



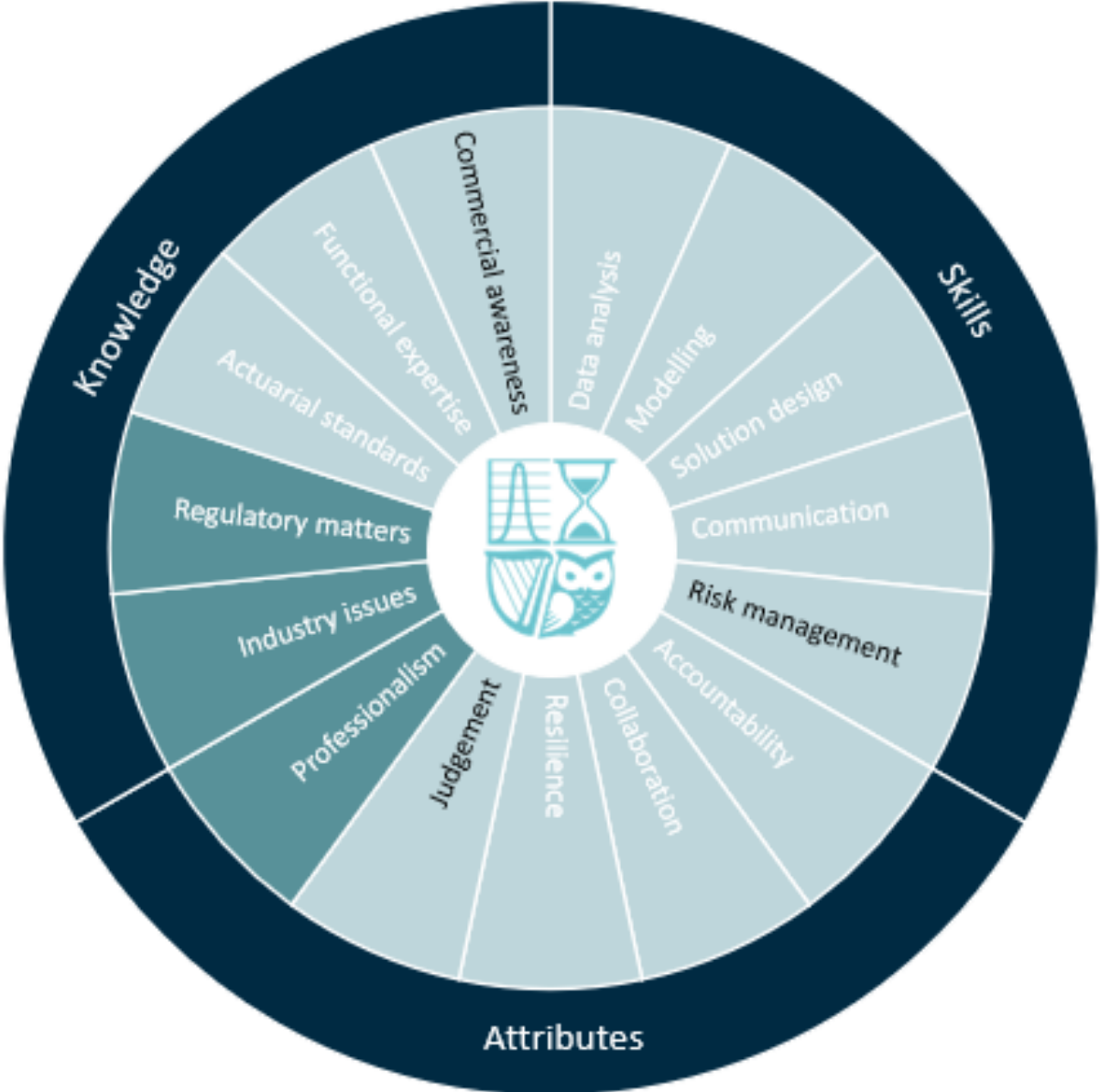
Society of Actuaries in Ireland

Consumer Insurance Contracts Act

Wednesday, 23rd September 2020

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Competency Framework Wheel



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Legal / Technical update

Naoise Harnett

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Introduction

- Background to Act - Private Members Bill
- Political overlay
- Significant resistance from industry
- Delayed commencement
- Commencement Order provided for split of provisions:
1 September 2020 vs 1 September 2021
- More onerous provisions from an industry perspective are delayed until 1 September 2021
- Application



September 2020 - Material Changes

- Abolition of requirement for insurable interest - divergence from UK (Section 7);
- Abolition of post-contractual obligation of utmost good faith (Section 15);
- Claims handling obligations. Non avoidance of claims on technical grounds (Section 16);
- Representations vs Warranties, Suspensive Conditions (Section 19).



1 September 2021 - Material Changes

- Abolition of requirement for pre-contract utmost good faith (Section 8);
- Innocent vs Negligent vs Fraudulent Misrepresentation - divergence from UK(Section 9);
- Requirements regarding disclosures at renewal (Section 14)



Questions Arising

- Balance between consumer protection vs industry concerns
- Increased cost of compliance to be passed onto consumers?
- Impact on reinsurers
- Divergence in approach from the UK on a number of material points





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**General Insurance practical
impacts**

Adrian Leonard

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All nonlife products are impacted by the Act except Marine (exempt from the Act)

Even though, the Act itself applies to Consumer contracts only, for logistical reasons, most insurers will apply this to a wider category of customer.

It will come into effect for any New Business, Renewals **and Mid Term Alterations** on or after these dates

S.7 Insurable Interest

Claimant does not need to be named on the policy.

Interest need only apply at time of loss, and not at contract inception.

Practical Issues

Will this increase the likelihood of fraud

For first party claims, how do insurers practically deal with someone who is not named on a policy and is seeking indemnification.

S.14 Duties of Consumer and Insurer at Renewal

Pre 1 SEPTEMBER 2020

SI577 (prev. SI74) requires, Insurers to issue a renewal intention within 20 days of renewal for all client categories.

From 1 SEPTEMBER 2020

Insurers must provide renewal terms and conditions of any alteration of cover within 20 working days.

Practical Issues

What happens if material information comes to light within 20 working days of renewal e.g. the property has just flooded

Insured now only needs to notify Insurers of changes that take the risk outside what was in the “reasonable contemplation of the contracting parties when the contract was effected”.

To reject a claim, the change must be so significant that Insurers would not have written the risk, or would have applied substantially different terms and conditions.

Practical Issues

What are substantially “different terms and conditions”. E.g. consumers advises they have a monitored alarm and obtain a small discount. Post inception, they cancel the monitoring contract

S.16.10 - Claims Handling: duties of consumer and insurer

The insurer or claimant are required to share information, including information which may otherwise be legally privileged that would either support or would prejudice the validity of the claim.

Practical Issues

How do insurers investigate fraud without “tipping off” claimant by sharing legally privileged information e.g. private investigator reports

Must legal advice on policy coverage must be shared even while in contemplation of an adversarial legal process

S. 17 – Deferred Payments

Pre 1 SEPTEMBER 2020

For property claims, Insurers often retained an element of the agreed settlement amount pending completion of reinstatement works and evidence that the expenditure. The amount typically retained by insurers was between 13.5% to 25%, depending on the nature and size of the claim.

From 1 SEPTEMBER 2020

Policyholders must be provided with details of the deferred payments conditions at pre contractual stage.

Claim settlement <€40K – 5%, claim settlement > €40K – 10%

Practical Issues

Will this encourage fraud

Will it encourage use of the “black economy” i.e. contractors which are not registered for VAT.

S. 19 Warranties, Basis of Contract clauses and Conditions Precedent to Liability

Any clause or term in any document that converts a statement made by the insured into a warranty is abolished.

All other types of warranties are abolished and conditions precedents are reduced to “bare conditions”

Practical Issues

Insurers will have to demonstrate the materiality of the breach of contract and the extent to which they have been prejudiced. This will likely result in more protracted and complicated coverage disputes

S. 21 Third party rights

Pre 01 September 2020

If an insured incurs a liability to a third party, that third party has no direct recourse to the Insurer (other than for Motor).

From 1 SEPTEMBER 2020

- ✓ If the policy holder is deceased or cannot be found, or
- ✓ If the policyholder is insolvent, or
- ✓ For any other reason where a court considers it to be reasonable

the insured's contractual rights against the insurer are transferred to the third party to whom a liability was incurred.

Practical Issues

There may result in an increased IBNR on contracts that were assumed to be fully developed

Section 12. Renewal of contract of insurance

Insurers must now provide all consumers at the renewal stage with a schedule that will provide details of any premiums paid by the consumer and claims paid in the preceding five years

Practical Issues

Many insurers have problems extracting this information from legacy IT systems (especially annualised premiums)

The legislation is not clear what is mean by “claims paid in the preceding five years”. In theory this could be a payment related to an UW year in the 1970s!

Section 14 - Duties of Consumer and insurer at renewal

This removes the duty of disclosure at renewal and instead puts a requirement on the insurer to either ask specific questions and/or else provide the consumer with the risk information on which they are relying on that were previously disclosed.

Practical Issues

Major overhaul of renewal processes given the onus is on insurers to ask specific questions or provide details of the information being relied on. Movement towards “statement of fact” type documentation

How do UWs capture information provided by email follow ups or surveys mid term



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Life Insurance practical impacts

Edel O'Connell

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Key Impacts on Life Insurers

- The long term nature of most life insurance contracts means there is less immediate impact for life insurers but provisions do apply equally to our protection contracts.
- Whilst the Act does not apply directly to reinsurers, they need to consider the implications in terms of changes to underwriting practices and future claims costs.
- Regulatory developments such as the Consumer Protection Code and precedent established through findings on individual cases by the Financial Services and Pensions Ombudsman has been driving changes in life insurance in areas such as the clarity of underwriting questions and proportionate responses to non-disclosure identified at claim stage. However, the Act formalizes what might have been thought of as “best practice” in the past from a consumer protection point of view.

S.11 Cooling Off

Pre 01 September 2020

Cancellation without charge (cooling off) was available for 30 days under Solvency II to those who purchased an “individual life insurance policy” and under the Distance Marketing Directive to those who purchased a policy remotely. In both cases, falls in investment value from single premium contracts could be deducted. There were no specific provisions for group policies.

From 1 September 2020

Where a consumers cancellation rights are not governed by either of the regulations above, 14 days cancellation rights are granted and “the insurer shall not impose any financial cost on the consumer other than the cost of the premium for the period of cover.”

Key Impacts on Life Insurers – practical actions

- **Application forms:** (1) Review all questions to ensure that relevant information is specifically requested in “plain and intelligible” language. No catch all questions. (2) Determine what underwriting information is considered to form part of the application form and must be returned to the customer.
- **Terms and conditions:** Amend to formally reflect the requirements of the Act. In particular, identify any ambiguities which would cause difficulty when resolved in favour of the customer.
- **Quality checking:** Any missing or obviously incorrect answer must be followed up or else the insurer waives their right to any further duty of disclosure on the customer.
- **Group contracts:** Decide what cooling off rights should apply.

Key Impacts on Life Insurers – practical actions

- **Claims process:** (1) Formally document any changes needed to ensure proportionate response taken to non-disclosure. (2) For group business, ensure scheme members will benefit where scheme owner no longer in place.
- **Reinsurers philosophy:** Where changes to approach to non-disclosure are considered material, engage with reinsurers where firms propose to move to a single claims approach (for contracts written before and after the Act comes into effect).



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General market view

Ciara O'Grady

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> General Market View

A far more *Deliberate and Considered Approach* to managing Customer interaction, at all Customer Touchpoints of the Insurance lifecycle.



Challenges to 1 September 2020 Compliance

- Delay in the commencement order
- Tight implementation timelines for 1 September 2020
- Remote working and cross-functional implementation
- Competing regulatory challenges and regulator interaction
- Phased Implementation is welcomed – more onerous provisions being introduced by 1 September 2021



Definition of Consumer & other Scope Considerations

- Consumers are defined as individuals, sole traders, partnerships, charities and incorporated bodies with an annual turnover of less than €3 million in line with the Financial Services and Pensions Ombudsman Act 2017
- Industry push to limit the application to individuals acting mainly outside of their trade/ profession
- Cross-border Insurance sector



Implementation Programmes

- Implementation Working Groups of different scale are being established across Insurers locally
- Programme Sponsors are being identified with engagement across the 3 lines of defence.
- Implementation plans are being designed with work streams established to address:
 - Impact across people, process, technology, training and governance
 - Gap analysis against the legislative requirements – including any potential overlap with other European legislative requirements
 - Data-driven Proposal Form Review
 - Policy Wording updates
 - Fundamental review of the claims process, including tackling trickier provisions relating to assessing misrepresentation, settlement and third party claims
 - Engagement with Coverholders/ Brokers



CBI Code ...

- With the upcoming review of the Consumer Protection Code and the possibility the Act leaves for a Code in this space, the focus on consumer centric practices and delivering fair outcomes for consumers should remain prominently at the top of the agenda for Chief Risk Officers and Chief Compliance Officers



Penalties

- Section 9 and 18 Remedies
- A court can also, in its discretion order the sum otherwise payable in a claim be increased in proportion to the breach where an insurer is in breach of any duties under this Act – similarly for any breach by a consumer
- Fines, Sanctions and RMP imposed by the Central Bank of Ireland

Q&A

Please click on the 'Raise Hand' icon
to ask a question
and
wait to be unmuted

or

Use the Q&A function

