

Direction 97 issued under Part 3 of Schedule 4 to the Legal Services Act 2007 to the Solicitors Regulation Authority (SRA)

1. This is a direction issued pursuant to paragraph 19(3) of Schedule 4 to the Legal Services Act 2007 (the Act).
2. Unless stated otherwise, words in this direction are used as they are defined in the Act.
3. In accordance with paragraph 19(3) to Schedule 4 to the Act, the Board has directed that the following alterations by the SRA to its regulatory arrangements be treated as exempt alterations for the purposes of paragraph 19(2)(c) to Schedule 4:

The Minimum Terms and Conditions (MTC) (set out in Appendix 1 to the SRA Indemnity Insurance Rules (SIIR)) to give effect to the provisions of the Insurance Act 2015 (the Insurance Act), which comes into force on 12 August 2016

Proposed changes

4. As from 12 August 2016 the Insurance Act 2015 amends legislation on non-disclosure and misrepresentation in relation to business insurance contracts, including policies of qualifying insurance.
5. The amendments are limited to consequential changes in the language of clause 4.1 (No avoidance or repudiation) and clause 7.2 (Reimbursement) of Minimum Terms and Conditions (MTC) (set out in Appendix 1 to the SRA Indemnity Insurance Rules (SIIR)) to replace references to “non-disclosure” with either “any breach of the duty to make a fair presentation of the risk” or “failure to make a fair presentation of the risk”.
6. There are three specific alterations:
 - in clause 4.1, replacing “non-disclosure or misrepresentation, whether fraudulent or not” with “any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case whether fraudulent or not”;
 - in clause 7.2 (a)(i), replacing “non-disclosure” with “any breach of the duty to make a fair presentation of the risk,”; and
 - in the remainder of clause 7.2, replacing “non-disclosure” (in each place) with “failure to make a fair presentation of the risk”.

Reason for exemption direction

7. The proposed alterations are technical in nature and are being made in direct response to changes in primary legislation affecting general insurance law. The effect of the amendments to clause 4.1 of the MTC is to make it clear that insurers cannot avoid or repudiate cover in the event that an insured authorised body is in breach of the new duty to make a fair presentation of the risk. The effect of the amendments to clause 7.2 of the MTC is to limit the insurers' remedy for failure to make a fair presentation of the risk, to a right for reimbursement from the insured, to the extent that it is just and equitable having regard to the prejudice caused to the insurer's interests. This is the same as the current position where there has been "non-disclosure" by an insured firm.
8. There is no change to the regulatory policy or approach of the SRA on this matter other than to align Appendix 1 of the SIIR with the Insurance Act 2015.
9. A copy of the alteration was submitted to the Board on 16 June 2016.
10. This direction is to be deemed made on and to be effective from 1 July 2016

For and on behalf of the Legal Services Board
1 July 2016