



INSURANCE INSTITUTE OF SHEFFIELD

Fraud and Insurance Law – the current state of play 20.07.2021

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Derry v Peak [1889]

“.....fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly careless whether it be true or false”.



Programme

- (a) obtaining a policy;
- (b) fraud in making a claim;
- (c) a few miscellaneous but related issues; and
- (d) concluding with a little bit about brokers and fraud.



Insurance Act 2015

2.— Application and interpretation

(1) This Part applies to non-consumer insurance contracts only.

1. Insurance contracts: main definitions

In this Act (apart from Part 6)—

“consumer insurance contract” has the same meaning as in the Consumer Insurance (Disclosure and Representations) Act 2012;

“non-consumer insurance contract” means a contract of insurance that is not a consumer insurance contract;



Consumer Insurance (Disclosure and Representations) Act 2012

1 Main definitions

In this Act—

“consumer insurance contract” means a contract of insurance between—

(a) an individual who enters into the contract wholly or mainly for purposes unrelated to the individual's trade, business or profession,



Consumer Insurance (Disclosure and Representations) Act 2012

2 Disclosure and representations before contract or variation

.....

(2) It is the duty of the consumer to take reasonable care not to make a misrepresentation to the insurer.



Consumer Insurance (Disclosure and Representations) Act 2012

SCHEDULE 1

Insurers' remedies for qualifying misrepresentations

2

If a qualifying misrepresentation was deliberate or reckless, the insurer—

- (a) may avoid the contract and refuse all claims, and
- (b) need not return any of the premiums paid, except to the extent (if any) that it would be unfair to the consumer to retain them.



Consumer Insurance (Disclosure and Representations) Act 2012

5 Qualifying misrepresentations: classification and presumptions

(1) For the purposes of this Act, a qualifying misrepresentation (see section 4(2)) is either—

- (a) deliberate or reckless, or
- (b) careless.

(2) A qualifying misrepresentation is deliberate or reckless if the consumer—

- (a) knew that it was untrue or misleading, or did not care whether or not it was untrue or misleading, and
- (b) knew that the matter to which the misrepresentation related was relevant to the insurer, or did not care whether or not it was relevant to the insurer.



5 Qualifying misrepresentations: classification and presumptions

(3) A qualifying misrepresentation is careless if it is not deliberate or reckless.

(4) It is for the insurer to show that a qualifying misrepresentation was deliberate or reckless.

(5) But it is to be presumed, unless the contrary is shown—

(a) that the consumer had the knowledge of a reasonable consumer, and

(b) that the consumer knew that a matter about which the insurer asked a clear and specific question was relevant to the insurer.



Recent cases

First Central Insurance Management Limited v William Singleton

Southern Rock Insurance v Hafeez.

Tesco Underwriting v Achunche

Jones v Zurich.



Insurance Act 2015

3.— The duty of fair presentation

(1) Before a contract of insurance is entered into, the insured must make to the insurer a fair

presentation of the risk.

(2) The duty imposed by subsection (1) is referred to in this Act as “the duty of fair presentation”.



Insurance Act 2015

8.— Remedies for breach

.....

(3) A breach for which the insurer has a remedy against the insured is referred to in this Act as a “qualifying breach”.

(4) A qualifying breach is either—

(a) deliberate or reckless, or

(b) neither deliberate nor reckless.



Insurance Act 2015

8.— Remedies for breach

....

- (5) A qualifying breach is deliberate or reckless if the insured —
- (a) knew that it was in breach of the duty of fair presentation, or
 - (b) did not care whether or not it was in breach of that duty.

- (6) It is for the insurer to show that a qualifying breach was deliberate or reckless.



Insurance Act 2015

SCHEDULE 1

INSURERS' REMEDIES FOR QUALIFYING BREACHES

2.

If a qualifying breach was deliberate or reckless, the insurer—

- (a) may avoid the contract and refuse all claims, and
- (b) need not return any of the premiums paid.



Fraud in making a claim

Versloot Dredging BV and another v HDI Gerling Industrie Versicherung AG.

The whole claim is a fabrication

There is a genuine claim, but the amount has been exaggerated.

The entire claim is justifiable but information has been provided to further the claim and which information is dishonest.



Insurance Act 2015

12.— Remedies for fraudulent claims

- (1) If the insured makes a fraudulent claim under a contract of insurance—
 - (a) the insurer is not liable to pay the claim,
 - (b) the insurer may recover from the insured any sums paid by the insurer to the insured in respect of the claim, and
 - (c) in addition, the insurer may by notice to the insured treat the contract as having been terminated with effect from the time of the fraudulent act.

- (2) If the insurer does treat the contract as having been terminated—
 - (a) it may refuse all liability to the insured under the contract in respect of a relevant event occurring after the time of the fraudulent act, and
 - (b) it need not return any of the premiums paid under the contract.



Insurance Act 2015

12.— Remedies for fraudulent claims

(3) Treating a contract as having been terminated under this section does not affect the rights and obligations of the parties to the contract with respect to a relevant event occurring before the time of the fraudulent act.

(4) In subsections (2)(a) and (3), “relevant event” refers to whatever gives rise to the insurer's liability under the contract (and includes, for example, the occurrence of a loss, the making of a claim, or the notification of a potential claim, depending on how the contract is written).



Insurance Act 2015

14.— Good faith

(1) Any rule of law permitting a party to a contract of insurance to avoid the contract on the ground that the utmost good faith has not been observed by the other party is abolished.

(2) Any rule of law to the effect that a contract of insurance is a contract based on the utmost good faith is modified to the extent required by the provisions of this Act and the Consumer Insurance(Disclosure and Representations) Act 2012.

(3) Accordingly—

(a) in section 17 of the Marine Insurance Act 1906 (marine insurance contracts are contracts of the utmost good faith), the words from “, and” to the end are omitted, and

(b) the application of that section (as so amended) is subject to the provisions of this Act and the Consumer Insurance (Disclosure and Representations) Act 2012.



Insurance Act 2015

15.— Contracting out: consumer insurance contracts

(1) A term of a consumer insurance contract, or of any other contract, which would put the consumer in a worse position as respects any of the matters provided for in Part 3 or 4 of this Act than the consumer would be in by virtue of the provisions of those Parts (so far as relating to consumer insurance contracts) is to that extent of no effect.



Insurance Act 2015

16.— Contracting out: non-consumer insurance contracts

(1) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects representations to which section 9 applies than the insured would be in by virtue of that section is to that extent of no effect.

(2) A term of a non-consumer insurance contract, or of any other contract, which would put the insured in a worse position as respects any of the other matters provided for in Part 2, 3 or 4 of this Act than the insured would be in by virtue of the provisions of those Parts (so far as relating to non-consumer insurance contracts) is to that extent of no effect, unless the requirements of section 17 have been satisfied in relation to the term.



Insurance Act 2015

17.— The transparency requirements

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(2) The insurer must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into or the variation agreed.

(3) The disadvantageous term must be clear and unambiguous as to its effect.

(4) In determining whether the requirements of subsections (2) and (3) have been met, the characteristics of insured persons of the kind in question, and the circumstances of the transaction, are to be taken into account.

(5) The insured may not rely on any failure on the part of the insurer to meet the requirements of subsection (2) if the insured (or its agent) had actual knowledge of the disadvantageous term when the contract was entered into or the variation agreed.



Fraud

We will at **Our** option avoid the policy from the inception of this insurance or from the date of the claim or alleged claim, or avoid the claim:

- (a) if a claim made by **You** or anyone acting on **Your** behalf to obtain a policy benefit is fraudulent or intentionally exaggerated, whether ultimately material or not, or
- (b) a false declaration or statement is made or fraudulent device put forward in support of a claim.



Any questions?