



# **Duty of Fair Presentation of the Risk**

**THIS APPLIES FOR POLICIES WHERE THE  
GOVERNING LAW IS A UK COUNTRY.**

**Important- New Duty of Fair Presentation of  
Risk/Disclose Material Information Please Read  
Carefully**

From 12 August 2016 the duty of disclosure for commercial Insurance contracts changes with the implementation of the Insurance Act 2015 (“the Act”).

For policies incepting or renewing on or after 12 August 2016 you, the policyholder, will have a duty to make “a fair presentation of the risk”. To meet this duty you will still need to disclose all material information to insurers which is known to you (or which ought to be known to you).

**Information is material if it would influence the judgement of a prudent insurer in establishing**

**the premium** or determining whether to underwrite the risk and, if so, on what terms. Material information does not necessarily have to actually increase the risk of the insurance under consideration.

Under the Act you, the policyholder, will be deemed to know information if it is known to any individuals in the categories below:

- (a) anyone within their business in a senior management or decision making role, and
- (b) anyone responsible for arranging the insurances.

Furthermore, under the Act it is deemed you, the policyholder, “ought to know” what should reasonably have been revealed by a reasonable search for information held internally or externally (including by any third parties to whom services are outsourced, consultants and agents). Please note that you can not rely on information that may be held by us in relation to other policies that we may place on the your behalf. You must ensure that all relevant information is provided to us for each and every policy that we place on your behalf. We accept no liability to you in this respect.

Your enquiries must cover all relevant group companies, branch offices etc. and the relevant personnel within them. Please ensure you make a full written record of the search made and the responses provided to ensure that you have evidence in the event of any claim being made.

The duty of fair presentation of risk also applies when there are changes to the risk and amendments made to any insurance policy (whenever incepted) after 12 August 2016.

In completing a proposal or claim form or questionnaire for your insurer(s), the accuracy and completeness of all answers, statements and /or information is your responsibility and it is of paramount importance that all relevant information is provided and that it is accurate. If you become aware of any material information that you supplied before the contract of insurance was finalised is incorrect, or has been omitted, you should inform us immediately. If you are unsure if information is material you should disclose it, as such.

**What are the consequences of not making a fair presentation of the risk?**

Under the Act , in the event that there is a breach of duty of presentation of risk, the remedies available to insurers will vary dependent on whether the breach is deliberate or reckless or otherwise. For deliberate or reckless breaches *the insurer may avoid the contract*, refuse all claims and retain the premium paid.

For other, non-fraudulent or non-reckless breaches **the remedy will depend on what the insurer would have done had a fair presentation of the risk been made.** If the insurer would not have accepted the risk it can avoid the contract but must refund premiums paid. If the insurer would have accepted the risk on other terms the contract is to be treated as if those terms applied, in the event that a higher premium would have been charged any claims payments can be reduced proportionately. This latter provision is especially important because if insurers can show that they would have charged only a modest additional premium, the impact on a claim could be disproportionately large.

For certain policies the insurer may change the remedies available to them from those described

above. In such circumstances we, and our wholesale partners, will inform you of the changes.

It is therefore important that you, the policyholder, understand and comply with these duties under the Act. It is up to us to ensure that our policyholders are informed of their duties, for which the consequences of failing to comply may be dire. We want to ensure our policyholders are certain with their duties and that they each provide their insurer(s) with a fair presentation of the risk at hand.

It is our view that this Act is an opportunity to review and align the culture and treatment of risk inside your organisation - and it is a new reality that every business is tasked with, equally.