

Notification of Claims & Claim Circumstances

Be Better Informed...

MGB is a leading specialist Lloyd's Broker arranging Professional Indemnity Insurance ("PII") and other financial lines cover. We have a reputation for delivering competitively priced, quality products and service to our clients. We are pleased to provide our clients with this Guidance Note to help explain what is a 'Claim' and a 'Claim Circumstance' in the context of a PII policy and the importance of making prompt notification of same to Insurers.

There are a large number of Insurers within the insurance industry who provide PII cover, most of whom have their own, and therefore different, policy wordings. A proper understanding of what and when to notify and adherence to the notification provisions of their PI policy should form an important part of an Insured's overall risk management procedures in the running of their business.

What constitutes a 'Claim'?

A 'Claim' is an assertion of rights against the professional communicated to him/her by a third party (normally - but not always - the client) arising out of the professional's business activities, which usually involves some form of demand or threatened claim for financial compensation. The communication can be made by way of a formal claim in the form of a Pre-Action Protocol Preliminary Notice of Claim or Letter of Claim, legal proceedings, by letter, e-mail or even verbally. In practice, a lot of Claims take the form of a complaint, made either verbally or in writing, about the quality of the service / advice provided by the professional. Any Claim made should be promptly notified to the PI Insurers. Please take particular note that it does not matter whether or not the professional considers a Claim to be totally without merit and unjustified – the very fact that a Claim has been made triggers the notification conditions of the PII policy.

Why constitutes a 'Claim Circumstance'?

A 'Claim Circumstance' is more difficult for Insureds to recognise in the course of their day to day professional business activities.

A PII policy normally requires that any Claim Circumstance, i.e. a circumstance which '*may*', '*might*', '*could*' or is '*likely to*' give rise to a claim ("Circumstance") is notified to Insurers as soon as an Insured becomes aware.

The difficulty Insureds face is not helped by the fact that different Insurers have a slightly different definition of what a Circumstance is as can be seen from the preceding paragraph. '*May*', '*might*', '*could*' and '*likely*' [to give rise to a claim] are different words used by different Insurers when referring to Circumstances, so Insureds will have to refer to their specific policy wording to confirm what their notification provisions specify.

However, as a general guide, a Circumstance can be one, or more, of the following scenarios:

- An intimation of an intention to claim against an Insured
- Any known direct or indirect criticism of an Insured's professional services, either expressed or implied, which could give rise to a loss to a third party

- Any known direct or indirect criticism of a party for whom an Insured is responsible, either expressed or implied, which could give rise to a loss to a third party
- An awareness of an Insured of a failing or shortcoming in its work, or a real doubt about the efficacy of their own performance, or a party for whom an Insured is responsible, in the course of their professional business activities, which could give rise to a third party loss

It should be stressed that the fact that an Insured regards an intimation of claim or criticism as unjustified and without merit does not remove the obligation from them to notify their Insurers. The very fact that an Insured is aware of such a situation at all triggers the notification provisions of the typical PII policy.

The importance of prompt notification for Insureds.

Most PII policies now state that it is a condition precedent to any indemnity being provided that an Insured must promptly notify Insurers of Claims or Circumstances of which they first become aware of during the policy period. In effect, if this condition is not complied with, Insurers can repudiate the notification and thereby refuse an indemnity to an Insured. The financial consequences to an Insured for failure to promptly notify both Claims and Claim Circumstances can therefore be very serious indeed.

If an Insured fails to notify Insurers of a Claim or a Circumstance and their policy renews in the intervening period before the notification is eventually made, then there is a further problem as the Insurers could treat the renewed policy as being voided *ab initio* (from inception) for failing to disclose information material to the underwriting of the risk. This would have extremely serious consequences for an Insured, including having to find alternative cover and the stigma of having had a PII policy cancelled from inception.

Whilst certain professions can have special conditions that give protection to Insureds against late notification and/or non-disclosure of a Claim or Circumstance, an Insured could still end up with having to bear a higher Policy Excess than would otherwise have been the case if prompt notification had been made to an earlier policy. Furthermore, the indemnity provided by Insurers could be reduced to reflect the prejudice that has been caused to their position as a result of the late notification. In addition to the direct financial affect of the aforementioned two points, a lot of valuable working hours can be lost in dealing with a policy coverage dispute arising out of late notification and/or non-disclosure.

The importance of prompt notification for Insurers.

Prompt notification of Claims and Circumstances is important to Insurers because although an Insured normally carries a self-insured Policy Excess, they carry the main financial exposure and therefore they need as early notification as possible so that they can form some assessment of an Insured's potential legal liability, advise on how the Insured should best proceed and, if appropriate, take over the handling of the Claim or Circumstance and/or appoint a solicitor or loss adjuster to investigate the notification and assist the Insured.

Whilst most Insureds are good at 'fighting their corner', they are not best placed to form an objective assessment of the situation. Also, PII disputes can be quite complex and involve legal principles outside the knowledge of the average Insured.

PII policies operate on a 'Claims Made' basis, i.e. the policy responds to Claims or Circumstances which an Insured becomes aware of, and reports to Insurers, during the policy period. In that respect, it is different to most other policies of insurance. A PII underwriter assesses a risk based on the information provided by an Insured with their proposal form and accompanying information. This information includes, amongst other things, details of all Claims and Circumstances of which the Insured is aware of that time, which are taken into account when considering whether to offer renewal terms for the risk and, if so, what premium to charge. However, Insureds should not withhold notification of Claims or Circumstances due to concerns about the adverse affect this would have on their premium.

Summary

Insureds should be fully aware of what constitutes a Claim or Circumstance, the notification provisions contained in their PII policy and understand the importance of prompt notification. Insureds should remember the Golden Rule, "*If in doubt, shout!*", i.e. if they are at all unsure about what or when to notify they should always err on the side of caution and discuss the matter with their insurance broker.

Note: This document has been created as general guide only and does not represent a complete analysis of the topics covered. It is intended to highlight points that will be of interest to Insureds, who should always seek specific guidance on the matters covered.