

▶ THE ENTERPRISE ACT 2016 - A 'REASONABLE TIME' TO PAY – WHAT DOES THAT MEAN?



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INTRODUCTION

The Enterprise Act 2016 comes into force on 4 May 2017, and will apply to every insurance policy placed or renewed on or after 4 May 2017 which is subject to the laws of England and Wales, Scotland, or Northern Ireland. The Act, which amends the Insurance Act 2015, gives insureds a right to claim damages if the insurer has breached their obligation to pay their claim within a reasonable time.

THE CURRENT LAW

At the moment, insureds cannot recover damages from insurers if they have suffered additional losses due to a delays by the insurer in paying out under the policy.

Under the new Act, it will be an implied term of every contract of insurance that the insurer must pay any sums due within a reasonable time. If the insurer breaches this term, the insured could have a claim for damages if they have suffered a loss as a result of being kept out of funds. Interest on late payments can also be claimed in addition.

WHAT DOES 'REASONABLE TIME' MEAN?

This means a reasonable time to investigate and assess the claim depending on the relevant circumstances, which 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.

The Act also provides a defence for insurers. If an insurer can show that there were reasonable grounds for disputing the claim (whether in relation to liability or quantum), the insurer will not be in breach of the implied term if they delay in paying the claim while the dispute is continuing.

Usual contractual principles will also still apply. In order to recover damages for failure to pay within a reasonable time, the insured will still need to show that they have suffered a loss which was caused by the insurer's breach of the implied term. The loss cannot be too remote, and the insured will still have to take reasonable steps to mitigate their losses.

CONTRACTING OUT

The Act does allow parties to contract out of the implied term, provided that the insured is not a consumer and that the insurer meets the transparency requirements set out in the Insurance Act 2015.

However, contracting out will not protect an insurer if they have committed a deliberate or reckless breach of the implied term.

TIME LIMITS

Claims against insurers for breach of the implied term must be brought within one year of the date on which the insurer has paid the claim. It is important for insureds to be aware that any claims for breach of the implied term brought after that date will be time barred.

COMMENTS

The Act is certainly beneficial to insureds in that it introduces a new right to claim damages in circumstances where insurers have failed to pay claims within a reasonable time, and it might provide an incentive for insurers to process and pay claims promptly.

However, the impact of this Act should not be overestimated. It does not give insureds a right to recover all losses in all cases. The usual hurdles for proving recoverable damages for a breach of contract will still have to be met. Furthermore, the Act does not oblige insurers to admit or pay claims immediately. Insurers will continue to investigate claims, particularly large or complex ones, and will still be able to delay payments in case of a genuine dispute with their insured.

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