



# Consumer Insurance (Disclosure and Representations) Act 2012

## 2012 CHAPTER 6

### *Qualifying misrepresentations*

#### **4 Qualifying misrepresentations: definition and remedies**

- (1) An insurer has a remedy against a consumer for a misrepresentation made by the consumer before a consumer insurance contract was entered into or varied only if—
  - (a) the consumer made the misrepresentation in breach of the duty set out in section 2(2), and
  - (b) the insurer shows that without the misrepresentation, that insurer would not have entered into the contract (or agreed to the variation) at all, or would have done so only on different terms.
- (2) A misrepresentation for which the insurer has a remedy against the consumer is referred to in this Act as a “qualifying misrepresentation”.
- (3) The only such remedies available are set out in Schedule 1.

#### **5 Qualifying misrepresentations: classification and presumptions**

- (1) For the purposes of this Act, a qualifying misrepresentation (see section 4(2)) is either—
  - (a) deliberate or reckless, or
  - (b) careless.
- (2) A qualifying misrepresentation is deliberate or reckless if the consumer—
  - (a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
  - (b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.
- (3) A qualifying misrepresentation is careless if it is not deliberate or reckless.

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*Status: This is the original version (as it was originally enacted).*

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- (4) It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.
- (5) But it is to be presumed, unless the contrary is shown—
  - (a) that the consumer had the knowledge of a reasonable consumer, and
  - (b) that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.