

*The Chartered Institute
of Loss Adjusters*



Insurance Act 2015

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The Act

- **This Act deals with:**

- Utmost good faith
- Warranties
- Insurers remedies for fraud
- An amendment to the Third Parties Rights Against Insurers Act 2010



- Today we will concentrate on **Utmost Good Faith**

Key points to remember:

- Comes into force on 16th August **2016**
- Policies renewed or incepted after that date will be on the new basis
- The rule of utmost good faith becomes the duty of fair presentation of the risk
- The rule of fair presentation applies to **non consumers** only



Consumers

- Consumers already have protection via the Consumer Insurance (Disclosure and Representation) Act 2012.



A consumer is:

- a) an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession, and
- b) a person who carries on the business of insurance and who becomes a party to the contract by way of that business (whether or not in accordance with permission for the purposes of the Financial Services and Markets Act 2000).

Consumer Protection

- Consumer Insurance (Disclosure and Representation) Act 2012.



Non Consumers

A fair presentation of the risk is one:

- (a) which makes the disclosure required by subsection 4 (see below),
- (b) which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
- (c) in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.



Non Consumer

No need to disclose facts that:

- (a) it diminishes the risk,
- (b) the insurer knows it,
- (c) the insurer ought to know it,
- (d) the insurer is presumed to know it, or
- (e) it is something as to which the insurer waives information.



Remember it only applies to **non-consumer insurance contracts** as consumer contracts are dealt with under the Consumer Insurance (Disclosure and Representations) Act 2012.

Non Consumer

- a) disclosure of every material circumstance which the insured knows or ought to know, or (see below)

- b) failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.



Contracting Out

Under section 15 of the 2015 Act, it is stated that any term within a contract that puts a Consumer in a worse position than they would be under section 3 or 4 is effectively null and void. With regard to non-consumer insurance contracts it is possible to “contract out” however, only where the insurer satisfies section 17 of the 2015 Act which requires, compliance with the “transparency requirements”.

These requirements mean that the insurer must bring the disadvantage of the contracting out term to the attention of the Insured and further more this must be in a clear and unambiguous manner.



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