

The Enterprise Act 2016 – new legislation introducing the right for policyholders to claim damages for the late payment of insurance claims

On 4th May 2016, the Enterprise Act 2016 was passed. This new legislation provides policyholders with a potential right to claim for damages due to late payment of claims by an insurer. The legislation is effective 4th May 2017 and will apply to all insurance policies placed or renewed on or after that date, if the policy is subject to the laws of the UK. The provisions are effectively an amendment to the Insurance Act 2015 (please refer to our prior guidance on the Insurance Act).

Current Law

Damages for late claims are not recoverable from insurers. An insured can only recover what it is owed under the policy and cannot recover any additional losses suffered due to a delay in payment from insurers.

New Act

The insurer must pay any sums due within a reasonable time; breach of this implied term may give rise to a claim for damages. The Act however includes a “reasonable time” to investigate and assess the claim. What is a “reasonable time” will depend on the relevant circumstances; the Act does however provide some examples of matters which may need to be taken into account, including (but not limited to):-

- The type of insurance policy
- The size and complexity of the claim

- Necessary compliance with relevant statutory or regulatory rules or guidance
- Factors deemed outside of the insurer’s control

The Act stipulates that if an insurer can show reasonable grounds for disputing the claim (liability or quantum), the insurer is not in breach of the implied term by failing to pay the claim, whilst said dispute is ongoing.

Time-Barring

Claims must be brought no later than one year from the date the insurer has paid all the sums due in respect of the claim. After the expiry of that one-year period, any claim for damages are time-barred.

Contracting Out

The Act allows insurers to contract out of the implied term in respect of commercial policies, provided they meet the “transparency” requirements in the Insurance Act. Contracting out will not be valid where there has been a deliberate or reckless breach by the insurer. Insurers are not permitted to contract out of consumer policies.

Claiming

Damages for late payment of claims may offer an important remedy for insureds and may provide an incentive for insurers to process and pay claims promptly. However, there are a number of significant

factors in order to achieve a successful claim for late payment; the insured would have to demonstrate all of the following:-

- The insured had a valid claim under the policy
- The insurer failed to pay within a reasonable time
- The insured had suffered loss, which was caused by the insurer's breach of the implied term
- The loss suffered by the insured was foreseeable, i.e. the loss suffered was the type that would have been considered by the underwriter and the insured when the insurance contract was entered into

Furthermore, the insured will not be able to recover any loss that could have been avoided by taking reasonable steps. The Act contains a number of defences for insurers, attempting to take into account the fact that complex claims can justifiably take considerable time to investigate.

Towergate's response:

We see very few claims that are not settled in a reasonable time, however we feel the act will provide extra weight in resolving any settlement of claim that is deemed to be taking too long to resolve. As such, the Act is certainly a useful tool in an insured's armoury, and will give both You and Us an additional negotiating point with insurers, when discussing claims. It will no doubt encourage a number of insurers (and perhaps some brokers and loss adjusters) to review the efficiency and effectiveness of their claims handling process.

However, the Act does not give insured's carte blanche to claim or recover damages from insurers and in all cases, a number of factors are required in order to successfully pursue damages. Whilst the Act is a very positive step forward, we do not see it as opening the floodgates to successful litigation against insurers and it should be remembered that complex claims are not always 'black or white' and can take significant time to finalise, often for justifiable reasons.

As your Insurance Broker and the UK's largest Independent Broker, we aim to provide solutions with leading insurers who offer an excellent claim proposition. We will support you through your claim to best ensure a satisfactory outcome and as previously stated, we see very few claims not settled in a reasonable time; however, in the unlikely event of a compensation claim for damages through a late payment, we will offer assistance and advice in pursuing the insurer.

Please speak with your Account Executive if you have any additional questions about the implications of the Insurance Act or Enterprise Act, for you and your business.