

# CICA Update

The Consumer Insurance Contracts Act (CICA) 2019, signed into Irish law on 26 December 2019, aims to provide more transparency and strengthen consumer protection in Ireland. While levelling the playing field for Irish consumers and aligning the insurance laws with similar changes made to UK insurance law, the Act places demanding obligations on insurers and brokers. This article will look at the changes introduced by CICA and identify steps that need to be taken to ensure compliant and customer centric outcomes.

The Act has come into force in two phases. Most of the provisions of the Act came into force on 1 September 2020 while the implementation of the remaining provisions is deferred to 1 September 2021. The Act gives the Central Bank the right to enact a regulatory code at a later point which may bring about further requirements.

## 1. Scope of the CICA

The Act applies to all non-life and life insurance contracts entered into or after the commencement of the Act. This includes any new contracts as well as renewals delivered to “consumers”. According to the Financial Services and Pensions Ombudsman Act 2017, a consumer is defined as any personal, unincorporated bodies (such as, solo traders, partnerships, clubs and charities) and incorporated bodies with an annual turnover of less than €3 million that are not part of a group with a turnover of more than €3 million.

## 2. Which provisions came into effect in 1 September 2020?

### Section 7 -Insurable Interest

Previous to the implementation of the Act, insurable interest was the basis of insurance contract law in Ireland and was a pre-requisite for making a valid claim. With the implementation of CICA, the principle of insurable interest has been abolished and the name of the beneficiary no longer needs to be specified in the policy documentation. This means a valid claim cannot be

rejected on the basis of consumer not having a valid interest in the contract at the time it was entered or when the loss happened, albeit the consumer is still required to evidence loss to make a valid claim. The exception for this applies to contracts of indemnity, which still may require the consumer to have an interest in the subject matter.

### Section 11, 13 and 14 (6)- Cooling off Period, Cancellation and Alteration

The Act introduced a 14-working day cooling-off period for cancellation of insurance contracts starting from the day the customer was notified of the conclusion of the contract. The 14-working day cooling off period does not include those contracts covered by cancellations rights set out in the Solvency II Regulations or in the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

For any cancellations, insurers are required to notify the customer of the cancellation of the contract together with the reason for cancellation and repay the balance of any unexpired term on a cancelled contract. The cost of cancellation cannot be substituted from the consumer.

Any alternation to the terms and conditions of a policy must also be notified to the customer on a durable medium and in plain language within

a reasonable time frame, and no later than 20 working days, before renewal.

### Section 15- Post Contractual Duties of consumers and insurers

The Act replaced the principle of utmost good faith with the introduction of new provisions at post contractual stage including duty to pay premiums within a reasonable time for consumers and limitations to claims refusal that is based on alteration of risk clause for insurers. An insurer can refuse a claim if the subject matter of the of the policy has altered to such an extent that the new risk was not covered in the initial cover of the policy. This exclude modification insured risk.

### Sections 16, 17 and 18 (excluding section 18(4))- Claims handling, payment deferral and remedies

The Act outlines enhanced claims handling duties including; (i) handling claims promptly and fairly; (ii) notifying the consumer once a claim is received on their behalf; (iii) cooperating with consumer during claims investigation; (iv) allowing the consumer to provide evidence; and (v) notifying the consumer the result of the claim once settled or declined together with the reasons of the decision.

It is also no longer possible to deny a claim solely based on late notification of the claim, unless the late notification gives rise prejudices for the insurer.

Limitation has been introduced to excluding cover for loss or damage to property due to criminal or intentional acts. However, this provision is only applicable if the person's acts has caused the loss and/or damage, or if they agreed to and/or were aware of the cause of loss or damage. Concerns have been raised in relation to this provision as it may enable cover for terrorism and cyber attacks even if it is excluded from the policy and further clarification is hoped to be received as part of code of guidance by the Central Bank.

### **Section 19- Insurance Warranties**

The Act abolishes “basis of contract” clauses and similar clauses that aims to utilise a statement made by the consumer prior to entering into a contract as warranty. Traditionally, warranties had been used to refuse a claim in cases where a specific warranty was breached. With CICA statements made in proposal forms or fact sheet, for example, can no longer be used as a warranty and can only be considered a representation by the consumer. Any clause within the terms and conditions that indicated a continuing restrictive obligation should be considered as a “suspensive condition”. In other words, the liability of the insurer is suspended only during the duration of the breach.

### **Section 21 to 24- Third Party Rights and Subrogation**

The Act prevents the insured to use the doctrine of privity of contract to deny a third party claim and extends the right of third parties to make a claim on behalf of consumer in situations where the person is insured against the incurred liability to a third party and where the person; (i) has died, (ii) cannot be found, (iii) is insolvent and any other reason that a court may deem acceptable, unless the loss was caused intentionally or recklessly. This may increase the number of claim payments which were traditionally declined under doctrine of privity of contract. Furthermore, the Act limits cases for subrogation for family members, personal relations and against employee of the insured.

### **3. Which provisions will become effective from 1 September 2021?**

#### **Section 8 and – Pre-contractual obligations**

The Act has turned the tables for pre-contractual obligations by replacing the duty of utmost good faith with a requirement to provide answer to questions posed by the insurer at the pre-contractual stage and renewals. Previously, it was the duty of the consumer to not only act with utmost good faith but also to provide full disclosure. From 1 September 2021, insurers will be under the duty to ask specific question to obtain the information required to underwrite the risk as consumers are no longer under any duty to volunteer information except to answer the questions honestly, fully and with care.

The questions asked cannot be general and has to be in a clear manner. If not, the interpretation most favourable to the consumer will prevail.

Furthermore, if a consumer does not provide a complete answer, it is the responsibility of insurer to investigate absent and / or incomplete answer. Generic follow up questions are no longer plausible as failing to pose specific, tailored question or following up on incomplete answers, may result in insurer covering the risk and liability for the insured.

#### **Section 9 –Remedies for misrepresentation**

As misrepresentation can lead to an insurance contract breach, the Act represents remedies for three kind of misrepresentation; innocent, negligent and fraudulent.

Innocent misrepresentation applies to cases where the consumer was not aware of the false statement at the time of making the representation. In these cases, insurer is required to pay the claim.

Negligent misrepresentation applies for cases where the consumer has been negligent in giving information. In these situations, an insurer should

threat the claim as it would, if it had known the neglected fact by either amending the terms (applying from inception) or reducing the amount of claim paid, taking proportionality under consideration. If the insurer would not have entered into the contact in any situation upon knowing the neglected information, the insurer can avoid the contract and refuse all claims but has to return the premium paid. If there is no claim on the contract, insurers can apply above remedies by giving notification to the customer. For non-life insurers, termination of contract is also possible by giving reasonable notice to the customer, if there are no claims made.

Fraudulent misrepresentation, where the insured knowing and purposely have given a wrong statement, is the only definite case where the insured can deny the claim and terminate the contract. Consumer protection remains to be in focus throughout the Act evidenced by the requirement to pay any valid claim made before the fraudulent misrepresentation. Insurers are allowed to decline any claim made after the fraudulent one.

#### **Section 12 – Renewal of Contract of insurance**

One of the most onerous provisions of the Act for many insurers is to provide a list to the consumer detailing the premiums paid and claims made over the previous five years, including third party claims (except health insurance contracts which falls under the scope Health Insurance Act 1994) at renewal. The Act also provides clarification on providing 5 years premium and claim data where mid-term adjustments exists.

#### **Section 14 (1 to 5)- Duties of consumer and insurer at renewal**

Similar to the requirements introduced to pre-contractual obligations, the consumer is not obligated to provide any additional or updated information, unless the insurer specifically asks about the previously known concerning matter. This highlights the importance of asking specific questions,

investigating and following up with any incomplete answers. The insurer is also required to provide to the consumer a written copy of the previous disclosed matters. Needless to say, this information should be requested and kept in a durable manner.

#### 4. What actions should be taken to prepare for the Act?

Majority of the changes have already come into effect in September 2020 and the remaining is due to be implemented by 1 September 2021. Considering the timeline, most firms have already put in place effective remediations. Below is a guide to assist firm to carry a self-assessment for compliance with the Act. The self-assessment can be used to review implementation of the first phase of the Act or to prepare for the implementation of the upcoming requirements.

- **Training:** Set an underwriting discipline that intelligently poses specific questions relevant to the risk underwritten. There will be an increase in the number of additional claims which were declined prior to implementation of CICA. These are claims that would have been denied due to absence of insurable interest, of innocent misrepresentation and the right of third parties to make a claim. Provide training to ensure these new channels of claim is incorporated in claims practices. Implementation of these provisions may result in an increase cost of claim across the industry which will have a knock-on impact on firms reserving process.
- **Review Proposal forms:** Review and amend proposal forms and additional documentation to ensure all appropriate questions have been considered. Ensure the questions are clear and posed in an intelligible language, keeping in mind if there is any ambiguity, the interpretation most favourable to the customer will prevail.
- **Review Policy wording:** Review the wording of the policy to ensure amendments have been in relation to insurable interest, cooling off period, cancellation, alteration rights and warranties.
- **Renewals:** Ensure prudent underwriting discipline is applied at renewals as it does at pre-contract stage by asking specific, clear questions and following up where necessary to obtain a complete answer. Notify any changes to the customer prior to the renewal of the contract within no later than 20 working days.
- **Exclusions:** If there are any matters from coverage that is excluded from the contract, explicitly state in writing to the customer prior to the commencement of the contract.
- **remedies for misrepresentation:** Understand how to identify and assess different type proportionate remedies for misrepresentation when processing claims. Consider innocent and negligent misrepresentation cases carefully in the claims handling process.
- **Data protection for third party claims:** In relation to third party claims, data protection issues should be considered, and wordings should be reviewed to ensure potential data transfers included in their privacy notice.