

A GUIDE TO PROFESSIONAL INDEMNITY CLAIMS AND CIRCUMSTANCES

IMPORTANT: THIS GUIDE SHOULD BE READ INCONJUNCTION WITH YOUR PROFESSIONAL INDEMNITY POLICY

Introduction

In an attempt to avoid unnecessary litigation, a Pre Action Protocol for Claims against Professionals has become an intrinsic part of the Civil Procedure Rules. Parties involved in a claim are expected to act within the protocol and failure to do so may result in financial penalties and increased costs.

The protocol has been kept simple to promote ease of use and general acceptability. However, it does impose tight timescales for action, which must be observed. It is therefore crucial, that all claims and circumstances are passed to Lockton Professions immediately, in order that we may provide you with immediate assistance and advice. This will enable us to notify your Insurers in compliance with your policy terms and conditions.

What is a 'circumstance'?

- An incident, occurrence, fact, matter, act or omission which MAY give rise to a claim in respect of civil liability
- This includes, but is not limited to:
 - Any intimation by a Third Party, whether expressed or implied, of an intention to claim against you
 - Any criticism relating to your performance
 - Any awareness that you may have of a service or action provided which may fail to meet the meet the standard requirements.

What is a claim?

- The majority of professional indemnity policies describe this as "a demand for, or an assertion of a right to, civil compensation or civil damages or an intimation of an intention to seek such compensation or damages". However you must check your own policy for the specific wording.

The obligation to notify circumstances/claims is very strict.

Either of the above must be notified immediately – there may be serious implications if you fail to do so. If you are in any doubt, please telephone us to discuss.

Preliminary notice of the potential circumstance

If you become aware that there is a possibility that a claim may be made against you (whether merited or not), for example, from comments at a meeting or during a telephone conversation, or in correspondence, or discovery by you from some other source, you should immediately submit details of the situation in writing to us or in accordance with any policy notification requirement.

The letter should contain the following information:

1. The identity of the potential claimant and any other parties
2. A brief outline of their grievance
3. A general indication of the financial value of the potential claim (if possible).

Lockton Professions and your Insurer(s) have a wealth of experience in dealing with such matters. If you have any doubts as to whether something should be notified to Insurers, please contact us immediately.

How to deal with a potential claim

Under the protocol, any letter of claim seeking redress must comply with the following:

1. It should be an open letter as opposed to being "without prejudice"
2. Identify any other parties involved in the dispute, or a related dispute
3. It should provide a clear chronological summary of the facts (including key dates) on which the claim is based

4. It should specify the allegations of negligence
5. It should provide an explanation as to how the alleged error has caused the loss claimed
6. It should provide an estimate of the financial loss and how this has been calculated
7. It should provide confirmation as to whether an expert has been appointed
8. It should ask you to pass a copy of this to your Insurers.

You are required by the Protocol to acknowledge receipt of this letter within 21 days of receiving it. Other than this, the Protocol places no obligation upon either party to take further action but it is vital that insurers are consulted at the earliest possible moment. This procedure is designed to allow each party to take stock at an early stage.

The identity or involvement of your Insurers **SHOULD NOT BE DISCLOSED** and the Letter of Claim should be passed immediately to Lockton Professions for discussion with Insurers.

You then have 3 months from the date of the acknowledgement of the Letter of Claim, within which to investigate the allegations and at the end of this period, it will be necessary to respond by sending one (or in some instances both) of the following:

1. Letter of Response, or
2. Letter of Settlement or
3. Both.

The Letters of Response and Settlement can be contained within a single letter.

Avoiding Claims

In order to minimise the potential risk of a future claim and also to enable you to enter the best defence to any future claims that may arise, you may find the following points useful:

- Maintain good communication channels with your clients and always follow up meetings and telephone discussions in writing
- Keep well recorded file notes of all meetings and/or of any advice that is offered to the client
- Ensure that you have excellent diary systems so as to avoid any slippage with regard to time limits etc.
- Refer to checklists as an aide memoir to ensure that relevant information has been obtained at an early stage
- Ensure that any Letter of Engagement is clear and

precise and identifies the proposed course of action and any advice that has already been given

- Whilst the archiving of files can be a huge problem in terms of storage costs and space, access to the file when dealing with a claim is essential when it comes to entering a defence
- Nominate a specific Partner at the firm to become responsible for the co-ordinating of any claim correspondence/notifications
- Encourage a culture of 'no fear' with regard to potential claims or problems within the practice. It is far more beneficial for partners and staff to feel that they are able to admit to a mistake early, than to leave problems to fester unseen.

Please do not hesitate to contact your adviser at Lockton Professions should you wish to discuss any claims related issue.

You can download a copy of the Pre Action Protocol for Claims against Professionals at: http://www.justice.gov.uk/civil/procrules_fin/contents/protocols/prot_neg.htm

Or a copy is available upon request from the Claims Department of Lockton Professions.

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