

Enterprise Bill 2015

The much anticipated Insurance Act 2015 is due to take effect from August 2016. The Enterprise Bill 2015, if passed (which looks likely - the bill passed its third reading in the House of Commons on Wednesday 9 March 2016) , will add to the insured-friendly reforms of the Insurance Act 2015 by bringing into law two key concepts:

- That an insurer must pay claims within a reasonable period of time
- A failure to pay claims within a reasonable period of time will entitle the insured to claim damages for losses suffered as a result of that failure.

Practically speaking, what does this mean?

Let's use the type of situation that arose in *Sprung v Royal Insurance (UK) Ltd* [1999] which was one of the cases in which a call for a review of the existing law was raised. Mr Sprung owned a small family business and bought insurance to protect his factory. Vandals damaged both his factory and plant. Insurers refused to pay the claim on the basis the policy did not cover 'wilful damage'. Mr Sprung went out of business as a result. He brought proceedings against his insurers, who eventually abandoned their defence. Mr Sprung was awarded an indemnity for his insured losses plus simple interest and costs. He was unable, however, to claim for his consequential losses of having gone out of business – a cause of action for 'damages for late payment of damages' does not exist.

If the Enterprise Bill is passed in its current format, someone in Mr Sprung's situation may be able to claim damages for the losses suffered as a result of late payment/wrong refusal to make payment of a claim, in addition to the enforcing the indemnity payment that should have been made in the first place.

Contracting out

As with the Insurance Act, contracting out of this implied term will be allowed in non-consumer contracts but only where the transparency requirements under s17 Insurance Act 2015 are met. To achieve that aim, careful drafting will be required, as well as close co-operation with brokers.

It will not be possible to contract out of the implied term in consumer contracts.

Consequences for Loss Adjusters and Claims Handlers

The ramifications for insurers, their agents, and those that adjust, claims handle, project manage and administer claims for insurers should not be underestimated.

Payments within a reasonable time

Payments must be made within a 'reasonable time'. That will include a reasonable time to investigate and assess, and it is likely to be acknowledged in the Act that what is reasonable will depend on all the relevant circumstances. The stage for uncertainty and satellite litigation is set.

In the meantime, insurers will need to decide what they consider to be a reasonable time. Those that contract with Insurers therefore need to be clear about what they should agree to, who is responsible for what, and whether for example adjusters with delegated authority should have access to funds held in escrow to ensure swift payment of claims once adjusted.

Reasonable ground for disputing a claim

Thought must be given and agreed between Insurers and its agents as to what would amount to 'reasonable grounds' for disputing a claim – if there are reasonable grounds, the insurer will not be in breach of the implied term. This is a further test which will be fact specific, and again likely to result in satellite litigation to determine what is and isn't a 'reasonable ground.' The conduct of the insurer (and by extension its agents/adjusters) when disputing a claim will also be relevant to deciding whether there was a breach or not.

This is a risk management issue for loss adjusters and others who handle claims on behalf of insurers - the concern has to be a rise in claims where there is the potential for it to be alleged that their inaction/negligent conduct/advice to dispute or reject a claim has caused a breach of the implied term, and thereby created an exposure for the insurer which it may then seek to recover.

For assistance with what steps should be being taken in respect of training, pro-active agreement of Service Level Agreements with Insurers, re-wording, contracting out, and other preparatory steps please contact the head of our Loss Adjuster Risks team, Sarah Trendell-Smyth. In the meantime, these links to the practical law insurance toolkit, and the Enterprise Bill tracker may assist.

<http://uk.practicallaw.com/6-503-2106>

<http://services.parliament.uk/bills/2015-16/enterprise.html>



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