



# Corporate Insurance Solutions Ltd

BUSINESS INSURANCE CONSULTANTS

Corporate House, 44 Regent Street, Lutterworth, Leicestershire LE17 4BD

Telephone: (01455) 550707

Email: [advice@insurancesolution.co.uk](mailto:advice@insurancesolution.co.uk)

[www.insurancesolution.co.uk](http://www.insurancesolution.co.uk)

## **Terms of Business**

This Agreement is between 'You' our client or potential client and Corporate Insurance Solutions Ltd and applies to all work that we carry out on your behalf.

Corporate Insurance Solutions Ltd is an Independent Consultancy. We are authorised and regulated by the Financial Conduct Authority (FCA). Our permitted activities are recommending insurance policies (and in cases where we do not give a recommendation we will tell you); arranging insurance cover; dealing as agent and assisting with the administration and performance of policies – all in connection with general insurance. Our FCA Registered number is 300280. These details can be checked on the Financial Services Register by visiting [www.fca.org.uk/register](http://www.fca.org.uk/register) or by contacting the FCA on 0800 111 6768.

We are required to comply with the FCA Regulation relevant to an insurance intermediary. These include the following:

- A firm must conduct its business with integrity, and pay due regard to the interests of its customers and treat them fairly.
- A firm must conduct its business with due skill, care and diligence.
- A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.
- A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
- A firm which holds client money has to meet certain specified conditions.
- A firm must take reasonable care to establish and maintain such systems and controls as appropriate to its business.
- A firm must maintain and keep up to date a list of the insurance undertakings it selects from and be able to provide a copy of this list in a durable medium to a customer on request.

### **Please read this document carefully.**

It sets out the terms on which we agree to act for our clients and contains details of our regulatory and statutory responsibilities.

We specifically draw your attention to the following sections:

- (a) Non-statutory trust
- (b) Segregation of designated investments
- (c) Interest on Client money

Please contact us immediately if there is anything in these Terms of Business which you do not understand or which you disagree with.

### **Relationships**

As independent insurance consultants we act as agent of our client. We are subject to the law of agency, which imposes various duties on us. However, in certain circumstances we may act for and owe duties of care to other parties. We will advise you when these circumstances occur so you will be aware of any possible conflict of interest. We offer products from a range of insurers; A list of insurers is available on request.

Our services may include advising you on your general insurance needs, arranging insurance cover with insurers to meet your requirements, issuing policy documentation to you in a timely manner and helping you with any ongoing changes you wish to make to your insurance. We may also help you make a claim against your policy.

We will endeavour to ensure that the products or services we offer you match your stated requirements. We will seek to identify your insurance needs in reliance upon information which you provide to us. If we cannot match your requirements, we will explain the differences in the product or service we can offer you. If we cannot match all your requirements, we will seek to provide you with enough information so you can make an informed decision about your insurance.

We will explain the main features of the products and services we offer you including details of the insurer, main details of cover and benefits, any unusual restrictions or exclusions, any significant conditions or obligations which you must meet and the period of cover. If you need extra time to consider the products or services we have offered you, we will endeavour to confirm: (a) how long you have to accept the insurance on the terms we have offered, and/or; (b) give you a written quote if you request one, including all the information we believe you need to make an informed decision, and/or; provide you with a sample policy if you ask for one.

### **Security**

We endeavour to place business with insurers with adequate levels of financial solvency but cannot guarantee the solvency of any insurer.

We do not monitor insurer solvency on an ongoing basis, and shall not be liable for losses suffered by you in the event of the insolvency of an insurer.



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A liability for the premium, whether paid in full or pro rata, may arise under policies where a participating insurer becomes insolvent.

## Policy Documentation

Policy documentation will be issued in a timely manner. This will be within 6 weeks of the contract of insurance being concluded. Your policy documentation will confirm the basis of the cover, give details of the insurers, and be accompanied by a policy schedule. The premium is due within 14 days of the date of the invoice and any penalties will be detailed.

Prior to the inception of the contract you will be given a statement of demands and needs. You should read this carefully. It will set out your demands and needs and confirm whether the contract has been personally recommended and if so, the reasons for making that recommendation.

You will be provided with the renewal terms in a durable medium no less than 21 days before expiry of the policy, or notified that renewal is not being invited. Attached to the renewal terms will be a statement of any changes to the terms of the policy, and changes to directive-required information (information required under the EU Directives), statements of price and information about cancellation.

You will be given an explanation of any changes, where necessary and in good time, which may appear in your policy and you will be advised of your right to request a new policy statement.

If there are any subsidiaries or associated Companies that you intend to be protected by Insurances arranged through us please ensure that these are noted on the documentation and advise us of any changes required.

We cannot over-emphasise the importance of your business being correctly described in the policy documents. You will appreciate that the policy will only provide indemnity for loss, damage or liability arising out of the business described. If the business description appearing in the documentation is inaccurate or your activities have changed you must let us know immediately otherwise your cover may be prejudiced.

There is a duty on all insurance Policyholders to take all prudent and reasonable steps to both prevent injury or damage of the type covered by the insurance and also, to take all such actions after the event as are sensible to minimise the loss. Failure to act in a reasonable manner may invalidate cover.

If renewal is not being offered you will be notified no less than 21 days before the expiry of the policy.

For some types of insurance cover it is possible that a claim may be made under a policy long after its expiry date and it is therefore important you keep such documents safely.

When documentation is forwarded to you it is imperative that you check all of the documents carefully to ensure that they meet your precise requirements and should have any queries or need to make any alterations then please do not hesitate to contact this office. If there are any points on which you are unsure or require clarification, then please do not hesitate to contact this office as failure to do so may prejudice any claim or invalidate your insurance policy.

We have provided details of the recommended insurance contract and by requesting cover under the terms of the contract you are confirming that this expenditure will remain affordable to you over the next 12 months.

## Claims

You must notify us as soon as possible of a claim or circumstances, which may give rise to a claim. It is essential you notify us promptly after discovery of all incidents or allegations that may result in a claim against your insurance policy. You must do so whether you believe you are liable or not. Any failure to do so may result in your insurer refusing to accept a claim. Any letter or other communication making allegations which could give rise to a claim which is received by you from any third party must be passed to us immediately, without acknowledgement. Only by providing prompt notification of incidents can your insurance company take steps to protect your interests.

In the event of a claim you should contact our claims department on 01455 550707.

You should have available the following information:-

- The type of policy you have (i.e. Commercial, Motor etc.)
- Your name and address.
- Your policy number.

We will remit claims payments to you as soon as possible after they have been received on your behalf.

We will provide you with every assistance in submitting a claim and seeking to obtain reimbursement for you. However in the event that an insurer becomes insolvent or delays making settlement we do not accept liability for any unpaid amounts.



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## **Duty to Make a Fair Presentation of Risk**

The Insurance Act 2015 came into force with effect from 12 August 2016. Under the Act insurance contracts will still be based on good faith and you will have a duty to make a fair presentation of the risk to insurers which will include disclosure of:

- Every material circumstance which as an insured you are expected to know or ought to know about the risk for which you are seeking insurance.
- Sufficient information to put a prudent insurer on notice that it needs to make further enquires to reveal those material circumstances.
- The disclosure must be made in a clear and accessible manner.
- Every representation made in relation to fact must be substantially correct
- Representations in relation to expectation or belief are made in good faith.

The core information we ask for as part of proposal forms or insurance submissions (such as claims information or asset value) will continue to lie at the core of a Fair Presentation and should be completed as accurately and fully as possible. In addition to answering our questions, you must advise us of all additional or unusual facts about the risk. These include, but are not limited to:

- Operational factors which make your business different from competitors or industry standards.
- Recent or planned business developments such as new products and services, acquisitions, customers or contracts which will affect your risk profile.
- Changes to sums insured (especially increases)
- Known issues where you already have a concern about the potential for increased risk in future.
- Changes in business operations, which might not be fully explained in the standard underwriting information such as business units with different working practices.
- Any incidents that would normally be covered by insurance whether claimed for or not.
- Criminal or HSE convictions.
- Negative financial information.

For all changes it is important to describe the circumstances and what you think the risk impact could be.

You must ensure that any information you provide is correct to the best of your knowledge and subject to you having conducted a reasonable search for information. This could require you to obtain or verify information with a number of sources who may hold or have access to important information about your business or the insurance risk. This may include key decision makers or those with responsibility for arranging your insurance (including us as your broker) or other parties that carry out outsourced functions for your business such as (but not limited to):

- Senior managers and those with accountability for managing functions relevant to the risk
- Persons covered by the insurance e.g. co insured or sub contractors
- Persons normally involved in arranging insurance for the organisation
- Employees who may have in-depth or specialist knowledge on processes and procedures
- Risk managers, Outsource contractors and Service providers

In the event that you make a misrepresentation of information which is considered to be deliberate or reckless i.e. you were aware that you were making a misrepresentation or did not care whether or not you were misrepresenting the risk, an insurer will be allowed to avoid your policy, which means that any claims you make will not be met and no refund of the insurance premium will be made and an Insurer may recover any amounts that they have paid or claim any expenses that they may have incurred. For your own protection, please adhere exactly to the duty to make a fair presentation of risk.

## **Cancellation and Mid-Term Adjustments**

Please note that cancellation rights vary between insurers and you should check their documentation if you are considering cancelling your policy. To exercise your right of cancellation, you should contact the insurance company or contact us either by telephone or by letter in each case in the manner and within the time limits set out in your policy documentation. If you exercise your right to cancel your policy your insurer will, as a minimum, charge you for the period during which you were covered, and other charges may be applied to cover the insurer's and our costs in arranging the cancelled policy.

**Be aware that some insurers do not offer any refund of premium for cancelled policies.** Where you cancel your policy or where you request a mid-term adjustment which reduces the cover provided under the policy, we may charge you for our time and costs. This will result in us reducing the amount refunded to you by the FULL amount of the commission and fees we would have received had you not cancelled or amended your policy. The reason for this is that the majority of our costs are incurred either in initially finding and setting up your policy or in the annual renewal process when we might check the ongoing suitability of the cover the policy offers. These costs are recovered through the commission and fees we earn. If you cancel, this does not give us an opportunity to recover the costs we incurred and would often result in us making a loss. However, any charge made will not exceed the cost of the commission and fees that we would have earned.



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Where you are paying for your insurance by instalments (and an instalment payment is not received by the relevant premium finance provider on or before the date when it is due to be paid) you agree that we may on your behalf instruct the insurer to cancel the insurance (or where the first instalment payment has not been received, notify the insurer that the policy has not been taken up) and offset any refund of premium which may be received against any money which you owe to us, the insurer and/or the premium finance provider. In such circumstances you will remain liable for any time on risk or other charge. You will also be responsible for putting in place any alternative insurance.

## Remuneration

Anything, which is not a premium, is considered a fee. Any commission, which is due, is payable out of the premium. Our remuneration may be as a fee, as brokerage (which is a percentage of the insurance premium paid by you and allowed by the insurers with whom the insurance is placed) or a combination of both.

Brokerage and fees are earned for the policy period and we will be entitled to retain all fees and brokerage in respect of the full policy period in relation to policies placed by us.

In addition to the premiums charged by insurers, we may, at our discretion, make additional charges to cover the administration of your insurance. All charges and administration fees will be disclosed and agreed and may be levied on new policies, mid term adjustments, renewals, replacement lost documents, credit arrangements and/or mid term adjustments.

Any adjustments that result in Underwriters issuing a Credit/Return premium will be returned to you net of our commission.

In addition to client fees and/or brokerage payments we may receive remuneration by ways of administrative fees or commission for services provided to underwriters. We may also act as reinsurance brokers to underwriters with whom we have placed insurance or reinsurance.

In respect of any mid-term transaction we reserve the right to make a charge of up to £25.00

## Client Money

Client money is money of any currency that we receive and hold in the course of carrying on insurance mediation on behalf of our clients (including you) or which we treat as client money in accordance with the client money rules. A copy of these rules is available on request.

Client money can be held in one of the following ways:

- A) It can be subject to a statutory trust
- B) It can be subject to a non-statutory trust
- C) In accordance with the FCA client assets sourcebook (CASS)

Client money will only be held on behalf of an insurer or underwriter in accordance with a written agency agreement.

## Statutory Trust

The aim of the trust is to protect the client in the event of the failure of the firm, or the failure of the bank or a third party at which the money may be held. In such a circumstance, the firm's general creditors should not be able to make claims on client money as it will not form part of this firm's assets.

The fact that we will hold client money on trust gives rise to fiduciary duties which will be owed to you until the client money reaches the insurer or product provider.

## We hold client money subject to statutory trust.

We keep client money separate from our own money. We may do this by paying it into a client bank account.

## Interest on Client Money

Any Interest earned on client money held by us will be retained by us for our own use, rather than paid to you.

Payment to Third Parties. We may transfer client money to another person, such as another broker or settlement agent for the purpose of effecting a transaction on your behalf through that person.

## Bank Accounts

Client money will be deposited with one or more approved banks.

We may on occasion choose to hold client money with a bank, which is not an approved bank. In such circumstances the legal and regulatory regime applying to the bank with which the client money is held will be different from that of the UK and, in the event of the failure of the bank the client money may be treated differently from the treatment which would apply if the client money were held by an approved bank in the UK.



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Where client money is held in a bank account, which is not an approved bank, such money will be held in a designated bank account. This means that it is not pooled with money held in any other account.

We will not hold client money in a bank that is not an approved bank for any longer than necessary to effect the transaction.

Where we propose to hold client money with a bank that is not an approved bank we will request your consent in writing to the use of the particular bank.

We may hold client money in a client bank account outside the UK, in such circumstances the legal and regulatory regime applying to the bank will be different from that of the UK and, in the event of a failure of the bank, your money may be treated in a different manner from which would apply if the client money were held by a bank in the UK. You may notify us if you do not wish your money to be held in a particular jurisdiction.

## Payment Options

We will provide you with full details of all payment options available to you when we provide you with the insurance premium.

If you choose to enter in a finance arrangement, this will be subject to interest charges that we will confirm to you when providing the full details.

The arrangement you enter into will be with the Finance Company, Premium Credit Ltd or through the insurers own finance facilities, not Corporate Insurance Solutions Ltd. It is an entirely separate contract irrespective of the insurance contract.

Corporate Insurance Solutions Ltd will process your finance application to Premium Credit on your behalf, however it is yourselves that is applying for the credit and you will be required to enter into a credit agreement with Premium Credit Ltd. Your personal information and the bank details that you provide to Corporate Insurance Solutions Ltd will be passed to Premium Credit Ltd and they will contact you via email or text and send PDF or word documents. Credit is subject to status and they may use a credit reference agency that leaves a record of the search or other information about you to carry out credit and anti-money laundering checks.

In the event of your failure to meet with the contractual obligations regarding payment to Premium Credit Ltd, the finance provider could approach the insurer to seek a termination of the insurance contract to recoup their outstanding finance arrears. You will be liable to pay their costs and charges if you do not keep up your repayments and cover is cancelled under your policy. This is because the agreement is between you, the policyholder and the finance company direct, not Corporate Insurance Solutions Ltd or the insurer.

**Your policy cover will cease if you fail to keep up payments on an instalment agreement or premium finance facility related to it.**

## Cancellation of this agreement

Our agreement may be terminated by one of us giving 7 days notice in writing to the other. In the event that you terminate our services we will be entitled to receive any fees or brokerage payable.

## Duration

This Agreement shall commence from the date that you appoint us to act as Your intermediary or You instruct us to arrange insurances on Your behalf whichever of these dates is the earlier. This Agreement shall then continue until cancelled in accordance with the Termination Clause below.

## Termination

You or Corporate Insurance Solutions Ltd may terminate this Agreement by giving 7 days notice in writing. In the event of termination by You, Corporate Insurance Solutions Ltd will be entitled to receive any and all fees or brokerage payable (whether or not the same have been received by Corporate Insurance Solutions Ltd) in relation to policies placed by Corporate Insurance Solutions Ltd prior to termination.

## Electronic Communications

Both parties may communicate with each other using electronic mail and attachments and both parties accept the inherent risks of using such means of communication. Both parties are responsible for checking that messages received are complete and both agree that in the event of a dispute neither will dispute the legal evidential standing of an electronic document. Any Agreement reached using electronic mail will be binding on both parties.

## Third Party Rights

No other person has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## Complaints

Our objective is to provide a high standard of service to you at all times. However we recognise that things can go wrong occasionally and if this occurs we are committed to resolving the matter promptly and fairly. If you wish to register a complaint please contact Paul Dockerty, either



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In all cases please quote your policy number or other reference we have given you. If you cannot settle your complaint with us, you may be entitled to refer it to the Financial Ombudsman Service. Our Complaints Procedure is available upon request.

## Compensation

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we or your insurer cannot meet our obligations, depending on the circumstances of the claim. The FSCS does not apply to the following types of insurance: aircraft, ships, goods in transit, aircraft liability, ship's liability and credit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of any claim, without upper limit. For other classes, coverage is 90% of any claim without upper limit. Further information about compensation scheme arrangements is available from the FSCS at [www.fscs.org.uk](http://www.fscs.org.uk)

## Money Laundering / Proceeds of Crime Act

UK money laundering regulations require us to obtain evidence of the identity of clients for whom we act at the start of a business relationship. This might, for example be evidenced by sight of a current passport and two utility bills/bank statements. For companies evidence will usually comprise a copy of certificate of incorporation, a list of directors, a list of shareholders and the registered address.

Claim payments will be made in favour of you. If you require a payment to be made to a third party then you must confirm the required payee name and details and provide a brief explanation for your request.

## Limitation of Liability

In the event of any breach of these terms and or in the event of any representation, statement or tortious act or omission including negligence arising under or in connection with all contracts between us then the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you. Nothing in these terms excludes or limits our liability for death or personal injury caused by the Company's negligence, fraud, fraudulent misrepresentation or regulatory obligation.

We shall not be liable to you for any indirect or consequential loss or damage, these may be losses that are not reasonably foreseeable, (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out or in connection with the services we provide to you.

Our total liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of our services to you ('Claim') shall be limited to £2,000,000 (two million pounds).

If you are not a Consumer (as defined by the FCA) and our professional indemnity insurers refuse to indemnify us for any claim made by or on behalf of you then our total liability in relation to that claim shall be limited to £1,000,000 (one million pounds).

## Liability for Directors, Officers or Employees

You acknowledge and agree not to make any claim personally against any Director, Officer or Employee arising out of the work and services provided under this agreement.

## Data Protection

We are registered under the Data Protection Act 1998 and we undertake to comply with the act in all our dealings with your personal data. Your personal information will be kept secure.

The information You supply is used to enable us to fulfill our role as insurance brokers. Information may also be supplied to professional regulatory bodies if required by them and to other parties if required or permitted by law. We do not sell, rent or trade our mailing lists, phone numbers or e-mail addresses.

## Law and Jurisdiction

These terms of business shall be governed by and constructed in accordance with English law. In relation to any legal action or proceedings arising out of or in connection with these terms of business we both irrevocably submit to the non-exclusive jurisdiction of the English courts.



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## **Client Declaration**

I/We confirm that I/we have read and understood the contents of the Terms of Business (August 2016)

I/We authorise you to proceed with the insurance cover and can confirm that the cover meets with our precise requirements.

Clients Signature.....Date.....

Company Name.....

Company Address.....

.....

Policy.....Renewal Date.....

**THIS DOCUMENT IS TO BE SIGNED AND RETURNED TO THIS OFFICE.**



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## Appendix

### Under Insurance. Average & Day One Cover

#### **Under Insurance**

It is essential that the sums insured selected by you are correct as if they prove inadequate at the time of a loss the claim will be reduced in proportion to the degree of under-insurance by the condition of Average. (Please see a description of Average below).

The amounts that you advise us of should represent the full value at risk and under-insurance may apply to any section of your policy including but not limited to Material Damage and Business Interruption and it is imperative that the correct information is declared to us for all covers required, as failure to do so, in the event of a claim under-insurance may apply.

For buildings this should represent the full cost of rebuilding the premises in their existing form including but not restricted to allowance for site clearance costs/debris removal, the additional cost of reinstatement to comply with public authority requirements, demolition, architects, VAT and professional fees.

The sum insured for contents should represent the full cost of replacement with equivalent new items. If you wish to insure any items on a 'current market value' basis please discuss this with us.

**We do not act as valuers and it is your responsibility to ensure that the amounts that you advise us of under your policy are what you consider to be correct. If you are in doubt we recommend that you seek a professional valuation.**

#### **Average Clause**

Please be aware your policy may be subject to "Average", whereby claims will be proportionally reduced if the value advised by yourself is less than the actual full value at risk at the inception of the period of insurance or where underinsurance is of a significant amount a claim could be rejected entirely. Bearing in mind the attitude of insurance companies towards underinsurance, we would urge you to check the current figures to ensure that they remain correct. The principle of Average means that if you are insured for less than the full value at the time of the loss, then ANY claim payment will be reduced in the proportion that the sum insured bears to the full value at risk.

**If the underinsurance is significant the insurer could reject a claim entirely.**

#### **Day One**

Where Material Damage cover is insured on a "Day One" basis, you decide on the "Declared Value" which, to avoid underinsurance should be the sum insured representing the full value at risk on "day one" of the policy or its renewal, this must be accurately set and we would recommend that you obtain professional valuations. In respect of buildings this must reflect the full re-construction costs including but not restricted to demolition, site clearance costs/debris removal, architects fees, VAT, professional fees, the construction of the property and the additional cost of reinstatement to comply with public authority requirements at the beginning (Day One) of each period of insurance. The policy then provides cover up to a specific sum insured, typically 115% or 130% of the "Declared Value", to make allowance for changes in value during the period of insurance. Such changes might be brought about by inflation, changes in rates of currency or other factors out of your control.

#### **Example of Under Insurance/Average**

I would stress the importance of having the correct sums insured as in the event of a claim, underinsurance and or average may apply. The amount of claim reduction (after excess) will be in direct proportion to the amount of the under insurance – please see the example below:

*Imagine you suffer a loss totalling £180,000, but only have insurance reinstatement cover to the value of £300,000, that should genuinely be valued at £600,000. You might think – I am covered for £300,000 and my claim will be paid in full, however most insurance policies are subject to an average clause.*

*The effect of the average clause is that the Insurance Company says 'the true reinstatement value is £600,000, but you are only covered for £300,000 – half the real amount, therefore insurers will only pay half of any valid claim you make'. The Insurance Company therefore pays out £90,000 – leaving you with a shortfall of £90,000.*

#### **Gross Profit Definition for Business Interruption**

Business Interruption Cover is arranged to protect your loss of earnings and additional expenses incurred following an insured loss. To ensure that you receive the full benefit of the insurance cover in the event of a claim it is critical to ensure that the sum insured and the indemnity period are correct.

One of the difficulties in establishing a sum insured is that the definition of 'gross profit' in an insurance policy is different from accountants and other business people, therefore to ensure that the correct figures are being used, please refer to your policy wording. A Factsheet is available for your guidance and is available upon request.



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Whilst we are able to provide guidance on how to assess the sum insured and indemnity period, it is your responsibility to ensure that the information provided meets your needs and demands as this can vary widely from one business to another.

We do not accept any responsibility for the adequacy of your indemnity period or sum insured. If you have any queries regarding this you should obtain professional advice in this respect.

## **The Insurance Act 2015 Effective from 12 August 2016 for new business, renewals and alterations.**

### **Duty of fair presentation**

#### **Non-consumer (i.e. business) insurance contracts only**

Under the previous legislation, insured parties (including Corporate Insurance Solutions Ltd acting on a client's behalf) must disclose every circumstance that they know, or ought to have known, which would influence an insurer in setting the premium or deciding whether to underwrite a risk. In essence this means that insured parties and Corporate Insurance Solutions Ltd need to predict the factors a hypothetical 'prudent insurer' would be influenced by. The new Act provides a clearer framework of what facts should be considered and disclosed.

The Act replaces the existing duty of disclosure with the duty of 'fair presentation' (i.e. *"Before a contract of insurance is entered into the insured must make to the insurer a fair presentation of risk"*).

It's important to note that *'entering into an insurance contract'* includes not only the main policy and each renewal of it, but also any variations or amendments.

**Note:** This change applies to **non-consumer/business insurance contracts only**. The consumer equivalent of this duty was introduced under the Consumer Insurance (Disclosures and Representations) Act 2012.

#### **Fair presentation**

A fair presentation of risk means:

- Before entering into a contract of insurance, disclosure by the insured of every matter which they know, or ought to know, that would influence the judgement of an insurer in deciding whether to insure the risk and on what terms (similar to the current position);
- **Or** (If the insured is unable to disclose all the information that they know or ought to know)
- Sufficient information for the insurer to make further enquiries about potentially material circumstances.

Information must be presented in a clear and accessible way. This is partly to prevent 'data dumping' where important information could be hidden in large volumes of information without distinguishing between the material and the trivial.

#### **Knowledge of the insured and insurer**

For the purposes of fair presentation (see above), the Act defines what the insured and the insurer would be deemed to 'know' or be 'presumed to know'.

#### **Insured parties will be considered to have known, or ought to have known:**

- Matters that could be expected to be revealed by a reasonable search of information available to the insured - for example, information held within a firm or by Corporate Insurance Solutions Ltd;
- Anything known by a person responsible for their insurance – for example, Corporate Insurance Solutions Ltd as your broker;
- Businesses will also be deemed to have the knowledge of anyone who is a part of its senior management, or who is responsible for their insurance.

This potentially creates an additional burden on insured parties as they will need to ensure that senior management and any individuals responsible for procuring insurance, are aware of the need to disclose all matters that they will be presumed to know. Proving the necessary information may also require gathering information from other areas of the business (e.g. health and safety advisers, accountants, legal department).

#### **Insurers will be considered to have known, or ought to have known:**

- Matters known to individuals who decide on behalf of the insurer whether to take the risk
- and on what terms – for example, underwriting teams;
- Knowledge held by the insurer and readily available to the person deciding whether to take the risk;
- Matters known by an employee or agent of the insurer and which should reasonably have been passed on to the person deciding whether to take the risk.



# Corporate Insurance Solutions Ltd

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Things which are common knowledge or which an insurer offering the type of insurance in question to similar types of client, would be expected to know in the ordinary course of its business.

Fair presentation doesn't need to be provided merely by one document or conversation, it recognises there may be several exchanges of information as the insurer draws out the information needed to underwrite the risk. For intermediaries and their business clients, the safest approach is probably to assume the insurer knows nothing about the business to which the insurance contract relates.

### Remedies for breach of fair presentation

Previously an insurer could refuse all claims under an insurance contract if the duty of pre-contractual disclosure had been breached. The Act now introduces a range of proportionate remedies, applicable depending on the scale of the breach and how the insurer would have approached the case had the breach not occurred.

Type of breach	Remedy available
Deliberate or reckless breach	Insurer can void the contract and keep any premiums paid
Breach is not reckless or deliberate but the insurer would not have entered into the contract	Insurer can void the contract but must return any premiums paid
Breach is not reckless or deliberate but the insurer would have entered into the contract on different terms	Insurer can treat the contract as if those different terms apply
Breach is not reckless or deliberate but the insurer would have charged a higher premium	Insurer can reduce cover to which the insured is entitled on a proportionate basis

Previously, one party to an insurance contract could avoid the contract if the other failed to act in accordance with 'utmost good faith'. Avoidance of contract is no longer a remedy for breaching the duty of utmost good faith. Insurance contracts will however still be based on utmost good faith, and clauses and obligations will be interpreted in a way that favours compliance with it.

### Warranties and terms not relevant to the loss

Currently, certain clauses called 'basis of the contract' clauses can convert all representations made in the course of an insurance contract into contractual warranties e.g. - *'the proposal or application and completed declarations and any other supplied information, form the basis of the contract'*. Breaching a warranty would therefore completely discharge an insurer from liability for all risks covered by the policy, even if the warranty had no bearing on the risk.

Under the Insurance Act, basis of the contract clauses will be banned. A breach of warranty will now result in cover being suspended for the duration of a breach but cover will remain in place if the breach is remedied prior to any loss.

Also, insurers won't be able to rely on non-compliance with a warranty if the non-compliance didn't increase the risk of loss in the circumstances that actually occurred. For example, an insurer could not avoid liability on the basis of a failure to maintain window locks if the loss was caused by flooding (as the maintenance of the window locks could not have reduced the risk of flooding occurring). The exception to this is for terms that define the risk 'as a whole' for example, terms restricting cover to 'non-commercial use'.

### Remedies for fraudulent claims

Previously, where there had been fraud, an insured party would forfeit the whole claim and insurers could also void the whole contract. The Act sets out insurers' remedies in the event of fraudulent claims. This means:

- Insurers will not be liable to pay the fraudulent claim
- They may recover any sums paid to the insured in respect of the fraudulent claim; and
- They may, by notice, treat the policy as terminated with effect from the fraudulent act and retain all premiums paid. Previous valid claims are unaffected.

These rights will also apply to fraudulent claims made under group insurance policies, although only in respect of the individuals who committed the fraud. In such cases, insurers will need to serve a notice on the fraudulent individual and the person who took out the policy on behalf of the group. Sums paid out for a fraudulent claim may be recovered from the person who committed the fraud or the person who took out the policy on behalf of the group (if they had not passed sums on to the fraudulent individual).

**If you are unsure about any points in The Terms of Business, please do not hesitate to contact our office.**