

# Swifter settlements

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## With the Enterprise Act 2016 newly in force, James King considers its likely effects on property insurance claims

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The [Enterprise Act 2016](#) came into force on 4 May, bringing with it new rules for the way the insurance profession handles claims.

Unlike the [Insurance Act 2015](#), the new legislation does not place any additional responsibilities on the policyholder; rather, on insurers, their agents and loss adjusters. It means insurers and their representatives must deal with claims in a reasonable time frame; if not, the act enables the insured party to claim for subsequent losses incurred.

### Reasonable time

Many in the insurance profession expect that the main beneficiaries of the new rules will be small to medium-sized businesses. This should encompass most property-owning policyholders or agents acting on behalf of freeholders. The act places the onus on insurers to settle claims promptly, that is, in a "reasonable time". However, this does not stop the insurer from investigating and assessing the claim.

"Reasonable time" is not defined in the new law. Delays in settlement could still occur, depending on the circumstances. Factors that could still mean slower progress include:

- reasonable grounds for disputing a claim or its quantum;
- the size or complexity of a claim;
- the type of insurance; and
- factors outside the insurer's control, such as the involvement of other parties or authorities, or the need to meet legal or statutory obligations.

Remember that the new legislation also covers claims made against you by a 3rd party, such as a trip or slip on your premises that you wish to dispute. Policyholders have the same protection against inflated or fraudulent claims as before, and thorough investigations should still take place.

### Remedies

In cases where indemnity has been granted yet repairs to a building have been delayed ? where insurers have not approved a contractor ? the affected areas remain unfit for purpose, which results in loss of income.

Under the act, though, you could receive compensation for a loss of potential income, as long as you take all reasonable steps to mitigate the loss. Claimants have up to 1 year to submit a compensation claim after settlement is received if they discover that the delay has had additional cost implications.

As this is a new piece of legislation, there are no legal precedents or case studies illustrating its effects. It could be said that the legislation is dealing with a problem that has not been significant for property managers or landlords, given that some claims always take time to resolve, such as those relating to subsidence. Insurers derive no benefit from delaying settlement; a damaged building is likely to be at greater risk of further damage than a weathertight structure, for instance.

### **Brokers? tips**

- Submit your claim promptly with as much information as you can supply.
- Record and make accurate copies of all documents supplied and dates.
- Supply any additional information requested promptly, or attend any appointment set by an insurer.
- Ask at the outset, in writing, what would be considered a reasonable time for settlement once indemnity has been granted. If after this date settlement has not been received, you have the ability to use the right to redress to speed things up.
- Request an interim payment to help cash flow if full and final settlement will take a period to resolve but indemnity has been granted.

### **Contracting out**

You may recall that the 2015 act allowed insurers to contract out of many of its provisions. This again appears an option under the new rules.

The right to damages for late payment of claims will be an implied term in all insurance policies; that is, it need not be stated in policy documents. Parties can agree to contract out, although this is most likely to be seen where the insurer imposes it and policyholders can only choose to accept the terms or buy insurance elsewhere.

However, it must meet the same transparency requirements as under the 2015 act, and be clearly drawn to the customer's attention. Also, if the insurer deliberately or recklessly delays claims, any contracting out will be invalidated and compensation can still be claimed for the delays.

### **Broker support**

Insurance brokers arrange the majority of property owner's policies, and your broker should bring you the benefits of their insurer relationships, including the ways in which they will be dealing with the new requirements.

A broker usually acts as your agent in sourcing and arranging the insurance and dealing with your claims. In some cases, brokers will act under a delegated authority to settle claims on behalf of insurers, as the agent of the insurer as well as the customer. In these cases, much of the responsibility for meeting the new rules lies with the broker.

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### **Further information**

- Related competencies include [Insurance](#)

- This feature is taken from the [RICS Property journal](#) (October/November 2017)
- Related categories include: [Property management](#) ; [Commercial property insurance](#) ; [Residential property insurance](#)