



Insurance Act 2015

2015 CHAPTER 4

PART 2

THE DUTY OF FAIR PRESENTATION

2 Application and interpretation

- (1) This Part applies to non-consumer insurance contracts only.
- (2) This Part applies in relation to variations of non-consumer insurance contracts as it applies to contracts, but—
 - (a) references to the risk are to be read as references to changes in the risk relevant to the proposed variation, and
 - (b) references to the contract of insurance are to the variation.

3 The duty of fair presentation

- (1) Before a contract of insurance is entered into, the insured must make to the insurer a fair presentation of the risk.
- (2) The duty imposed by subsection (1) is referred to in this Act as “the duty of fair presentation”.
- (3) A fair presentation of the risk is one—
 - (a) which makes the disclosure required by subsection (4),
 - (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
 - (c) 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 made in good faith.
- (4) The disclosure required is as follows, except as provided in subsection (5)—
 - (a) disclosure of every material circumstance which the insured knows or ought to know, or

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- (b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.
- (5) In the absence of enquiry, subsection (4) does not require the insured to disclose a circumstance if—
- (a) it diminishes the risk,
 - (b) the insurer knows it,
 - (c) the insurer ought to know it,
 - (d) the insurer is presumed to know it, or
 - (e) it is something as to which the insurer waives information.
- (6) Sections 4 to 6 make further provision about the knowledge of the insured and of the insurer, and section 7 contains supplementary provision.

4 Knowledge of insured

- (1) This section provides for what an insured knows or ought to know for the purposes of section 3(4)(a).
- (2) An insured who is an individual knows only—
- (a) what is known to the individual, and
 - (b) what is known to one or more of the individuals who are responsible for the insured's insurance.
- (3) An insured who is not an individual knows only what is known to one or more of the individuals who are—
- (a) part of the insured's senior management, or
 - (b) responsible for the insured's insurance.
- (4) An insured is not by virtue of subsection (2)(b) or (3)(b) taken to know confidential information known to an individual if—
- (a) the individual is, or is an employee of, the insured's agent; and
 - (b) the information was acquired by the insured's agent (or by an employee of that agent) through a business relationship with a person who is not connected with the contract of insurance.
- (5) For the purposes of subsection (4) the persons connected with a contract of insurance are—
- (a) the insured and any other persons for whom cover is provided by the contract, and
 - (b) if the contract re-insures risks covered by another contract, the persons who are (by virtue of this subsection) connected with that other contract.
- (6) Whether an individual or not, an insured ought to know what should reasonably have been revealed by a reasonable search of information available to the insured (whether the search is conducted by making enquiries or by any other means).
- (7) In subsection (6) “information” includes information held within the insured's organisation or by any other person (such as the insured's agent or a person for whom cover is provided by the contract of insurance).
- (8) For the purposes of this section—

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- (a) “employee”, in relation to the insured's agent, includes any individual working for the agent, whatever the capacity in which the individual acts,
- (b) an individual is responsible for the insured's insurance if the individual participates on behalf of the insured in the process of procuring the insured's insurance (whether the individual does so as the insured's employee or agent, as an employee of the insured's agent or in any other capacity), and
- (c) “senior management” means those individuals who play significant roles in the making of decisions about how the insured's activities are to be managed or organised.

5 Knowledge of insurer

- (1) For the purposes of section 3(5)(b), an insurer knows something only if it is known to one or more of the individuals who participate on behalf of the insurer in the decision whether to take the risk, and if so on what terms (whether the individual does so as the insurer's employee or agent, as an employee of the insurer's agent or in any other capacity).
- (2) For the purposes of section 3(5)(c), an insurer ought to know something only if—
 - (a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in subsection (1), or
 - (b) the relevant information is held by the insurer and is readily available to an individual mentioned in subsection (1).
- (3) For the purposes of section 3(5)(d), an insurer is presumed to know—
 - (a) things which are common knowledge, and
 - (b) things which an insurer offering insurance of the class in question to insureds in the field of activity in question would reasonably be expected to know in the ordinary course of business.

6 Knowledge: general

- (1) For the purposes of sections 3 to 5, references to an individual's knowledge include not only actual knowledge, but also matters which the individual suspected, and of which the individual would have had knowledge but for deliberately refraining from confirming them or enquiring about them.
- (2) Nothing in this Part affects the operation of any rule of law according to which knowledge of a fraud perpetrated by an individual (“F”) either on the insured or on the insurer is not to be attributed to the insured or to the insurer (respectively), where—
 - (a) if the fraud is on the insured, F is any of the individuals mentioned in section 4(2)(b) or (3), or
 - (b) if the fraud is on the insurer, F is any of the individuals mentioned in section 5(1).

7 Supplementary

- (1) A fair presentation need not be contained in only one document or oral presentation.
- (2) The term “circumstance” includes any communication made to, or information received by, the insured.

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- (3) A circumstance or representation is material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms.
- (4) Examples of things which may be material circumstances are—
 - (a) special or unusual facts relating to the risk,
 - (b) any particular concerns which led the insured to seek insurance cover for the risk,
 - (c) anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.
- (5) A material representation is substantially correct if a prudent insurer would not consider the difference between what is represented and what is actually correct to be material.
- (6) A representation may be withdrawn or corrected before the contract of insurance is entered into.

8 Remedies for breach

- (1) The insurer has a remedy against the insured for a breach of the duty of fair presentation only if the insurer shows that, but for the breach, the insurer—
 - (a) would not have entered into the contract of insurance at all, or
 - (b) would have done so only on different terms.
- (2) The remedies are set out in Schedule 1.
- (3) A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”.
- (4) A qualifying breach is either—
 - (a) deliberate or reckless, or
 - (b) neither deliberate nor reckless.
- (5) A qualifying breach is deliberate or reckless if the insured —
 - (a) knew that it was in breach of the duty of fair presentation, or
 - (b) did not care whether or not it was in breach of that duty.
- (6) It is for the insurer to show that a qualifying breach was deliberate or reckless.

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