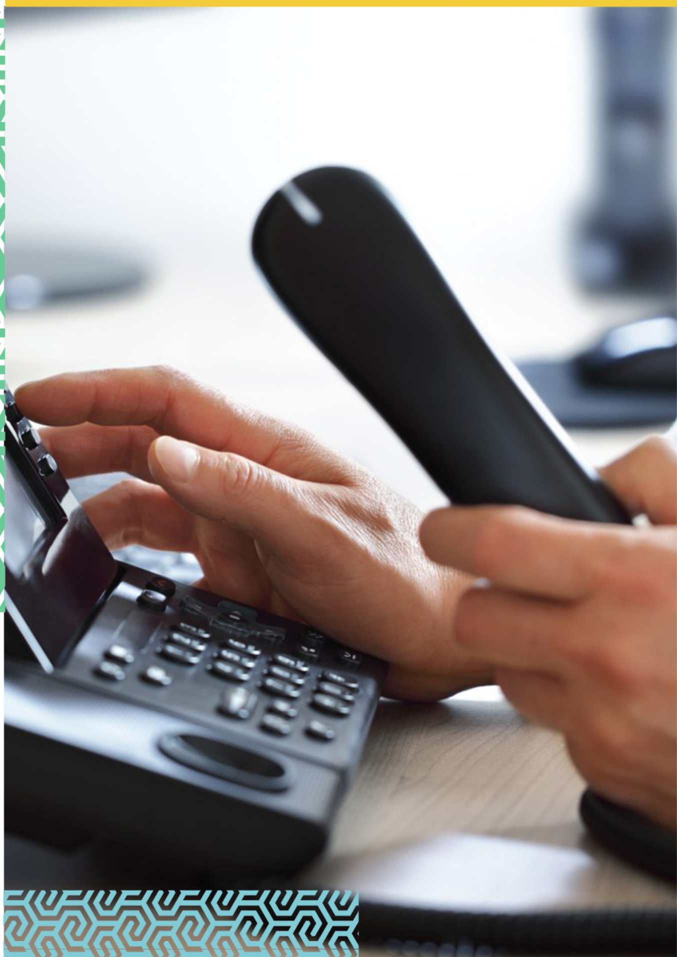
Broker Bulletin No. 3 – Insurance Act 2015



Risk Management Partners
rmpartners.co.uk

25 YEARS OF DEDICATION IN ACTION

Broker Bulletin No. 3 – Insurance Act 2015

Following a joint review of the insurance policy placements with QBE Insurance (Europe) Limited (QBE) the following policies will be subject to the changes outlined below, relevant to the Insurance Act 2015. In summary, the key changes are:

1. **Material Changes**

   Going forward the insured must notify QBE as soon as <u>*reasonably practical*</u> of any material changes. You will recall this was previously <u>*within 30 days of the change*</u>.

2. **Remedies for breach of the duty of fair presentation**

   Where an insured breaches their duty of fair presentation, then assuming the breach is not deliberate or reckless, and the contract is a contract of insurance which QBE would normally have entered into, then QBE reserve the right to apply one or more of the following:

   (i) enter the contract on different terms (other than terms relating to the premium),
   (ii) charge a higher premium, effective from the effective date of the variation,
   (iii) where the premium has been reduced but the risk would not normally have attracted the reduction QBE will require the insured to reimburse QBE a sum equal to any reduction in premium.

   Any claim under the policy will be subject to the policy's usual terms, conditions and exceptions, and of course each policy should be read as a standalone contract.

   The changes will take place with effect from 1st June 2017 renewal cycle and be made on a renewal by renewal basis through to 31st May 2018.

   The relevant polices affected are:

   a) Employers and Public Liability
   b) Officials' Indemnity
   c) Professional Indemnity
   d) Environmental Covers
   e) Directors & Officers
   f) Medical Malpractice
   g) Fidelity Guarantee/Crime
   h) Motor

Below is an example of the policy endorsement which will apply. This example relates to Employers and Public Liability, but would be similar for other covers.

Endorsement 008 – Condition: Insurance Act 'Contracting In' Endorsement

*The clauses below are added to and form part of the General terms and conditions to this **policy**.*

1. ***Basis of contract***

   *Any reference to 'basis of the contract' in this **policy** or in the proposal form (if any) is of no effect.*

2. ***Duty of fair presentation***

   *The **insured** must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.*

3. ***Remedies for breach of the duty of fair presentation – proposing for this insurance***

   *If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation then the **insurer's** remedies shall be as follows:*

   *(a) if such breach is deliberate or reckless, the **insurer** may:*

   *(i) treat this **policy** as having been terminated from its inception; and*

   (ii) retain the premium;

   *(b) if such breach is not deliberate or reckless and the **insurer** would not have entered into this **policy** but for the breach, the **insurer** may by notice to the **insured** treat this **policy** as having been terminated from its inception in which case the **insurer** shall return the premium; and*

   *(c) in all other cases if, but for the said breach, the **insurer** would have entered into this **policy** but:*

   (i) on different terms (other than terms relating to the premium), the insurer may require that this policy is treated as if it had been entered into on those different terms from the outset; or

   *(ii) would have charged a higher premium, the **insurer** may charge such higher premium, effective from inception, and the **insured** shall pay such higher premium no later than fourteen (14) days after receiving the **insurer's** written notice that such higher premium is payable.*

4. ***Material changes during the policy period***

   *4.1 The insured must notify the **insurer** as soon as reasonably practical of any material change to the **insured**, its **business** or the risks insured if indemnity under this insurance is sought in relation to any such change.*

   *4.2 The insured must notify the **insurer** as soon as reasonably practical of any material change to the **insured**, its **business** or the risks insured if indemnity under this insurance is sought in relation to any such change.*

5. Remedies for breach of the duty of fair presentation – variation

*If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation in relation to a variation of this **policy**, the **insurer's** remedies shall be as follows:*

*(a) if such breach is deliberate or reckless, the **insurer** may:*

*(i) by notice to the **insured** treat this **policy** as having been terminated from the time when the variation was concluded; and,*

(ii) retain the premium;

*(b) if such breach is not deliberate or reckless, and the **insurer** would not have entered into the variation but for the breach, the **insurer** may treat this **policy** as if the variation was never made, in which case the **insurer** shall return any additional premium relating to the variation; and*

*in all other cases if, but for the said breach, the **insurer** would have entered into the variation but:*

*(i) on different terms (other than terms relating to the premium), the **insurer** may require that the variation is treated as if it had been entered into on those different terms;*

*(ii) would have increased the premium by more than it did or at all, the **insurer** may charge such higher premium, effective from the effective date of the variation, and the **insured** shall pay such higher premium no later than fourteen (14) days after receiving the **insurer's** written notice that such higher premium is payable; or*

*(iii) would not have reduced the premium by as much as it did or at all, the **insurer** may require the **insured** to reimburse to the **insurer** a sum equal to any reduction in premium no later than fourteen (14) days after receiving the **insurer's** written notice that such amount is payable.*

*The changes will take would have charged a higher premium, the **insurer** may charge such higher premium, effective from inception, and the **insured** shall pay such higher premium no later than fourteen (14) days after receiving the **insurer's** written notice that such higher premium is payable*

6. Fraudulent claims

6.1 If the i**nsured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **insurer**:

(a) Is not liable to pay the claim;
*(b) may recover any part of the claim already paid from the relevant **insured**; and*
*(c) may by notice to the **insured** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **insurer** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.*

6.2 These remedies shall not be available against any other entity insured under this policy that was not implicated in the fraud.

7. Terms not relevant to the actual loss

*Where: (i) the **insured** has failed to comply with any express or implied term of this **policy**, other than a term that defines the risk as a whole; and (ii) compliance with such term would tend to reduce the risk of loss of a particular kind, at a particular location and/or at a particular time, the **insurer** cannot rely on the failure to comply to exclude, limit or discharge the **insurer's** liability if the **insured** shows that the failure to comply could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.*

8. Incorporation

8.1 The provisions of this endorsement replace the following provisions in the policy:

(a) Material inaccuracy clause;

(b) Material alteration clause; and

(c) Fraud clause (where applicable)

Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

Get in touch

For more information, please contact your RMP consultant or account director.

contact@rmpartners.co.uk

Risk Management Partners

The Walbrook Building
25 Walbrook
London EC4N 8AW

020 7204 1800
rmpartners.co.uk

06/2019