

GUIDANCE RELATING TO INSURANCE ACT 2015

The Insurance Act 2015 has come into effect 12th August 2016 and has changed the law in relation to what must be disclosed to insurers at the renewal or inception of a policy. It is essential that you and the whole of your senior management (if any) read this note and comply with its terms.

Duty of Fair Presentation

Before the contract of insurance is entered into, you are under a duty to make to the insurer a fair presentation of the risk. This can be contained in more than one document and can even be presented orally.

This duty consists of three elements:

1. You must disclose every material circumstance that you know or ought to know. Failing that, you must disclose sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances. In this context, a 'material circumstance' is one which would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.
2. If you have disclosed a fact, that fact must be correct or substantially correct. In this context, 'substantially correct' means that a prudent insurer would not regard it as being materially different from the correct answer. If you have disclosed an expectation or a belief, then you must hold that expectation or belief in good faith.
3. You must disclose all this information in a manner that would be reasonably clear and accessible to a prudent insurer.

Knowledge

As stated above, you must disclose every material circumstance that "you know" or "ought to know". If you are an individual, the Act states that "you know" everything that is known to you and/or to anyone who is responsible for your insurance (such as your broker).

If you are not an individual, the Act states that "you know" everything that is known to your senior management and/or anyone who is responsible for your insurance. 'senior management' means those individuals who play significant roles in the making of decisions about how your activities are to be managed or organised.

Whether you are an individual or not, the Act states that you "ought to know" everything that should reasonably have been revealed by a reasonable search of information available to you. This search can be achieved by making enquiries or by any other means.

Remedies

If you breach the duty of fair presentation, Insurers will have a range of remedies. **These remedies include a suspension of the cover, a revision in their terms and in a case of a deliberate or reckless non-disclosure may lead to avoidance of the policy.** As such, it is very important that you comply with the duty of fair presentation.

Help

If you want any further guidance in this matter, please contact us.