

# THE INSURANCE ACT 2015

A GUIDE FOR OUR CLIENTS AND BROKERS



XL CATLIN



## The Insurance Act 2015

The Insurance Act 2015, which comes into force on 12 August 2016, introduces the most significant changes to UK insurance contract laws in over 100 years. It applies to all contracts of insurance, reinsurance and retrocession as well as variations to existing contracts entered into after that date.

### The main changes include:

- A new duty of fair presentation, which clarifies what a client must disclose to an insurer and what an insurer ought to know about its clients (business contracts only)
- Remedies for breach of the duty of fair presentation (business contracts only)
- Changes to warranties and terms not relevant to the loss, updating the law on what happens when clients are in breach of warranties (business and consumer contracts)
- New rules on contracting out (business contracts only).

## XL Catlin's position on the Insurance Act 2015

We believe that the Act reflects our philosophy of doing business in a clear, fair and client-focused way. While we are working to implement it, we don't believe we will need to make fundamental changes in the way we operate, or that it will change our approach to situations where our clients make innocent mistakes.

We've been supportive of the Act from initial consultation to enactment. Since then, we've worked to ensure that our standard wordings and products are clear in their intention. We've also been fully involved in the market wordings groups who have been updating the standard wordings for the London market.

In doing this, we've worked closely with our brokers and clients to ensure that we have common understanding of "fair presentation" and what the other principal changes to the law mean to our clients.

Our position on the main provisions of the Act is set out in the table opposite right.

MAIN PROVISIONS OF THE ACT	XL CATLIN'S POSITION
<b>Duty of fair presentation</b>	
<ol style="list-style-type: none"> <li>1. Insured must disclose all material information they know or ought to know or;</li> <li>2. give sufficient information to put the insurer on notice that they need to ask more questions.</li> <li>3. The information must be provided in a way that is reasonably clear and accessible and is not a data dump.</li> <li>4. Information does not need to be disclosed which:               <ol style="list-style-type: none"> <li>a) Diminishes the risk.</li> <li>b) The insurer knows, ought to know or is presumed to know, or;</li> <li>c) The insurer has waived the right to.</li> </ol> </li> </ol>	<p>We would generally expect our clients to meet these requirements. However, we think this should be based on a collaborative, partnership-based approach, so that we can continue to provide our clients with relevant and appropriate products and services.</p> <p>We are happy to agree the scope of the disclosure a client will provide and which people and companies within their organisation will provide it.</p> <p>We are also happy to discuss the format in which the disclosure is to be provided.</p>
<b>Remedies for breach of duty of fair presentation</b>	
<p>Deliberate or reckless breach The Insurer may:</p> <ol style="list-style-type: none"> <li>a) Avoid the policy;</li> <li>b) Refuse to pay any claims; and</li> <li>c) Retain any premium paid.</li> </ol> <p>For any other breach:</p> <ol style="list-style-type: none"> <li>a) If the insurer would not have entered into the contract on any terms the insurer can return the premium and refuse to pay claims;</li> <li>b) If the insurer would have entered into the contract on different terms other than additional premium the contract will be treated as if on those terms;</li> <li>c) If an additional premium would have been charged, then the insurer may reduce proportionately any claim paid.</li> </ol>	<p>XL Catlin will enforce these remedies. However, there may be cases where the remedy is limited by contract to the insured who makes the breach and does not affect the cover of others insured on the policy.</p> <p>XL Catlin will use the first two remedies where appropriate. However, on the proportionate reduction of a claim, we are prepared to consider payment of an appropriate additional premium as an alternative remedy.</p>
<b>Basis of contract clauses</b>	
We do not include these in our policies and would not seek to rely upon them.	
<b>Warranties and other terms</b>	
<p>Breach of warranty will result in the insurer having no liability under the contract until the breach has been remedied;</p> <p>Terms not relevant to the actual loss - unless a term defines the risk as a whole the insurer cannot rely on a term to decline a claim unless the failure to comply with the term has increased the risk of the loss that occurs.</p>	<p>XL Catlin will in most cases follow the Act. If we do not follow the Act, we will make clear when we consider a clause to be a warranty and what the impact of a breach would be. We will do the same for any conditions precedent, where we think it's essential that they are complied with. In some cases our wordings are improvements on the Insurance Act and we believe our clients should not lose this benefit.</p>
<b>Fraudulent claims</b>	
The insurer may refuse to pay the claim, recover any sums already paid and treat the contract as terminated with effect from the date of the fraudulent act and retain the premium paid.	XL Catlin will use the remedy set out in the Act.

## Do we intend to opt out of the Act?

Where there is the option to opt out of the Act, we won't unless there are good reasons to do so on a case by case basis. If we did decide to opt out on a specific point in a specific contract, we would give very clear notice to the client and broker about what we are doing and why. We think this would be unlikely without specific discussions taking place first.

## Damages for late payment of insurance claims

The Enterprise Act, which comes into force on 4 May 2017, amends the Insurance Act by creating an implied term in all English law insurance policies that claims must be paid within a reasonable time. Regardless of any laws or regulations, XL Catlin always pays all claims as quickly as we can, allowing for a proper investigation of the claim. We have a highly professional claims service to match the complexity of the risks that we are underwriting and ensure that claims are dealt with in a reasonable time.

## The Act and claims handling

Our approach to claims has always been to make fair decisions alongside our clients and not rely on points that might be regarded as unfair or highly technical. For instance, we announced before the Act was passed that we would not be relying upon basis clauses in our dealings with our customers. Where we do take coverage points, we clearly communicate those to the broker and the clients as quickly as possible and are always open to discussion with the broker and client.

At XL Catlin, our claims goal is to provide consistently superior service, wherever and whenever you need us. So when you experience a covered loss, our promise is to investigate, manage, and resolve your claim as soon as possible - so you can move forward with getting back to business. It's a promise we take very seriously.

And according to The Gracechurch London Claims Report Q1 2016, a leading independent survey on claims service, we're delivering on that promise. We'd like to share some highlights with you:

### Broker favorability

- XL Catlin was ranked top in the market, with a score which was more than double that of our nearest competitor.

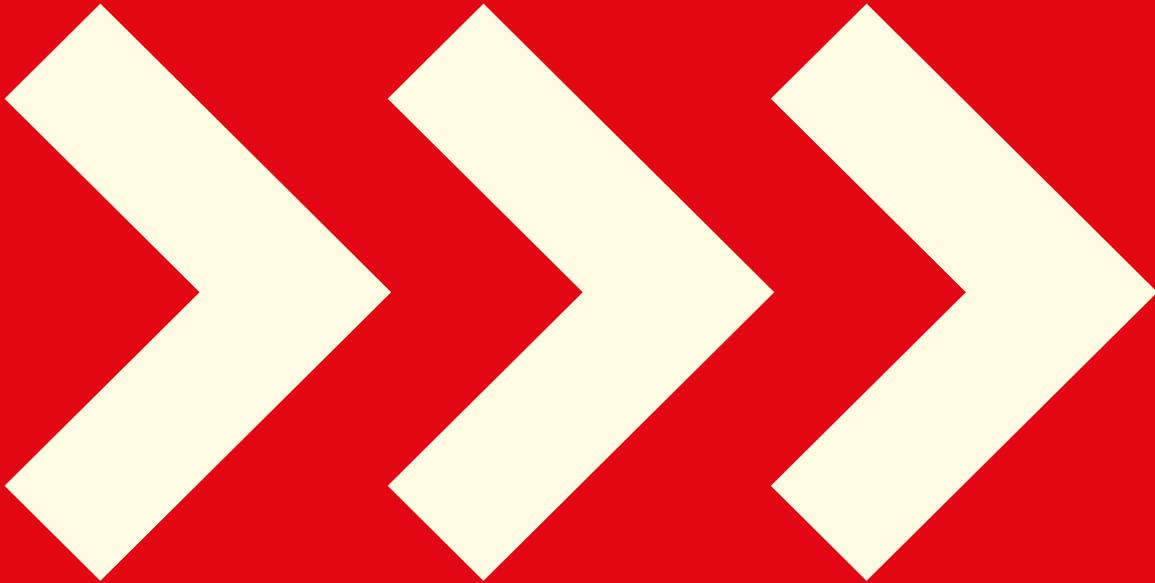
### Overall satisfaction

- In the last 12 months, 35% of XL Catlin's users rated their claims service 9 or 10 out of 10 (where 10 is excellent).
- Only 3% ranked us 6 or less out of 10.

### Performance ratings

- XL Catlin continues to perform above the market average across all service attributes.
- We are ranked number 1 for Commerciality and Accessibility.

We take our promise very seriously and we continue to focus on improving these results even more.



## CONTACT

If you have any questions about our position on the Insurance Act, speak to your relationship advisor who can put you in touch with our Legal and Compliance team.

XL Catlin  
20 Gracechurch Street  
London, EC3V 0BG  
Office: +44 (0)20 7933 7000

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