



# AXA Insurance

## A Guide to Fair Presentation of Risk

This document is intended to help brokers and customers in preparing a Fair Presentation as required by the Insurance Act 2015 (the Act). Nothing in this guide is intended to represent legal advice or change in any way the duty to make a Fair Presentation on each and every risk as set out in the Act.

### The Insurance Act and the Duty of Fair Presentation of Risk

The Insurance Act 2015 (“the Act”) introduces a number of reforms to the law that governs non-consumer insurance contracts and will be effective in respect of all non-consumer insurance policies in the United Kingdom that are incepted, renewed or varied from 12 August 2016.

The purpose of the Act is to update the statutory framework in line with best practice in the modern UK insurance market. The overall aim is to give the Insured greater clarity in terms of the information that must be provided to the Insurer and to create a fairer position if the Insured does not provide the necessary information.

### The Duty of Disclosure

It is important to remember that the general requirement to disclose facts and circumstances that are material to and would influence an insurer’s decision to offer insurance and if so at what terms has not changed. Our strong advice remains that where there is uncertainty as to whether a fact is material that this should be disclosed. The Act does however set out in more detail the type and format of information that needs to be disclosed.

The intention is that relevant disclosure is made before the insurance contract (or cover variation) is incepted and encourages both parties to the contract to work to establish all the material circumstances on which the insurance contract is to be based.

### Knowledge of the Insured

An Insured in addition to continuing to ensure that material facts and circumstances are not misrepresented has an obligation to disclose all material facts and circumstances which they know or ought to know. This includes information that should have been discovered by the Insured based on reasonable research or analysis of data and information available to that Insured.

Businesses do need to consider who within their organisation has appropriate knowledge to ensure that a Fair Presentation of Risk is made.

### Extent and Format of Disclosure

The Act sets out the individuals whose knowledge will be directly attributed to the insured where the insured is not an individual (such as a company). “Senior Management” is defined as individuals who play significant roles in making decisions about how the insureds activities are to be managed and organised. There is in addition a duty to make reasonable enquiries of relevant individuals not falling within this definition.

The extent of information provided should therefore as a minimum be sufficient to put a prudent Insurer on notice that it needs to make further enquiries to reveal those material circumstances. This is sometimes referred to as “signposting”.

The disclosure made by an Insured must be in a manner which is reasonably clear and accessible and presented in a logical and clear fashion. It is not appropriate to include every possible source of information about the Insured or to effectively engage in “data dumping” as a method of addressing the requirement to disclose all material facts.

### The Purpose of this Guide

#### (What does a Fair Presentation of Risk look like?)

The Act introduces a number of fundamental changes and these are explained along with details as to how AXA will be implementing these changes into insurance contracts in a separate guide entitled “AXA’s approach to the Insurance Act”.

Our motivation for the creation of this document is to assist in ensuring that presentations comply with the Duty of Fair Presentation with a clear understanding of risk disclosure by all parties with the result that insurance products purchased respond in the value adding manner anticipated and intended by all parties to the contract.

The Insured is required to undertake a ‘reasonable search’ of available information. This in turn needs to be presented such that the insurer can readily obtain a full and clear picture of the risk that is to be transferred. The general requirement to disclose facts and circumstances about the business, its activities and the specific subject matter to be



insured has not changed. However the Act also requires that the Insurer takes steps to seek clarification on important points where that information provided is unclear. The idea is that all parties work together to make sure the right information is gathered. Cover can then be arranged on the correct terms and there should be no unexpected issues in the event of a claim.

## Reasonable Search

A reasonable search will vary enormously depending on the size and complexity of the business and the Brokers existing knowledge of the business. However it is important that each presentation is based on a consistent process of information gathering and that this is reviewed and signed off by the insured before being presented to the insurer.

The concept of making a fair presentation is not in our view a simple checklist creating Yes or No answers for presentation. An indexing of the contents is useful but the Insured should consider creating a narrative of information that creates an accurate picture of the risk and explain matters which might lead to misunderstanding. This is particularly the case where there are any unusual aspects of the risk.

Where there are any known areas of concern within the business, e.g. the type or severity of loss this should be disclosed. Equally matters such as change of activity or structure of the business should be detailed. Any compliance or quality issues within the business are matters for disclosure.

We also believe that it is extremely important to allow sufficient time for quotations and renewal to perform a reasonable search for information and additionally allow for insurers to seek clarification on important points signposted.

## Proposal Forms

The Duty of Fair Presentation is pre-contract. We will therefore no longer be using Proposal Forms in connection with our general Commercial Account. This does not apply to Financial Lines business where Proposal Forms are obtained as a means of collecting information prior to offering terms. We will retain the use of Proposal Forms for Professional Indemnity and Management Liability covers.

However in certain classes of business we will seek questionnaires where it is felt that a specific level of detail is required and it would be difficult for the Insured to predict exactly what additional information, if any, may be required by an Insurer.

## General Information Required

Many current risk presentations include details of the customer's website and we anticipate that this will continue to be the case. If any information beyond the information provided on the index home page is felt to be relevant specific reference to this should be made in the presentation.

We anticipate that presentations will include relevant facts about the structure of the client's business and their history. In regard to the latter we often find that some important information is omitted from presentations concerning financial circumstances and/or criminal prosecutions in relation to the business or previous activities of persons who play a significant role in the business. It is also important that any special terms or conditions, declinatures etc. by previous insurers is disclosed.

## Property Insurance/Business Interruption

We need to be told the full value at risk and the scope/type of cover required. Underinsurance, whether due to incorrect valuation, the effects of inflation or underestimating the length of time needed to reinstate or recover the full trading activity is a major reason for clients being unable to recover the full amount of the loss.

We expect the presentation to give underwriters a clear description of the type of premises, its construction and occupation. Also required is an explanation of processes carried out at the premises and details of the machinery used. We also need to understand what fire or intruder protections are installed.

A reasonable search should include known information about potential risks arising from subsidence and flood risks.

## Special or Unusual facts

A Fair Presentation will also need to include special or unusual facts about the risk. We find that the omission of some of the following features can lead to a misunderstanding of the risk to be insured and therefore create problems in the event of a claim.

- Modern methods of construction including composite panelling, cross laminated timber or if any timber framed construction. Many new hotels are constructed of such materials.
- Are there any processes within the business that are non-standard e.g. upholstery repair within a clothing warehouse.



## Employers/Public/Products Liability

We need to be given a realistic estimate of wage roll splits between various non-manual and manual activities both at and away from the insureds own premises for the coming year. Similarly, projected turnover for the coming year is required. Where there are a range of different business activities or products sold a split of the turnover helps to give a better picture for rating purposes. We often find that out of date or previous estimates have been used and it is important that a thorough examination of the budgets for the coming year, together with any potential sales opportunities that will increase the size of the business is detailed. On the other hand we want to know about matters within the knowledge of the management that might significantly shrink the business. From a historic perspective we should be advised of the growth or reduction in wages and turnover and whether the business activity or the structure of the business has changed. A clear description of the business activity is required including details of what employees physically do through the process from design or sales planning through to delivery of finished goods or work. This should also include an analysis of the major work hazards to which they are exposed and methods to prevent injury or disease arising.

In terms of products we need to have a detailed understanding of their applications and function. Details of the major customers will aid understanding of the risk as will a geographical distribution of imports and exports.

Quality standards are important but a reasonable search will also identify where the client has been particularly vigilant about compliance matters or had to address areas relating to quality standard issues within the business.

### Special or Unusual facts

From a liability perspective we find that the omission of some of the following features can lead to a misunderstanding of the risk to be insured and therefore create problems in the event of a claim.

- Type of work undertaken by independent sub-contractors
- Work in higher risk areas
- Environmental issues that the client has to control
- Previous product safety issues and product recalls
- Past or future construction contracts exceeding 12 months duration.

## Commercial Motor

The schedule of vehicles should clearly state the make, model and registration number, engine size, year of manufacture and current value.

### Special or unusual facts

A Fair Presentation will also need to include special or unusual facts about the risk, i.e. matters that distinguish the client from others in their fields of activity. The following features are often overlooked.

- Carriage of hazardous goods
- Tool of trade attachments
- Notifiable DVLA medical conditions
- Driver convictions for serious offences
- Driver age profile and allocated vehicles.

**This document is a guide designed to provide assistance however it can never be inclusive of all situations and circumstances that may apply. The Insured ultimately will still retain a requirement to comply with their duty to provide a Fair Presentation of Risk as stipulated in the Act.**

## AXA Vantage

AXA can assist clients to comply with their responsibilities. AXA has specialist knowledge within a number of sectors and these are marketed under our Vantage banner. The Vantage approach is split into 9 sectors. For the purpose of this guide we have chosen 3 sectors and taken an example of some Trade specific considerations for one trade in each of those sectors. These are set out below. Our underwriters will be pleased to discuss our approach for any of the Trades within our appetite.

### Construction Industry – Building Contractors example of specific considerations:

- Erection of buildings of non-standard construction
- Own Construction Management, e.g. using project managers rather than engaging a single Management Contractor
- Basement re-modelling
- Steel Frame erection of taller buildings
- Underpinning work
- Use of tower cranes or exceptionally high value plant
- Details of how labour is provided, including an understanding of how subcontractors are employed and managed
- An understanding of how Contract Sites and Plant are secured.



### Leisure Industry – Hotels

- Any provision of accommodation for students or residents for whom payments are made by the DSS or local authority
- Any provision for any outdoor pursuits that are offered (e.g. golf, outdoor children’s play area, paintball, clay pigeon shooting, archery, off road vehicles)
- Any beauty or other treatments offered.

### Motor Trade – Vehicle sales

- The split in turnover between new and second hand vehicle sales including whether there is any provision to facilitate pre-delivery inspections, servicing, repairs or any after-sales warranty related repairs
- General profile and mix of vehicles sold including average and maximum values including any vehicle franchises held
- Other business activities or services such as vehicle collection or delivery, breakdown recovery services and/or fuel sales
- Details of any self-drive vehicle hire, lease or contract hire activities and any vehicles used for such purposes, whether to be insured or not
- Provision of any services that include work away from main premises, other than collection and delivery e.g. specialist recovery including police contract services, mobile servicing
- Full details of all trade plates and vehicles licensed for road use including any that are privately owned by directors and spouses or civil partners of directors, principals or partners of the business
- Driving restrictions required, i.e. any employee for business use but SDP restricted to named drivers only
- Current and historical detail relating to the number of vehicles and drivers including any non-employee or SDP young drivers including their relationship to the business and vehicle allocation
- Information regarding employees that might influence the judgement of underwriter on the motor insurance risk e.g. age/experience profile, convictions
- Any provision of courtesy vehicles to customers whose vehicles are with the insured for repair including the number/type of vehicles and the basis of cover required
- Any accompanied only or unaccompanied vehicle demonstrator requirements to help facilitate vehicle sales to their prospective customers
- Forecourt vehicle management and security controls including vehicle key protections and detail around how vehicles are stored when premises are closed for business
- Any association with vehicle racing, rallying or other motor sports including any third party preparation or support. Racing by directors, partners, family members involving support from the business or active sponsorship with service, support or vehicle ownership.

Hopefully you will find this document helpful and shines some light on the issue of Fair Presentation.

It can never be exhaustive in scope or in the examples given but aims to give clarification on this issue.

As the Act states the Duty of Fair Presentation ultimately lies with the Insured and the Broker acting on their behalf. The duty to disclose any material factor that may affect a prudent underwriter’s judgement still stands. The Act helps codify this into duties of both Insurer and Insured as well bringing this forward to before the contract is formed and finally providing clarity over the remedies that should apply in the event of breach.