

Insurance Act 2015: Changes to UK Insurance Law

Comparison of old and new regimes

Issues	Previous Regime	Consumer Insurance (Disclosure and Representations) Act 2012	Insurance Act 2015
<p>Duty of Disclosure</p>	<p>Principles originated from sections 18 – 20 of the Marine Insurance Act 1906. Under the MIA there was an obligation on an insured to disclose every material circumstance about the risk and not to misrepresent material facts.</p> <p>No requirement on the insurer to ask questions to elicit information (unless the insurer wanted to ask questions relating to something disclosed to them).</p>	<p>A consumer insured has a duty to take reasonable care not to make misrepresentations.</p> <p>Burden shifted to the insurer to ask appropriate questions to elicit information. If the insurer fails to do so, they will have no remedy.</p>	<p>A non-consumer insured must make a fair presentation of risk, i.e.:</p> <ul style="list-style-type: none"> — Either disclose every material circumstance which the insured knows or ought to know (being those within the insured’s own knowledge/known to senior management or those responsible for the insurance) or give the insurer sufficient information to put a prudent underwriter on notice to ask further questions. — Information must be clear and accessible (no data dumping). — Representations must be substantially correct/made in good faith.
<p>Remedies</p>	<p>Insurer could avoid policies for misrepresentation/ non-disclosure regardless of whether the misrepresentation/non-disclosure was deliberate or reckless.</p>	<p>Insurer’s remedy depends on the nature of the consumer’s misrepresentation:</p> <p>Deliberate or reckless – the insurer can avoid the policy and refuse all claims and need not return any premiums paid (unless this would be unfair to the consumer).</p> <p>Careless – remedy based on what the insurer would have done if the consumer had taken reasonable care not to make a misrepresentation:</p> <ul style="list-style-type: none"> — If insurer would not have entered into the contract on any terms – insurer may avoid and refuse all claims but must return the premium. — If insurer would have entered into contract on different terms – insurer can require that the contract be treated as if those terms apply. — If insurer would have charged a higher premium – insurer may reduce the claim payment accordingly. <p>Honest and reasonable – the insurer must pay the claim.</p>	<p>Insurer’s remedy depends on the nature of the insured’s breach of duty:</p> <p>Deliberate or reckless – insurer can avoid policy, refuse claims, and not return the premium (‘deliberate or reckless’ is when the insured knew or did not care whether it was in breach of duty of fair presentation; this is for the insurer to prove).</p> <p>Neither deliberate nor reckless – remedy is determined by what the insurer would have done if there had been a fair presentation:</p> <ul style="list-style-type: none"> — If the insurer would not have contracted on any terms – insurer may avoid and refuse all claims but must return the premium. — If the insurer would have entered into the contract on different terms – insurer can require that the contract be treated as if those terms apply. — If the insurer would have charged a higher premium – insurer may reduce the claim payment accordingly.

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Warranties	<p>'Basis of contract' clauses:</p> <ul style="list-style-type: none"> — Pre-contractual statement could be converted into warranty by using 'basis of contract' language. — Any inaccuracy would discharge insurer from all liability for loss. <p>Section 33(3) Marine Insurance Act 1906:</p> <ul style="list-style-type: none"> — a warranty 'must be exactly complied with, whether it be material to the risk or not' — if not, 'the insurer is discharged from liability from the date of the breach of warranty'. <p>Section 34(2) provided that once a warranty had been broken, the insured could not use defence that breach had been remedied.</p>	<p>'Basis of contract' clauses prohibited for consumer insurance.</p>	<p>Warranties retained but the 'sting' removed:</p> <ul style="list-style-type: none"> — Abolition of 'basis of contract' clauses in non-consumer insurance: must now expressly include warranties in contract. It is not possible to contract out of this provision. — For consumer and non-consumer insurance, breach of warranty suspends (not discharges) insurer's liability only, and where the breach is remedied before loss, insurer must pay claim. Breach will be taken as 'remedied' either when the insured ceases to be in breach or if the risk becomes essentially the same as was originally contemplated. — In the case of a warranty or other term intended to reduce the risk of loss of a particular kind, at a particular location or at a particular time, insurer cannot rely on breach of the term if the non-compliance could not have increased the risk of the loss that actually occurred.
Fraudulent Claims	<p>Remedy for fraud – position under previous regime unclear.</p>	<p>N/A</p>	<p>Where fraud is established:</p> <ul style="list-style-type: none"> — The whole claim is forfeited. — Insurer may by notice opt to treat the contract as terminated from the date of the fraudulent act (without returning premium). — A fraud does not affect any previous claims/notifications (depending on policy language), regardless of whether insurer chooses to terminate.
Claims for Late Payment	<p>Damages could not be claimed for late payment of insurance claim.</p>	<p>N/A</p>	<p>From 4 May 2017 insurer must pay valid claims within a reasonable time. Insured can claim damages if duty breached.</p>