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One more push - damages for late payment provisions come into effect today

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The industry could be forgiven if feeling reform-weary after contending with the changes already brought in by the Consumer Insurance (Disclosure and Representations) Act 2012 and the Insurance Act 2015. However, now is the time to dig deep and make sure you are prepared for further changes that come into effect today and allow claims to be brought against insurers for damages for late payment.

While the allegations may very rarely have any substance, the likelihood is that insurers will face claims for late payment almost straight away, with policyholders and their advisers tagging them onto most coverage disputes to bolster their negotiating strategy. Allegations extending to bad faith are unlikely to be far behind.

So, if you only do one thing today, check that your claims handling procedures are late payment-enabled and know what the late payment provisions are in your own policies and those related to it.

Key provisions

In summary, ss13A and 16A of the Insurance Act 2015 introduce into every contract of insurance an implied term requiring the insurer to pay sums due within a reasonable time. Failure to do so entitles the insured to remedies including damages.

The Act expressly recognises the need for a reasonable time to investigate and assess the claim and also includes a non-exhaustive list of matters which may be taken into account in determining what amounts to 'a reasonable time'. This includes the type of insurance, size and complexity of the claim and factors outside insurers' control. For example, business interruption (BI) claims will often take longer to value than other claims. What amounts to a 'reasonable time' will certainly be a flashpoint for dispute between the parties.

There is also a defence where an insurer has reasonable grounds for disputing the validity or value of the claim.

The Act permits contracting out in non-consumer insurance contracts (where the breach is not deliberate or reckless) provided that the transparency requirements set out in the Insurance Act 2015 are satisfied.

The limitation period for bringing such a claim is one year from the date that insurers pay all sums due.

Insurers should be mindful to consider their reinsurance programmes to assess the recoverability of any damages awards, as well as obligations when part of a subscription market. Insurers may also wish to look at their contracts with external parties to see if they can pass on liabilities for any delays.

Having been involved at the forefront of the Law Commission reforms since hosting the scoping round table in 2006, it is interesting to look back and track the progress of these fundamental changes. Click here for our earlier guidance on the practical impact of the late payment provisions and here for questions to ask about implementation.

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