

Late Payment of Insurance Claims

Currently under English law insurers do not have to pay damages in relation to a failure to pay under an insurance contract.

This will change for insurance contracts **made on and after 4 May 2017**, when the Enterprise Act 2016 comes into force which inserts a new section 13A into the Insurance Act 2015 (the "Act"). Under section 13A, it will be an implied term of every contract of insurance (both consumer and business) that if the insured makes a claim under the contract, the **insurer must pay any sums due in respect of the claim within a reasonable time**. A breach of this implied term will mean the insured can claim for **damages for late payment**.

A reasonable time includes a reasonable time to investigate and assess the claim. What is reasonable will depend on all the relevant circumstances, but the following are examples of things which may need to be taken into account:

- the type of insurance;
- the size and complexity of the claim;
- compliance with any relevant statutory or regulatory rules or guidance; and
- factors outside the insurer's control.

If the insurer can show that there were reasonable grounds for disputing the claim, it will not breach the implied term merely by failing to pay the claim while the dispute is continuing. The conduct of the insurer in handling the claim may be a relevant factor in deciding whether that term was breached.

This implied term cannot be contracted out of for consumer insurance contracts. Contracting out is allowed, however, for business contracts, provided that:

- it meets the 'transparency requirements' set out in the Act, namely that the insurer takes sufficient steps to draw the term to the insured's attention before the contract is entered into; and
- the term is clear and unambiguous as to its effect.

Any attempt to contract out of deliberate or reckless breaches of the implied term will not be valid. A claim for late payment damages must be brought within one year of the expiry of the "reasonable time" in which the claim should have been paid.

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The information contained in this guide is intended to be a general introductory summary of the subject matters covered only. It does not purport to be exhaustive, or to provide legal advice, and should not be used as a substitute for such advice.

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