

Enterprise Act 2016:

Its effects on property insurance claims

The Enterprise Act comes into force on the 4th May 2017, bringing with it new legislation for the insurance industry relating to the handling of claims. Unlike the Insurance Act of 2015, the new Act does not place any additional responsibilities on the policyholder but upon Insurers, their agents and loss adjustors. The Act provides that insurers and their representatives must perform so that claims are dealt with in a reasonable time frame. If this goal is not achieved, then the act will enable the insured to claim for subsequent losses incurred.

So, the Act benefits policyholders?

Many people in the industry expect that the main beneficiaries of the new rules will be small to medium sized businesses – businesses with up to 250 employees operating in England and Wales (The Act does not extend to Scotland or Northern Ireland). This should encompass most property-owning policyholders or agents acting on behalf of freeholders. Historically, such companies do not have the 'muscle' to press for swift claims settlement from insurers and had to resign themselves to allowing insurers to operate at their own pace. And it is often these firms that are most exposed if claim settlements are delayed. Of course, much larger firms are not precluded from the act, but it is often the case that, due to the size of insurance contracts, their claims are dealt with in a timelier fashion!

The act places the onus on insurers to settle claims promptly, i.e. in a "Reasonable Time". However, this does not stop the insurer from investigating and assessing the claim.

"Reasonable Time" is not defined in the new law. Delays in settlement could still occur, depending on the circumstances of the individual claim. Factors that could still see slower progress include where there are reasonable grounds for disputing a claim or its quantum, the size or complexity of a claim, the type of insurance or factors outside the insurers control (such as involvement of other parties or authorities, or to meet legal or statutory obligations).

Of course, this does include claims against you from a third party such as a trip or slip on your premises which you wish to dispute. Policyholder have the same protection against inflated or fraudulent claims as before and thorough investigations should still take place.

But, at the end of the day, once the claim has been agreed, the clock starts ticking and settlement should be forthcoming.

So, what are the remedies?

We sometimes see cases where indemnity has been granted yet repairs to a building have been delayed because insurers have not approved a contractor. The affected areas remain unfit for purpose resulting in loss of income. Now, you could expect compensation for a loss of potential income, as long as you take all reasonable steps to mitigate the loss. Claimants have up to 1 year to submit a compensation claim after settlement is received if they discover that the delay has had additional cost implications.

However, as this is a new piece of legislation there are no legal precedents or case studies that illustrate how the new act will work in practice. It could be said that the legislation is dealing with a problem that has not been significant to Property Managers or landlords as some claims always take time to resolve, such as subsidence claims. Also, there is no great benefit to insurers in delaying settlement as a damaged building is likely to be at greater risk of further damage than a weatherproof structure.

Contracting out

You may recall that The Insurance Act allowed insurers to 'contract out' of many of the provisions. This again appears as an option with the new rules.

The right to damages for late payment of claims will be an implied term in all insurance policies (does not need to be stated in policy documents). Parties can agree to contract out, although this is most likely to be seen where the insurer imposes it and policyholders can only choose to accept it or buy elsewhere.

However, it must meet the same transparency requirements as for the Insurance Act and be clearly drawn to the customer's attention. Also, if the insurer deliberately or recklessly delays claims, any contracting out will be invalidated and compensation still be claimed for the delays.

Look to your Broker for more help

Insurance Brokers arrange the clear majority of property owner's policies although some major property policyholders might be insured direct with an insurance company.

Your Broker should bring you the benefits of their relationships with, and knowledge of, the insurers covering the property world, including the ways in which they will be dealing with the new requirements. Remember that the Broker usually acts as your agent in sourcing and arranging the insurance and in dealing with your claims.

In some cases, brokers will act under a delegated authority to settle claims on behalf of insurers – acting as the agent of the insurer as well as for the customer. In these cases, much of the responsibility for meeting the new rules lies with the Broker.

Brokers tips (without stating the obvious):

- Submit your claim promptly with as much information as you can supply
- Record and copy accurately all documents supplied and dates (when sending electronically ask for a reply acknowledging your email)
- Promptly deal with any additional information request or attend any appointment requested by an insurer to discuss the claim.
- Ask at the outset, in writing, what would be considered a reasonable time for settlement once indemnity has been granted. If after this date settlement has not been received, then you may have the ability to use the right to redress to speed things up
- Request an interim payment to aid cash flow, if full and final settlement will take a period to resolve but indemnity has been granted.

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