

### What happens if I do not notify a Professional Indemnity claim or circumstance immediately?

Last month we provided Part 1 of this article which provided information on when to notify a PI claim or circumstance. This article discusses the notification process, the information required and the ramifications in not notifying a matter immediately.

Failure to notify your insurer as soon as reasonably possible could lead to your claim being disputed by your Insurer or worse, rejected. So, even if you're unsure whether it's worthy of letting them know or not, it's best to err on the side of caution and contact your Broker to discuss. And as tempting as it may be, don't try to resolve any disputes yourself, no matter how small the problem is, as you might inadvertently admit liability which can result in your Insurer suffering prejudice, and again jeopardize the chance of your claim being paid.

#### Duty of Disclosure

Another very important condition of Professional Indemnity policies involves your Duty of Disclosure at the time of taking out a new policy or completing your annual renewal proposal form. Under the 'Prior Claims/Circumstances' exclusion of your policy, you are obliged to disclose on your application, any past claims or circumstances that may lead to a claim being made against you. If you do not comply with your Duty of Disclosure your insurer has the right to revoke your policy, meaning that the policy is void from the date of inception. Even if you attempt to make a claim for a fresh unrelated incident there will most likely be no coverage.

#### The Notification Process

##### What information needs to be provided to Aon to notify Insurers on your behalf?

You need to provide full written details of each claim or circumstance to your insurers via your Aon brokers so that they can fully evaluate each matter. This would include a summary in chronological order encapsulating the following:

- The name of the individual who provided the advice/service to the affected client/claimant
- The name of the claimant
- The nature of the potential claim and the circumstances that have led to it
- The date the advice/services was provided
- An estimate of the financial value of the claim
- The date upon which you first became aware of the circumstance that may give rise to a claim
- Confirmation of whether a formal claim has yet been made against you by the client
- Your opinion on whether you could be liable for the claim
- Supporting documentation or evidence that relates to the claim (for example, a copy of any correspondence you have received which has alerted you to the potential for a claim to be made).

Once a claim has been noted by your insurers they will require your involvement on an on-going basis to assist them to create the best possible defence and it will be a condition of your policy that you co-operate and provide your insurers with such assistance.

Your insurers will normally ask you to draft a response to the complaint/allegation, for their approval prior to sending. This should be on your own letterhead as frequently a robust denial of liability early on will prevent the matter from developing any further. It is possible that your insurers will request that you do not disclose to your client that you've notified the matter to your insurers as this can often result in the client pursuing a claim more aggressively as they regard themselves as being more likely to receive a settlement offer to avoid going to court and your insurers incurring significant defence costs.

#### What NOT to do if a Claim or Circumstance Arises

If you become aware of a claim, or you identify an error/oversight that might develop into a claim (a 'circumstance'), it is vital that you **do NOT do** any of the following as by doing so you may affect your right to be indemnified under your policy as a result of prejudicing your Insurers' position:

- Admit liability
- Make any offer to settle the problem
- Incur any legal costs or expenses without your insurers' prior approval.

If you receive any correspondence from your client, or a third party, suggesting that a claim may be made against you, **please do not**:

- **Reply** – forward the correspondence to ourselves immediately with your DRAFT RESPONSE so that we can discuss the response with your insurers as all replies have to be authorised by your insurers
- **Take any action** which might prejudice your insurers' position or their ability to examine the problem
- **Disclose details** of your professional indemnity policy, your insurers, or reveal to the claimant that the problem has been reported to your insurers.

Should you have any questions regarding the above article, please do not hesitate to contact your Aon broking team:

**Charlotte Carson** T +64 9 362 9161  
Account Executive [charlotte.carson@aon.com](mailto:charlotte.carson@aon.com)

**Andrew Mettrick** T +64 9 362 9827  
Account Executive [andrew.mettrick@aon.com](mailto:andrew.mettrick@aon.com)

**Lesley Kerr** T +64 021 587 661  
Senior Executive Director [lesley.kerr@aon.com](mailto:lesley.kerr@aon.com)