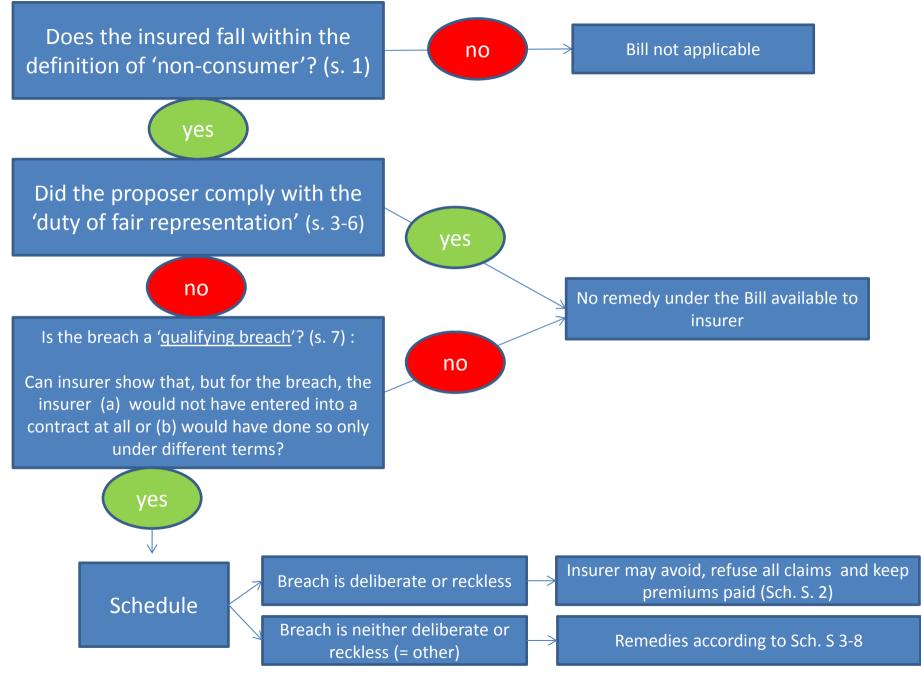
Duty of Fair Presentation

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Fair presentation of the risk

Disclosure of every <u>material</u> <u>circumstance</u> which the proposer <u>knows or ought to know</u>,

Or giving the insurer sufficient information in relation to material circumstances to put a prudent insurer on notice that it needs to make further inquiries

Disclosure in a manner which would be reasonably clear and accessible to a prudent insurer

Every <u>material representation</u> as to something the proposer <u>knows</u> or ought to know is <u>substantially</u> <u>correct</u>, or, if as to something else (eg., expectations, beliefs) is made in good faith

Breach of duty by proposer

<u>Material</u>: if it would influence the judgment of a prudent insurer in determing whether to take the risk and if so, on what terms (S. 4 (5))

<u>Circumstance</u>: including any communication made to or information received by, the proposer (S. 4 (4)). Other examples: special or unusual facts relating to the risk, particular concerns which led the proposer to seek cover, anything which those involved in the class of insurance and field of activity would generally understand as something that should be dealt with in a fair presentation (S. 4 (6))

<u>Substantially correct</u>: a material representation is substantially correct if a prudent insurer would not consider the difference between representation and what is actually correct to be material (S. 4 (7))

Knows:

- If proposer is an individual: knowledge includes what is known to one or more of the individuals who are responsible for the proposer's insurance (S. 5 (2))
- If proposer in not an individual: knowledge only of individuals who are part of senior management or who are responsible for the proposer's insurance (S. 5 (3))

<u>Ought to know</u>: a proposer ought to know what would have been revealed by reasonable search of information available to the proposes (S. 5 (4))

Can insurer show that, but for the breach, the insurer (a) would not have entered into a contract at all or (b) would have done so only under different terms? (S. 7)

No remedy for breach of duty of fair presentation

The breach of duty of fair presentation is a qualifying breach

Did the proposer omit to disclose something relating circumstances which (1) diminish the risk; (2) (3) the insurer knew, ought reasonably to have known, things the insurer is presumed to have known it, waived the right to know; (4) or which Did the insurer inquire into these circumstances? are covered by an express or implied warranty? (S. 6 (1)) • the insurer knows something only if it is known to one or more of the individuals who participate on behalf of the insurer in the underwriting decision (S. 6 (2)) • the insurer ought reasonably to have known something only if (a) an employee/agent knows it and ought reasonably to have passed on the relevant information to an individual who participates on behalf of the insurer in the underwriting decision (S. 6(3) or (b) if the relevant information is readily available to such individual (S. 6 (3)) Things the insurer is presumed to know: things (= information, knowledge, facts, rumours, expectations, beliefs) of common knowledge, things which an insurer offering this type of insurance to this type of proposer would reasonably be expected to know in the ordinary course of business (S. 6 (4), (5)) No remedy for breach of duty of fair Can insurer show that, but for the breach, presentation the insurer (a) would not have entered into a contract at all or (b) would have The breach of duty of done so only under different terms? (S. 7) fair presentation is a qualifying breach

Qualifying breach of duty of fair presentation

Deliberate or reckless

Qualifying breach is deliberate or reckless if the proposer:

- Knew that it was in breach or
- Did not care whether he was in breach (S. 7 (5))

The insurer has to show that the qualifying breach is deliberate or reckless (S. 7 (6))

Insurer may avoid, refuse all claims and keep paid premium (Sch. 2)

