

NOTIFYING CLAIMS AND CIRCUMSTANCES UNDER DIRECTORS AND OFFICERS AND EMPLOYMENT PRACTICES LIABILITY INSURANCE POLICIES

The purpose of this guide is to provide an awareness of points which should be taken into account when you first become aware of a claim or a circumstance which may give rise to a claim. Throughout this guide “you” or “your” refer to the Insured and “Policy” refers to the Directors and Officers or Employment Practices Liability Policy.

Who to notify

All notifications should be forwarded in writing directly to the address provided for claims notifications in your Policy. Your professional insurance advisor should also be copied in.

When to notify Insurers

Directors and Officers Liability is underwritten on what is known as a ‘claims made basis.’ If you are satisfied that a situation has arisen which needs to be notified you must inform Insurers as soon as practicable and within the period of your insurance. For situations which arise very close to your Policy expiration date and where it has not been reasonably practicable to notify Insurers, notification may be accepted by Insurers for a short period after your Policy has expired. This is typically between 7 and 30 days. It is usually condition precedent to insurance coverage being granted that claims and circumstances are notified to Insurers in accordance with the policy terms and conditions.

As soon as you first become aware of a claim or circumstance, notification should be made immediately irrespective of:

- The amount which may be involved
- Your views or opinions on liability
- Whether you consider the claim or circumstance to be spurious or without merit
- Whether you consider the claim or circumstance may disappear

What to notify Insurers - a wrongful act – an error or omission

It is important you include as many details as possible in your initial notification advice. Insurers may have further questions but it will save time if the information you provide is as complete as possible.

Notification should include:

- Complete details of the nature of the claim or circumstance, including name(s) of actual or potential claimant(s) together with your views on the claim or circumstance and any allegations that have been made or you anticipate might be made against you
- Details of other parties involved (other than the claimant)
- Date of your first awareness of the claim or circumstance
- Your estimate on the quantum which may be involved
- Copies of all correspondence or documents including attendance and file notes relevant to the claim or circumstance

What is usually **NOT covered**?

- A claim or circumstance which you were aware of prior to inception of the Policy
- If the Policy includes a Prior Litigation Date, claims or circumstances which commence before the Prior Litigation Date
- Your company’s professional services
- Fraudulent, dishonest or illegal acts or omissions
- Contractual benefits

There are legal protocols applying to Directors and Officers and Employment Practices Liability claims which impose time constraints and procedural rules as to how claims should be dealt with. Your Insurers will have specialists who will work hand in hand with you to deal with these issues and if litigation is necessary, they will arrange and pay for a legal expert to represent you.

When you first become aware of a claim or circumstance it is important you **DO NOT**:

- Make any admission of liability
- Enter into correspondence except to acknowledge receipt of any potential claims or circumstance
- Make or promise any payment or settlement
- Incur costs without Insurers approval
- Take any action which might prejudice Insurers' position or their ability to investigate a claim or circumstance
- Provide details of your Directors & Officers Policy to the claimant or disclose that Insurers have been notified

What is meant by a circumstance?

There is no single or simple definition but the following may help in understanding what is likely to be deemed a notifiable circumstance.

A notifiable circumstance could include:

- Receipt of a verbal or written claim
- Receipt of legal proceedings
- Any criticism or dispute which you feel could result in potential liability
- An intimation by any third party of an intention to make a claim involving decisions, acts, errors, omissions, misstatements, misleading statements or breaches of duty
- Employment claims such as unfair dismissal or discrimination *

*depending on whether or not Employment Practices Liability for the Company has been purchased.

When making a notification it is important that it should be in terms which leave the Insurer in no reasonable doubt that you are notifying a circumstance. You should refer to the specific circumstances which may give rise to a claim, identify a possible claimant and the loss that they have suffered or may suffer in the future. If you are in any doubt you should, as soon as practicable, contact your professional insurance advisor or our claims team at Angel Underwriting who will advise you in taking an appropriate course of action.

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This guide represents a brief overview and does not represent a comprehensive explanation of its subject matter. Whilst care has been taken to ensure the accuracy of the information provided, Angel Underwriting does not guarantee such accuracy and accepts no liability for loss or damage resulting from reliance on this guide. For advice in specific situations Angel Underwriting recommends that you seek appropriate professional advice from a professional insurance advisor who will advise on taking an appropriate course of action. Angel Underwriting is part of the Catlin group of companies. Catlin Insurance Company (UK) Ltd. is authorised and regulated by the Financial Services Authority. Further information about the FSA can be found on their website at www.fsa.gov.uk and www.moneymadeclear.fsa.gov.uk. Information about Angel Underwriting can be found at www.angelunderwriting.com.