Living in the Material world…

You'd be forgiven for having missed it given how little coverage there has been, but last week saw a change in the law that fundamentally alters the underwriting foundation of General Insurance for insurers, consumers and intermediaries alike.

The Consumer Insurance (Disclosure and Representations) Act 2012 came into effect on the 6th of April this year. It is an amendment to the Marine Insurance Act of 1906 and at its heart is the abolition of the duty on consumers to volunteer material facts when applying for, or renewing an insurance policy. The consequences are … as I said… huge.

The old law required consumers to volunteer any information which would "influence the judgment of a prudent insurer" in fixing the premium or deciding whether to take the risk. The problem has been that most consumers have little idea of the scope of information that might influence a prudent insurer.

The penalties for failure to disclose information to insurers can be harsh – even where that omission is the result of perfectly logical assumptions and a reasonable interpretation of the questions asked. For example, until now, if a consumer discloses only those instances of prior loss or damage that they actually claimed for and omits losses that they didn't claim for, their new insurer could deem that to be material information. They could treat the policy as if it does not exist and refuse all claims under it – including those claims that would have been covered had the material facts been disclosed. Although most reputable insurers don't use such extreme tactics, the FOS and the government have been sufficiently concerned to update the law and remove that option.

Effectively the new Act redefines 'utmost good faith' in the context of consumer insurance as the requirement to honestly answer any questions asked, with a duty to take reasonable care not to misrepresent.

The primary impact of this will be a more onerous application and renewal process adopted by the insurer in order to ensure that there is no ambiguity in their questions and to ensure that they are very clear in the way the questions are asked. Rolled-up or "catch-all" questions will have to be completely unpacked making the process longer and more complicated. As brokers the responsibility will fall on you to ensure that you have clearly gone through the appropriate questions and disclosure statements with your client.

It's worth taking that responsibility seriously, and using a GI platform that takes it seriously too.

Because this isn't a change in regulation, but in legislation, it has made over a century of settled case law obsolete overnight, so you'll want to make sure you're on solid ground should you be unfortunate enough to get caught up in any of the inevitable litigation that will arise during the early operation of the Act to establish new precedents over issues like:

- What is 'honest and reasonable' in terms of any misrepresentation?
- When is an intermediary to be considered an agent for the consumer or the insurer
- Who is to bear the financial risk of any error by the intermediary?

It's pretty important stuff, so we'll be watching out for key developments and posting links to Twitter. If you want to keep an eye on what we find, just follow @SourceInsurance.

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