

SCHEDULES

SCHEDULE 1

Section 4(3).

INSURERS’ REMEDIES FOR QUALIFYING MISREPRESENTATIONS

PART 1

CONTRACTS

General

- 1 This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with consumer insurance contracts (for variations to them, see Part 2).

Deliberate or reckless misrepresentations

- 2 If a qualifying misrepresentation was deliberate or reckless, the insurer—
- (a) may avoid the contract and refuse all claims, and
 - (b) need not return any of the premiums paid, except to the extent (if any) that it would be unfair to the consumer to retain them.

Careless misrepresentations—claims

- 3 If the qualifying misrepresentation was careless, paragraphs 4 to 8 apply in relation to any claim.
- 4 The insurer’s remedies are based on what it would have done if the consumer had complied with the duty set out in section 2(2), and paragraphs 5 to 8 are to be read accordingly.
- 5 If the insurer would not have entered into the consumer insurance contract on any terms, the insurer may avoid the contract and refuse all claims, but must return the premiums paid.
- 6 If the insurer would have entered into the consumer insurance contract, but on different terms (excluding terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.
- 7 In addition, if the insurer would have entered into the consumer insurance contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.
- 8 “Reduce proportionately” means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 6), where—

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$$X = \frac{\text{Premium actually charged}}{\text{Higher premium}} \times 100$$

Careless misrepresentations—treatment of contract for the future

- 9 (1) This paragraph—
- (a) applies if the qualifying misrepresentation was careless, but
 - (b) does not relate to any outstanding claim.
- (2) Paragraphs 5 and 6 (as read with paragraph 4) apply as they apply where a claim has been made.
- (3) Paragraph 7 (as read with paragraph 4) applies in relation to a claim yet to be made as it applies in relation to a claim which has been made.
- (4) If by virtue of sub-paragraph (2) or (3), the insurer would have either (or both) of the rights conferred by paragraph 6 or 7, the insurer may—
- (a) give notice to that effect to the consumer, or
 - (b) terminate the contract by giving reasonable notice to the consumer.
- (5) But the insurer may not terminate a contract under sub-paragraph (4)(b) if it is wholly or mainly one of life insurance.
- (6) If the insurer gives notice to the consumer under sub-paragraph (4)(a), the consumer may terminate the contract by giving reasonable notice to the insurer.
- (7) If either party terminates the contract under this paragraph, the insurer must refund any premiums paid for the terminated cover in respect of the balance of the contract term.
- (8) Termination of the contract under this paragraph does not affect the treatment of any claim arising under the contract in the period before termination.
- (9) Nothing in this paragraph affects any contractual right to terminate the contract.

PART 2

VARIATIONS

- 10 This Part of this Schedule applies in relation to qualifying misrepresentations made in connection with variations to consumer insurance contracts.
- 11 If the subject-matter of a variation can reasonably be treated separately from the subject-matter of the rest of the contract, Part 1 of this Schedule applies (with any necessary modifications) in relation to the variation as it applies in relation to a contract.
- 12 Otherwise, Part 1 applies (with any necessary modifications) as if the qualifying misrepresentation had been made in relation to the whole contract (for this purpose treated as including the variation) rather than merely in relation to the variation.

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PART 3

MODIFICATIONS FOR GROUP INSURANCE

- 13 Part 1 is to be read subject to the following modifications in relation to cover provided for C under a group insurance contract as mentioned in section 7 (and in this Part “A” and “C” mean the same as in that section).
- 14 References to the consumer insurance contract (however described) are to that part of the contract which provides for cover for C.
- 15 References to claims and premiums are to claims and premiums in relation to that cover.
- 16 The reference to the consumer is to be read—
- (a) in paragraph 2(b), as a reference to whoever paid the premiums, or the part of them that related to the cover for C,
 - (b) in paragraph 9(4) and (6), as a reference to A.

PART 4

SUPPLEMENTARY

- 17 Section 84 of the Marine Insurance Act 1906 (return of premium for failure of consideration) is to be read subject to the provisions of this Schedule in relation to contracts of marine insurance which are consumer insurance contracts.