notice of or comply with these
or other terms on your policy
it could lead to a claim not being paid in part or all.**

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Introduction

It is important to note that no insurance policy will cover every eventuality. All insurance policies include 'small print' which places obligations upon both parties to ensure that the insurance remains valid and operational.

At BQI, we place a great importance on ensuring that we take your demands and needs into account when providing you with a quotation and recommending the product that's right for you. As part of this, we would highlight the following terms which can often be overlooked but are critical when making sure your policy meets your expectations.

These terms are not exhaustive on the foundations of insurance and if you have any further questions or queries please do not hesitate to contact your Account Executive who will be happy to help.

The Insurance Act 2015

Introduction

In February 2015, the Insurance Act 2015 (the Act) received Royal Assent and became effective on 12th August, 2016. The Act has a significant impact on the operation of your insurance policy, including your disclosure obligations towards the insurers, warranties and fraud. The Act also impacts on the remedies insurers may adopt in the event of your obligations not being complied with. The purpose of this notice is to highlight the key changes introduced by the Act, so we would recommend you read these notes carefully. If you require more information on these important changes, please contact your dedicated Account Executive, who will be happy to assist in explaining your obligations. The Act applies to all non-consumer insurance policies commencing on or after 12th August 2016.

A Fair Presentation of the Risk

An underwriter can only make decisions based on the facts presented to them. They know general information about your trade but only the additional information about your business from you filling out their questionnaires and volunteering information. The objective of a fair presentation is to give them all the information they might need to quote a premium and decide what terms to offer you. So, answer their questions carefully and tell them:

- Things that will increase the risk of a loss.
- Your plans for the business.
- Any unusual processes or systems that are not normal for the trade.
- Why you are changing insurers (if that is the case).

Consider also that they will want to know about anything that calls into question the integrity of the firm, its senior management, directors and owners, convictions, bad debts, court judgements, censure or accusations by authority, investigations by authority and so on. Imagine all those things you might want to know about someone you were employing to look after your firm's finances and cash or something or some person who is precious to you. The point about the fair presentation is that it is far better to get everything out at the time of quotation than to let the insurer find things out at the time of a claim.

A Reasonable Search

The discipline created by the Act is a good one in that you are required to make enquiries of anyone who might be able to give material information. This will include directors, senior management, shop floor managers, and agents of the firm such as solicitors or accountants. Please provide us with a clear list of Persons of authority within your firm so that we can help you create a secure and effective way of managing your insurances with us.

Accuracy and Clarity

No more hastily completed questionnaires, The Act places a responsibility on the insured to be clear and accurate in giving answers. If you have any points you wish to raise about the questions that are asked of you or there is anything you do not understand then please ask us to advise you. It is no longer possible simply to send documents to an insurer and expect them to look through them to find material facts. You have to tell them what to look for.

Claims Payments

As long as you are honest and not reckless, the claims payment situation has improved for you and this is outlined under the following sections.

Warranties

Similarly, the treatment of warranties has improved in your favour and the changes are detailed in the examples below. One major new responsibility is that you will have to tell insurers if you ever breach a warranty during the policy year, so you are going to have to make a note if that happens.

Claims Remedies

As long as you are honest and not reckless (not caring) in helping the insurer understand the risk they are covering, then the Act provides you with what should be fairer treatment if your presentation is not fair. If you have been fraudulent or reckless in your presentation then the underwriter may have a right to avoid the policy from inception, pay no claims and keep the premiums.

The insurer will look at the risk at the time of a claim and if you have not made a fair presentation and in the absence of dishonesty or recklessness, they will have three options:

- 1) To suggest that they would have charged more premium and reduce your claim proportionately;
- 2) To suggest that they would have written the policy but on different terms, in which case they can rewrite the policy from inception and apply those terms;
- 3) To suggest that they would not have insured you at all and avoid the policy from inception and give you back your premiums.

Can you see now why it is important to get the presentation right from the outset, even if it takes more time and a greater level of enquiry than previously?

Remember the insurers can apply these remedies even if the non-disclosure or misrepresentation has nothing to do with the loss.

Always refer the matter to us if the insurer suggests that they might not pay your claim in full as illustrated in the examples below.

Warranties and Conditions

A warranty or condition precedent to liability has to be complied with literally or the insurer might have the right to cancel the policy from the date of the breach and not pay any claims.

Some warranties must be complied with at all times and others you must be complying with at the time of a loss. We will advise you which is which.

An insurer may only take action on a breach of warranty if the breach was causative of a loss.

If a warranty is partially causative, then the insurer might reduce a claim rather than not pay it at all.

In the past an insurer could refuse to pay a claim if you breached a warranty at any time and even if the breach had nothing to do with the loss.

Because the insurer has lost that rather strict right, it is likely to be material to the underwriter if you have failed to comply with any warranty as required.

We therefore think it is important that you develop a system of making a note if a warranty is ever breached during the year.

Contracting Out

It is possible to "contract out" of the new Act. As your insurance broker we will advise you if this applies to you.

Changes, Duty of Disclosure & Material Facts

It is important that you understand any information, statements or answers made by you to us or your insurer, are your responsibility and must be correct.

Any failure to disclose facts material to the insurer or any inaccuracies in your answers may invalidate your insurance cover in part or in whole.

Facts material to the insurance are matters or information which may influence your insurer as to the acceptability or otherwise of your proposal or renewal and must be disclosed immediately. You are advised to keep copies of documentation sent to or received from us for your own protection. Please ensure you consult us if you are in doubt as to whether something is material information or not.

The disclosure of information not only applies at the commencement and renewal of your policy, but also at anytime during the period of insurance.

Please note that if you fail to disclose any information or change in circumstances to your insurers which could influence the cost of your premium, or their decision to accept your insurance, this could invalidate your insurance cover and could mean that part or all of a claim may not be paid.

Your insurances are important. Please keep us informed of all changes to your business, so that we can give you advice on the insurance aspect of those alterations. A note of the type of matters to be referred is enclosed, which whilst not being exhaustive is intended to be a help. Our aim is to ensure that your risks are properly assessed and protected at all times.

The information you provide must be a Fair Presentation of Risk, which is established by conducting a Reasonable Search of your business, and the information you provide must be Clear and Accurate, as detailed in the Insurance Act information. Two questions you should ask yourself when reviewing the information you provide are:

- Could this information mis-lead?
- Is there anything else that should be disclosed?

Examples of information you might need to provide:

- Any history of bad debt of any directors, partners or principals whether as an individual or in a company including County Court Judgements, bankruptcy, administration orders, IVAs, CVA's etc
- Criminal convictions (spent or otherwise)
- Any history of censure AND / OR investigation by HMRC or other regulatory body
- Acquisitions or disposals
- Changes in process, occupancy, products, materials or operations
- Purchase, construction, development, of new premises.
- Alterations to premises
- Increase or decrease to stock, equipment, contents or any other items insured.
- New contractual liabilities
- Hiring in, borrowing or leasing of plant.
- Alteration or amendment to services including, fire or burglary protective systems or withdrawal of police response services
- Circumstances which require increased liability limits such as exhibitions, open days, overseas contracts etc.

If you have any doubt as to whether a fact should be disclosed, please contact us.

Description of Business & Activities

It is important to ensure that your business description and activities are kept up to date at all times. Any new activities or alterations to the existing ones should be advised immediately throughout the life of your insurance policy.

Summary

Always contact us in the event of the insurer indicating that they may not pay a claim in full. Either we, as your insurance broker, will guide you or advise you, or we can introduce you to independent claims specialists who can look after your interests if you have taken advantage of our Claims Consultancy Club.

You might also wish to consider appointing a specialist when the loss first occurs if it is complicated or of any size, which again can be arranged with the uptake of our Claims Consultancy Club.

If you would like to know more with regards to the Claims Consultancy Club then please contact your dedicated Account Executive.

Also remember that any changes to your cover requirements should be notified to us immediately so these can be agreed with insurers (we would always appreciate notifications in good time so that we can have arrangements in place before any deadline).

Glossary of some important insurance terms.

Warranties, Policy Conditions & Subjectivities

All policies contain warranties, conditions, exclusions, and exceptions. When a policy is issued you are strongly advised to read it carefully as it will be this document, the schedule and any certificate of insurance which is the basis of the insurance contract you have purchased.

Where specific warranties apply to your insurance, they must be complied with continually AND strictly word for word. Any breach could result in your policy being cancelled by the insurer.

Remember that the term "WARRANTY" in an insurance policy, is not a benefit.

Equally, certain conditions which are not warranties can have a bearing on the operation of cover.

Conditions are most often precedent to liability which means that similar to a warranty, it must be complied with continually. However a breach of such a condition allows the insurer to avoid a claim where the claim results from the breach in question.

Where either warranties or special conditions apply, they are briefly highlighted in the documents we have sent to you; however we do ask that you refer to your policy documentation for full wordings.

Subjectivity conditions or clauses can also apply to an insurance policy and these can often take the form of actions which must be completed or documents which must be provided to allow cover to continue. Such clauses will carry a deadline upon expiry of which insurers can, at their sole discretion terminate the cover or amend the terms and conditions of the insurance policy.

Average

The sums insured shown on your insurance schedule and policy are subject to AVERAGE (unless otherwise stated by endorsement, please ask your Account Executive if you are unsure).

This means that if you are insured for less than the full value (Underinsured) for any item at the time of a loss, then ANY claim payment may be reduced in accordance with the proportion that the sum insured bears to the full value of the risk. If underinsurance is significant, the insurer can treat this as a misrepresentation of the risk and avoid the policy (cancel from inception) altogether.

As an example, if your buildings are insured for £500,000 but the rebuilding cost of those buildings at the time of the loss is actually £1,000,000, a claim of say £50,000 to repair a damaged part of the building would result in a payment of £25,000. This is most commonly calculated as follows;

$$\text{Value at risk} \times \text{Insured value} \div \text{Actual value} = \text{Claim to be paid}$$

$$£50,000 \times £500,000 \div £1,000,000 = £25,000$$

It is your responsibility to ensure that your sums insured represent the full value of the risk/s you are insuring at the inception and duration of your policy allowing for inflation. This is important to ensure that you are fully insured in the event of a claim.

If necessary you should seek professional advice on what a full sum insured should be. We can only advise you how to calculate the sum insured not what the sum insured should be.

For further clarification, please contact our office for advice.

Basis of Settlement

There are four basis of settlement for property insurance. These are detailed below starting with the most common basis;

- **Reinstatement** – This is the most common basis of cover and is often referred to as 'New for Old' cover. Settlements of this type are made based upon the cost of replacement or repair without a deduction for wear and tear provided that reinstatement is actually carried out. Where damage rather than total loss occurs, settlement would be for the cost for restoring the damage with new material, again without any deductions for wear and tear provided the full repair takes place. It is important to note that where this cover is in place, your sums insured must represent the full cost of replacing the item/items as new at the time of the loss or damage.
- **Indemnity** – Similar to Reinstatement, this cover provides settlement for new replacement costs to replace or repair an item but a deduction is made for wear and tear. The principle of Indemnity cover is to place you in the same financial position after a loss as that which you were in immediately before the loss.
- **Agreed Values** – An uncommon, but occasionally available basis of settlement, Agreed Value can apply to items such as antiques or valuables which may be insured on a 'selling price' basis. This value must be agreed (and quantified by valuation or similar) by insurers at the inception of cover and rated accordingly.
- **First Loss** – This can be used to financially restrict cover. For instance where it would be inconceivable that a large risk could lose the entire property or stock by theft, the insurance may be arranged as a total declared value of £1,000,000 but with a first loss limit of £100,000. This would mean that insurers' liability for any one incident would be restricted to £100,000 maximum regardless of the amount of the loss.

If you are unsure as to the basis of settlement for your items, please contact us for further advice.

Claims

All policies contain conditions regarding the notification of claims. It is your responsibility to notify us immediately of all incidents that may result in a claim against your insurance policy. You must do so whether you believe that you are liable or not.

Any correspondence or claim received by you must be passed to us immediately, without acknowledgement to the sender other than where there is a claim notice under the Ministry of Justice where acknowledgement is required to the communicating solicitor within 24 hours.

Only by providing prompt notification of incidents can your insurance company take steps to protect your interests. We will provide you with details on who to contact to make a claim when issuing your policy documents.

During office hours please contact our office on 01604 498 300. Outside of our office hours, please contact your insurers claims helpline number which can be found in your policy booklet.

Subrogation

With regard to claims, Insurers are entitled to take over any rights which you may have against other parties, with regards to making recoveries to minimise their loss. These rights of recourse are known as Subrogation Rights.

Your policy contains provisions that either exclude the Insurers from Liability, or allow the Insurers to reduce their liability, for example, if you have entered into any agreements that exclude your rights to recover damages from another party in relation to any loss, damage or destruction, which would allow you to sustain a claim under your insurance.

Examples of this are the 'hold harmless' clauses which can often be found in contracts. If you are in doubt you should consult with us. Subrogation law is complex and even if you are underinsured, you may have rights to recover sums not paid by the insurer from the third party.

You may prejudice your rights with regard to a claim if, without prior agreement from your insurer, you make any agreement with a third party (such as the above) which will prevent the insurer from recovering the loss from that or another party.

Retention of Liability Documents

Successful long tail liability claims, as a result of a gradually operating cause, are no longer unusual e.g. deafness or asbestos related claims can span 20 years or more. It is important that you retain indefinitely all liability policies both in your name or that of any company with whom you are or have been associated in the past.

Expired Employers Liability Certificates of Insurance should be retained for a minimum of 10 years to comply with current legislation but we recommend you retain them at least 40 years.

The Employers Liability Trading Office, now retain Employee Reference Numbers (ERN's) for all Employers Liability Insurance placed to ensure that tracing of this type of insurance is easier in the future. You will be asked for and should supply your ERN number when placing this type of cover.

Insurable Interest and Legal Entities

Only the legal entity that has a legal ownership of property (a chose in possession) or a right (a chose in action) may affect insurance. For general insurance policies, that are not marine insurance policies, that interest must exist at the time of a claim

A legal entity can be a person over age 18 or a legally formed organisation (such as a limited company) which has contractual capacity.

If both do not exist then there is unlikely to be any insurable interest and the insurer has an ancient right to avoid the policy as if it never existed.

In layman's terms, a policy will only cover items owned by or the responsibility of, persons or organisations specifically named in the policy document.