

Insurance Act 2015

Broker Impact Assessment

Impact assessment for brokers

The changes brought about by the Act will come into force in August 2016, giving brokers and their clients just over a year to prepare. The reforms will result in significant changes being necessary to client facing documents, broking procedures, proposal forms and the approach to claims.

As a result, it is vital that brokers ensure that all documentation as well as the treatment of clients is aligned with the Act. It is inevitable that once the Act comes into force, the Financial Conduct Authority will look closely at whether or not policyholders are being properly informed of their duties and the risks they will face in the event of a breach of the duty of fair presentation.

ICOBS 2.2.2 -When a firm communicates information... to a customer... it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.

Set out below are examples of issues that brokers should be focussing on.

Client engagement

The Act makes clear that policyholders are under a duty to fairly present risk and in order to do so, a number of hurdles will have to be cleared. These include ensuring:

- i. that all material circumstances that are known or ought to be known to client's senior management are disclosed; and
- ii. a client's senior management has conducted a "a reasonable search".

Brokers must satisfy themselves that all client facing documentation is updated to refer to the new duty and the requirements of the Act are clearly explained.

Brokers must also be wary that their own individual knowledge can be imputed to their clients, such that a failure to disclose something discussed informally, or information obtained in some other way than directly from the client, might lead to a client breaching the duty of fair presentation. This means that brokers should review the manner in which relationships are conducted with clients as well as their record keeping. A failure to do so could not only adversely affect a client's policy, but the consequences could be visited upon the broker by way of a professional liability claim.

Explanation of remedies

Gone will be the days when brokers can simply explain the risk of avoidance in the event of non-disclosure of a material fact.

The new “proportionate” remedies provide insurers with a menu of options in the event of a breach of the duty of fair presentation. Brokers will therefore have to find ways to explain the potential impact of those complex remedies to their clients.

Proposal forms

The new duty to fairly present risk and the abolition of basis of contact clauses will mean that the wording of proposal forms will be likely to change.

Brokers will need to consider whether approved proposal forms are likely to offer full protection to their clients, bearing in mind that if the information provided is enough to put an insurer on notice that it needs to make further enquiries and the insurer fails to do so, that may be enough for a client to satisfy the new duty.

Disclosure process

The duty of fair presentation might be breached if the presentation is not made in a way that is “reasonably clear and accessible”.

As such, brokers will need to review their procedures and consider how best to satisfy this requirement on behalf of clients across risks of different complexity and size.

Negotiating terms

The ability for brokers to negotiate more favourable terms on behalf of their clients, as well as insurers’ ability to contract out of the new provisions, will mean that the market may see an even greater variety of policy wordings being introduced. This in turn will leave brokers vulnerable in the event that the “best” terms are not secured for clients. It is therefore important that the practical changes brought about by the Act are fully understood.

In addition, the changes to the impact warranties may offer opportunities for brokers either to negotiate ‘warranty free’ policies, or at least to ensure that the warranties that are included are drafted in such a way so that their application is as narrow as possible.

Policy wordings

Almost all commercial insurance policies will require redrafting to a greater or lesser extent to ensure that they do not fall foul of the provisions of the Act. Wordings drafted by brokers will be no exception.

By way of example, brokers must review wordings to ensure that they no longer refer to basis of contract clauses, nor make any reference to the “old” requirement to disclose all material facts.

Further, the changes to the impact of warranties will mean that their drafting will dictate their breadth and overall usefulness. Changes to conditions relating to fraud will also need to be considered.

Claims

Claims teams will have to ensure that they fully understand the provisions of the Act and in particular the new proportionate remedies available to insurers.

Brokers will have to consider how best to assess and, if appropriate, challenge insurers’ assertions that different terms would have been applied and/or a different premium would have been charged in the event of a breach of the duty of fair presentation. Further, where a “proportionate remedy” is applied, brokers will have to consider how best to protect clients against that remedy being applied to other claims arising in the same policy period.

Brokers will also have to consider how best to present claims to insurers in the event that a client has breached of warranty.

Insurance Act Impact Assessment

Given all of the above issues, brokers should be considering what needs to be done now to prepare their businesses for these changes. Leaving preparations until August 2016 is not an option with the FCA's current focus on the insurance market.

To assist brokers in identifying how the Act will impact upon their businesses specifically and what changes they need to implement before August 2016, Browne Jacobson has developed an Insurance Act Impact Assessment product.

The scope of the Assessment will be agreed on a case by case basis with fixed pricing being available where suitable. However, the assessment will focus on;

- i. your client engagement process;
- ii. customer facing documentation, including client reports and advices;
- iii. proposal forms and/or broker led wordings;
- iv. risk placing procedures; and
- v. claims procedures.

Following the assessment Browne Jacobson will provide an "Impact Report" which will clearly detail the risks faced by the business and the changes necessary to ensure compliance with the Act.

All assessments will also include the provision of training to key staff to ensure that the changes are fully understood.

Should you be interested in instructing Browne Jacobson to undertake an Insurance Act Impact Assessment, or wish to discuss the Act in general terms, please contact us to discuss your options.

talk to us...

Jonathan Newbold | 0115 976 6581 | jonathan.newbold@brownejacobson.com

Tim Johnson | +44 (0) 115 976 6557 | tim.johnson@brownejacobson.com

James Gibbons | +44 (0)115 908 4893 | james.gibbons@brownejacobson.com



brownejacobson
insurance lawyers