

## INSURANCE ACT 2015

The Insurance Act came into effect from 12th August 2016. The new Act modernises insurance law and aims to make it easier and fairer for clients to have claims settled.

However, the Act has introduced new levels of responsibility on all parties to a commercial insurance contract which will directly impact upon you and Sutton Winson as your Broker.

Some insurers may contract out of certain parts of the Act. However we are pleased to confirm that your insurers, Allianz, have not and have adopted the principles of the Insurance Act with immediate effect.

Under the Act you have a duty to make a 'Fair Presentation' so that insurers have a complete and accurate description of the risks they are insuring.

### KEY COMPONENTS OF A FAIR PRESENTATION:

A fair presentation is a presentation that discloses, in a manner that is clear and accessible, every material circumstance which is known or ought to be known by your senior management, including those responsible for arranging your insurance, following a reasonable search.

#### **Material Circumstance**

A circumstance, which would influence the judgement of a prudent (careful) insurer in determining whether to provide cover, and if so, on what terms.

#### **Known or ought to be known**

Includes actual knowledge of your senior management and knowledge, which ought to be known, following a reasonable search.

#### **Senior management**

Anyone who plays a significant role in making decisions (whether or not they hold a formal managerial or directorial position). This includes Trustees, Committee Members, Directors and Officers of the club

#### **Reasonable search**

This depends on the nature of your business and the insurance cover you are seeking.

#### **Reasonably clear and accessible**

Material information must be presented in a clear manner. Data dumping or referring to websites is not sufficient.

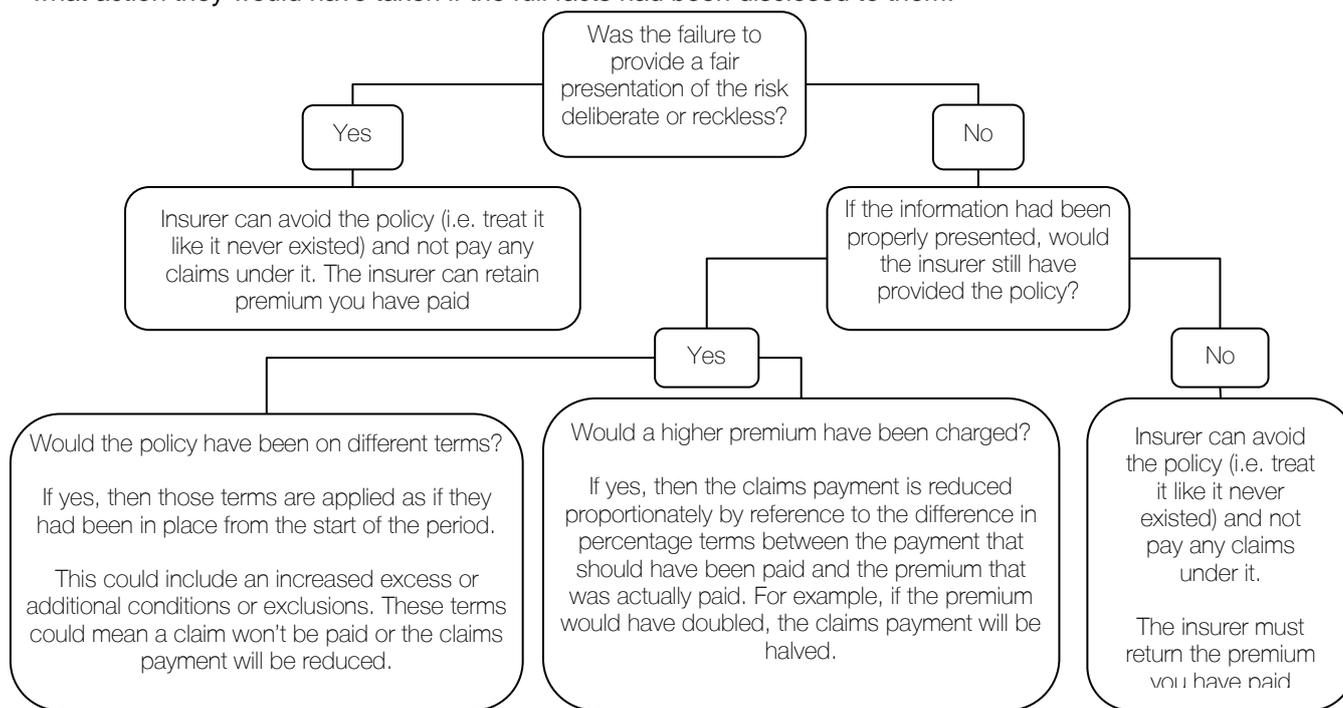
**To assist your understanding of what might be construed as a material circumstance some specific examples are detailed below:-**

- Any amendment to your Club activities.
- Acquisition of new premises or disposal of existing ones
- Additions or amendments to buildings or contents or playing surfaces
- Change in use of property e.g. third party/ies hiring space
- Commencement of or changes in storage of hazardous / high value goods
- Installation, alteration or disconnection of security systems including loss of police response.
- All criminal offences, prosecutions, bankruptcy or insolvency of a member of senior management, as defined above
- Disclosure of all incidents that could give rise to a claim even if a claim is not to be made.

**Please note this list is by no means exhaustive. If you are in any doubt whether something is a material circumstance, please contact us for guidance.**

## INSURER REMEDIES IF YOU FAIL TO PROVIDE A FAIR PRESENTATION

If you fail to provide a fair presentation insurers have the right to review the policy terms and conditions based on what action they would have taken if the full facts had been disclosed to them.



## TO ENSURE YOU DO NOT BREACH THE NEW LEGISLATION WE HAVE A FEW RECOMMENDATIONS:-

### Do:

- Tell us anything you believe may be relevant.
- Identify who within your organisation is in the senior management and ensure you consult with them so that all material circumstances are disclosed.
- Complete and return promptly any questionnaires or declarations we may ask you to complete.
- Keep a record of all correspondence relative to arranging your insurances.
- Pay your premium promptly.
- Ensure you notify any possible claims to us promptly and in line with policy terms.

### Don't:

- Attempt to conceal any relevant information.
- Make any assumptions about what is material.
- Falsely answer any questions or leave any questions unanswered.
- Overlook checking with colleagues for information you may not be aware of.
- Ignore requests for further information to be provided.

## POSITIVE OUTCOMES

Providing you fulfil your obligations under the new legislation and do not act in a deliberately reckless way you can expect some positive outcomes:

- Insurers cannot make any statement made by you before cover starts in to a contractual condition as a part of your contract.
- Insurers will no longer be able to reject a claim for breach of a warranty unless the breach is relevant to the loss e.g. Failure to comply with an alarm setting warranty will have no bearing upon a flood claim.\*
- Insurers cannot rely on non-compliance with a policy warranty, if you can show that failure to comply would not have increased their risk.\*
- If you cannot comply with a warranty e.g. alarm warranty, cover can only be suspended for the period of the non compliance.\*
- Insurers can only limit their liability for a claim where there is non-disclosure or misrepresentation of material facts, in proportion to the amount of premium they charged compared with what they would have charged had there been full disclosure.
- Further legislation effective from 2017 – The Enterprise Act – will make insurers liable for damages, if your business suffers as a result of their late claims payments and unreasonable behaviour.

\*These assume that the insurer has not 'contracted out' of the provisions of the Insurance Act 2015.