

# Essential client guide

Important information and glossary of terms

**HOWDEN**

# Fair presentation of risks and duty of disclosure – Insurance Act 2015

When entering into an insurance contract (meaning at inception and each renewal of it, and when there is a variation or amendment) you must disclose all material facts and circumstances which ought to be known by you, and this must be substantially correct and made in good faith. This is anything that might influence an insurer as to whether to insure you or not, or continue with any insurance that you have, what premium to charge, or conditions to impose. This information should include special or unusual facts relating to the risk and particular concerns that led you to seek insurance.

Sufficient information will need to be disclosed to put a prudent insurer on notice to make further enquiries and must be presented to insurers in a clear and structured manner so that the insurer can readily assess it. Providing ambiguous or poorly sign-posted information (data dumping) is unlikely to satisfy your obligation.

You must undertake a reasonable search of your organisation so that the facts disclosed are accurate and complete, thereby providing your insurers with a fair presentation of what you do. As well as senior management, your search should include, but not be limited to:

- Persons responsible for key functions
- Parties who are beneficiaries of your policies including separate or subsidiary business units

**Examples of “material facts” that need to be disclosed include (but are not limited to):**

### General

- Any incidents of loss or damage or injury or circumstances or incidents that might give rise to a claim (whether or not any loss, damage or liability is covered by insurance, or whether an insurance claim is made or not)
- If an insurer has declined a proposal for insurance, cancelled cover, refused to renew a policy
- Criminal convictions or disqualification as a director in respect of anyone involved in the business
- If any director or partner has been involved in a business that has gone into liquidation/ administration, has been dissolved or similar, or if they have personally been bankrupt or been subject to a County Court Judgement or similar
- Official notices or warnings from councils or any other local or statutory authorities
- Withdrawal of any statutory licences

### About your business

- Business activity (or change to business activity), including processes, products, and geographic presence
- Activities and processes outside of those normally found within your business and/or sector including the use of hazardous materials or practices (e.g. use of heat or chemicals, working from height etc.)
- New companies, markets, acquisitions, or disposals
- Additional premises/insurable items
- Changes to premises
- Higher than ordinary degree of risk or liability (specific to your business or industry-specific)
- Business financial status

### Material damage policies

- Construction of the buildings, e.g. use of composite panels which present a higher fire risk
- Changes in occupation (if other parties occupy the premises, or part of the premises, this will have an effect on insurers’ assessment of the risk)
- Changes in security of any premises, or in the existence, type, and operation of alarms and extinguishers or other fire protections
- New/amended processes, especially anything involving the use of heat
- Increased storage of hazardous materials/attractive stock
- Any attempted break-in or arson attack
- Use of temporary/third-party premises

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**Ask us for any advice you need as to whether something is material.**

## Liability policies

- Changes to business activities (including disclosing historic activities that have ceased)
- The creation or acquisition of new companies for which cover is required
- New products or activities
- Products imported or exported to, or work in overseas territories (particularly the USA or Canada)
- Work in or on hazardous locations such as offshore installations
- Health and safety investigations/prosecutions

## Motor Policies

- Driving convictions
- Corporate investigations/prosecutions
- Undisclosed accidents
- Changes to vehicle performance
- Change of use of vehicle
- Vehicle ownership or changes of ownership (especially if vehicles are personally owned rather than owned in the name of the business/company)
- Licence disqualification or changes to licences

## Business personal accident and travel policies

- Changes to business activities
- Material differences in the travel pattern (different geographies, number of journeys, etc.)
- If any manual work is undertaken

The above is not an exhaustive list but serves to provide examples only. Remember if in doubt, disclose it!

It does not matter that insurers haven't asked for any information – you must still disclose it.

Certain information does not need to be disclosed, however, it is advisable to be cautious as any uncertainty could lead to a dispute with the insurer. The information which does not need to be disclosed is as follows:

- Information already held by them
- What an insurer writing this risk would reasonably be expected to know
- Common knowledge
- Matters that reduce the risk, or which the insurer has waived their right to

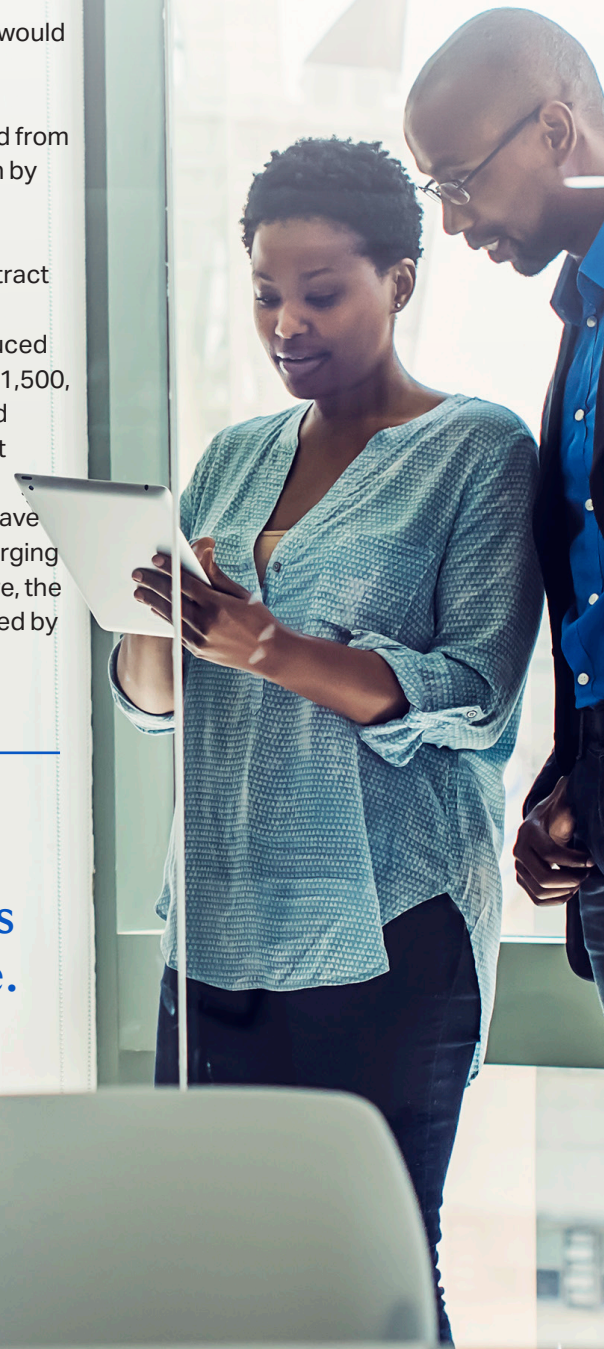
If in doubt about whether something needs to be disclosed – disclose it. You must maintain a documented paper-trail (paper or electronic communications) to demonstrate that a reasonable search has been undertaken, including how such responses were verified as being correct.

## Insurer remedies

In the event of a misrepresentation or non-disclosure of material facts, insurers must act in line with what they would have done if there had been a fair presentation of the risk. They have a number of remedies available as follows:

- Fraud does not automatically bring the policy to an end. The insurer may:
  - Decline the claim (even non-fraudulent aspects)
  - Recover monies already expended in relation to the claim
  - Terminate cover with effect from the date of the fraudulent act. Cover would still be in force prior to the fraudulent act
- Avoidance of the policy:
  - If the breach was deliberate or reckless the contract can be terminated from inception and the insurer may retain the premium. This must be proven by the insurer.
  - If the breach was not deliberate or reckless:
    - If the insurer would not have written the risk they can avoid the contract but must repay the premium
    - If a higher premium would have been charged the claim can be reduced proportionately (e.g. if premium was £1,000, but would have been £1,500, claim reduced by 1/3rd - £500/£1,500). Some insurers have elected to opt out of this part of the Act and instead intend to simply deduct the premium increase from the claim settlement.
    - If additional terms would have been applied, these are deemed to have been applied from inception/renewal. This can be in addition to charging a higher premium and any subsequent claim reduction. Furthermore, the insurer can retrospectively adjust previous claims if they are affected by the imposition of the new terms.

**If an insurer has opted out of any provisions of the Insurance Act, we will advise you accordingly and discuss the implications and options available.**



# Warranties and conditions precedent

Particular attention must be paid to any warranties and conditions as failure to comply with them could invalidate your policy or mean that claims may not be paid in full (or at all).

Breach of a warranty will result in insurer's liability being suspended rather than discharged (It is your responsibility to show that the breach of a warranty (or condition) could not have increased the risk of the loss which occurred, in the circumstances in which it occurred). Subsequent compliance with the terms of warranty will result in cover being reinstated (bear in mind this may not always be possible, such as a warranty as to the construction of a building).

Warranties aren't always referred to as such within a policy and schedule. They may be referred to as conditions, endorsements, special terms, as well as warranties.

It's important that you look out for these and if you have any doubt about a particular statement, please ask us for advice.

Conditions precedent: Some conditions do impose a responsibility on you to have done something or completed something before a certain section of the policy will operate. If you do not comply, cover may not be in place (see insurer documents for options available to them dependent on the type of condition not met).

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**Failure to comply may leave you with no cover and potentially for a claim not to be paid**

## Claims notifications

Many insurance policies require immediate notification of claims, or within a specified time period, as detailed within your policy documentation. To ensure that you do not fall foul of any claims reporting condition(s), please follow the guidelines in your policy documents and/or documentation issued by us.

## Policy cover

Details of cover, including information you have provided to us, the sums insured (where applicable) and sections of cover which operate are detailed within the policy documentation. The information you have declared has been used to determine the rating and the underlying foundation on which your insurance will be arranged. This means your insurer has relied on this information and the premium has been calculated on this basis. It's, therefore, very important that this information is accurate and fully disclosed.

Cover is subject to the policy exclusions, terms and conditions, supplementary benefits and designed to pay an amount up to the sum insured/benefits, and limits (where applicable) in the event of a claim, subject to the exact cause of loss being covered and subject to you complying with all terms and conditions.

## Communicable diseases

Despite the Supreme Court ruling against a minority of policy wordings in respect of Business Interruption cover, it was not insurers' intention to include cover for worldwide pandemics such as Covid-19 or any new novel diseases. This approach towards such diseases remains and, therefore, following the FCA test case we saw all insurers revisit and review their wordings – across all sections and not limited to Business Interruption. This has resulted in insurers applying exclusions from renewal, and in some cases mid-term, to ensure clarity is provided to policyholders of this intention. However, a minority of insurers have not included such exclusions as their wordings were, and remain, clear enough in stating that such cover is not provided. Please ensure you refer to each individual policy coverage section for the terms and conditions applicable to your specific cover.

## Claims payments

It's an implied term of every contract of insurance that if the insured makes a claim under the policy, the insurer must pay any sums due within a reasonable time. Claims against insurers for breach of the implied terms must be brought no later than one year from the date that the insurer paid all sums due in respect of the claim.

What a "reasonable time" is will depend on the relevant circumstances and includes a reasonable time to investigate and assess the claim. Breach of this implied term may give rise to a claim against the insurer for damages, and examples of matters which may need to be taken account of include:

- The type of insurance
- The size and complexity of the claim
- Compliance with relevant statutory or regulatory rules or guidance
- Factors outside the insurer's control

If an insurer can show there were reasonable grounds for disputing the claim (whether in relation to premium or quantum), the insurer will not be in breach of the implied term merely by failing to pay the claim while that dispute is continuing.

## Adequacy of your declared values and sums insured

It is important that you regularly review the adequacy of your sums insured, indemnity periods and limits of indemnity (where applicable). Your declared value and sum insured needs to be adequate to either rebuild or replace as new your material assets (unless otherwise indicated within your policy documentation) or restore your business and gross profit or revenue or fees to the trading position you would have been in had the loss not occurred.

Whilst Howden is able to provide quotations for varying indemnity periods and information about how to calculate the sum insured, we don't accept any responsibility for inadequacy of your indemnity period and/or sum insured – we strongly recommend that you obtain the assistance and advice of your professional accountant.



## Business interruption

Where Business Interruption cover is provided, please ensure that the sum insured (whether gross profit or revenue or fees) has been calculated in accordance with the Insurance policy definition and that the maximum indemnity period is sufficiently long enough to enable your business to get back to the trading position it would have been in had the loss not occurred. The sum insured and maximum indemnity period should allow for inflation and any predicted growth in your business activities.

If you don't currently have Business Interruption cover, we would strongly recommend that you consider adding this to your policy in order to help protect your business in the event of a loss. Please telephone us so that we may provide a quotation.

## Buildings insurance

It's critical to remember that the sum insured needs to represent the reinstatement or rebuild cost, not the market value of your building, including any driveways, garages, and outbuildings etc. The sum insured should include costs for materials, labour, architects, surveyors, other legal and professional fees, the cost of demolition and debris removal, VAT\*, any public authority or planning costs and inflation, or other increasing costs that happen during the policy period as well as any rebuilding period.

*\*You should include VAT at the full rate if you cannot recover VAT. However, if you can recover VAT please seek the professional advice of your accountant before excluding VAT from your buildings sums insured as the position can be complex. Likewise, for residential properties please check with your accountant as to the extent of VAT that can be recovered.*

The rebuild cost may be higher if you have a specialised property, such as a listed building, or other special features that may be more difficult, more costly, or take longer to rebuild or repair than a standard property.

We strongly recommend that you engage the services of a chartered building surveyor to provide you with appropriate reinstatement sums insured for your buildings at intervals of at least every five years.

## Contents insurance

The sum insured should be set on the basis of the new replacement cost, not the value on your balance sheet. You should include allowance for debris removal, installation and delivery costs (with VAT included if you cannot recover VAT from HMRC).

An up-to-date inventory of all of your contents, machinery, plant etc, is useful when considering your sum insured. If you have customers' goods on site, the value should be included too. If you have items of specialist or complex machinery or equipment it may be useful to discuss with a supplier the cost and availability of suitable similar replacements or repairs as these could take a long time to replace. If you have equipment that is no longer manufactured or available you might need to insure for the value of a new equivalent machine.

## Stock insurance

The sum insured should be set on the basis of the maximum cost (at any one time) to buy the stock again from the supplier, including carriage and delivery. If you are a manufacturer then you should consider maximum costs of:

- Raw materials – the market cost of materials, including costs such as freight, unloading, storage costs and irrecoverable taxes and duty

- Work in progress – factor in the cost of raw materials and any manufacturing costs directly incurred, including direct factory overheads
- Finished goods – the net manufacturing cost of finished goods. Or, for many businesses, the purchase cost, including expenses such as freight, unloading, storage and irrecoverable taxes. The sale price should not be used, unless specifically agreed with insurers.
- Waste materials – certain waste materials will have a commercial value and a market rate
- You should also include an allowance for the cost of stock debris removal and disposal.

## Average and proportional settlement

In the event of a claim, if sums insured are found to be inadequate, Insurers may apply average or proportional settlement.

This means that the amount claimed under the policy will be reduced in proportion to the under-insurance, resulting in only part of your claim being settled.

As an example, if buildings are insured for £300,000, but the full reinstatement value of the buildings at the time of a loss is £400,000, a claim for a loss of say £100,000 for repairs to the building would result in a payment of only £75,000 – the calculation is as follows:

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$$\frac{\pounds 300,000}{\pounds 400,000} \times \pounds 100,000 = \pounds 75,000$$

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An example of a proportional settlement would be if a company states its operations as low-risk but actually engages in high-risk activities, and a loss occurs causing £300,000 in damages. The insurer calculates that the premium should have been 40% higher and therefore pays 60% of the claim, which is £180,000.

It is, therefore, very important to ensure that your declared values represent the full value at risk and that protection is in place to allow for inflation and capital additions during the period of insurance. In addition, the gross profit is adequate for future growth.

The average/proportional settlement clause is applied to full or partial loss claims. In the case of severe under insurance, the insurer could (dependent upon the reason for under-insurance) cancel your policy from inception subsequently resulting in no claims settlement being made.

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Howden does not act as a valuer or surveyor and accepts no liability for the inadequacy of any of your sums insured. It's the policyholder's responsibility to ensure that the sums insured in your policy represent the full value at risk.

## Credit checks

As part of assessing your application for insurance, Howden and insurers, including any insurance company we recommend to you, may be required to undertake a credit check as part of the application procedure.

## Financial strength

It's our normal practice to regularly assess the financial strength of the insurance companies that we deal with. Whilst we observe the financial ratings applied by independent agencies along with other readily available information, we are unable to guarantee the financial strength of an insurer.

## Employers liability tracing office (elto)

Since 1999 the insurance industry has operated a voluntary code of practice to search historical Employers Liability policy records to identify insurers of former employers to assist claimants in pursuing compensation for disease or injury caused at work.

In order to improve and enhance the information stored on the database, insurers are seeking to store additional data by way of a unique identifier for each employer. The unique identifier being used is the Employer Reference Number (ERN), commonly referred to as the Employer PAYE Reference.

To assist us in providing your insurer with this information, please make sure that you have provided your ERN reference for your company and any subsidiary companies.

## 4th eu motor directive – motor insurance database (mid)

Full details of your vehicles, including demonstrators, own/business use, trade plates, and courtesy/loan vehicles must be supplied to the Motor Insurance Database (MID), and the Government has the right to enforce financial penalties for non-compliance.

Furthermore, police have the authority to impound and scrap any vehicle if proof of insurance cannot be provided by the registered owner/keeper.

For single vehicle policies, and fleet policies where the insurer is updated "as and when" of any changes, the insurer will update the MID on your behalf. However, if you have a fleet policy on a declaration basis, i.e. the insurer is advised of any vehicle changes either quarterly or six-monthly, then the reporting of vehicle changes to the MID is your responsibility and your insurer will provide you with log-in details and passwords together with a telephone number for the insurer's MID helpdesk.

Please note that evidence of such details being known to the MID is not confirmation of the level of insurance cover in place. It is simply evidence of ownership and confirmation that insurance exists.

If you're uncertain as to whether you are responsible for reporting vehicle changes to the MID please contact us for further information.

## Optional extra covers and optional additional products

The Financial Conduct Authority (FCA) has certain requirements in relation to the sale of optional additional products to consumers and businesses. Along with the primary insurance product, anyone involved in arranging optional additional products or extra covers on your behalf needs to make sure that you fully understand the products or extra covers offered and that you specifically choose to purchase them by an "opt-in" method rather than "opting-out" of products that have automatically been included.

# What do we mean by an “optional extra cover” or an “optional additional product”?

An “Optional Extra Cover” is not a separate product but an extension to the core cover provided under your primary product (e.g. Commuting, Buildings or Contents Accidental Damage or Winter Sports).

An optional additional product relates to a separate product that you may have chosen to purchase alongside your primary insurance product that does not form part of your primary product (e.g. legal expenses or loss recovery insurance).

We’d like to take this opportunity to remind you to check the cover currently provided, in particular in relation to any optional additional products or extra covers purchased. The purchase of these products or extras is optional.

If you no longer require any of them because they don’t meet your current needs, or if you’re uncertain whether the cover you have reflects your current requirements, please contact us as soon as possible so we can discuss this with you and explain how any changes you wish to make may affect you and the cover provided.

# Glossary of important terms

This glossary provides a selection of important terms but is not limited to the terms listed below.

## Average

In the event of a claim, if declared values or sums insured are found to be inadequate, Insurers may apply average. This means that the amount claimed under the policy will be reduced in proportion to the under-insurance, resulting in only part of your claim being settled. As an example, if buildings are insured for £300,000 but the full reinstatement of the buildings at the time of the loss is £400,000, a claim for a loss of £100,000 for repairs to the building would result a payment of only £75,000.

## Claims made policy

Certain policies or covers may be settled on a "Claims Made" basis. This means that any claims will fall under the policy you have in force at the time the claim is made against you and not the policy you had in force at the time the allegedly negligent work was carried out or advice given. If you decided not to renew your insurance policy then all cover ceases for any new claim made against you arising out of any work that you have carried out or advice given in the past, even though you may have had insurance cover in force at the time.

Any claim made against you should also be advised to the Insurer during the period of insurance that it is first made, otherwise liability will not be accepted by the Insurer please refer to your Policy Wording for the specific requirements of your Insurer.

## Conditions

A condition must be exactly complied with strictly and in full. If you do not comply with a condition, your insurers may decline your claim if your non-compliance caused or contributed to the loss.

## Conditions precedent

A condition precedent must be complied with strictly and in full. If you do not comply with a Condition Precedent, your insurers may decline a claim. Insurers also have other remedies available, such as avoiding the policy or applying proportional remedies, which can include reducing the payout of a claim based on the extent of the breach.

## Day one

Your Insurer increases the value at risk (as declared) by an agreed percentage to allow for the effects of inflation. If the value of the insured item declared by you at the start of the policy period (day one) is insufficient, Average will be applied.

An example of this is:

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Buildings declared value £1,000,000

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Day one percentage 30%

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Amount payable for rebuild (if necessary) £1,300,000

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## Employers' Liability

The Employers' Liability Compulsory Insurance (Amendment) Regulations 2008 state that the requirement to display the certificate will be satisfied if the certificate is made available in an electronic format so long as it is reasonably accessible to relevant employees.

The amendment also states that the retention of certificates is no longer compulsory. However, it is good business practice to retain your certificates as these will provide historical information on your insurers and policy numbers in the event of potential claims emerging in the future.

The Employers' Liability Certificate must specifically state the company's cover under the Policy. The term "subsidiary &/or associated company" will no longer be acceptable and each associated company will be required to display its own Certificate. Please therefore ensure we are notified of all holding, subsidiary and associated companies.

Since 1 April 2012 the insurance industry has operated a mandatory code of practice to search historical Employers' Liability policy records to identify insurers of former employers to assist claimants in pursuing compensation for disease or injury caused at work.

In 2010 a number of insurers joined the Employers' Liability Tracing office (ELTO), set up to establish a central database to store information from member insurers.

ELTO's rules require all mandatory policy data relating to 100% of all insured employers to which ELD (Employer's Liability Database) relates to be fully and properly recorded on the ELD within 90 days of the effective date (e.g. cover start date for new business/renewals).

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## Excess / deductible

The amount you must contribute towards any insured loss.

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## Franchise

A minimum amount or period of loss that must be incurred before your policy will respond. Once the franchise is reached, the entire amount of your loss is paid.

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## Indemnity

To be placed in the same financial position as you were in prior to the loss.

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## Minimum and deposit premiums

Premiums for certain policies or covers may be on a minimum deposit basis. The premium you pay at the beginning of the policy is a deposit based on your expected business activity. At the end of the insurance period when you know the true extent of your activity, if this is higher than expected, you may need to pay an additional premium. The deposit premium you pay is a minimum charge for the cover. If you cancel the policy at any stage or your activity is less than expected, you will not receive any refund.

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## Proportionate settlement

Proportional settlement refers to the adjustment of a claim pay out based on the proportion of the premium that would have been paid if the correct information had been disclosed. If a policyholder misrepresents or fails to disclose important information, the insurer can reduce the claim payment proportionally. For example, if a business misrepresents its operations as low-risk but actually engages in higher-risk activities, and a loss occurs, the insurer may calculate the pay out based on the premium that should have been paid for the higher risk.

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## Reinstatement as new

To rebuild, replace or repair the lost or damaged item to a condition as good as, but not better or more extensive than, its condition when new.

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## Subrogation

Subrogation allows your insurer to take over any rights you may have against other parties with regard to making recoveries to minimise their loss.

You may prejudice your rights with regard to a claim if, without the prior agreement from your insurer, you make any agreement with a third party which will prevent your insurer from recovering any loss from that, or another, party.

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## Subjectivity

If your insurers agree to insure you subject to certain requirements, failure to comply with them may result in cover not being in place. If a subjectivity is imposed, it will set out details of the necessary condition/action, the timescale for it to be met, any special insurance terms that will apply until it is met, and the consequences if it is not met or not met in time.

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## Suspensive condition

If you breach a suspensive condition your insurance will be suspended from the date of the breach until you are able to comply with the suspensive condition. Your insurer won't be liable for any claim that occurs during the period of suspension.

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## Warranties

Warranties are very important provisions in your insurance policy and must be exactly complied with at all times. Breach of a warranty will suspend cover from the date of the breach until the date that the breach is remedied and the warranty becomes a suspensive condition.

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## Utmost good faith

All contracts of insurance are subject to a legal duty to show "Utmost good faith", in that both you and the insurers have a duty to disclose, clearly and accurately, all "material facts" (as mentioned earlier) relating to the proposed insurance, and to take all reasonable care to prevent or minimise any loss or claim or the chances of any loss or claim happening.



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