

## **Duty of Disclosure and Material Facts**

All insurance contracts are based on the principle of 'utmost good faith'. This means that all parties to the contract have a duty to disclose all material facts.

A material fact is **all** information which is likely to influence the decision of the underwriter/insurer whether or not to accept the insurance proposed, what conditions to apply (if any) and at what rate of premium.

The onus lies on **you** to ensure we receive complete and accurate information to pass on to the insurer/underwriter. Failure to disclose a material fact may result in the insurers voiding the policy in the event of a claim.

The duty of disclosure is **ongoing** and applies from the moment discussion commences with insurers, prior to the issue of any policy document, throughout the period of insurance and again at renewal.

For 'commercial customers', examples of what constitutes a material fact include:

- Any amendment to your business activities from those that were disclosed at the time of inception of the original insurance policy.
- A change in your status e.g. from sole trader/partnership to limited company
- A change of premises including any acquisition or sale of part of your premises.
- Alterations to your sums insured/estimates e.g. buildings, contents, stock, gross profit, loss of rent, turnover, wage roll etc.
- Changes to processes – particularly those involving the use or storage of hazardous materials
- Installation/changes or removal of fire, sprinkler or security systems.
- Driving offences other than minor parking offences
- Criminal prosecutions of any director/partner unless considered 'Spent'
- Changes in trading patterns particularly if you intend to trade in USA/Canada
- Any contractual liabilities which you accept.
- Previous claims or incidences which might have given rise to a claim whether you were insured or not
- The existence of County Court Judgements
- If an insurer has previously declined to offer renewal for a policy or imposed more onerous terms for the proposed insurance

This list is by no means exhaustive and if there is any doubt as to whether information is material then you should disclose it.

Conversely certain facts do not have to be disclosed e.g.

- Facts that might reduce the risk
- Facts of law
- Facts that the insurer already knows e.g. if a claim has previously been made against the insurer
- Facts that an insurer should reasonably be aware of

The consequences of non-disclosure can be severe with insurers having the right to declare the policy void from inception. This can make it more difficult for you to secure insurance in the future.

### NOTE

Not all risk exposures can be insured against. Insurance policies are designed to pick up unpredictable or fortuitous events. In determining whether indemnity is due under a policy, the insurer will establish how exactly a loss occurred. Once the 'proximate cause' (dominant cause of a loss) is established indemnity will be considered.

Please speak to one of our brokers if in any doubt on any of the matters raised above.