

ENTERPRISE ACT 2016

KEY ISSUES YOU SHOULD CONSIDER

The Enterprise Act comes into effect in May 2017.
Here's a summary of the key issues surrounding damages for late payments.



In association with Clyde & Co LLP

CLYDE & CO

**DAMAGES FOR LATE PAYMENTS:
KEY ASPECTS OF THE ACT**

- » Implies a term into all policies renewing/incepting after 4th May 2017 that:
 - Sums due will be paid
 - Within a reasonable time
 - When a claim is made
- » No breach if there are reasonable grounds for dispute; conduct of the insurer is relevant
- » Option to contract out for non-consumer contracts (but why would you?)

WHEN ARE SUMS DUE?

Material Damage claims:

- » Requirement to make indemnity payments as soon as policy liability engaged. Should an immediate interim payment be made and then topped up to re-instatement level when committed to?

Business Interruption claims:

- » How regularly should interim Gross Profit losses be paid?
- » What would be the impact of not supporting reasonable mitigation (ICW) proposals?

Liability claims:

- » Act does not distinguish between claims arising from damage to a policyholder's assets, as opposed to those from third parties
- » Unreasonably defensive strategies/delay resulting in avoidable loss of customers Importance of communication/agreement to proposed strategy

WHAT IS A REASONABLE TIME?

Depends on:

- » Type of insurance
- » Size/complexity of a claim
- » Compliance with relevant statutory/regulatory guidance
- » Factors outside insurer's control
- » Suspected or actual fraud - justifying delay may require disclosure of anonymous/ fraud indicators

CONSIDERATIONS ON "WHEN IS A CLAIM MADE"

- » When notification/confirmation that an indemnity payment is sought?
- » After acceptance of policy liability?
- » Policy clauses may be relevant – claims notification, claims condition claims preparation, professional accountants, payments on account, among others;
- » Is a claim a thing submitted by the policyholder to which the Insurer responds, or an ongoing status with the onus on Insurers to pay sums due?

DAMAGES

- » Are above and beyond policy entitlement and interest on delay in paying that
- » Will be greatest for lost opportunities/customers where proposed mitigation is not paid/supported (rather than just paid late)
- » May run significantly beyond the Maximum Indemnity Period, and be many multiples of the sums insured

FIND OUT MORE

To learn more about the Enterprise Act and how it could effect your business, please contact:



Damian Glynn

Director, Head of Financial Risks,
Vericclaim UK Ltd
T: +44 121 200 8682
M: +44 7920 877 658
E: dglynn@vericclaim.co.uk



Toby Rogers

Partner, Clyde & Co LLP
T: +44 20 7876 4535
M: +44 7595 214 953
E: toby.rogers@clydeco.com