



AXA's Approach to the Insurance Act

A Guide for Brokers – May 2016





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Nothing in this guide is intended to represent legal advice or provide a full summary of the Act.



About this Guide

This broker guide sets out how we intend to incorporate the provisions of the Insurance Act 2015 into our commercial insurance contracts and outlines what further help and support will be available from AXA.

We are pleased to have the opportunity to talk to you further about how AXA is implementing the Insurance Act 2015 (the Act).

The Act introduces a number of reforms to the law that governs non-consumer insurance contracts.

The Act received Royal Assent on 12 February 2015 and will be effective in respect of all non-consumer insurance policies in the United Kingdom that are inception, renewed or varied from 12 August 2016.

Last year, we communicated that we would be adopting the principles of the Act early (for policies effective or renewing from 1 April 2015). Since that time we have been managing commercial claims in accordance with the Act.

We remain fully committed to the principles of the Act, which are aimed at encouraging a better

exchange of information between the parties to the insurance contract and a fair approach to resolving disputes.

The purpose of the Act is to update the statutory framework in line with best practice in the modern UK insurance market. We do not therefore intend to opt out of any of the provisions of the Act. Our aim is to ensure that all parties enjoy the full benefit of the changes the Act brings.

A key area brought about by the Act is the new duty of fair presentation. We set out how we intend to assist customers with this aspect and we are working on a further document (to be available shortly) that will provide more detail on underwriting matters that may be relevant to this new duty.



For help and support, please refer to your usual AXA contacts



How AXA is implementing the Act in our Insurance Contracts

Policyholders will either receive an updated policy document (together with a notice summarising the changes) or a notice that sets out the changes being applied to their existing policy document. Either way, all customers will have certainty that they will benefit from the new provisions brought about by **the Act**.

The Act itself makes a number of fundamental changes, in the following areas:

- Basis of Contract terminology
- Warranties
- Claims approach in respect of Conditions Precedent
- Fraudulent Claims
- Fair Presentation of Risk approach and remedies.

We believe that these changes are the key areas that need to be brought to the attention of customers, but the law created by **the Act** will in any event apply. The approach we are adopting is summarised on the next few pages.

“ AXA aims to make things clearer for our customers and partners. We are updating our main policy wordings to bring them in line with the Act and will be implementing these changes to both new and existing customers whose policies commence or renew on or after 12 August 2016. ”



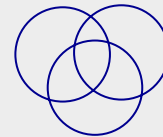
Changes to our Policy Wordings



Basis of Contract

'Basis of Contract' clauses have been abolished by the Act and it is not possible to contract out of this provision.

- We are removing any reference to 'basis of contract' terminology in our policy wordings, proposal forms/ statements of fact or question sets.



Conditions Precedent to Liability

The Act brings in changes that prevents an insurer relying on the breach of a term that aims to reduce the risk of loss of a particular kind, or at a particular location or time, where the breach is entirely unconnected with the loss (this does not apply to a term which defines the risk as a whole).

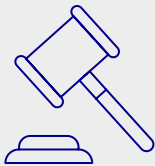
- We are making clear that where a condition is designed to reduce the risk of loss but the policyholder is able to show that non-compliance with the condition could not have increased the risk of loss, we will pay the claim.



Warranties

The Act changes the legal effect of warranties. Previously, the only remedy for a breach of warranty was a cessation of cover from the date of the breach. The Act changes this position, whereby cover is suspended until the policyholder remedies the breach (if the breach can be remedied).

- AXA will be making clear that where any historic policy or endorsement wordings refer to a "Warranty", these will in future be treated as a suspensory condition. This means we will have no liability for a breach of the condition until such time as the breach has been remedied by the policyholder.



Fraudulent Claims

The Act sets out the remedies available to insurers in the event that a fraudulent claim is submitted by a policyholder. Under the Act, insurers will be liable for losses occurring before the date of the fraudulent act but can treat the policy as having been terminated at the point when the fraudulent act is committed. It also confirms insurers do not have to pay the claim (any element of it).

- We are making changes to ensure our Fraud condition is in line with the remedies under the Act:
 - » we will not pay a claim in the circumstances
 - » we will terminate the policy from the date of the fraudulent act
 - » we will recover monies already paid out under the policy in respect of the claim.



Fair Presentation of Risk

The new duty to make a Fair Presentation of Risk is one of the most fundamental changes brought about by the Act. Whilst the general requirement to disclose facts ‘that are material to the prudent insurer’ has not changed, the Act sets out in more detail the type of information that needs to be disclosed, who needs to disclose it and how it needs to be disclosed.

The intention is that the customer and their broker disclose all relevant information before the insurance contract or any change in cover commences. Both the insurer and the insured are encouraged to make sure that they are clear as to what information the insurance contract will be based on.

The Act also sets out a series of remedies where the new duty of fair presentation has been breached.

1) Changes to Policy Wordings

Given the importance of this change, we are including a new Fair Presentation of Risk condition into our policies to set out the new duty:

- A condition of the policy of the duty to make a fair presentation of the risk to be insured, with clarification that this duty applies at the start of the policy, before any variation is made and prior to the renewal of any policy.

Remedies for breach of the Fair Presentation of Risk condition

We do not intend to ‘opt-out’ of any of the provisions of the Act. We will not normally be able to agree to any request to treat a presentation as being a complete ‘Fair Presentation’ unless in exceptional circumstances where we agree to this in writing, as we believe that this new duty sets a fundamental new standard that the new law requires both parties to abide by.

We are incorporating the remedies laid down in **the Act** as follows:

- If the failure to make a fair presentation of the risk is deliberate or reckless, we have the right to avoid the policy and keep the premium.
- If the failure to make a fair presentation of the risk is not deliberate or reckless, and
 - » we would not have provided cover had a fair presentation been made, we have the right to avoid the policy and return your premium

- » we would have issued cover on different terms had a fair presentation been made, we have the right to:
 - ◇ reduce proportionately any claim amount paid, by a comparison of the premium actually charged against the premium we would have charged had a fair presentation been made
 - ◇ treat the policy as if it had included such different terms (other than premium) that we would have applied had a fair presentation been made. Where the impact of the correct information would have been to alter some of the terms of the policy (such as a different excess) rather than the premium, that we would treat the policy as if it had included those different terms.

In addition, we may need to collect any additional premium required to ensure the client has full cover for any future losses.



Fair Presentation of Risk continued

2) Underwriting Process

All of our underwriting staff have been briefed on the implications of **the Act**.

The Act sets out the duty to disclose ‘those material circumstances that would influence a prudent insurer on whether to insure the risk (and if so on what terms)’. Failing this, a disclosure which gives a prudent insurer enough information to make them aware of the need to ask further questions about the risk.

We have reviewed our underwriting manuals to ensure there is as much guidance as possible to underwriters to ask relevant additional questions. However, as in the past, we recommend that if there is any doubt as to whether a matter might be considered material, it should be disclosed.

Businesses need to consider who has what knowledge within their organisation too. **The Act** specifically references “senior management” and those individuals responsible for an insurance programme who must familiarise themselves fully with **the Act** and its obligations.

We would be happy to discuss any particular concerns on individual risks we insure.

3) Proposal Forms

We have considered the position with Proposal Forms and how they support the need to comply with the duty of fair presentation, which is a pre-contractual duty.

In some areas such as Professional Indemnity, e-traded business or schemes, it is common for a Proposal Form or online question set to be completed prior to quotation or renewal. It is recognised that in many instances these documents support the duty of fair presentation by helping to articulate those matters likely to be considered as material to us. In these areas, existing Proposal Forms or Statements of Fact will therefore still be appropriate subject to some changes such as removal of basis of contract clauses.

However, in many instances, Proposal Forms are only received after the contract has incepted and in such circumstances they do not support the pre-contractual duty of fair presentation. We have therefore made the decision that we no longer require completion of a Proposal Form in such circumstances, which will generally apply to most of our Property, General Liability and Commercial Motor products.

To support this move, we are working on a further **Fair Presentation of Risk Guide for Brokers**, which will help set out the key pieces of information that we feel are needed to satisfy the duty of fair presentation and will be useful for discussions with new and existing customers in terms of the preparation of a risk submission to the market. This will be available shortly. It is important that previous market submissions are reviewed to ensure the content can satisfy **the Act** and that this happens in good time ahead of the renewal date.

The approach to be taken on individual delegated authority arrangements will be decided in partnership with the broker concerned.



AXA's Claims Handling Approach

We continue to handle claims in accordance with the provisions of **the Act**, having agreed to give our customers the benefit of their new rights under **the Act** since early 2015.

We have always taken a wide variety of matters into account in terms of deciding on the approach we will adopt with individual claims. Generally there are few changes needed to our processes to meet the requirements of **the Act**. We have always taken a fair and proportionate approach to making indemnity decisions and we continue to be recognised as an insurer who puts our customers first when it comes to our claims service.

Our claims teams have been fully briefed on **the Act** and have been engaged on the changes to policy cover that we are adopting.

We have invested heavily in our approach to combat fraudulent activity and all claims will continue to be vetted through a process that ensures we pay only valid claims, quickly and sensitively.

Our Claims Transparency documents (available at www.axaconnect.co.uk) continue to provide guidance around common reasons why certain claims are not met and simple things our customers can do to ensure their policy will respond when required.

Decisions to not meet a claim or opt for a proportionate remedy will never be taken lightly and we will continue to look carefully at each decision on its merits, where necessary involving senior claims and underwriting personnel through internal escalation procedures.





Summary of Approach / Q&A

1. Will AXA be ready to implement the Act?

- Yes. AXA has been an early adopter embracing the spirit of the Act and our internal project is well advanced in terms of documentation changes. All elements of our business will be ready to comply with the Act when it comes in force.

2. Will AXA be updating their policy documentation in line with the Act?

- Yes. This guide sets out the changes we are making and all customers will receive either an updated policy document or a notice that details those changes.

3. How will AXA's processes change to support the new duty of fair presentation?

- We are in the process of producing a guide to brokers that will outline some of the key areas that we need to know about for different risks. We will no longer require Proposal Forms for most contracts, unless it is standard practice that these are completed as a matter of course in order to obtain a quotation (for example e-traded business, Professional Indemnity insurance or other specialist schemes).

4. Does AXA intend to opt out of any of the provisions of the Act?

- No. It may be necessary or agreed on in individual circumstances, but unless we have specifically agreed in writing to any variation, we expect the new law to apply in full to each contract.

5. What changes are being made to the Claims process in order to satisfy new remedies under the Act?

- We do not envisage the need to make any material changes. All of our claims teams have been briefed with the policy cover changes we are making and generally about the new remedies available under the Act. We will continue to ensure that more sensitive decisions, for example to not meet a claim or where we are unable to pay the claim in full, are handled appropriately and transparently, involving where necessary our most senior people.

6. Will there be any impact on premiums after 12 August 2016?

- We don't anticipate any changes, but on individual cases it may depend on the extent that the information disclosed changes. We will work closely with our brokers on any individual cases.

7. Will AXA consider the payment of an additional premium to have a claim paid in full as an alternative approach in those circumstances where AXA is entitled to proportionately reduce a claim payment?

- Charging a higher premium is not a remedy available to insurers under the Act. We will continue to adopt a fair and compassionate approach when dealing with any claim and there may be exceptional circumstances where this is an appropriate response. Our standard approach will be to apply the remedies available under the Act, as set out in our Fair Presentation of Risk Condition.

8. Will AXA be making the same changes in respect of Delegated Authorities and Schemes?

- Yes. We are already in the process of contacting Scheme holders to discuss the changes.

9. Who should be contacted to obtain further information or assistance?

- Please contact your usual AXA contact.



Glossary

We know that insurance can sometimes be complex and some of you will be expert at deciphering the terminology in the Act but to be clearer, we have included a Glossary to assist people who are not so familiar.

Parties – The insurer and the customer(s) who are involved in the contract of insurance.

Non-consumer – Customers that are not “consumers” as defined in the “Consumer Insurance Act” – normally this will mean commercial insurance customers.

Incepted – commencement of the insurance policy.

Statutory Framework – The requirements as laid down within the Act in question.

Opt out – Where an insurer offers insurance that specifically states it will not comply with the terms of the Act and where the customer agrees to accept this.

Fair Presentation – The definition of the obligation for the customer and their advisors to supply information at a reasonable level of detail, accuracy and ease of interpretation as laid down in the Act.

Material circumstances – Those features of the risk that are material to the decision of an insurer and should be disclosed.

Basis of contract terminology – The wording within the policy that previously laid down that the information supplied was fundamental to the insurance contract and that the information must be in all regards true and complete as per the Marine Insurance Act 1906.

Warranties – Conditions within a policy that had to be absolutely complied with at all times if the policy was to be effective. If the warranty was not complied with then in theory the insurer could decline to pay any claim even if the insured had corrected the issue that had breached the condition and even if the loss was completely unconnected to the issue – unless the insurer has accepted the situation and waived their rights.

Conditions Precedent to liability – A condition that has to be complied with for cover to operate.

Breach of a term – Where the policyholder has failed to comply with a condition in the contract of insurance.

Proportionate remedies – Reduce proportionately any amount paid, by a comparison of the premium actually charged against the premium we would have charged if we had known the correct facts about the business.

Avoid the policy – Treat the policy as not being in force and not be obliged to meet any claims.



Thank you