

Insurance act update

Wednesday, 29th June 2016

NIG Committed to Fair Presentation of Risk

In our first Insurance Act bulletin issued last month, we explained how NIG was embracing the changes brought about by the Insurance Act 2015. In this bulletin we will look at one of the major changes brought about by the Act in a little more detail - Fair Presentation of Risk.

Why is change needed?

As there is now far more publically available information accessible to help underwriters understand the risks that are being proposed to them, placing the burden on the policyholder alone, to disclose material information in the modern day is unfair.

New position

The revised duty in respect of disclosure is a key change in the disclosure requirements for non-consumer contracts. Now, the insured must make a "Fair Presentation of Risk". This is defined as one:

- which makes a disclosure of every material circumstance which the insured knows or ought to know or disclosure which gives insurers sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances;
- which makes the disclosure in a manner which would be reasonably clear and accessible to a prudent insurer;
- in which every material representation as to a matter of fact is substantially correct and every material representation as to a matter of expectation or belief is in good faith.

Fair Presentation of Risk therefore includes both existing requirements (such as material accuracy and good faith) as well as some new ones (such as conducting a reasonable search and the clear and accessible presentation of risk information).

Impact of the new requirements

There are several key impacts of these new requirements:

- insurers will have to take more responsibility for asking questions and probing for information about a risk;
- signposting matters to underwriters will probably be sufficient;
- no data-dumping on insurers, nothing should be buried in footnotes.

The Insurance Act states that the insured does not need to disclose a circumstance if it diminishes the risk, the insurer knows it, the insurer ought to know it, the insurer is presumed to know it or it is something as to which their insurer waives information. In the main, this is the same as the current

practice.

In the event of a misrepresentation occurring, the remedy has now changed depending on the circumstances. If the misrepresentation has been a deliberate or reckless breach of the Fair Presentation of Risk then the insurer can avoid the contract and retain the premium. If the misrepresentation is deemed to have been non-deliberate or innocent, the insurers' remedy changes.

At NIG we will be asking ourselves what we would have done had the innocent non-disclosure actually have been made when making the fair presentation. If we would not have written the policy, then the remedy applied will be to avoid the contract but we will return the premiums paid. If we decide that we would have written the policy but on different terms, then in the event of a claim we will adjust the amount of the claim by either the additional terms we would have applied (e.g. the excess) or proportionately reduce the claim in line with the proportionate change in premium, or, if applicable apply both remedies.

NIG response

Neil Manser Managing Director of NIG; "All of the Insurance Act changes will be fully embedded into our future conversations with our Broker partners. We have been working hard to ensure all of our policy documentation is ready for 12th August. Existing policy holders will receive a 'Notice to Policyholder' at renewal, explaining what changes we have made to their existing policy wordings to make them compliant with the Act."

"We are carrying out frontline underwriter training to ensure they are all fully up to speed with all the changes that the Insurance Act brings, particularly in respect of Fair Presentation of Risk. In addition, we have already made a commitment that for eTraded business we will accept information provided as being a fair presentation."

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