

## GUIDE FOR NOTIFYING CIRCUMSTANCES/CLAIMS UNDER A PROFESSIONAL INDEMNITY POLICY

THIS IS AN IMPORTANT DOCUMENT  
IT SHOULD BE CIRCULATED WITHIN YOUR PRACTICE

1. This guide is intended to assist you in understanding your professional indemnity insurance, and your obligations under it. You should, however, always carefully review the full terms and conditions of your policy to ensure your understanding of them. If you have any queries in relation to policy terms and conditions, you should raise them with your insurance broker.

### *Notification*

2. Professional indemnity policies are written on a 'claims made' basis (that is, not an 'occurrence' basis). The policy, which will respond to a claim and govern the terms of cover, will be the policy in force when the claim is first made against you and notified to insurers – or when a circumstance which might give rise to a claim is first notified to insurers and accepted.
3. It is important to understand that it is the *existence* of a claim or circumstance that is important – and not whether the claim or potential claim has any merit. Whether you will ultimately be *liable* in respect of the claim is not important for notification purposes.
4. Most policies will define what constitutes a 'claim', and claims are not usually difficult to identify. A 'circumstance', however, is often not defined and left to the insured's own judgement. A circumstance can be –
  - an indication or intimation of an intention to make a claim against the insured;
  - direct or indirect criticism about the insured's performance or services provided or a dispute about performance or services;
  - an awareness of a failure in performance or services;
  - a real doubt about the efficacy of the insured's performance or services.
5. It is extremely important to notify insurers strictly in accordance with the policy wording. In some cases the insured will have a specific period of time in which to notify (e.g., 7 days, 30 days) In other cases, the time will be expressed as 'immediately' or 'as soon as practicable', etc. You should check your policy carefully in this regard.
6. In most cases, the requirement to notify will be a 'condition precedent' to liability under the policy – that is, if you do not comply with the condition the insurer can deny any liability it might have solely because the condition has been breached.

7. If you delay in notifying insurers of a circumstance or claim, therefore, it is possible that you will be denied cover under the policy entirely. In other cases, if the delay has caused 'prejudice' to the insurers, they might be entitled to reduce their indemnity to the extent of that prejudice. It is therefore important to implement 'notification procedures' within your own firm.
8. If you are uncertain about whether you ought to notify a circumstance (or claim) to your insurers, you should ring your insurance broker, to discuss.
9. The attached form should be used for the purpose of notification. If the notification is made at a time close to expiry of your current policy, you should telephone your account executive or claims contact to *ensure* receipt of the form by your insurance broker and mark it as 'urgent'.

#### *Communication with third parties*

10. It will always be a condition of your professional indemnity policy that you do not admit liability to, or enter into any settlement with, a third party without the consent of your insurers. It is important, therefore, to avoid becoming involved in discussions with any third party – or *potential* claimant - about the merits of a claim against you.
11. Any formal letters of demand should be merely acknowledged, with a statement that the matter will be investigated and that a further response will follow. Any correspondence between you and the (potential) claimant should be given to your insurance broker when notifying a claim or circumstance.
12. Until solicitors are appointed by insurers to act on your behalf, insurers might require you to communicate direct with a claimant. Insurers should, however, approve any correspondence you propose sending. Draft correspondence should be sent via your insurance broker who will seek such consent on your behalf.

#### *Appointment of solicitors*

13. Your policy will usually give insurers control over the appointment of solicitors on your behalf. At the time of appointment it is important to understand on whose behalf they are acting. If the solicitors advise on coverage under the policy, they will be acting on behalf of insurers only. If coverage is disputed, you should liaise with your insurance broker and, depending on the nature of the dispute, consider the appointment of independent solicitors to act on your behalf in relation to it.

