part of genoa shipping week

The Insurance Act 2015-a ten year anniversary review

UK

Patrick Foss & Chris Zavos, Partners, Kennedys Law LLP

16 October 2025

Kennedys

Lloyd’s coffee house

Marine Insurance Act 1906

1906 CHAPTER 41 6 Edw 7

The case for reform

- The Marine Insurance Act 1906 ("MIA") codified principles developed by the English Courts in the 18th and 19th centuries
- Introduced to protect a developing insurance industry
- MIA was considered too insurer friendly and outdated
- Did not reflect:
  - diversity of the modern insurance market
  - changes in practice
  - the "information revolution"
  - the modern commercial environment
- Insurance Act based largely on recommendations of the Law Commission (nine year project culminating in July 2014 report)

Marine Insurance Act 1906

1906 CHAPTER 41 6 Edw 7

Overview – Insurance Act 2015

- Contains a “default” regime in three main areas:
  - Disclosure and misrepresentation
  - Insurance warranties
  - Insurers’ remedies for fraudulent claims
- Insurers can contract out
- Applies to insurance and reinsurance
- Aimed at ensuring a better balance of interests between insureds and insurers
- Broadly supported by insurance industry
- Biggest change to English insurance contract law in 110 years
- Came into force on 12 August 2016
- Fears of significant rise in disputes have not come to pass

Pre-contractual obligations

Criticisms of the MIA duty of utmost good faith

Duty of disclosure is poorly understood and one-sided	Duty on insured is unduly wide
Encourages data dumping	Underwriting at the claims stage
Single remedy of avoidance	Lead to disputes

Fair presentation of the risk

- Duty of good faith as enshrined in section 17 MIA has been abolished
- There is now a statutory obligation on the insured to make a fair presentation of the risk
- Some key elements of the old law retained:
  - The requirement of materiality - the view of the hypothetical underwriter
  - The requirement for inducement - the view of the actual underwriter
- A fair presentation of the risk is one that meets the following three criteria:

First element

- Substance
  - First limb: duty to disclose every material circumstance which the insured knows or ought to know, or
  - Second limb: failing that, duty to disclose sufficient information to put a prudent insurer on notice that he/she needs to make further enquiries in order to reveal those material circumstances

Fair presentation of the risk

- Guidance is given on “material circumstances” (non-exhaustive):
  - Special or unusual facts which increase the risk
  - Particular concerns leading to the purchase of insurance
  - Standard market information relating to the class of insurance and field of activity

Second element

- Form
  - Additional requirement for insured to disclose information in a manner which is reasonably clear and accessible to a prudent insurer
  - Targets “data dumps” – information may need to be structured, indexed and signposted
  - Equally targets overly brief and cryptic presentations

Third element

- Material representations
  - Duty not to make misrepresentations – no change

Knowledge of Insured

- Duty to disclose every material circumstance which the insured knows or ought to know remains
- What does the insured know?
  - Corporate insured knows what is known to:
    - senior management team (i.e. board members)
    - those individuals responsible for its insurance (i.e. the risk manager but also including brokers)
- What ought the insured to know?
  - Positive duty to conduct a reasonable search of information available to the insured both within its own organisation and information held by others such as the insured's brokers
  - What constitutes a reasonable search?
  - *Delos Shipping* v *Allianz* – (the 'Win Win') [2025] EWCA Civ 1019

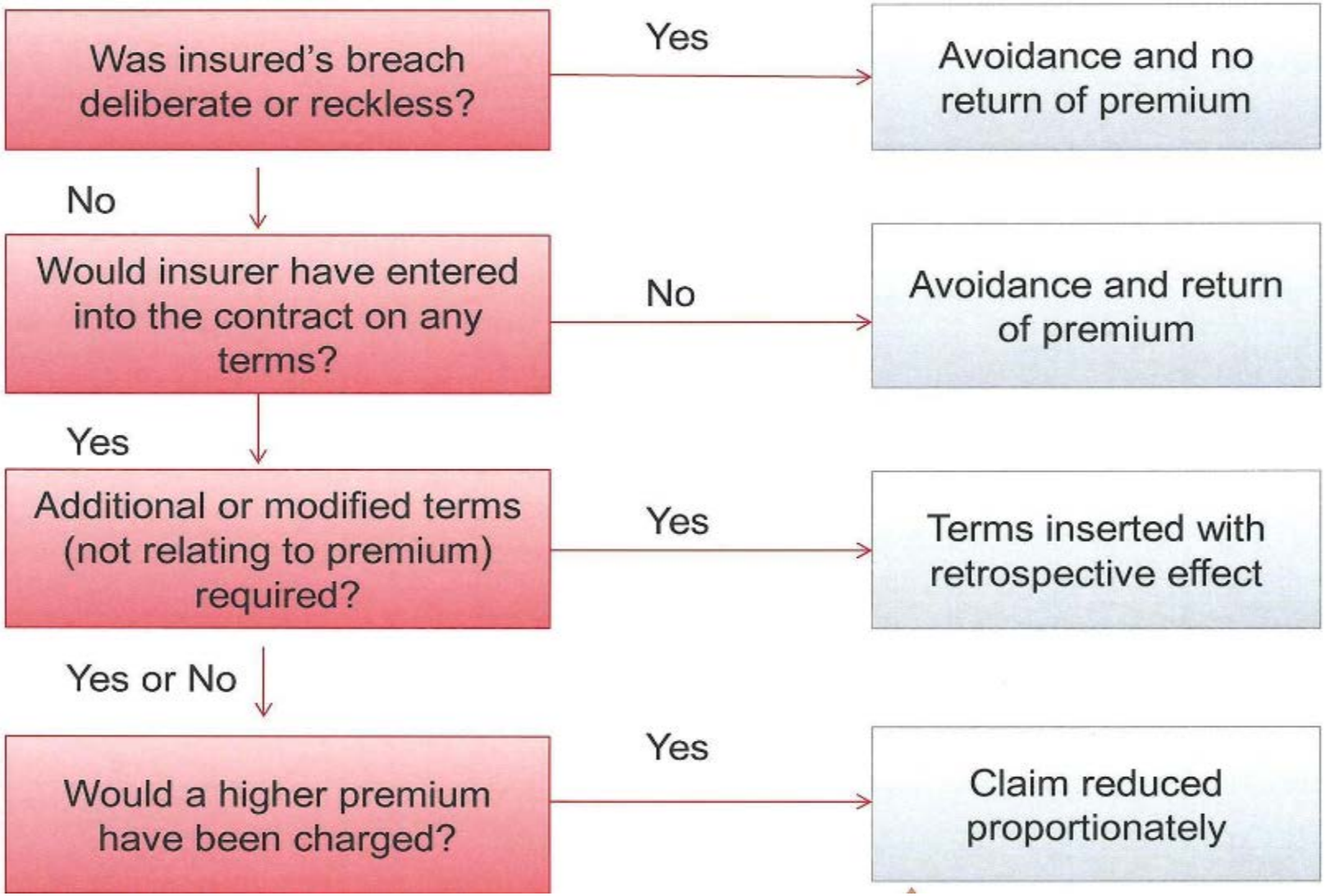
Knowledge of Insurer

- The insured will not have to disclose information which the insurer knows, ought to know or is presumed to know:
- Insurer knows
  - Information known to the underwriter personally or to any employee or agent participating in the underwriting decision
- Ought to know
  - Information known to employee or agent of the insurer which should have been passed on to the underwriter e.g. knowledge of the claims department
  - Information held by the insurer which is readily available to the underwriter e.g. electronic records

Knowledge of Insurer

- Presumed to know
  - Matters of common knowledge
  - Things which an insurer offering insurance of the class in question would reasonably be expected to know in the ordinary course of business
- In addition, the insured need not disclose circumstances which diminish the risk or in respect of which the insured has waived further information
- *Delos Shipping* v *Allianz* – (the 'Win Win') [2025] EWCA Civ 1019

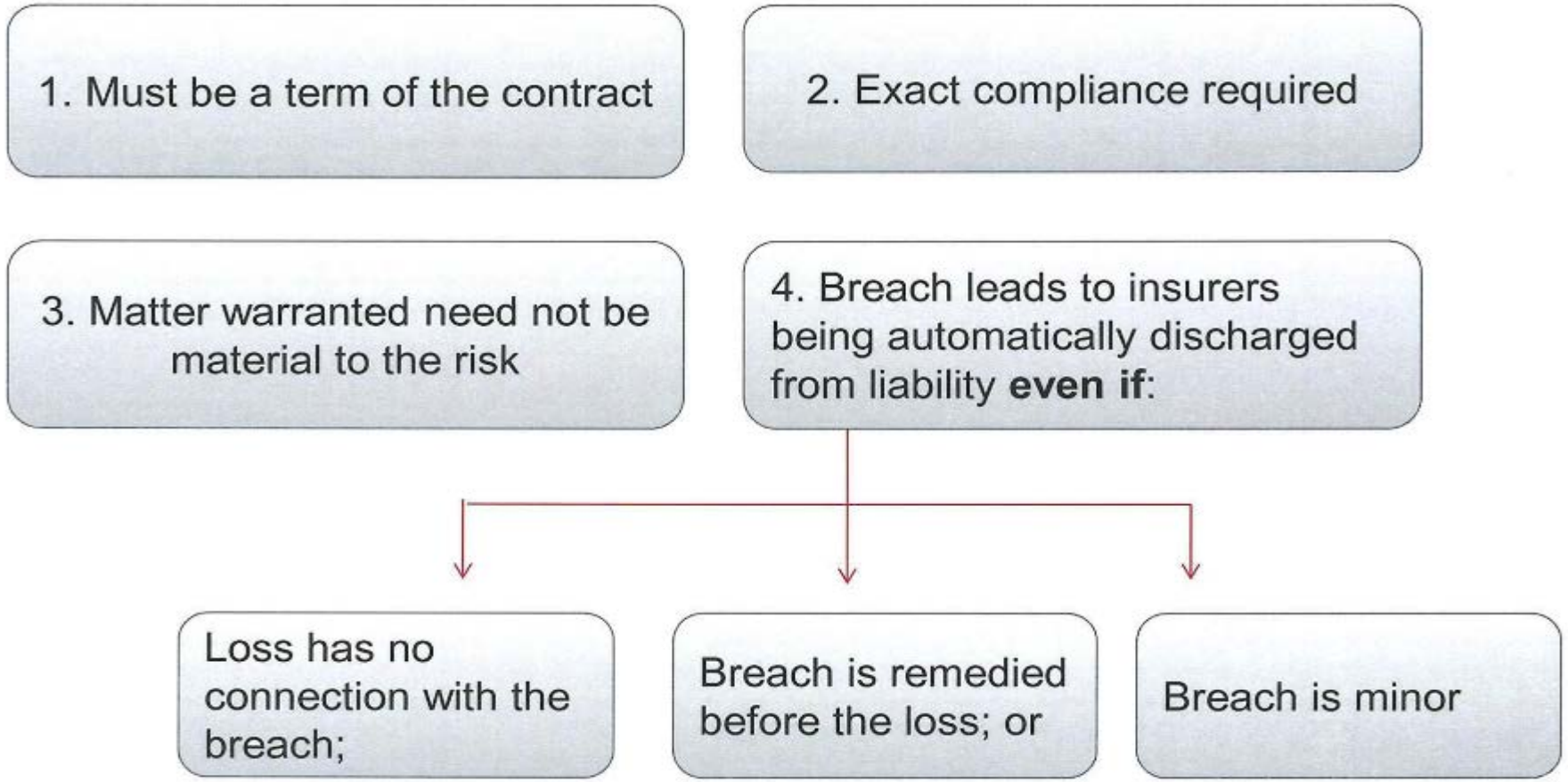
Default remedies for non-disclosure or misrepresentation



Warranties

Warranties – Previous law - Section 33 MIA

- Summary of key characteristics



Kennedys

Warranties – Previous law

De Hahn v Hartley (1786) 1 TR 343

- Policy of insurance was taken out on a vessel sailing from Liverpool to the British West Indies
- Warranty that the vessel would leave Liverpool with "50 hands or upwards"
- Vessel set sail with only 46 hands
- 6 hours later, the vessel picked up a further 6 crew members in Anglesey
- Weeks later off the coast of Africa the vessel (still with 52 hands) was captured and lost
- Held: Breach of warranty – claim not covered. It was irrelevant that the breach had been remedied within 6 hours and before the vessel had left the relatively safe waters around Britain

Warranties/other terms – Insurance Act

- The key changes in relation to warranties:

Abolish existing statutory remedy for breach i.e. automatic discharge of liability

New default remedy: breach suspends rather than discharges insurers from liability

Remedy of breach by insured prior to loss puts insurers back on risk

Warranties

- There are now two types of warranty
- Where a warranty which "*defines the risk as a whole*" is breached:
  - No automatic and "forever" discharge of liability
  - Insurers' liability is suspended during the period of breach
  - If the breach can be remedied, insurers come back on risk once the breach has been remedied
  - No English case (as yet) on the meaning of "*defines the risk as a whole*"
    - *The Teras Lyza* [2025] SGHC 82
    - Relates to warranties that are "*fundamental and extensive*"
    - Narrow interpretation

Warranties/other terms – Insurance Act

Requirement for breach to relate to loss

Section 11 warranties

- Applies to warranties (and other terms) which do not "*define the risk as a whole*"
- Applies to a term if compliance with it would tend to reduce the risk of:
  - loss of a particular kind
  - loss at a particular location
  - loss at a particular time
- Particular focus – risk/loss mitigation terms
- Two cases:
  - *MOK Petro Energy FZC v Argo (No 604) Ltd* [2024] EWHC
  - *Lonham Group Ltd v Scotbeef Ltd* [2025] EWCA Civ 203

Warranties/other terms – Insurance Act

- So in summary:
  - A warranty still requires strict compliance by the insured
  - In the event of breach, the remedy available to the insurers will depend on which section of the IA applies
  - If the warranty "*defines the risk*" then insurers' liability will be suspended during the period of breach. An example may be terms requiring a vessel to be classed or property to be certified
  - If the warranty/term does not define the risk as a whole such as a risk mitigation clause covering requirements for locks, alarms, sprinkler systems etc
    - Insurers will have no defence to a claim if the insured can show that non-compliance with the term "*could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred*"
    - A relevance but not a causation test

Damages for late payment of claims

Enterprise Act 2016

- Implied term that if the insured makes a claim under the insurance, the insurer must pay sums due within a reasonable time
- Reasonable time involves considering:
  - Type of insurance
  - Size and complexity of claim
  - Compliance with statutory/regulatory rules
  - Factors outside insurers' control
- Breach exposes insurers to claim in damages in addition to the policy indemnity
- Insured needs to prove that it had suffered a loss due to late payment of the claim, would be obliged to mitigate – normal contractual principles
- No US style bad faith damages

Damages for late payment of claims

Rationale for change:

- Previously under English law, there was no remedy (other than interest) for late payment of insurance claims
  - *Sprung v Royal Insurance* [1999] 1 Lloyd's Rep IR 111
- Whilst the law has changed, to date, there has been no successful claim against insurers for damages for late payment
- However, such damages are regularly if not invariably claimed by the insured if proceedings are commenced
  - *Delos Shipping* v *Allianz* – (the 'Win Win')
  - Had the facts been different, the insurers would have been exposed to a claim


FRAUD

Fraud – Current law

Types of fraud

- Pure fraud
- Exaggerated claims
- Fraudulent devices – *The DC Merwestone* [2014] EWCA 1349

Effect of fraud

- *Galloway v Guardian Royal Exchange (UK) Ltd* [1997] AII ER 14

Legal uncertainty on remedy

- Common law rule of forfeiture; or
- Remedy of avoidance for breach of the duty of utmost good faith

Fraud – Previous law

- The Law Commission identified 3 unresolved issues:
  - Does a fraudulent claim affect a previous claim made under the same policy?
  - Does a fraudulent claim affect subsequent claims?
  - May the insurer sue the insured for damages to recover the cost of investigating a fraudulent claim?

Fraud – Insurance Act

Common law rule of forfeiture put on a statutory footing

- Insurer not liable to pay insurance claim to which the fraud relates
- Can recover monies already paid out on a claim which is later discovered to be fraudulent

Forfeiture of subsequent claims

- Insurers have the option to treat the contract as if it had been terminated at the time of the fraudulent act
- Must give notice of their election to do so to the insured
- Insurers may then refuse to pay claims arising from 'relevant events' occurring after the time of the fraudulent act and need not return any premium paid
- A relevant event is any event that would trigger the insurer's liability under the particular policy e.g. loss or damage due to an insured peril under a property policy or notification of a claim under a "claims" made policy

Fraud – Insurance Act

No forfeiture of previous valid claims

- Insurer remains liable in respect of claims arising from “relevant events” that took place before the date of the fraudulent act

Not covered by the Act

- Damages to recover the reasonable costs of investigating the claim

Default regime

Contracting out

- Provisions of the Act are intended to provide default rules
- Parties are free to agree alternative regimes provided that the insurer satisfies **2 transparency requirements**
  - Must take sufficient steps to draw the disadvantageous term to the insured's attention before the contract is entered into
  - Disadvantageous term must be clear and unambiguous as to its effect
- In considering whether transparency requirements have been met, characteristics of the insured and the risk are taken into account
- Will contracting out of the reforms be commercially acceptable?

Exception

- Basis of the contract clauses

Underwriting insurance

Insurers

- Change in emphasis in relation to duty of disclosure – underwriters required to play a more active role in the pre-contractual negotiations
- Consider setting out material circumstances to the brokers for a particular risk in advance
- Need to make further enquiries based on the information provided if a prudent underwriter would make such enquiries
- Consider working with insureds to develop general guidance and protocols regarding what a standard presentation of the risk for that class of business should include
- Effective information sharing between the underwriting and claims teams will be required
- Insurers need to evidence that they have:
  - carried out a reasonable search of information available within their organisation
  - a reasonable level of knowledge relating to the class of business in question

Underwriting insurance

Insurers - continued

- Consider defining in the policy documentation whose knowledge in an organisation is relevant
- Awareness that avoidance is no longer the sole statutory remedy
- Arguably – more effective proportionate remedies? However, to take advantage of these:
  - insurer may need to produce (in addition to witness evidence from the underwriter in question) that had a fair presentation been made, they would not have written a risk, would have amended the terms or charged more premium
  - this may involve producing other comparable policies to support the underwriting position and/or underwriting guidelines
  - going forward, there will need to be a great focus on standard underwriting guidelines

Placing insurance

Insureds

- Change in emphasis from disclosure to making a fair presentation
- More active and considered approach is required when deciding what information should be given to the insurer
- Need to structure and signpost their presentation in a clear and accessible way i.e. no “data dumping”
- Required to seek out information about their business and the risk to be insured by undertaking a reasonable search and by making enquiries of their staff and agents (including brokers)
- “Draconian” remedy of avoidance restricted – proportionate remedies introduced

Placing insurance

Brokers

- No longer a separate statutory duty on agents to disclose information to the insurer when effecting insurance on the insured's behalf
- However, the broker's knowledge is likely to be within the definition of the insured's knowledge, the broker being responsible for the insured's insurance
- Greater onus on brokers to keep records and to verify information contained in underwriting submissions
- No need to disclose confidential information held on behalf of other clients, but there is a duty to disclose non-confidential information

Warranties/other terms

- Insurers
  - to contract out or not to contract out?
  - under the Act, breach of warranty is only suspensory
  - under the Act, breach of other risk mitigation terms must "relate" to the loss
  - do insurers wish to impose contractual remedies similar to the existing law on warranties/condition precedents?
  - either way, wordings should be reviewed to ensure that they are either compliant with the Act or the transparency requirements are satisfied

Warranties/other terms

- Insureds/brokers
  - strict warranties
  - strict compliance still required and still no need for causal link between breach and loss/claim
  - breach of warranty is no longer fatal to a claim however liability is suspended
  - breach of warranty/condition precedent may need to “relate” to the loss to provide insurers with a defence

Warranties/other terms

- Fraud
  - greater certainty for all parties regarding the remedies available to insurers in the case of fraud by an insured
  - what constitutes fraud still left to the common law

Any questions?

Kennedys

Kennedys

KennedysLaw

KennedysLaw

kennedyslaw.com