

The Insurance Act 2015

The Insurance Act 2015 is a major change to insurance law which came into force on 12 August 2016. It applies to insurance policies which start on or after that date or to any existing policies subject to a rate review or change which are effective on or after that date.

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Although the day to day impact on group risk policies is likely to be minimal, all providers will reiterate the importance of disclosing all material facts when considering a new, or renewing an existing policy.

Key to the impact on group risk policies is:

1. The duty of fair presentation:

Clients must continue to disclose all material facts i.e. disclose all material facts or circumstances that they know, or ought to know. They must not misrepresent information and if information is not complete then this must be disclosed. A material fact is information which, if disclosed would in all likelihood result in a different decision e.g. higher premiums or even a refusal to offer terms.

2. New remedies for the non-disclosure of material facts:

If the insurer finds that a client has deliberately not disclosed the full material facts, the insurer can cancel the scheme and keep the premium paid. If the insurer feels that the non-disclosure of material facts was non-deliberate, they can choose to cancel the policy but must give back the premium.

3. Fraudulent claims:

The Act clarifies what an insurer can do if a client or employee makes a fraudulent claim/underwriting submission.

What does this mean?

Take the example of a group life assurance policy with a premium of say, £10,000 per annum, and where the employer is asked to provide details of all employees who are not actively at work prior to commencement of cover.

Shortly after the policy starts a member dies and a claim is submitted for £200,000, but it subsequently turns out that the employee had been absent for over six months or more with a serious medical condition, which had not been disclosed. Under the Act the insurer could refuse to pay the claim (i.e. treat it as if the policy had never started) leaving the employer with a potentially very expensive uninsured liability.

However, if the omission of this information was non-deliberate then the insurer is able to review the risk again as if the information had been received originally. This could lead to the above scenario where the policy is effectively null and void, but if the insurer could have provided cover albeit at a higher price the Act allows the insurer to reduce the benefit payable proportionately.

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Insurers do recognise that the remedies available to them under the Act, where there has been non-deliberate/ reckless non-disclosure, are often not in the best interests of the actual members covered.

That being said, if the omission is found to be reckless or deliberate then the insurer is able to cancel the policy and not return the premium paid. If there is an element of fraud then the insurer has the option to cancel the policy and recover any benefits paid.

How are group risk insurers treating the new Act?

Insurers do recognise that the remedies available to them under the Act, where there has been non-deliberate/ reckless non-disclosure, are often not in the best interests of the actual members covered.

In acknowledgement of this they have the ability to opt out of this part of the Act (Schedule 1, paragraphs 6 and 11). This will allow the insurer (in this instance only) to charge the higher premium to the employer and pay a claim as this is fairer to employees who are the ultimate beneficiaries, but who have no say in the process of setting up the insurance contract.

Where an insurer opts out of this section of the Act they must inform policyholders prior to cover starting (or at renewal date or rate review). This will be done by direct contact, in the product literature or via the employer's intermediary.

What does it mean for employers?

Employers must be aware of their duty to provide full and accurate information, which insurers consider a material fact as well as the consequences should this not be done.

Barnett Waddingham are committed to ensuring that policies are set up and managed in a manner that is fully compliant with the Insurance Act 2015.

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact us via the following:

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