

## INSURANCE ACT 2015 PREPARATION POINTS FOR CONSIDERATION

---

As Members are aware the Insurance Act 2015 comes into force on 12 August 2016. To assist Members with their final preparations, Griffin has prepared a set of 'crib sheets' which are attached to this bulletin. These are intended to provide a practical reminder to brokers and coverholders of the issues which will need to be considered at each stage, when handling business under the new regime.

Two sets of 'crib sheets' are attached. The first is intended as an aide-memoire for use by brokers and the second is directed at those Members who are acting for underwriters/operating as coverholders. Each set starts with a management planner before going on to highlight issues at the pre-placement, placing and post-placement stage. We hope that Members will find these sheets of assistance.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

All rights reserved. No part of this publication may be reproduced in any material form, whether by photocopying, scanning, downloading to computer or otherwise without the written permission of Griffin Managers except in accordance with the provisions of the Copyright, Designs and Patents Act 1988.

Issued: July 2016  
© Tindall Riley & Co Limited

Managers: Griffin Managers  
Regis House  
45 King William Street  
London EC4R 9AN  
Telephone 020 7407 3588  
Email [griffin@triley.co.uk](mailto:griffin@triley.co.uk)  
[www.griffin-insurance.co.uk](http://www.griffin-insurance.co.uk)

# INSURANCE ACT 2015

## Points for Consideration (Brokers)

**Management  
Planner**

→ Provide Insurance Act training for Employees, including Claims personnel

→ Update Checklists/Templates

→ Review Client and Market TOBAs

→ Check proposal forms/wordings for Compliance with Insurance Act

→ Advise staff to allow more lead in time

→ Provide guidance to staff on what is a 'Fair Presentation'

→ Remind staff of importance of documenting/keeping records of communications with Clients and Insurers

# INSURANCE ACT 2015

## Points for Consideration (Brokers)

### Pre-Placement (including Quotations)

→ Allow more lead in time for placements, including renewals

→ Ascertain whether the placement is subject to the Insurance Act

- ↳ (1) Contract entered into on or after 12.08.16 and  
(2) Subject to the laws of England and Wales, Scotland or NI

→ Document/keep records of communications with Clients/Insurers

→ Advise client on 'new' duty to make a 'Fair Presentation'

→ Presentation of the Risk

#### Fair Presentation of the Risk

- ↳
- reasonably clear and accessible
  - 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

#### Disclosure Required

- ↳
- disclosure of every material circumstances which the Insured knows or ought to know, or
  - failing that, disclosure which gives the Insurer sufficient information that it needs to make further enquiries for the purpose of revealing those material circumstances

#### Knowledge of Insured

- ↳
- the Insured ought to know what should reasonably have been revealed by a reasonable 'Search' of information available to the Insured
  - an Insured who is not an individual knows only what is known to one or more of the individuals who are
    - part of the Insured's senior management
    - responsible for the Insured's insurance (including Broker and persons for whom cover is provided by the Contract)

# INSURANCE ACT 2015

## Points for Consideration (Brokers)

### Pre-Placement (including Quotations)

#### Scope of 'Search'

- Broker can provide advice, but client to agree boundaries of search
- Agree with Client information held by the Broker (core data gathering in broking house)
- Can search parameters be agreed/narrowed by obtaining pre-agreement of insurers, in particular definitions of 'Senior Management' and 'Insured Organisation' and requirements expected by line of business?
- Where it will assist Clients, get Insurer agreement on what information it holds on the Client (avoid Client making incorrect assumptions)

Is the presentation 'clear and accessible' (avoid 'data dumping' and brief presentations)?

Where possible, obtain Client's agreement to presentation of the placement

#### 'Contracting Out' by Insurer (at Quotation)

- Advise Client where an Insurer has contracted out of any part of the Insurance Act
- Provide the Client with the explanations that must be provided by Insurers of any 'disadvantageous term(s)' and ensure that the Client understands them
- Obtain Client's agreement to proceed with placement on these terms

The Broker should consider whether an alternative market will write the same risk without any 'disadvantageous term(s)'

Highlight important policy terms e.g. Warranties and Conditions Precedent

Check Client/Insured can comply

# INSURANCE ACT 2015

## Points for Consideration (Brokers)

### Placing

→ Get Insurer sign off as a fair presentation

→ Clear and accessible presentation  
Is the presentation clearly indexed and signposted to include specifically highlighting any unusual activities/known areas of concern/risk?

→ Seek clarification from Insurer(s) on any wording ambiguities

→ Document/keep records of conversations with Insurers during the placing process including questions raised during the placement and answers provided by the Client

→ 'Contracting Out' by Insurer (if not already done at quotation)  
Has an Insurer 'Contracted Out' of any provision of the Insurance Act and if so has it satisfied the transparency requirements?

- ↳ (1) Has the insurer highlighted any 'disadvantageous term(s)' and its effect on the Client(s) (re)insurance placement?  
↳ (2) Has the disadvantageous term been brought to the Client's attention and has the Client specifically agreed to accept this term

↳ The Broker should consider whether an alternative market will write the same risk without any 'disadvantageous term(s)'

# INSURANCE ACT 2015

## Points for Consideration (Brokers)

### Post-Placement

#### Evidence of Cover

- Highlight any Warranties, Onerous Conditions and consequences of not complying with these terms
- Confirm details of any 'Contracted Out' provisions by the Insurer
- Remind Clients of disclosure obligations

#### Claims

- No delay – advise Insurer of claim immediately
- Claims personnel to understand that a claim may be payable despite the Client being in breach

#### Breach of the duty of Fair Presentation

- Claims personnel to fully understand consequences/proportionate remedies for allegations of failure to make a Fair Presentation

#### Breach Of A Warranty/Condition Precedent

- Warranty: Advise Client that policy suspended until such time that breach is remedied, if capable of being remedied
- Condition Precedent: Advise Client that breach means Insurers not liable for loss
- Seek clarification of position with Insurers
- Assist Client where possible in establishing that the breach may fall within Section II of the Insurance Act (breach not relevant to the actual loss)

# INSURANCE ACT 2015

## Points for Consideration (Underwriters)

**Management  
Planner**

→ Provide Insurance Act training for Employees, including Claims personnel

→ Update Checklists/Templates/remove any 'Basis of Contract' provisions

→ Ensure that Policies and Procedures (including underwriting guidelines) are updated

→ Review TOBAs

→ Check proposal forms/wordings for Compliance with Insurance Act, including amendments where necessary if opting to 'Contract Out' of any part of the Insurance Act

→ Advise staff to allow more lead in time

→ Provide guidance to staff reviewing information to ascertain whether it is a 'Fair Presentation', including asking relevant questions

→ Remind staff of importance of documenting/keeping records of communications with Clients and Brokers

# INSURANCE ACT 2015

## Points for Consideration (Underwriters)

### Pre-Placement (including Quotations)

→ Make sure that decision-making policies and procedures (including rating guidelines and matrices) are updated

↳ Would you be able to demonstrate what your underwriting decision would have been where there is non-disclosure? Avoidance or a proportional remedy? This should be consistent across your Organisation

→ Allow more lead in time for placements, including renewals

→ Are the Law and Jurisdiction provisions clearly identified on the (proposed) placement?

→ Ascertain whether the placement is subject to the Insurance Act

- ↳
- (1) Contract entered into on or after 12.08.16 and
  - (2) Subject to the laws of England and Wales, Scotland or NI

→ Document/keep records of communications with Clients/Brokers

→ Presentation of the Risk

#### Fair Presentation of the Risk

- ↳
- reasonably clear and accessible
  - 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

# INSURANCE ACT 2015

## Points for Consideration (Underwriters)

**Pre-Placement  
(including  
Quotations)**

### Disclosure Required

- disclosure of every material circumstances which the Insured knows or ought to know, or
- failing that, disclosure which gives the Insurer sufficient information that it needs to make further enquiries for the purpose of revealing those material circumstances

### Knowledge of Insurer

(including information already known about the Insured within the Organisation)

- 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
- things which are common knowledge and 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

Is the presentation 'clear and accessible (no 'data dumping' and brief presentations)?

### 'Contracting Out' by Insurer (at Quotation)

- Specifically highlight to the Client /Broker if 'contracted out' of any part of the Insurance Act
- Explain the 'disadvantageous term(s)' to the Client/Broker

# INSURANCE ACT 2015

## Points for Consideration (Underwriters)

### Placing

- Clear and accessible presentation.
- Is the presentation clearly indexed and signposted to include specifically highlighting any unusual activities/known areas of concern/risk?

Review the presentation very carefully

Is sufficient/the right information received in order to understand, price, assess and underwrite the risk?

If not, ask questions. Where questions are asked make sure you are satisfied with the answers

Ensure that you are satisfied that ALL questions on a proposal form have been answered

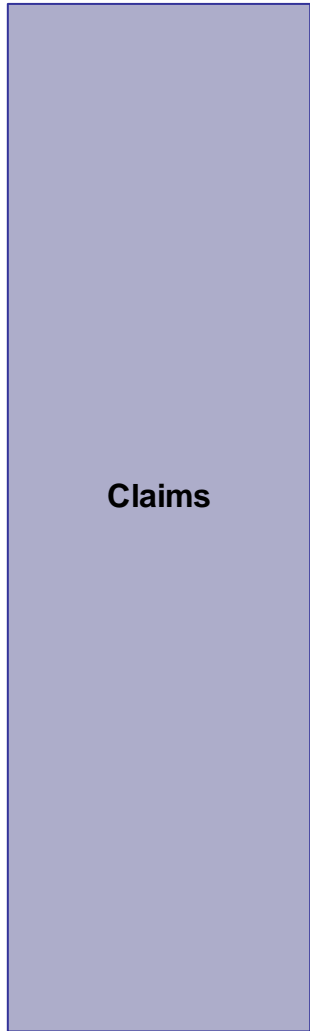
Document/keep records of conversations with Clients/Brokers during the placing process including answers to questions raised during the placement

'Contracting Out' (if not already done at Quotation)  
If 'Contracted Out' of any provision of the Insurance Act have the transparency requirements been satisfied?

- (1) Highlight any 'disadvantageous term(s)' and its effect on the Client(s) (re)insurance placement?
- (2) Highlight disadvantageous term to the Client'/Broker

# INSURANCE ACT 2015

## Points for Consideration (Underwriters)



Keep a record of all communications with Client/Broker and keep them informed on progress of claim

Be aware of potential for a claim for damages for 'late payment' following Enterprise Act coming into force for policies entered into on or after 4 May 2017

### Claims involving Breach of Fair Presentation

- If breach deliberate or reckless – entitlement to avoid
- If breach not deliberate or reckless – entitlement to avoid or proportional remedies available

### Claim where a Warranty has been Breached

- Advise Client/Broker that policy suspended until such time that breach is remedied, if capable of being remedied
- If breach not relevant to actual loss the onus is on the Insured to demonstrate this