



Insurers to be liable to pay damages to insureds for late payment of claims

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For insurance policies entered into after 4 May 2017, insurers could be liable to policyholders for late payment of claims. It will be an automatically implied term of the policy that sums due from insurers must be paid within a reasonable time.

This change is set out in the Enterprise Bill, which received Royal Assent on 4 May 2016. It will come into effect for policies, both of insurance and of reinsurance (although reinsurance is less likely to be affected in practice), entered into after 4 May 2017. The provisions making the changes will be inserted as an amendment into the Insurance Act 2015.

Damages for late payment of insurance claims

Currently, insureds are not able to sue insurers for loss insureds suffer due to late payment of a claim. Sections 28-30 of the Enterprise Act introduce an implied term into insurance contracts that insurers will pay any sums due in respect of a claim within a reasonable time. If there is unreasonable delay in payment of the claim, insureds will be able to claim for loss suffered as a result.

This will act as an additional remedy for insureds, alongside payment of the claim and interest. There is no cap on the damages that can be awarded.

What is a “reasonable time”?

Insurers must pay sums due under the policy

within a reasonable time. What amounts to a reasonable time will depend on factors such as:

- the type of insurance
- the scale and complexity of the claim
- compliance with any statutory or regulatory rules
- any factors outside insurers’ control.

It includes a reasonable time to investigate and assess the claim. Insurers will also not be in breach during the dispute of a claim, as long as there are “reasonable grounds” for that dispute. The conduct of insurers in handling the claim can also be a factor in deciding whether there has been a breach.

Deadline for making late payment claims – an important amendment

Insureds must bring any late payment claims within one year from the date on which insurers have paid all sums due in relation to the claim. This limitation period was included as an amendment to the Enterprise Bill as it passed through Parliament. It provides insurers with more certainty, avoiding a potential tail of claims for late payment.

Any comments or queries?

Richard Breavington
Partner

+44 20 3060 6341
richard.breavington@rpc.co.uk

Simon Greenley
Partner

+44 20 3060 6854
simon.greenley@rpc.co.uk

Can insurers contract out?

Insurers cannot contract out of the provision in relation to consumer contracts.

Insurers are able to contract out in commercial contracts. However, insurers cannot contract out of any deliberate or reckless breach, and any contracting out clause must meet the transparency requirements set out in Section 17 of the Insurance Act 2015. No doubt there will also be commercial pressure on insurers not to contract out.

What could the impact be?

The impact on insurers could be significant. Insureds will have a direct claim against insurers for any loss caused by an unreasonable delay in paying sums due. Insurers will need to consider what practical steps could be taken to avoid exposure to claims (see below). Insurers will also need to consider whether any payment made should impact on loss ratio for the business, and whether it needs to be identified separately in P&L accounts. Absent specific policy wording, a liability for late payment damages would not be covered by reinsurance because it would not fall within the indemnity under the underlying direct policy.

What should insurers do to avoid claims for damages?

A starting point is to ensure that teams are aware of the changes. Insurers should consider internal briefings to:

- claims teams
- compliance teams
- finance teams on the possible effect on P&L accounts
- underwriting teams

In addition, insurers should consider:

- ensuring training on the Insurance Act, including the additional measures is up to date
- using diary systems to ensure timescales for dealing with a claim are tracked and kept to, particularly where third parties such as claims adjusters are being used
- using claim handling protocols to document appropriately the handling of claims
- making interim payments on large claims
- amending reinsurance policies to cover the potential liability.

Author of article: Sophie Newton

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