International Comparative Legal Guides

# Insurance & Reinsurance 2026

A practical cross-border resource to inform legal minds

**15th Edition**

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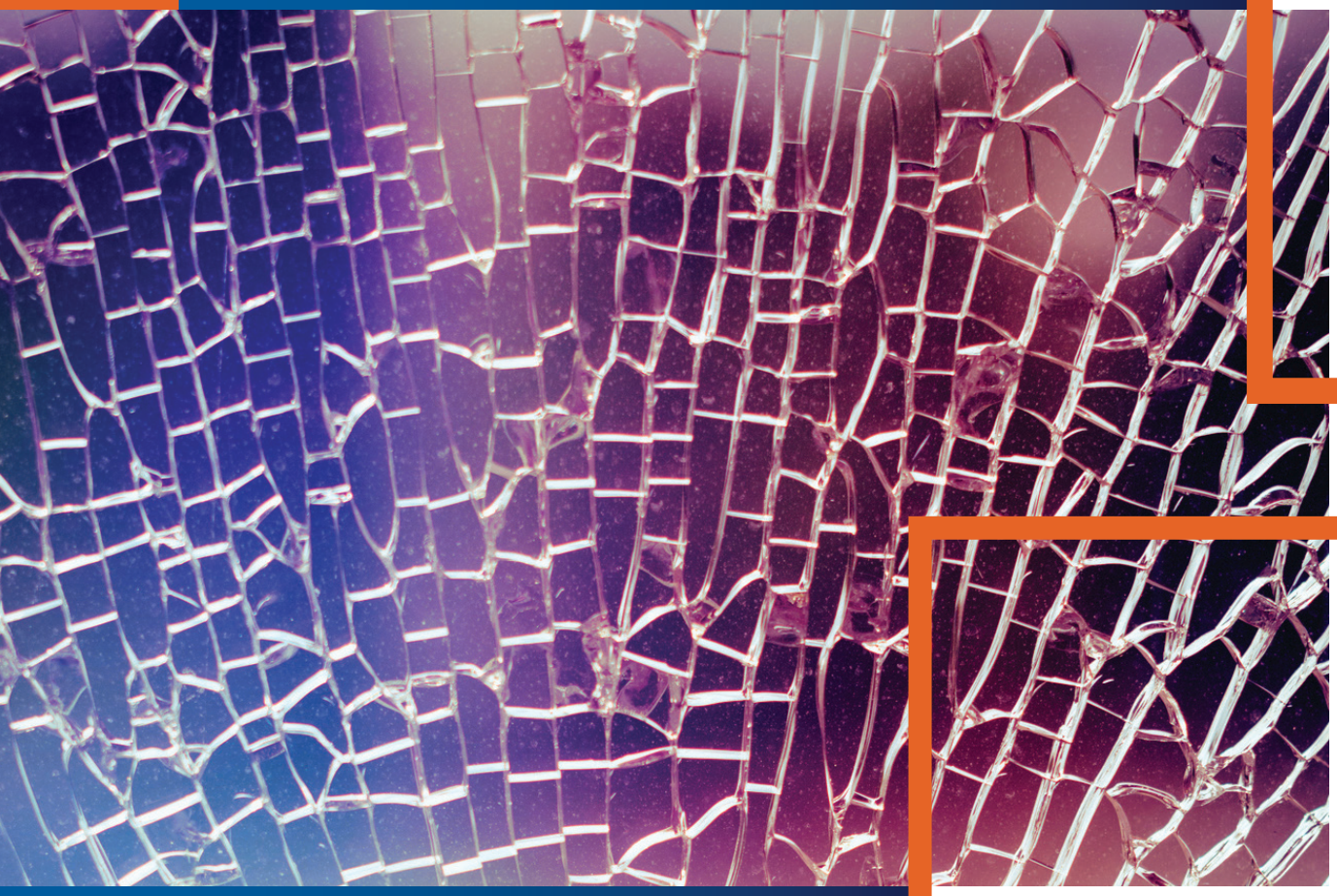

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# Industry Chapter



# Expert Analysis Chapter



# Q&A Chapters

# Q&A Chapters Continued



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# England & Wales


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## 1 Regulatory

### 1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The regulation and supervision of insurance companies is the responsibility of:

- the Prudential Regulatory Authority (**PRA**); and
- the Financial Conduct Authority (**FCA**).

The PRA is responsible for the prudential regulation and supervision of insurers, deposit-takers and major investment firms in the UK. The FCA is responsible for the conduct of business regulation for all financial institutions (as well as the prudential regulation of companies not regulated by the PRA) and maintains a single consolidated register of all FCA- and PRA-authorised firms and approved individuals, the Financial Services Register.

(Re)insurers and Lloyd's entities are 'dual-regulated' firms. They are authorised and prudentially regulated and supervised by the PRA, as well as being regulated by the FCA for conduct purposes. Insurance intermediaries (i.e., brokers and agents) are regulated solely by the FCA.

### 1.2 What are the key requirements/procedures for setting up a new insurance (or reinsurance) company?

An authorisation application must be made to the appropriate regulator (PRA or FCA) for permission to carry out 'regulated activities' under Part 4A of the Financial Services and Markets Act 2000 (**FSMA**), unless an exemption applies. The key insurance-related regulated activities are the 'effecting' (i.e., entering into) and 'carrying out' (i.e., performing) of contracts of insurance.

The PRA assesses applicants from a prudential perspective, and the FCA does so from a conduct perspective. In either case, the regulator will assess whether, if authorised, the applicant would meet the relevant 'Threshold Conditions' at authorisation and on a continuing basis, including minimum requirements as to: legal status; location of offices; and suitability.

Insurers must be able to demonstrate adequate financial resources pursuant to the capital requirements set out in the PRA Rulebook. The UK's prudential regime, referred to as Solvency UK, is still largely aligned with the EU's Solvency II regime, though reforms have been made including: changes to the financial thresholds, internal model standards, the approach to capital add-ons, group capital requirements, third-country branches, reporting and disclosure rules; the introduction of a mobilisation phase for new insurers; and changes to the matching adjustment for long-term liabilities.

Individuals carrying out certain functions in relation to a (re)insurer must also be approved by the appropriate regulator or, in some cases, both regulators, in accordance with the Senior Managers & Certification Regime (**SM&CR**). Functions covered by the SM&CR include the chief executive, other senior executive functions, the chair of the board, and the head of the actuarial function.

### 1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

Under Section 19 of the FSMA, it is an offence for a firm to carry out a regulated activity in the UK without authorisation. It is possible for a foreign (re)insurer to cover a risk in the UK without authorisation, provided that no regulated activity is carried out from within the UK.

If a foreign (re)insurer does wish to carry on insurance activities in the UK (either directly or through an agent), it must apply for authorisation in the UK by either forming a UK subsidiary or establishing a branch and satisfying the relevant financial, operational and administrative requirements.

Since 31 December 2024, the requirement for UK branches of foreign insurers to calculate branch capital requirements and hold sufficient assets to cover them has been removed. Firms are still required to comply with their capital requirements in their home state and notionally allocate sufficient capital to the branch.

Foreign insurers operating outside the UK should, however, be mindful that it is an offence for a person to communicate an invitation or inducement to enter into a contract of insurance in the course of business unless they are authorised or such communication is approved by an authorised person (the 'Financial Promotion Restriction'). This restriction applies to any financial promotion capable of having an effect in the UK, including communications originating outside the UK. There are, however, relevant exemptions for general insurance, reinsurance, large risks insurance and certain contracts of long-term insurance.

Swiss general insurers will benefit from cross-border access to the UK market in respect of wholesale (re)insurance activities following the Berne Financial Services Agreement. Gibraltar-based insurers continue to have access to the UK market under post-Brexit transitional arrangements, pending finalisation of a new Gibraltar authorisation regime.

### 1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

There is some protection for consumer insurance contracts.

For example, terms which are unfair for the purposes of the Unfair Terms in Consumer Contracts Regulations 1999 will be deemed void, and further restrictions were introduced by the Consumer Rights Act 2015 – for example, exclusions must be transparent and prominent, and cancellation fees should not be disproportionately high.

For non-consumer insurance contracts, the insured is under a duty of fair presentation implied by the Insurance Act 2015. For consumer insurance contracts, the duty on the consumer is only to take reasonable care not to make a misrepresentation to the insurer (under the Consumer Insurance (Disclosure and Representations) Act 2012). In both cases, the parties cannot contract out of certain of the provisions (or, at least, cannot do so in certain circumstances).

The Insurance Act 2015 also implies a term into every insurance contract that the insurer will pay valid claims within a reasonable time. It is possible to contract out of this provision, to a limited degree, in non-consumer contracts.

In addition, the FCA Handbook contains:

- the Insurance Conduct of Business Sourcebook, which details the information that must be provided to consumers in writing before the policy is concluded and contains rules on the inclusion of cancellation rights and additional rules for specific types of insurance products (including renewal pricing rules for home and motor insurance);
- the Product Intervention and Product Governance Sourcebook, which sets out requirements for a product approval process for insurance products and ongoing review (including identifying a target market, product testing, considering whether a product provides fair value, etc.); and
- the Consumer Duty, which sets expectations for the standard of care that firms must give to retail customers.

It has been suggested that a stipulation in an insurance policy may be so capricious or unreasonable as to be unenforceable. However, subject to our comments above on the issue of fairness in consumer insurance contracts, this would be inconsistent with the basic English concept of freedom of contract. A condition in an insurance policy which is contrary to public policy is unenforceable, and a stipulation which is impossible to perform is a nullity.

### 1.5 Are companies permitted to indemnify directors and officers under local company law?

Pursuant to the Companies Act 2006, a company may not indemnify a director against any liability arising from negligence, default, breach of duty or breach of trust in relation to the company of which (s)he is a director. However, a company is permitted to take out and maintain insurance against such liabilities.

A company may indemnify directors against: liabilities incurred to third parties, including in respect of proceedings brought by third parties (covering both legal costs and damages) and may take out 'Directors & Officers' Insurance to this end; and liabilities incurred in connection with the director's role as trustee of an occupational pension scheme. The only exceptions are criminal penalties, penalties imposed by regulatory bodies and liabilities incurred in the unsuccessful defence of criminal or civil proceedings (or unsuccessful applications for relief from liability).

### 1.6 Are there any forms of compulsory insurance?

In the UK, there is a legal requirement to purchase insurance in certain circumstances. The most well known of these are employers' liability and motor insurance (third-party liability) policies. In addition, there are several sector-specific compulsory insurances (e.g. shipping, aviation, etc.), or which may be required as a condition of membership of industry organisations (e.g. those providing childcare, dentists, estate agents, notaries, optometrists and opticians, osteopaths, solicitors, etc.). Authorised UK insurance intermediaries, for example, are required to hold professional indemnity insurance in accordance with the FCA Handbook.

## 2 (Re)insurance Claims

### 2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

English law has traditionally been perceived to be fairly pro-insurer, since courts will enforce the bargain between the parties. The law relating to non-disclosure/misrepresentation, breach of conditions precedent and breach of warranties was generally felt to be advantageous to insurers.

There is, however, some protection for consumers by virtue of the Unfair Terms in Consumer Contracts Regulations 1999 and the Consumer Rights Act 2015 (see question 1.4 above).

Additionally, in response to criticism that the law was weighted too heavily in favour of insurers, reform took place in the form of two Acts of Parliament: the Consumer Insurance (Disclosure and Representations) Act 2012; and the Insurance Act 2015.

The 2012 Act replaced the duty of the consumer to volunteer material information with a duty to take reasonable care not to make a misrepresentation during pre-contractual negotiations and altered the remedies available for material misrepresentations by consumers.

The Insurance Act 2015 brought in reforms in respect of a business insured's duty to disclose all material facts and altered the law relating to warranties and conditions precedent, to redress the perceived advantage to insurers. Rules concerning consequential damages in respect of late payment of claims came into force in May 2017 (see question 1.4 above).

### 2.2 Can a third party bring a direct action against an insurer?

The Third Parties (Rights against Insurers) Act 2010 simplifies the procedure by which a third party who has suffered loss as a result of the actions of an insolvent insured can claim against the insurer and improves the third party's rights to access information about the insurance policy. The 2010 Act does not apply to reinsurance contracts.

### 2.3 Can an insured bring a direct action against a reinsurer?

There is no privity of contract between an insured and a reinsurer. Accordingly, if the reinsured becomes insolvent, the insured has no direct cause of action against the reinsurer. However, some reinsurance contracts contain clauses which purport to confer a benefit on the insured, and such clauses are now enforceable under the Contracts (Rights of Third Parties) Act 1999, subject to the rules of preference in insolvency. In such cases, the insured can enforce the contract against the reinsurer.

**2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?**

The remedies for misrepresentation and non-disclosure changed for consumer insureds after the implementation of the Consumer Insurance (Disclosure and Representations) Act 2012 (see question 2.1 above). Broadly, if a consumer makes a careless misrepresentation, the insurer's remedy will be based on what it would have done had the consumer not breached his/her duty. That may result in the insurer being able to avoid the contract or to impose different terms or to reduce proportionately the payment to the consumer (because a higher premium would have been charged). If a consumer makes a reckless or deliberate misrepresentation, the insurer can avoid the policy and keep the premium '*except to the extent (if any) that it would be unfair to the consumer*' to retain it.

For non-consumer insureds, the Insurance Act 2015 introduced materially the same changes to remedies as those already in place for consumer insureds. Insurers can contract out of the changes for non-consumer insureds (subject to certain conditions), but not for consumer insureds.

**2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?**

There is a positive duty on a non-consumer insured (but not a consumer insured) to disclose all matters material to a risk irrespective of whether the insurer has specifically asked. The non-consumer insured's duty includes knowledge of material facts which they ought to know because they would have been revealed by a reasonable search of information available to the insured. Information held by any other person with relevant information (even those outside the company, such as agents) will be imputed to the insured if a reasonable search would have revealed that information (although there is an exception for confidential information acquired by the agent through a business relationship with someone other than the insured).

However, the insured is not required to disclose facts which: diminish the risk; were known, or ought to have been known, or are presumed to be known by the insurers; were waived by the insurers; or were covered by an express policy term.

Consumer insureds do not have a duty to volunteer material information; although, if a consumer insured chooses to do so, they must take reasonable care.

**2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?**

There is an automatic right of subrogation which applies to all contracts of insurance which are contracts of indemnity, once the insurer has fully indemnified the insured. This doctrine of subrogation does not apply to contracts of life insurance and personal accident insurance. The insurer acquires the right to use the insured's name to proceed against any third party responsible for the loss and claim from the insured any sums received by way of compensation from that third party.

The right of subrogation may be excluded or amended by the terms of the policy.

## 3 Litigation – Overview

**3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?**

Claims for £100,000 or less (or personal injury claims of less than £50,000) must be commenced in a County Court (except for claims relating to media and communications work), and such claims will generally be transferred to a County Court if they are commenced in the High Court unless there is reason to believe it should be dealt with by a High Court judge. Relevant factors include: the financial value of the claim; the amount in dispute; the complexity of the facts; legal issues, remedies or procedures involved; and the importance of the outcome of the claim to the public in general.

An insurance dispute is a 'commercial claim' and is therefore likely to be brought in the Commercial Court, a specialist court in the King's Bench Division of the High Court.

There is no right to a hearing before a jury, except in (rare) cases where an allegation of fraud has been made against the party making the application.

**3.2 What, if any, court fees are payable in order to commence a commercial insurance dispute?**

Claims between £10,000 and £200,000 incur a court fee of five per cent of the amount claimed, while any claim over £200,000, or where the claimant does not indicate the value of the claim, incurs a fixed court fee of £10,000.

**3.3 How long does a commercial case commonly take to bring to court once it has been initiated?**

It commonly takes 12 to 24 months, depending on the complexity of the case and the number of witnesses involved, among other factors.

Two pilot schemes, the Shorter Trials Scheme and the Flexible Trials Scheme, were introduced in the Business and Property Courts and became permanent on 1 October 2018. The aim of both schemes is to achieve shorter and earlier trials for business-related litigation, at a reasonable and proportionate cost. Under the Shorter Trials Scheme, cases are managed by docketed judges with the aim of reaching trial within approximately 10 months of the issue of proceedings, and judgment within six weeks thereafter. The Flexible Trials Scheme is designed to encourage parties to limit disclosure and to confine oral evidence at trial to the minimum necessary for the fair resolution of their disputes.

## 4 Litigation – Procedure

**4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?**

Most commonly, the courts order standard or narrow search-based disclosure, although in non-personal injury multi-track cases they have broader powers to make orders from a 'menu' of disclosure options. Standard/narrow search-based disclosure requires a party to carry out a reasonable and proportionate

search for documents and to disclose all the documents on which it relies, or which adversely affect its own case, adversely affect another party's case or support another party's case.

The parties are subject to an ongoing duty to preserve disclosable documents. The duty of disclosure is limited to documents that are, or have been, in a party's 'control'. This includes documents for which a party has a right to call. The courts also have the power to order a non-party to disclose documents in its possession.

Disclosure usually takes place after statements of a case have been served. However, before proceedings have commenced, disclosure may be ordered between likely parties to the proceedings and, in very limited circumstances, against non-parties.

Separate disclosure rules apply in the Business and Property Courts (which include the Commercial Court and the Technology and Construction Court), with limited exceptions. Under these rules, 'Initial Disclosure' of certain key documents is made with the first statements of case. In the main disclosure exercise, known as 'Extended Disclosure', standard disclosure is not intended to be the default position. Rather, the court can apply a different 'Model' of disclosure to each issue, although 'known adverse documents' must be disclosed in any event. The five available Models range from no further disclosure to disclosure of documents which may lead to a train of inquiry, and the disclosure of 'narrative' documents may also be ordered if they provide background or context. A streamlined version of these rules applies to 'Less Complex' cases, which are generally those worth £1m or less.

### 4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

Parties are entitled to withhold privileged documents from production in court proceedings. Legal advice privilege attaches to communications between a client and their lawyer for the dominant purpose of giving and receiving legal advice. Litigation privilege attaches to communications between client and lawyer, or between either of them and a third party, for the dominant purpose of giving or receiving legal advice or collecting evidence for use in litigation, while litigation is pending or in the reasonable contemplation of the communicating parties.

Written or oral communications between the parties which constitute genuine attempts to resolve the dispute attract 'without prejudice' privilege, regardless of whether the documents are marked 'without prejudice', although this rule is not absolute and can be overridden where the justice of the case requires.

### 4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

The court has the power to issue a witness summons requiring a witness to attend court to give evidence or produce documents on such a date as the court may direct. If a witness fails to comply, they risk being found in contempt of court.

A witness abroad cannot be compelled to attend a trial, and so in those cases an order for a deposition may be made. Please see further question 4.4 below.

### 4.4 Is evidence from witnesses allowed even if they are not present?

It may be possible to obtain an order for the examination of a witness under deposition if a witness cannot attend trial. This involves the witness giving evidence to the examiner as if the examination were the trial itself. There is, therefore, full opportunity for cross-examination. The evidence is then reduced to writing and the document is received into evidence at the trial.

Where a witness is resident or located in a state which is a member of the Hague Evidence Convention (which includes the UK and all EU Member States except Austria, Belgium and Ireland), the court may, upon application by a party, issue a letter of request to the relevant foreign court. The foreign court may refuse the request only in very limited circumstances, such as when the witness exercises a right not to give evidence that exists under the law of either the English courts or the relevant foreign court. Where a witness is resident or located in a state which is not a party to the Hague Evidence Convention, or any other relevant treaty, a letter of request must be submitted and delivered through diplomatic channels.

Alternatively, it is possible to rely on a witness statement without calling the witness in person. Generally, the witness must be called to give oral evidence, unless the court orders otherwise, or the statement is entered as hearsay evidence. If the statement is to be entered as hearsay evidence, all other parties to the proceedings must be notified of this. Notice is given by serving a witness statement, informing the other parties that the witness will not be called and providing reasons for this. However, the party against whom the evidence in the statement is adduced can apply to the court for permission to call the statement-maker for cross-examination.

The court has the power to allow a witness to give evidence through a video link or by other means (provided the local country allows this).

### 4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

The court's permission is required to call an expert witness. The expert's primary duty is to the court, and this overrides any obligation to the instructing party. The expert's opinion must, therefore, remain independent of the instructing party. The court has the power to restrict expert evidence to what is reasonably required to resolve the proceedings, including to direct that evidence be given by a single joint expert where the parties wish to submit expert evidence on a particular issue. It is, however, far more common to have party-appointed experts.

### 4.6 What sort of interim remedies are available from the courts?

The court has the power to order a range of interim remedies if certain conditions are satisfied, including:

- An order in favour of pre-action disclosure before a claim has been made if the matter is urgent, or it is otherwise necessary to make the order in the interests of justice.
- An injunction requiring a party to perform, or to refrain from performing, a specific act – for example, to prevent a claimant from pursuing legal proceedings (an 'anti-suit injunction') or to restrain a breach of contract. If an

injunction is disobeyed, that party will be in contempt of court.

- A freezing injunction if there is an objectively real risk of dissipation of assets. The remedy is *in personam*, i.e., the applicant is not provided with security for their claim and has no proprietary rights in the assets in question.
- A search order in respect of documents if there is (among other things) a real possibility that the defendants will destroy the relevant evidence.
- An order for the preservation or delivery up of property, pursuant to Rule 25.1 of the Civil Procedure Rules 1998. An application can be made at any time and the procedure to be used is the same as for an injunction.
- A *Norwich Pharmacal* order, which requires a respondent to disclose certain documents or information to the applicant. The respondent must (broadly) be either involved or mixed up in a wrongdoing, whether innocently or not, and the order is required to enable an action to be brought against the ultimate wrongdoer.

### 4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

Permission to appeal must be obtained either from the lower court at the hearing at which the decision to be appealed was made, or from the appeal court itself. Permission will be given only where the court considers that the appeal would have a real prospect of success, or there is some other compelling reason why the appeal should be heard. The appeal court will refuse to allow an appeal unless it considers that the decision of the lower court was wrong, or the decision of the lower court was unjust due to a serious procedural or other irregularity. The appeal is generally limited to a review of the lower decision and is not a re-hearing.

The Court of Appeal has jurisdiction to hear and determine appeals from any judgment or order of the High Court. If an application for permission to appeal made in the High Court is refused, a party can still apply to the Court of Appeal. In very limited circumstances, there may be an appeal directly from the High Court to the Supreme Court.

A party may apply for leave to appeal a Court of Appeal decision to the Supreme Court. An application must first be made to the Court of Appeal and an application may be made to the Supreme Court only after the Court of Appeal has refused to grant permission to appeal. If the application is not made at the judgment hearing, a written submission must be made within 28 days of the date of the order or judgment given by the Court of Appeal. Permission to appeal will be refused by the Supreme Court if it does not raise an arguable point of law of general public importance.

### 4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

When a court awards damages, it also has discretion to award simple interest for such periods and at such rates as it sees fit, pursuant to Section 35A of the Senior Courts Act 1981 and Section 69 of the County Courts Act 1984. The court's discretion is limited to awards of interest starting no earlier than the day on which the cause of action arose and ending no later than judgment or sooner payment. The court's powers do not override any contractual provision on interest or interest due under the Late Payment of Commercial Debts (Interest) Act 1998.

At the point of judgment, interest ceases to run on the principal sum but begins to run on the judgment debt (currently eight per cent) until it is satisfied. The court has flexibility in determining the periods by reference to which interest on awards is to be calculated and paid and in relation to the rate of interest on the judgment debt if in a foreign currency.

### 4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

The starting point is that the loser pays the winner's costs. However, the court has complete discretion as to costs, except in limited specific circumstances when they follow automatically. In exercising its discretion, the court should have regard to factors such as the conduct of the parties and the extent to which the parties have followed any pre-action protocol. The court may award a percentage of costs to reflect partial success, or costs may be awarded each way.

Special rules apply where an offer to settle is made in accordance with Part 36 of the Civil Procedure Rules 1998. A party can make and accept a Part 36 offer before or after litigation has commenced. Broadly, if a claimant declines to accept a defendant's Part 36 offer but does not do better than the offer at trial, additional costs consequences will usually be ordered against the claimant. Similarly, if a defendant declines to accept a claimant's Part 36 offer and the claimant subsequently obtains a judgment which is at least as advantageous to the claimant as its offer, additional costs consequences will usually be ordered against the defendant.

### 4.10 Can the courts compel the parties to mediate disputes, or engage with other forms of Alternative Dispute Resolution? If so, do they exercise such powers?

The courts will generally enforce a clear and express agreement to mediate and will grant a stay of litigation proceedings to ensure that such mediation takes place. If there is no enforceable agreement to mediate, the courts nevertheless have the power to compel the parties to mediate or engage with other forms of Alternative Dispute Resolution (**ADR**). However, parties cannot be forced to settle at ADR, although costs consequences might be awarded if a party unreasonably fails to participate in ADR (or comply with an order to take part in ADR).

### 4.11 If a party refuses a request to mediate (or engage with other forms of Alternative Dispute Resolution), what consequences may follow?

If a party unreasonably refuses to mediate (even if no order to take part in ADR has been made), the court can order costs sanctions, even if that party is successful. The leading case is *Halsey v Milton Keynes General NHS Trust* (2004). The Court of Appeal held that an unreasonable refusal to mediate could result in a costs sanction and set out a non-exhaustive list of factors which might lead to a conclusion that a party had unreasonably refused to mediate.

## 5 Arbitration

**5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?**

The English courts support arbitration as a dispute resolution mechanism. Under the Arbitration Act 1996, the role of the court is supportive rather than interventionist. The general approach of the courts is of intervention in arbitration only where the tribunal is unable to act effectively. The cases which have involved significant court intervention tend to have been *ad hoc* arbitrations in which the parties are unwilling or unable to agree a basic procedure for arbitration.

Pursuant to the Arbitration Act 1996, the court can aid arbitration by securing the attendance of witnesses, and has the power to award interim relief in certain situations (see question 5.4 below). Otherwise, application to the court is permitted only if the other parties consent in writing or the tribunal allows it.

The court also has the power to determine preliminary issues of law, remove arbitrators or fill a vacancy, as well as hear appeals from the arbitrators' award.

**5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?**

A right to arbitrate will arise only if there is an arbitration agreement. However, there is no specific form of words required to ensure that an arbitration clause will be enforceable. Arbitration clauses will therefore be construed in accordance with common law principles.

**5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?**

Express arbitration clauses are enforceable, but must use clear, unambiguous and mandatory language to avoid giving rise to potential disputes. It is not necessary for the parties to agree to arbitration after a dispute has arisen, and it is common for arbitration agreements to be concluded as part of the original contract.

A court will not stay litigation proceedings in favour of arbitration if it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed. Under the doctrine of separability, an arbitration clause is regarded as a separate agreement, independent of the rest of the contract. Accordingly, the invalidity of the contract as a whole will not necessarily result in the arbitration clause also being invalid.

**5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.**

The court has the same powers in supporting arbitral proceedings that it has in court proceedings and can make orders for the taking of evidence, the preservation of evidence, ordering the inspection and preservation of property, the granting of an interim injunction and the appointment of a receiver (Section 44(1) of the Arbitration Act 1996). The Arbitration Act 2025 expressly states that the court can exercise these powers in relation to third parties as well. In practice, however, the English courts are reluctant to intervene in arbitral proceedings (see question 5.1 above).

The courts are not empowered to grant pre-action disclosure in respect of disputes which are to be referred to arbitration.

**5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?**

Pursuant to Section 52 of the Arbitration Act 1996, arbitration awards must contain reasons for the award unless it is an agreed award, or the parties have agreed to dispense with reasons.

If the award does not include reasons, or the reasons are ambiguous, the parties can apply to correct the award. Under the Arbitration Act 1996, the parties are free to agree on the power of the tribunal to correct the award or make an additional award. Applications must be made within 28 days of the date of the award, or within any longer period which the parties may agree. If the tribunal dismisses the application, the applicant may consider an application to the court. If the tribunal grants the application, it will issue corrections or clarifications to the award, and these will take effect as part of the original award.

**5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?**

Pursuant to the Arbitration Act 1996, a party may appeal an award on the basis that the tribunal lacked substantive jurisdiction; there was a serious irregularity affecting the tribunal, the proceedings or the award; or, if the parties have not agreed to waive the right to do so, on a question of English law.

Any challenge or appeal must be made within 28 days of the date of the award, although this time limit may be extended in exceptional circumstances.

It is generally difficult to challenge an award on the basis that the tribunal exceeded its jurisdiction, and successful applications tend to be limited to situations where there was no valid arbitration clause at all. Similarly, it is generally difficult to satisfy the test for serious irregularity.

Under the Arbitration Act 2025, if a tribunal has ruled on its own jurisdiction and a party has taken part in the arbitral proceedings then (unless otherwise in the interests of justice) the court will not hear grounds of objection or new evidence, unless such ground or evidence could not have been put before the tribunal through acting with reasonable diligence, or rehear evidence.

## 6 Hot Topics

**6.1 In your opinion, are there any current hot topics which relate to insurance and reinsurance issues in your jurisdiction? If so, please set out briefly any which are of particular note.**

The growing litigation funding industry in the UK impacts (re)insurers in various ways: for example, there may be a tension over who controls the conduct of litigation where a

party benefits from both funding and insurance. There has been a considerable amount of focus on litigation funding recently in England. The Civil Justice Council (**CJC**) finalised its review into this topic in June 2025 and supported the introduction of legislation to help clarify the enforceability of litigation funding agreements. It is also proposed that the Ministry of Justice, rather than the FCA, should regulate this area. The CJC also recommended a general 'light touch' approach to regulation. Although legislation was expected shortly after the report came out, a further government review has since been announced and it currently remains unclear if and when the government will act on this issue.

## Note

This chapter aims to address the law as at 31 December 2025. No liability is accepted by the authors for any errors or omissions (whether negligent or not) that this chapter may contain. This chapter is for information purposes only and is not intended as legal advice. Professional advice should always be obtained before applying any information to particular circumstances.

## Acknowledgments

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Jon has been recommended in *The Legal 500* in the field of insurance and reinsurance. He has particular expertise in the Bermuda Form (usually involving New York substantive law and English or Bermudian arbitration) and has been involved with numerous cases in this field, including representing reinsurers successfully in the first Bermuda Form case to come before the English courts on issues of policy construction. Jon acted for insurers and reinsurers in respect of various COVID-19 claims.

Jon is a CEDR-accredited Mediator and has written and spoken extensively on the subject, and has participated in numerous mediations. He has also completed the CEDR Certificate in Advanced Negotiation and Leadership.

**Recent Experience**

Acts for Lloyd's Syndicates and London and international (re)insurance companies on a wide range of issues, including personal accident, accident & health, travel, product liability, property/casualty and reinsurance.

Involved in advising with respect to competition issues relating to the aviation and aerospace insurance and reinsurance market.

Has acted recently on successful reinsurance arbitration concerning captive reinsurance.

Has been involved in a number of large claims subject to the 'Bermuda Form' wording. Most of these cases are arbitrated, but the case of *AZICO v XL Insurance (Bermuda) Ltd. and ACE Bermuda Insurance Ltd* was heard in the English Commercial Court and Court of Appeal ([2013] EWHC 349 (Comm) and [2013] EWCA Civ 1660).

Contributor to 'Insurance Disputes' (edited by Mance J) in respect of subrogation.

Lectures on insurance topics, including the Insurance Act 2015 and related changes to insurance law, subrogation, the development of excess of loss reinsurance, the 'Bermuda Form', and contract interpretation.

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**Joris De Geest** is a Legal Director in the Corporate Insurance team in London, having qualified in Australia. Joris advises insurers, reinsurers, intermediaries and others on regulatory, commercial and corporate matters. He has a broad experience in assisting clients with commercial agreements (including distribution arrangements and reinsurance), regulatory advice including the UK's regulatory perimeter and authorisation regime, and insurance distribution regulations, as well as corporate and reinsurance transactions. He also advises Lloyd's market participants on Lloyd's regulations and various agreements. Joris has been recognised as a 'Star Associate' in *Chambers UK 2026: Insurance – Non-contentious*.

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