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ARTICLE

The Insurance Act 2015: 10 Years On, What Have We Learned?

By Ralph Fearnhead – May 13, 2025

In 2015, significant changes were made to the landscape of the United Kingdom's insurance law for businesses when the Insurance Act 2015 (IA) received royal assent. Until then, insurance law had been governed by the Marine Insurance Act 1906, an act that codified principles developed in the 18th and 19th centuries. However, following concern that the regime was outdated, was too insurer friendly, and failed to reflect modern commercial practice, the Law Commission was invited to make proposals for reform. The IA was the result, a piece of legislation "aimed at ensuring a better balance of interests between the policyholders and insurers" (2014 Law Commission Report).

However, since the act came into force in August 2016, only a relatively small number of cases considering its provisions have come before the courts. This article considers some of the IA's key reforms and, through analysis of the resulting case law, assesses what has changed in practice over the last 10 years.

Duty of Fair Presentation (Sections 2–8 IA)

Arguably, one of the most significant changes under the IA was the introduction, in section 3, of a duty of fair presentation of the risk on the prospective policyholder. The duty of fair presentation replaced the duty of disclosure, an aspect of the long-standing duty of utmost good faith, which required policyholders to disclose *all* circumstances material to the risk. That was an onerous obligation that sometimes led to protective "data dumping" by policyholders seeking to ensure all potentially material information was provided to insurers.

Under the IA, although material circumstances must still be disclosed, disclosure is limited to what the policyholder "knows or ought to know" or, failing that, "sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances." The concept of "knowledge," which is elaborated on in sections 4 to 6, arguably encourages a more pragmatic approach to presenting the risk. For example, a policyholder company is deemed to know only what is known by the senior management or by the individual or individuals responsible for the insurance. In addition, the requirement on insurers to undertake further inquiries promotes mutual active engagement and seeks to level the playing field. The IA goes on to explain that a circumstance will be material if it would influence the judgement of a prudent insurer in determining whether to take the risk and, if so, on what terms. Examples may include special or unusual facts relating to the risk, particular concerns that led the policyholder to seek cover for the risk, or anything that those concerned with that class of insurance and field of activity would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question. The IA goes on to discourage data dumps by requiring the policyholder to disclose the risk in a manner that would be reasonably clear and accessible to a prudent insurer.

Has this been tested by the courts?
A number of the cases that have considered the duty of fair presentation since the IA came into force concern failures to disclose information pertaining to a director's insolvency history or previous criminal charges, including the following:

- *Young v. Royal and Sun Alliance Insurance Plc* [2020] CSIH 25
- *Berkshire Assets Ltd. v. AXA Insurance UK Plc* [2021] EWHC 2689 (Comm)
- *Tynefield Care Ltd. v. The New India Assurance Company* [2024] 5 WLUK 700

In all three cases, the policyholder was held to have failed in discharging its duty of fair presentation.

In *Tynefield*, where the nondisclosure concerned a *de facto* director, the court noted that the burden of showing materiality falls on the insurer; and, therefore, whether a circumstance is deemed to be material will be assessed from the perspective of prudent insurer. However, the threshold remains low—all the insurer needs to show is that a prudent underwriter would be influenced by the facts, not that the underwriter would refuse the risk. This is the same test as that which applied pre-IA.

Berkshire provides a further example of the court's approach to the materiality threshold. Here the charges against the director were unrelated to the director's role with the insured and were later discontinued. The court nonetheless held that had the charges been disclosed, the insurer would not have underwritten the policy.

What does this tell us about the IA?
These cases demonstrate that the courts will continue to take a strict approach where there has been a lack of disclosure regarding the insolvency or criminal history of directors, notwithstanding the replacement of the duty of disclosure with the duty of fair presentation. Perhaps unsurprisingly, the court considers such circumstances to be material.

Proportionate Remedies (Section 8 IA)
Alongside the replacement of the duty of disclosure with the duty of fair presentation, the IA reformed remedies available to insurers for breach of the duty. Under the previous law, a breach entitled insurers to avoid the policy entirely. Now the IA provides a scale of proportionate remedies, and an insurer will have a remedy for breach of the duty of fair presentation only if, had it known the undisclosed information, it would not have entered into the contract or would have done so on different terms.

Further, the remedy available will depend on whether the breach is deliberate or reckless:

1. Where the breach was deliberate or reckless, the insurer can avoid the contract and retain any premiums.

2. Where the breach was neither deliberate nor reckless but, in its absence, the insurer would not have entered into the contract at all, it can avoid the contract but must return any premiums.

3. Where the breach was neither deliberate nor reckless but the insurer would have entered into the contract only on different terms (except in relation to the premium), the insurer can treat the contract as if those terms apply.

4. Where the breach was neither deliberate nor reckless and the insurer would have entered the contract but would have charged a higher premium, the insurer can reduce the amount to be paid on a claim proportionately.

Has this been tested by the courts?
In the three cases mentioned above, the court allowed the insurer to avoid the policy. In *Tynefield* and *Berkshire*, the insurer could point to clear evidence of existing practice, including internal practice notes and guidelines, to show that the insurer would not have provided the cover had it known the undisclosed information.

However, the outcome was different in *Delos Shipholding SA & Ors v. Allianz Global Corporate and Speciality SE & Ors* [2024] EWHC 719 (Comm). Here the policyholder company did not have actual or constructive knowledge of criminal charges against one of its directors, and so there had been no breach of the duty of fair presentation. However, if there had been a breach, the court considered that insurers would have provided cover on the same terms, save for the condition that the relevant director was replaced, a condition the policyholder would have complied with, and so insurers could not have avoided the policy. This decision is subject to an appeal due to be heard later this year.

What does this tell us about the IA?
While these cases demonstrate that insurers will be able to point to evidence of existing practice to avoid cover under the IA, as *Delos* indicates, insurers can no longer take it for granted that any breach of the duty of fair presentation will inevitably lead to avoidance.

Terms Not Relevant to Actual Loss—Warranties and Conditions Precedent (Sections 9 and 11 IA)
Prior to the IA, insurers frequently used “basis of contract” clauses to convert statements into warranties, resulting in draconian consequences for breaches, even those entirely unrelated to the risk. The IA now explicitly bans such clauses (section 10) and prevents insurers from relying on a breach of a term to exclude, limit, or discharge its liability where the relevant breach is irrelevant to the actual loss (section 11).

Has this been tested by the courts? *Mok Petro Energy v. Argo (No. 604) Limited (The “F1”)* [2024] EWHC 1935 (Comm) concerned claims made in relation to a cargo of gasoline that had been contaminated by water. Reinsurers argued, in part, that the policyholder had breached a warranty requiring inspection and certification of the cleanliness of certain pipelines and that any claim under the policy was therefore precluded. In circumstances where only the certification element of the warranty had been breached, the court suggested (in *obiter* comments) that the correct approach under section 11 was to consider whether compliance with the term as a whole would tend to minimize the risk. Here, while the lack of certification may not have tended to reduce the risk, there was no serious dispute that compliance with the warranty as a whole was capable of minimizing the risk of water contamination, and so the insurers' breach of warranty defense would not have been precluded by section 11.

What does this tell us about the IA?
Although not determinative, the comments in *Mok* suggest a restrictive approach to section 11. The court explicitly said, "if there is a breach of warranty, the Defendants are entitled to rely on it, no matter how technical the argument might be." Whether that approach will be followed in future cases remains to be seen.

Proportionate Remedies (Section 10 IA 2015)
The IA also abolished the harsh rule that a breach of warranty automatically discharged the insurer's liability. Now a breach of warranty merely suspends the policy until such time that it is remedied.

Has this been tested by the courts?
In *Lonham Group Ltd. v. Scotbeef Ltd. & Anr* [2025] EWCA Civ 203, the insurer argued that it was entitled to avoid a claim on the basis that the policyholder breached a condition precedent in the policy requiring that it trade only with third parties on the basis of declared standard terms. Although at first instance the court held that the policyholder had not been in breach of warranty, the court of appeal disagreed and went on to conclude that, as the breach had not been remedied, the "suspensory" element of section 10 did not come into play and the insurer was not liable.

What does this tell us about the IA?
Again, the decision in *Lonham* indicates that, whether or not the IA was intended to ameliorate some of the harshest consequences of the old law and rebalance the rights of insurers and policyholders, an insurer will still be able to avoid a policy where the policyholder is in breach of warranty.

Claims for Late Payment of Damages— (Section 13A IA)
Pursuant to the Enterprise Act 2016, the IA introduced an implied term into all insurance contracts requiring claims to be paid within a reasonable time. Breach of the implied term entitles the policyholder to an additional claim for damages. The legislation sets out example factors that may be considered when assessing what a reasonable time is, including the type of insurance, the complexity of the claim, and factors outside the insurer's control. Further, where there are reasonable grounds for an insurer to dispute the claim, the insurer will not breach the implied term, although the handling of the claim will be a factor for consideration.

Has this been tested by the courts?
In *Quadra Commodities v. XL Insurance & Ors* [2022] EWHC 431 (Comm), a policyholder had brought a claim for lost cargo under a marine cargo insurance policy. The insurer unsuccessfully denied cover on various grounds. The policyholder made a claim for late payment of damages under section 13A on the basis that the insurer's conduct was "wholly unreasonable and its investigations either unnecessary or unreasonably slow." The court confirmed that there are two limbs to the test. The first considers what a reasonable time is for an insurer to pay sums due (with the burden of proof falling on the insured). The second considers whether there were reasonable grounds for the insurer to dispute the claim (with the burden falling on the insurer).

Relevant factors in that case included the complex factual matrix, the fact that the origin of the claim lay in fraud, and the lack of evidence. The court concluded that a reasonable time to investigate, evaluate, and settle the claim had been no more than a year from the notice of loss but that there were reasonable grounds for disputing the claim, irrespective of the fact that they were ultimately mistaken. Consequently, there was no breach of section 13A, despite the court acknowledging that, at times, the insurer's conduct was too slow.

A similar claim was also advanced unsuccessfully in *Delos* (see above).

What does this tell us about the IA?
As the only reported claims for breach of section 13A so far have failed, the circumstances in which a policyholder will be able to show that an insurer has indeed taken too long to pay a claim and receive an award of damages remain unclear.

Conclusion
In drafting the IA, the Law Commission deliberately avoided a detailed prescriptive approach, opting instead for a principles-based approach in the expectation that the detailed application would be developed by the courts in deciding cases. This reflected the way in which English insurance law had originally developed so successfully through volumes of case law spanning well over a century. The introduction of the IA has not led to the wave of cases anticipated by the commission, and there remain degrees of ambiguity around the practical application of various of the principles.

In the *Scotbeef* case discussed above, Lord Justice Fraser, noting that there had been limited authority on the operation of the IA, suggested that could potentially demonstrate the degree to which the IA has successfully reformed insurance law and practice.

There is certainly merit to that view, and the IA has provided a background against which many cases have been settled prior to reaching court. It is, however, also now common practice (driven by standard policy wordings) for commercial disputes to be determined through arbitration and other confidential mechanisms. That can be contrasted with the early 1900s when the previous Insurance Act was being developed. With many disputes now being determined in confidence, there is also now a parallel body of decisions applying the IA, including decisions from former senior judges, practitioners, and those in the market. Those decisions, however, remain known only to the parties and their advisors. With no precedential value to them, it remains a moot point whether that selective knowledge may avoid or generate additional claims between parties who may genuinely or falsely consider they are better informed than others.