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United Kingdom
Insurance Disputes

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This country-specific Q&A provides an overview of insurance disputes laws and regulations applicable in United Kingdom.

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United Kingdom: Insurance Disputes

1. What mechanism do insurance policies usually provide for resolution of disputes between the insurer and policyholder?

Insurance contracts typically provide for resolution of disputes by court proceedings or arbitration and may specify a muti-tiered process, requiring Alternative Dispute Resolution ('ADR') in the first instance.

The composite nature of many insurance contracts can give rise to conflicting provisions and careful consideration should be given to the appropriate forum, with proper explanation as to triggering events and orders of application, where alternative scenarios are dealt with in a single clause. Policyholders may prefer to have disputes heard in open court, particularly where claims could arise under multiple policies or excess layers.

The combination of arbitration and choice of law provisions may allow the parties to modify application of the chosen substantive and/or procedural law. For example, 'Bermuda form' excess liability insurance requires disputes to be resolved by arbitration in London, using a modified version of New York law to determine substantive policy disputes.

2. Is there a protocol governing pre-action conduct for insurance disputes?

Where the policy provides for disputes to be resolved by litigation, the Civil Procedure Rules ('CPR') will govern that litigation. The CPR include pre-action protocols on best practice before commencing various types of claims but there is no specific protocol for insurance coverage.

The general Practice Direction on pre-action conduct applies, with the overriding objective of encouraging parties to engage constructively in early exchange of information, attempting to resolve disputes swiftly and cost-effectively, and avoiding recourse to court proceedings where possible. There is no analogous protocol for arbitration.

3. Are local courts adept at handling complex insurance disputes?

The Commercial Court, Court of Appeal and Supreme Court have a long history of dealing with complex international insurance claims. The experience and quality of the judiciary is unrivalled, with common law precedent providing extensive guidance and a degree of certainty as to the outcome of insurance disputes.

4. Is alternative dispute resolution mandatory?

The use of alternative dispute resolution is voluntary though well-established. The UK is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with relevant laws contained in the Arbitration Act 1996.

The Civil Justice Council issued a report in 2021 endorsing mandatory mediation in principle, provided the obligation imposed on parties is proportionate to the matters in dispute. In *Churchill v Merthyr Tydfil* [2023] the Court of Appeal confirmed for the first time that Judges can direct legal proceedings to be stayed and require parties to take part in ADR; departing from the longstanding precedent in *Halsey v Milton Keynes* [2004], which had established that parties could not be forced to mediate.

5. Are successful policyholders entitled to recover costs of insurance disputes from insurers?

The general rule is that costs follow the event, so that an unsuccessful party will be required to pay the successful party's costs (to be assessed if not agreed) as well as their own. The right to recover costs arises at the point of issuing proceedings, although a contribution towards pre-action costs may be agreed with the insurer as part of any settlement. The extended fixed recoverable costs regime applies to most civil claims issued from 1 October 2023 with a claim value not exceeding £100,000.

6. Is there an appeal process for court decisions and arbitral awards?

Permission to appeal against a court decision may be granted under CPR, section 52, where (a) the appeal would have a real prospect of success (in the opinion of the Judge hearing the application), or (b) there is some other compelling reason for it to be heard. A party to

arbitral proceedings can appeal to the court on a question of law arising out of an award under section 69 of the Arbitration Act 1996 if all parties agree to the appeal, or the court grants permission.

7. How much information is the policyholder required to disclose to the insurer? Does the duty of disclosure end at inception of the policy?

The Insurance Act 2015 ('IA 2015') imposes a duty of fair presentation requiring a policyholder to disclose material circumstances it knows or ought to know (from a reasonable search), or else sufficient information to put a prudent insurer on notice that it needs to make further enquiries.

A circumstance is material if it would influence the judgment of a prudent insurer, which may include special or unusual facts relating to the risk, or concerns which led the policyholder to seek insurance. For corporate policyholders, the knowledge of senior management and individuals responsible for arranging the insurance is relevant for purposes of discharging the duty.

The Consumer Insurance (Disclosure and Representation) Act 2012 imposes a duty for consumer policyholders to take reasonable care not to make a misrepresentation, when completing the proposal form and answering questions from the insurer.

The duty of disclosure comes to an end when the contract of insurance is concluded unless express policy terms impose a continuing duty, for example, to inform the insurer of material changes in circumstances. The general duty recurs at renewal and will also occur mid-term where the policy period is extended or where the scope of coverage is increased.

8. What remedies are available for breach of the duty of disclosure, and is the policyholder's state of mind at the time of providing the information relevant?

If the insurer can show that a fair presentation of material circumstances would have caused it to decline the risk, or only provide cover on restricted terms, the insurer will have a remedy against the policyholder. If the breach was deliberate or reckless, the insurer may avoid the policy (i.e. treat it as cancelled from the start) without returning any premiums paid and refuse all claims.

If the breach was merely accidental or careless, the position depends on what the insurer would otherwise have done: if the policy would have been issued on different terms, the policy will be treated as if those terms applied from the outset; and if the insurer would have charged a higher premium, the insurer may reduce proportionately the amount paid out in relation to any claim. IA 2015 removes the remedy of avoidance of the contract for breach of the duty of good faith, previously applicable under section 17 of the Marine Insurance Act 1906 ('MIA 1906').

9. Are certain types of provisions prohibited in insurance contracts?

IA 2015 abolished 'basis of contract' clauses, which had the effect of converting a policyholder's pre-contract representations, including all statements contained in the proposal, into warranties.

Insurance contracts covering criminal fines are likely to be unenforceable based on the *ex turpi causa* principle, prohibiting recovery of damages resulting from a person's own illegal or unlawful acts.

10. To what extent is a duty of utmost good faith implied in insurance contracts?

MIA 1906 provides that insurance contracts (both marine and non-marine) are contracts of 'utmost good faith'. This principle was the basis of a policyholder's pre-contractual duty of disclosure prior to changes introduced by IA 2015 and remains relevant to limited post-contractual duties of fair dealing.

For example, where a term of the insurance requires the policyholder to provide the insurer with information in particular circumstances, or when a liability insurer exercises a right to conduct the insured's defence to a claim made by a third party, the policyholder and insurer are required to act in good faith towards each other in performance of the contract. The duty comes to an end upon commencement of proceedings between the policyholder and insurer, or settlement of the policy claim.

11. Do other implied terms arise in consumer insurance contracts?

The Consumer Rights Act 2015 gives rise to implied terms in consumer insurance contracts that the insurer must perform the service provided with reasonable skill and care, within a reasonable time and (if the premium has not been agreed), for a reasonable price. These obligations overlap to some extent with the Insurance

Conduct of Business Rules and policyholders may be able to seek redress through the Financial Ombudsman Service established by the Financial Services & Markets Act 2000.

Insurers are not permitted to use contractual terms to put consumers in a worse position than they otherwise would be under the terms of IA 2015.

12. Are there limitations on insurers' right to rely on defences in certain types of compulsory insurance, where the policy is designed to respond to claims by third parties?

The Road Traffic Act 1988 limits the exceptions operable in motor policies, to safeguard the rights of third party victims. Third party rights are preserved where the policyholder is in breach of a policy term or the duty of fair presentation, in the event of the policyholder's insolvency, and where the vehicle is driven by another person not covered by the policyholder's insurance. The statutory requirements are regarded as a minimum and motor policies will be construed to comply with the legislation.

13. What is the usual trigger for cover under insurance policies covering first party losses, or liability claims? Are there limitation periods for the commencement of an action against the insurer?

First party insurance is usually triggered by occurrence of an insured peril causing damage to insured property within the policy period. Liability insurance typically covers legal liability to a third party, triggered by a quantified liability being established by a judgment or by settlement with the claimant. Latent defects insurance responds to structural problems or safety risks arising during the policy period, where the defects could not have been discovered upon reasonable inspection prior to completion.

Under section 5 of the Limitation Act 1980, an action on a simple contract (including most insurance policies) must be brought within six years from the date of accrual of the cause of action, or 12 years for a contract made by deed.

14. Which types of loss are typically excluded in insurance contracts?

Depending on the type of insurance policy, typical exclusions may include existing claims, defects, fraud, dishonesty, contractual liability, consequential loss, fines, penalties, other insurance, pollution, gradual deterioration or inherent vice.

15. Do the courts typically construe ambiguity in policy wordings in favour of the insured?

Ambiguous policy terms may in some circumstances be construed against the insurer in accordance with the 'contra proferentem' principle, i.e. against the proposer or drafter of the wording. This depends on the type of policy provision in dispute and the relative bargaining position of the parties at the time of negotiating the contract. If policy wording is clear, the courts must apply it, even if this produces a harsh or seemingly uncommercial outcome. Recent cases emphasise the judicial trend for literal interpretation of contract terms and reluctance to interfere with unambiguous language (for example, *Bellini v Brit UW* [2024] and *Project Angel v Axis* [2024].

16. Does a 'but for' or 'proximate' test of causation apply, and how is this applied in wide-area damage scenarios?

Insurers are only liable to indemnify losses proximately caused by an insured peril, unless the policy wording provides otherwise. 'Proximate cause' means the dominant, effective or operative cause, whether or not this is the last to occur in a sequence of events. 'But for' causation (i.e. but for the existence of X, would Y have occurred?) is often applied as a threshold test, although this is not always necessary or sufficient. In *FCA v Arch* [2021], the test case on business interruption ('BI') insurance following the Covid-19 pandemic, the Supreme Court held that 'but for' causation should not be applied where both the insured peril, and the uninsured peril operating concurrently with it, arise from the same underlying fortuity.

17. What is the legal position if loss results from multiple causes?

Where two or more causes of approximately equal efficacy operate concurrently to bring about a loss, they will be regarded as concurrent proximate causes. If one of the proximate causes is an insured peril and the other is uninsured (but not excluded), the loss will be covered under the policy. If one of the proximate causes is excluded under the policy, the loss will not be covered, applying the principle in *Wayne Tank v Employers' Liability Assurance* [1974].

18. What remedies are available to insurers for breach of policy terms, including minor or unintentional breaches?

The remedy available for breach depends upon classification of the policy term: (i) failure to comply with a condition precedent to inception of the risk precludes the insurer from liability until there has been compliance; (ii) failure to comply with a condition precedent to liability prevents a claim by the policyholder unless the condition has been complied with, regardless of whether the insurer has suffered prejudice arising from the breach (subject to the effect of section 11, IA 2015); and (iii) conditions that are not expressed to be conditions precedent are bare conditions subject to general contractual rules, so that repudiatory breach allows the insurer to terminate the contract, but any lesser breach does not affect the contract or claim.

IA 2015, section 11, provides that insurers may not rely upon breach of policy provisions designed to reduce the risk of loss of a particular kind, or at a particular location or time, if the policyholder can show that the non-compliance *"could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred*". This is designed to prevent insurers from avoiding claims based on breach of policy terms unconnected to the loss.

19. Where a policy provides cover for more than one insured party, does a breach of policy terms by one party invalidate cover for all the policyholders?

This depends on whether the policy is joint or composite. Joint policies arise where the parties share a common interest in the insured subject matter (such as joint property owners), in which case the conduct of one policyholder may prejudice the rights of another as against the insurer. Composite policies insure multiple parties for their separate interests in the insured subject matter (such as landlords and tenants, or contractors and sub-contractors), in which case a breach by one policyholder does not usually affect the rights of other insured parties.

20. Where insurers decline cover for claims, are policyholders still required to comply with policy conditions?

There are conflicting authorities on this point in the English courts. In *Diab v Regent* [2006], the Privy Council held that policy conditions must continue to be observed, while recent judicial comments in *Technip v MedGulf* [2023] suggest that, where insurers decline cover under a liability policy, the right to rely upon claims conditions in defence of a claim by the policyholder would be waived or subject to estoppel. Policyholders should seek to comply with claims conditions where possible for the avoidance of doubt.

21. How is quantum assessed, once entitlement to recover under the policy is established?

For a valued policy, the amount recoverable from the insurer is the agreed value. Otherwise the measure of indemnity is calculated with reference to the value of insured property at the time of loss, the cost to repair damaged property to its previous condition, or the quantum of a liability claim once ascertained by a judgment, arbitral award or binding settlement. Property policies may include specific terms on calculation of loss, such as conferring upon the insurer or policyholder a right to choose between reinstatement costs or payment on an alternative basis.

22. Where a policy provides for reinstatement of damaged property, are pre-existing plans for a change of use relevant to calculation of the recoverable loss?

The purpose of indemnity insurance is to put the insured back into the position they would have been if the insured peril had not occurred, which may be achieved by the insurer replacing or repairing damaged property or paying the reduction in market value. The appropriate level of indemnity depends on the policy wording and surrounding circumstances.

Where reinstatement is not possible or not elected by a party with the right to choose, diminution in value is the default measure, and this is likely to apply where a policyholder intended to sell the insured property at the time that damage occurs. Post-loss intentions as to reinstatement or otherwise are usually irrelevant, subject to general principles of reasonableness, betterment and proportionality.

23. After paying claims, are insurers able to pursue subrogated recoveries against third parties responsible for the loss? How would any such recoveries be distributed as between the

insurer and insured?

In relation to contracts of indemnity (i.e. not accident or life insurance), an insurer is entitled to seek recovery of payments made to the policyholder from a third party responsible for the loss. The right of subrogation arises at common law and under MIA 1906, section 79, unless modified or restricted by express policy terms. Insurers are prevented from pursuing subrogated claims against co-insured parties under a composite policy, subject to limited exceptions where the underlying contract between the co-insured parties supports a different conclusion on the intended scope of policy cover.

Recoveries are allocated on a 'top-down' basis, not proportionately (applying *Lord Napier & Ettrick* [1993]). Sums obtained from third parties are therefore to be applied towards uninsured losses first, then paid down from the highest to the lowest layer of cover, before reimbursing the policy deductible.

24. Is there a right to claim damages in the event of late payment by an insurer?

Section 13A of the IA 2015 implies a provision into insurance policies incepting after 4 May 2017 to the effect that insurers must pay any sums due in respect of policy claims within a reasonable time, failing which the policyholder is entitled to claims damages. What amounts to a 'reasonable' period for insurers to investigate and evaluate the indemnity position will depend on all of the circumstances, including the complexity of underlying facts. Parties to consumer insurance cannot contract out of this provision.

25. Can claims be made against insurance policies taken out by companies which have since become insolvent?

The Third Parties (Rights against Insurers) Act 2010 enables a claim to be pursued against an insolvent company and the insolvent company's liability insurer at the same time. A statutory mechanism can be used to obtain information about the insolvent party's insurance at the pre-action stage. The third party can be in no better position than the insured, so that the insurer is entitled to rely upon limitation or any other defence that would have been available as against the insured, as well as any defence available to the insured in respect of the alleged liability.

26. To what extent are class action or group litigation options available to facilitate bulk insurance claims in the local courts?

Several mechanisms exist for seeking redress on behalf of multiple parties, including: Group Litigation Orders, where each claimant must 'opt-in' and be listed on the Claim Form; representative actions under CPR 19.8, where claimants and/or defendants have the 'same interest in a claim'; and groups of individual claims managed together by the courts.

27. What are the biggest challenges facing the insurance disputes sector currently in your region?

The increasing frequency and severity of climate-related events has led to a surge in insurance claims, placing additional pressure on the London market. In 2024, UK insurers paid out a record £585 million for losses caused by extreme weather. The absence of any industry-wide definition of precisely what is required to establish occurrence of a 'storm' or 'flood' gives rise to uncertainty over the scope of cover for these related perils.

The invasion of Ukraine in February 2022 has led to a deluge of claims in the Commercial Court for losses arising from aircraft stranded in Russia, and damage to or expropriation of strategic assets including energy, mining and manufacturing interests. Several aircraft leasing companies are pursuing claims under contingent & possessed policies, case-managed alongside parallel proceedings against various reinsurers, with related trials taking place in Ireland and the US.

28. How do you envisage technology affecting insurance disputes in your jurisdiction in the next 5 years?

Technology is expected to have a significant impact on the management of insurance disputes in the next five years. There will most likely be a proliferation of Generative AI in claims-handling, meaning that claims should be processed far more quickly. The continued rise of 'Big Data' (referring to the volume, velocity and variety of available data) will assist insurers in assessing the validity of policy claims.

29. What are the significant trends and developments in insurance disputes within your

jurisdiction in recent years?

Claims arising from the Covid-19 pandemic have been a dominant theme. The BI insurance test case brought by the Financial Conduct Authority meant that guidance from the Supreme Court was obtained swiftly on typical market wordings, but many disputes remain unresolved, with significant appeal decisions pending on issues such as aggregation, and treatment of government support.

Building safety remains a key focus for the construction industry, with hard market conditions and increasingly broad policy exclusions for cladding and fire safety related claims contributing to a rise in coverage disputes. The Building Safety Act 2022 introduced extended limitation periods and new causes of action to help facilitate remediation of defective buildings, and further judicial guidance is anticipated in 2025 on application of the critical 'just and equitable' test to evaluate responsibility as between commercial entities.

IA 2015 represents a major rebalancing of the rights of insurers and policyholders. The first reported decision addressing the causal requirements under section 11 was handed down in 2024 (*Mok Petro v Argo)*, although the comments on breach of warranty were 'obiter', i.e. not binding precedent, and it will be interesting to see how the arguments are developed in subsequent cases.

30. Where in your opinion are the biggest growth areas within the insurance disputes sector?

Warranty & indemnity insurance has become a widely adopted solution in the mergers & acquisitions market, with a corresponding rise in disputed claims. Recent cases demonstrate the evidential complexities in securing payment under this type of cover, and the importance of careful drafting of policy wordings to maximise the value of insurance assets.

Cyber-attacks, ransomware incidents and data breaches have become increasingly common. The emergence of model cyber war exclusion clauses caused controversy in the London market amid concerns over clarity on the scope of coverage, given the inherent complexities in attributing responsibility for such events. The issue of when fines and penalties are uninsurable as a matter of law on public policy grounds is ripe for clarification from the courts, particularly as regards GDPR breaches.

Environmental, social and governance concerns remain high on the agenda with many companies being sued for failing to manage climate risks, damaging the environment or making unsubstantiated claims on green credentials. The trend for climate litigation is set to continue, with insurers looking to robustly defend ensuing claims and test the boundaries of policy exclusions relating to 'pollution' and 'deliberate acts'.

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