

INSURANCE ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: the Duty of Fair Presentation

Section 8: Remedies for breach

76. This section sets out the circumstances in which an insurer will be entitled to a remedy for an insured's breach of the duty of fair presentation.
77. The insurer must show that it would have acted differently if the insured had not failed to make a fair presentation; that is, that the insurer would not have entered into the contract or variation at all, or would only have done so on different terms. This reflects the current law on inducement as developed following the decision in *Pan Atlantic Insurance Co Ltd v Pine Top Insurance Co Ltd*.¹
78. A breach for which the insurer has a remedy is a "qualifying breach".
79. Under the current law, a breach of section 18 or 20 of the 1906 Act gives the insurer a single remedy of avoidance of the contract. Under the Act, the insurer has different remedies depending on the situation. One distinction is whether or not the proposer's breach of the duty of fair presentation was deliberate or reckless.
80. An insured will have acted deliberately if it knew that it did not make a fair presentation. An insured will have acted recklessly if it "did not care" whether or not it was in breach of the duty, but this is intended to indicate a greater degree of culpability than acting "carelessly". "Deliberate or reckless" will include fraudulent behaviour.
81. The deliberate or reckless definition echoes that in CIDRA. However, in CIDRA a "qualifying breach" must be either deliberate/reckless or careless, since the consumer's duty is to take reasonable care not to make a misrepresentation to the insurer. In non-consumer insurance, breaches do not have to be careless or deliberate/reckless in order to be actionable. "Innocent" breaches of the duty will also give an insurer a remedy if the insurer can show inducement. This reflects the current law for non-consumer insurance.
82. **Section 8(2)** provides a signpost to the details of the remedies available for breach of the duty of fair presentation, which are set out in Schedule 1.

¹ [1995] 1 AC 501.