

## Notice to policyholders

We want to draw your attention to the following important changes to your existing policy cover that will become effective upon renewal of your policy. At renewal your existing policy wording will be replaced with a revised wording.

### Changes relating to the Insurance Act 2015

We are implementing the Insurance Act 2015 (**Act**) reforms into all of our policies. The key reforms relate to:

1. the duty of fair presentation of the risk;
2. remedies for breach of warranties and other contractual terms; and
3. remedies for fraudulent claims.

#### 1. The duty of fair presentation (commercial insureds)

The Act introduces a new ‘duty of fair presentation’ which clarifies what an insured must disclose to an insurer and what an insurer ought to know about its insured’s. Under this new duty, at inception and renewal of your policy and also whenever changes are made at your request you must:

- tell us, in a clear and accessible manner, about all material facts; and
- not misrepresent any material facts.

A ‘‘material fact’’ is a circumstance or representation that would influence our decision to insure you and, if so, on what terms. If you are unsure about whether a fact is material, it is in your best interest to tell us about it.

If you deliberately or recklessly fail to make a fair presentation of the risk we may:

- avoid your policy and retain your premium; and
- recover any amounts we have paid (e.g. claims) or expenses we have incurred.

If your failure to make a fair presentation is not deliberate or reckless we may do one or more of the following, depending on what we would have done if we had known the material facts when we agreed to insure you:

- if we would not have entered into the policy we may avoid your policy and return any premium you paid. In such case, we will recover any amounts we have paid (e.g. claims) or expenses we have incurred; or
- if we would have entered into the policy, but on different terms and/or on additional premium, we may apply those different terms to your policy (e.g. different limits of indemnity or exclusions) and/or charge you additional premium.

#### *Our additional premium approach*

It is important that we explain our additional premium approach:

- Charging additional premium is not a right that is provided for by the Act. Under the Act, if an insured’s failure to make a fair presentation is not deliberate or reckless and the insurer would have charged additional premium if it had been aware of the relevant material facts, the insurer has the right to reduce the amount to be paid on any claim during the period of cover in proportion to the amount of premium that would have been charged. By way of example, if the insurer would have charged double the amount of premium, the insurer would be entitled to reduce the amount payable on any claim during the period of cover by 50% (e.g. only £50,000 would be paid on a £100,000 claim).
- Rather than reducing a claim proportionally, we have instead decided to charge the additional premium that we would have charged if we had known the material facts and pay any claim(s) in full.
- We believe that our additional premium approach should - in most situations - be more favourable to you when compared to the proportional claim approach under the Act. However, we acknowledge that there may be some situations where this will not be the case. For example, if there are no claims under the policy we may still charge the additional premium. It may also be the case that the additional premium we charge may be higher than the amount that the claim(s) would have been reduced by under the proportional claim approach.

We have inserted a new fair presentation of risk clause into your policy in place of clauses relating to the pre Act duty of disclosure.

#### *Disclosure obligations – consumer insured's*

The duty to make a fair presentation does not apply to insured customers who have taken out a policy for purposes which are wholly or mainly unrelated to their trade, business or profession (i.e. consumer insureds).

If you are a consumer insured, at inception and renewal of your policy and also whenever changes are made to it at your request, you must take reasonable care not to make a misrepresentation to us.

If a consumer insured deliberately or recklessly make a misrepresentation we may avoid the policy and retain the premium. If a consumer insured makes a misrepresentation that is not deliberate or reckless, we may exercise one or more of the remedies set out above in respect of a non-deliberate or reckless failure to make a fair presentation of the risk.

#### *Changes to material facts during the period of insurance*

We have either updated an existing clause or where relevant inserted a new clause which requires you tell us about any changes to material facts during the period of insurance. If you do not tell us about those changes, we will have the same rights available to us in respect of a failure to present the risk.

## **2. Warranties and other contractual terms (both consumer and commercial insureds)**

### *Basis of the contract provisions*

The Act prohibits any clause or provision in an insurance policy which converts pre-contractual statements or representations made by an insured into contractual warranties. These provisions are commonly referred to as 'basis of the contract' clauses/provisions. In line with these changes, we have removed all 'basis of the contract' provisions from your policy and pre contractual documents.

### *Breach of warranties and other terms designed to reduce particular types of risk*

The Act updates the law relating to breach of warranties and other terms which are designed to reduce particular types of risk. In accordance with these changes we:

- have removed the phrase 'provided always that all the terms and conditions of the policy have been complied within the title page to your policy; and
- will not refuse to pay a claim on the basis that you have breached such a term if you can prove that your breach did not increase the risk of the loss.

## **3. Remedies for fraudulent claims (both consumer and commercial insureds)**

The Act clarifies the remedies available to insurers where a fraudulent claim has been made. Under the Act, where a fraudulent claim is made we may:

- refuse to pay the claim and recover any expenses or sums we have already paid; and
- treat the policy as having terminated from the date of the fraudulent act. We have updated the fraudulent claims provisions of your policy.

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