

INSURANCE ACT 2015 PREPARATION REVISED TEMPLATE WORDINGS

Members will be aware that the Insurance Act 2015 (“the Act”) comes into force on 12th August 2016. For Business Insureds the Act changes disclosure obligations, and makes the remedies available to insurers more proportionate if these obligations are breached. For all Insureds the Act changes the way in which warranties and other onerous provisions operate under insurance policies, and clarifies the position concerning fraudulent claims.

Griffin has issued various Bulletins on the Act and is in the course of delivering a presentation to the Membership, advising of the changes it brings in and the practical steps which Members will need to take as a result. This Bulletin deals with one such practical step which is the changes which need to be made to standard warnings used on documentation issued to Insureds.

BUSINESS INSURED’S DUTY OF DISCLOSURE WARNING

Members will recall that the disclosure obligations of Consumer Insureds changed in April 2013 when the Consumer Insurance (Disclosure and Representations) Act 2012 came into force. Since then Members who deal with Consumer and Business Insureds have needed to draw a distinction between the two and have had to revise their standard disclosure warnings used on emails, renewal invitations, quotations, cover notes and so on to ensure that what is used is appropriate.

All Members who deal with Business Insureds now need to prepare revised templates, advising them of the disclosure obligations which will apply when the Act comes into force. A suggested standard warning appears below:

“Under English law, if you are a business insured (i.e. an insured who has bought insurance wholly or mainly for purposes related to their trade, business or profession) the business has a duty to disclose to the insurer every material circumstance which it knows or ought to know after reasonable search. This is the case before your cover is placed, when it is renewed and any time that it is varied. Your policy wording may also provide that this duty continues for the duration of the policy. A circumstance is material if it would influence an insurer’s judgment in determining whether to take the risk and, if so, on what terms. If you are in any doubt whether a circumstance is material we recommend that it should be disclosed. Failure to disclose a material circumstance may entitle an insurer to impose different terms on your cover or proportionately reduce the amount of any claim payable. In some circumstances an insurer will be entitled to avoid the policy from inception and in this event any claims under the policy would not be paid.”

In addition, revised templates need to be prepared to advise all Insureds of the importance of complying with Warranties and Conditions Precedent and what the consequences of breach may now be under the Act. As Members know the Act does include a provision dealing with terms not relevant to the loss, which can give an insured an opportunity to argue that the Insurer should be liable in circumstances where the Insured is in breach of a Warranty, Condition Precedent or some other onerous term. Nevertheless that does not alter the fact that Members have a duty to warn Insureds of the importance of compliance with these provisions to avoid being in breach. Suggested warnings are as follows:

WARRANTIES

“Warranties are important provisions contained in your policy and must be exactly complied with at all times. Breach of a warranty may suspend your policy. (Re)insurers may have no liability to pay losses occurring or attributable to something happening during any such period of suspension. The period will continue until the breach has been remedied (if it is capable of remedy). A warranty may exist in the policy using other terminology and without reference to the word ‘warranty’.

*We would like to draw your particular attention to the following warranties:
(Enter clause number/title or other form of identification from within the policy)*

It is very important that you read the full policy carefully and, if you are unsure of, or are unable to comply with, any provisions, please contact [Member] immediately.”

CONDITIONS PRECEDENT

“Please also take particular note of any conditions precedent that appear in the policy. If a condition precedent to the validity of this policy or to the commencement of the risk is not complied with, the insurer will not come on risk. If a condition precedent to the Insurer’s liability under this policy is not complied with, the insurer may not be liable for the loss in question. A condition precedent may exist in the policy using other terminology and without reference to the words ‘conditions precedent’.

*We would like to draw your particular attention to the following conditions precedent:
(Enter clause number/title or other form of identification from within the policy)*

It is very important that you read the full policy carefully and, if you are unsure of, or are unable to comply with, any provisions, please contact Member immediately.”

RISK MANAGEMENT MESSAGE

Members have had to distinguish between Consumer and Business Insureds (if indeed they deal with both), and give appropriate warnings about disclosure obligations to each, since April 2013. From 12th August this year Members need to ensure that the advice to Business Insureds, and any standard disclosure warning used on documentation, has been updated to reflect the revised obligations under the Act.

In addition Members need to ensure that standard warnings advising all Insureds of the existence of Warranties and Conditions Precedent and the consequences of breach have been updated, to reflect the changes under the Act.

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.

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