

The Insurance Act 2015

Introduction

This is the fifth in a series of updates from the Weightmans Market Affairs Group which aim to raise awareness of the changes facing the insurance industry in relation to commercial insurance contracts following the enactment of the Insurance Act 2015 ('the Act') the main provisions of which come into force on 12 August 2016.

Our previous publications provided an overview of the Act, considered the new duty of fair presentation and the available remedies in the event of a breach of that duty. If you have missed our previous publications on the Act they can be found [here](#). In this update we will consider how the Act reforms the law in relation to fraudulent claims.

Fraudulent claims

Part 4 of the Act sets out the remedies available to an insurer in the event that an insured presents a fraudulent claim, and also how this applies to group insurance policies. Part 4, unlike other provisions of the Act, applies to both consumer and non-consumer insurance policies.

If an insured submits a fraudulent claim, the insurer can:

- refuse to pay the claim;
- recover from the insured any sums paid to the insured as a result of the fraud;
- terminate the policy from the time of the fraud;
- avoid liability for any claims occurring after the fraud; and
- retain the policy premium.

The insurer will not escape liability for any claim notified prior to the fraud, nor for any claim notified after the fraud but where the loss occurred prior to the fraud being committed.

It should be noted that whilst the Act makes reference to an insurer being able to recover sums paid to the insured as a result of the fraud, it is our view that this right of recovery could possibly extend to those payments made to others (for example, suppliers and service providers) on behalf of the insured.

In respect of group insurance policies, (policies taken out by one person to cover a number of others) the above remedies will apply but only in respect of the individual party committing the fraud and will not affect the insurance position of the remainder of the group.

What does this mean for insurers?

The insurance industry has a regulatory responsibility to combat fraud and financial crime. There are a growing number of insurers taking a robust stance against fraud which raises positive brand awareness and delivers a firm message to those insureds that are complicit in criminal activity.

To be more effective, claims and underwriting teams need to work more closely and to share information with each other when it comes to fraudulent events. The focus needs to be on detection, prevention and staying ahead of new and emerging strategies.

Whilst the Act merely clarifies the remedies available, insurers should pay close attention to those claims submitted after

a known fraud but where the event causing loss is alleged to have occurred prior to the fraud. Insurers will remain liable for these claims so the actual date of loss needs to be investigated carefully.

Insurers should also remember the suspensory provisions of the Act for breach of warranties and time related terms. These could also be a catalyst for opportunistic fraud as addressed in our previous update.

The remedies contained within the Act do not affect the insurer's ability to plead, in litigation, that a claim is fundamentally dishonest, or to apply to the court for a finding of contempt. Indeed, bearing in mind the application of QOCS, insurers may well wish to consider pleading fundamental dishonesty in place of fraud. The Act also does not amend the insurer's right to report fraud to Police. Further, insurers have the option of finding private prosecutions against those insureds who have perpetrated the fraud.

What next?

Should you wish to discuss the Act and its effects in more detail, or would like assistance with your preparations, please do not hesitate to get in touch.



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January 2016

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