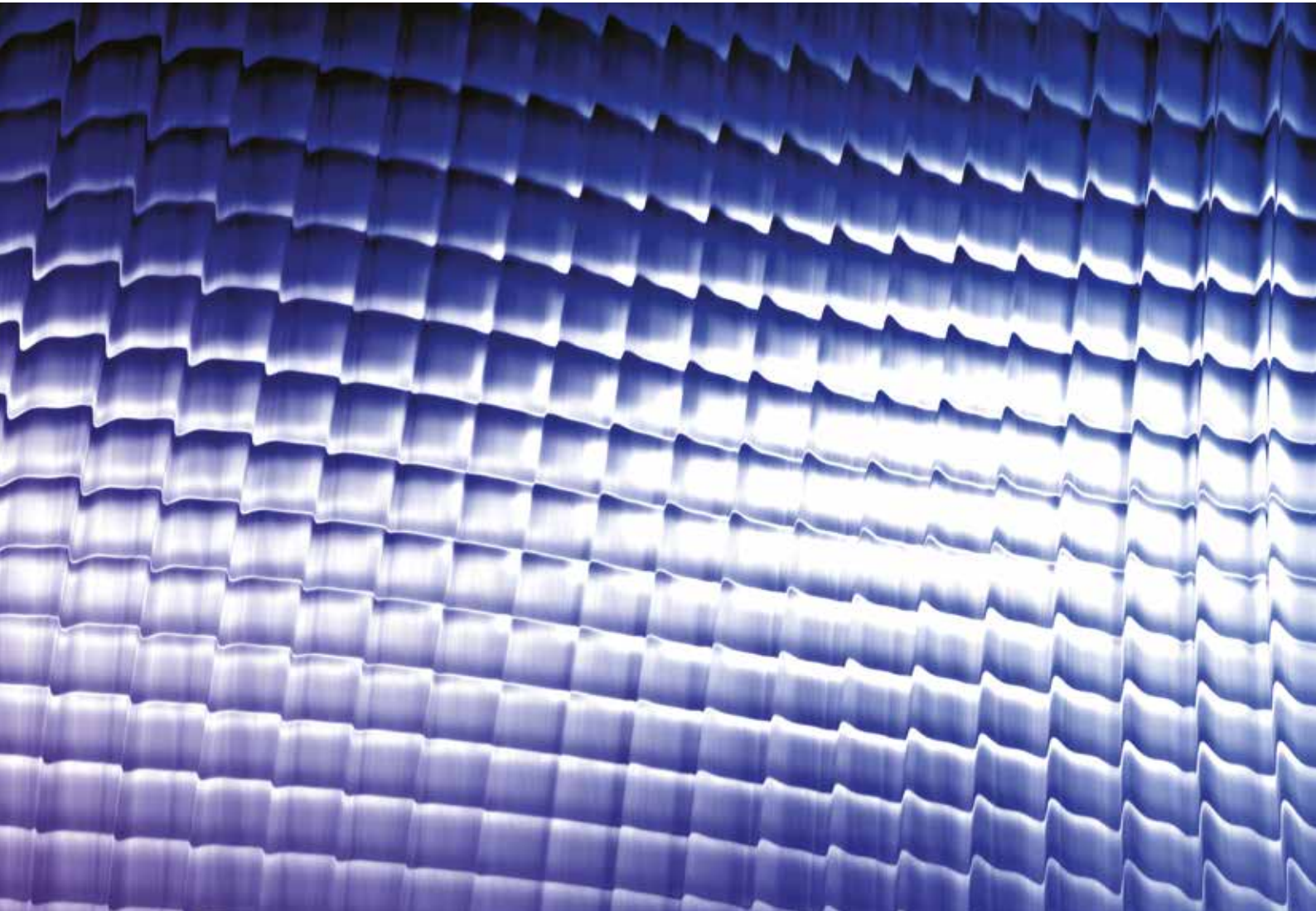
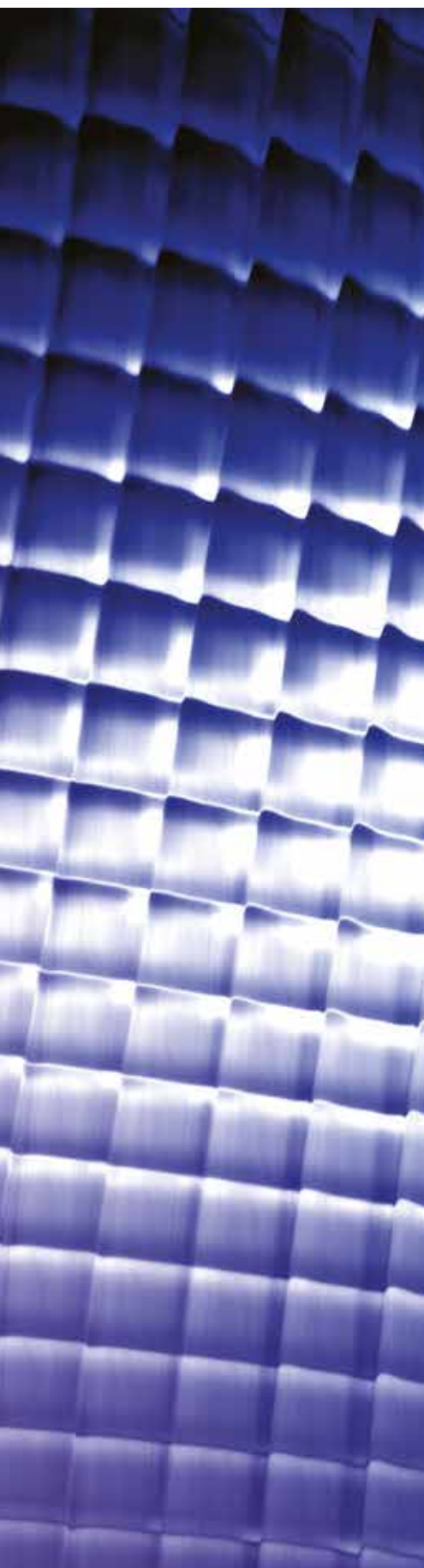




Handling claims notices –
a guide for Firms





This guide is intended to help your firm deal with any claims or allegations made against it.

The details of how to handle a claim will depend on the wording of your firm's professional indemnity insurance policy. Your firm's broker or insurers will be able to help you if you require specific advice.

1. Aims

This guide covers:

- what your firm needs to know about notifying its insurers about a claim
- the civil procedure rules (CPR)
- the impact of RICS' special conditions.

2. When to notify insurers

It is understandable that your firm may be reluctant to risk an increase in premium by notifying your insurers of something that may turn into nothing. However, it is dangerous to delay or avoid notifying them of a possible claim, as your insurers could void your firm's policy in part, or in full, for nondisclosure. This could leave individuals personally responsible for the costs of the claim and any damages.

Your firm's professional indemnity policy contains specific conditions about notifying claims, and 'circumstances' that may give rise to a claim. It is very important that you and your colleagues read these policy conditions carefully and comply with them.

The requirement of RICS' complaints handling procedure (CHP) and the civil procedure rules (CPR) makes it even more important to notify your insurers quickly. These issues are covered later in this guide.

3. What should your firm notify your insurers about?

Your firm needs to notify your insurers immediately about:

- an actual claim, whether it has been made by letter before action is taken or by a letter of claim (in other words, a writ)
- a written or verbal threat of a claim
- any 'circumstance' which your firm has reason to believe may, or is likely to, result in a claim – make sure you check your policy wording and the level of certainty of a claim arising for the notification clause to be triggered
- any complaint notified via your firm's complaints handling procedure.

A broker can advise you on whether to notify and on the best way to do this in order to get the most from your firm's insurers. If there is any doubt about whether to notify a claim or circumstance, it is better to err on the side of caution and notify. When to notify is set out in your firm's policy wording and the time period is often very short. For example, should you receive a notice referring a dispute to adjudication, you may have only 48 hours in which to notify the claim or your insurers may reject it. In any event, you should notify your insurers as soon as reasonably practicable.

Your firm should choose a senior person to be responsible for professional indemnity insurance

- That person will need to remind colleagues of their obligations to be alert to claims and to circumstances that may/are likely to give rise to a claim. Everyone within the firm must ensure that they are aware of the requirements of the policy.
- It is a good idea for senior staff to make written declaration of 'no known circumstances' on a regular basis. You can incorporate this into monthly or quarterly board or partners' meeting system.

4. What are ‘circumstances’?

Circumstances that may, or are likely to, give rise to a claim can be difficult to assess. From time to time in all business relationships, tensions arise between the business and a client. The tensions are usually about one of the following issues, or a combination of them:

- time (lateness)
- money (overspend on the budget or estimate)
- perceived under-performance.

It will be up to your firm to decide whether the situation is no more than a typical day-to-day business tension, or whether it could escalate into something more serious.

Most insurers would prefer to be notified of all circumstances and be provided with the information detailed in this guide and is more fully explained in your insurance policy wording. This shows them that your firm runs good risk management procedures and puts the insurers in the best position to defend your firm. Insurers’ main concern is that, if there is a circumstance that may, or is likely to, give rise to a claim, they want to be able to defend it as early as possible. Your firm won’t necessarily be penalised for notifying a circumstance.

It is very important to stress that there is a substantial risk in deciding against notification. It is vital that you get advice on the matter from your broker or legal adviser. The golden rule is – if in doubt, notify.

Bear in mind

The law is increasingly complex. It is very easy for a lay person to unwittingly compromise or prejudice their legal position by saying something, doing something or not doing something that can later be held against them in court. This not only relates to the negotiations between the two parties but also to matters of legal procedure that must be followed to the letter and within strict time limits.

Accordingly, a lay person is not as well qualified to judge how to handle a case as a solicitor (especially in the case of insurance protection, where a solicitor will be appointed by the insurers for this specific purpose).

Some disputes can be better resolved without the intervention of lawyers. Insurers and lawyers both understand this and are usually willing to allow the insured person to continue to negotiate a satisfactory resolution in a dispute. If this is done with insurers’ knowledge and under the watchful eye of their solicitor, then if any prejudice were to become evident it would be possible to stop it or control it in good time. In this way your firm’s position is protected because the insurers have given their consent in advance.

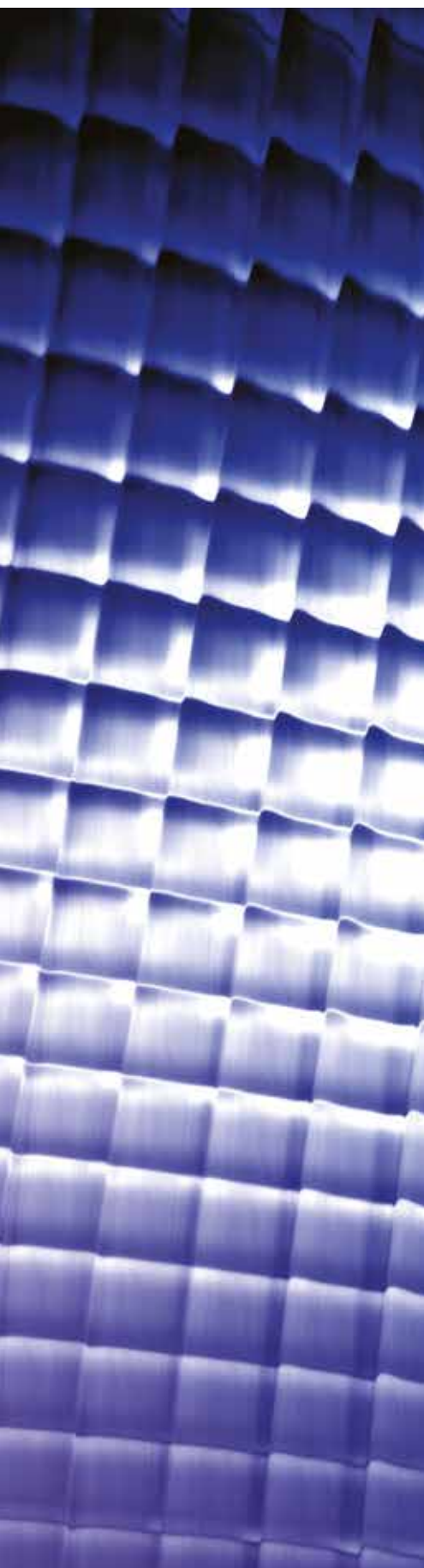
Examples of ‘circumstances’ and what to do

Example one – your firm gets a letter from a client giving some kind of warning or ultimatum needing something done which, if it isn’t, will result in legal action.

- Notify immediately. Send a copy of the letter, unanswered, to your firm’s broker or insurers.
- Await further instructions before answering or entering into discussions.
- It can be helpful to send your firm’s insurer a draft of what you might want to say to the client, seeking their approval.

Example two – your firm gets a phone call, email or letter from a client stating dissatisfaction with the service, price, timescale etc.

- If there is a clear complaint or threat, notify it, as above.
- If it is unclear what the client means, enter into a discussion to clarify the situation and keep meticulous notes and records of conversations, what is agreed, what is not agreed and what your firm agrees procedurally to do next.
- Discuss the situation with your firm’s broker and, in particular, the broker’s claims advisor.



Example three – your firm’s client is ‘difficult’ to deal with, and you think they are being unreasonable. There is a general tension in the business relationship but your firm does not believe that it is at fault.

- Treat it as a circumstance which might give rise to a claim.
- Make a clear and concise written summary of the circumstances relating to the client and the specific job.
- Gather together written evidence, where available, to ‘paint a picture’ that could be easily understood by an outside party. Send this document to your broker or insurers. Tell the insurers how you think the matter should be dealt with and then await their response.
- The insurers will usually ask you to ‘keep them advised of developments’, which means that they will not become involved at this stage but let you carry on and hopefully resolve the situation.
- Always ask for the insurers’ confirmation that the notice of the circumstance has been formally accepted by them. This means that it is recorded that you have notified the circumstance in good time. If the matter carries on beyond the next renewal date (and it may carry on for months or years) you can be certain that, if a claim does progress, it will be dealt with under the policy in force at the time your firm notified. This is essential for your firm’s security of insurance cover.

5. Late notifications

Your firm’s insurers determine whether or not a notification is late. Cover may be denied if a claim is notified late. Many court cases are fought on the issue of late notification alone and it is not uncommon for firms to find themselves uninsured as a result, particularly where the requirement to notify a claim in a timely manner is expressed to be a condition precedent to cover for the claim. This usually happens where:

- an insurer is of the view that failure to notify them of a claim or circumstance may prejudice their ability to defend the claim
- a firm has changed insurers and a claim is notified to the new insurers which they believe ought to have been notified to the old insurers
- where a policy has expired, your firm’s insurers may not deal with the claim if the policy does not contain specific clauses that provide cover retrospectively.

6. What if your firm’s insurers do not accept the notification?

A difficult issue sometimes arises if there is not enough tangible evidence to show a legal liability. In these circumstances, insurers may not accept notification of a claim. Should this happen to your firm:

- obtain advice from an experienced broker and, if necessary, from an experienced solicitor
- ensure that there is a clear record that shows that you have tried to notify the claim and, if possible, try to persuade the insurers to accept it
- if they still refuse to accept notification, keep concise records and send a copy to your firm’s insurers to show that to the best of your ability you have been complying with the terms and conditions of the policy
- even if your insurers have refused to provide cover for a claim, you still need to comply with policy requirements when dealing with the claim, because otherwise your ability to challenge their refusal may be compromised by a subsequent breach of the conditions of the policy.

- by continuing to comply with the terms of the policy, you can ensure that, should a future dispute arise with your insurers about policy cover in connection with the incident, your firm will be prepared to press its case
- if your practice has an annual turnover of less than £1m, you are entitled to challenge any refusal to pay your claim through the Financial Ombudsman's Service. This is a quick and cheap alternative to litigation.

7. If a policy is voided

If your firm's insurers void the policy they will return any premium paid. It is more usual for insurers to exclude a particular claim than to void the entire policy. If this happens to your firm, you need to get advice as to your rights and the options available to you.

8. Claims that fall within your firm's self-insured excess

In some cases, your firm may have a special arrangement with its insurers for dealing with small claims that fall within your firm's excess. It is still vital that you notify all claims and circumstances in line with any special arrangements, whether or not they fall within the excess.

What at first might appear to be a small, insignificant claim can often escalate into a claim which substantially exceeds the excess. Bear in mind that, if your firm hasn't notified the claim properly, it may not be covered.

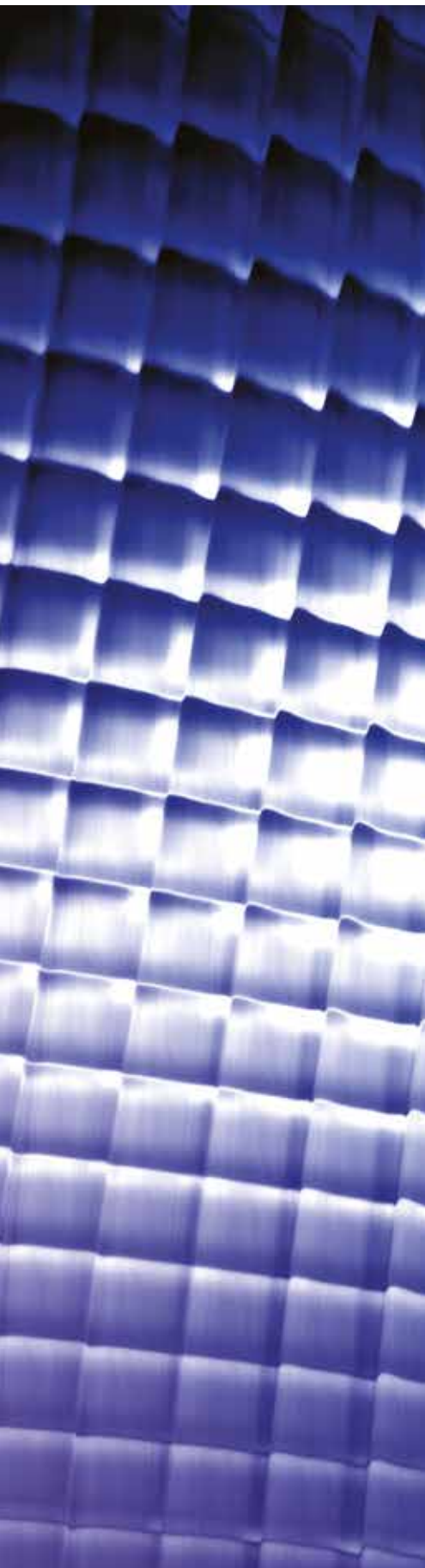
The majority of claims are settled without going to court. Nevertheless, the expense and costs incurred in defence and negotiation of a claim are considerable. These costs and expenses are often not covered by the excess, so it is essential that your insurers are aware of them from the start.

Don't try to handle claims within your firm's excess unless you have experience and sound advice from your firm's broker. It is very easy to transgress the tried and tested rules of law and evidence. If the matter gets out of control, you may prejudice your firm's legal situation to the extent that a prosecuting lawyer can take advantage.

9. Fraud and dishonesty

If you have reason to suspect dishonesty or fraud on the part of a partner, director or employee of your firm, your firm must notify its insurers immediately.

- You should do this whether or not it gives rise to a claim for legal liability. If you delay notifying the matter, not only will you have no insurance for any losses arising after the date you discovered the fraud, but also insurers may take the view that your failure to provide immediate notice suggests that you would be complicit in the fraud.
- Circumstances concerning fraud and dishonesty are both serious and complicated in law and will usually involve notifying the appropriate authorities.
- The investigation of criminal acts and civil liabilities that may result must be run jointly by all parties and with the maximum co-operation of all concerned.
- This situation could cause problems regarding your firm's reputation with insurers in the future. It's very important to get the help of your firm's broker or legal adviser in ensuring that the firm's reputation is maintained on the presumption of innocent until proven guilty.
- Insurers may want to exclude liability for the claim. This is not always justifiable and your firm should seek specialist advice immediately if this happens.
- It is important to realise that you are not your own best adviser or judge in these difficult situations. Always seek advice from people with more experience.



10. RICS' special conditions – protection for your firm

RICS' special conditions are there to protect your firm if an allegation against it is made and where any non-disclosure, misrepresentation of facts or untrue statements are included in the proposal form you supply to your firm's insurers, or in any other information you provide to them.

The conditions ensure that the insurers will not void the policy if someone makes such an allegation against your firm. However, it is your firm's responsibility to satisfy the insurers that the alleged nondisclosure, misrepresentation or untrue statement was 'free of any fraudulent conduct or intent to deceive'.

The insurers may further qualify this 'innocent non-disclosure' clause to ensure that your firm cannot get any greater cover or higher indemnity than it would otherwise have been entitled to in the absence of innocent misrepresentation etc.

Your firm's insurers can also deny liability on a particular claim without voiding the policy where they feel that they have been misled. While the 'innocent non-disclosure clause' is useful, it is not a guarantee that insurers will ignore matters of materiality.

It is the duty of the insured to examine their firm and its assets and disclose facts, even if those facts may make a claim against the firm more likely.

11. Other insurances

If your firm notifies a claim under a professional indemnity policy, it's a good idea to consider whether you should also notify it under a public liability insurance or a directors and officers' liability insurance, if your firm has them. There is sometimes an overlap of coverage between these policies, depending on the nature of the claim being made. Always get specialist advice in this situation.

12. Civil Procedure Rules

The main objective of the CPR is to keep cases out of court, so parties are encouraged to resolve matters without resorting to court proceedings. That means there is an important overlap with the RICS requirements on internal complaints handling procedures, where the ultimate way of resolving disputes is through independent redress means such as the Surveyors Ombudsman Service. There are protocols for professional negligence claims that set out best practice in handling claims against professional people. They also cover issues such as:

- expert evidence
- standard letters
- alternatives to litigation.

We highly recommend that your firm familiarises itself with these.

The most fundamental impact of the CPR is on the timetabling of letters and other documents between the parties. It is no longer necessary to issue a conventional writ. This used to be an obvious trigger to notify a claim. A 'letter of claim' is now used instead and this triggers the time to be followed. The protocols set out:

- timetables for communications between the parties and the investigation of claims
- the disclosure of documents at an early stage
- the early exchange of summaries of witness statements and experts' reports.

13. Complaints handling procedure

All firms regulated by RICS must have in place a complaints handling procedure (CHP). Rule 7 of RICS Rules of Conduct for Firms requires firms to operate a CHP which must include a redress mechanism that is approved by RICS Regulatory Board.

The Provision of Service Regulations require all professional service firms to provide actual and potential clients with details of their complaints handling procedures. You must tell your clients about the procedure in all terms and conditions and send them a copy of it if they request one. An RICS approved CHP would have two stages:

- consideration of the complaint by a senior member of the firm or the firm's designated complaints handler; and
- if the complaint cannot be resolved, referral to an independent third party with the authority to award redress.

The final stage of the procedure will provide the client with access to independent redress if the firm is unable to resolve the complaint. RICS' Regulatory Board has approved a list of redress providers for firms to use.

The referral to your firm's chosen independent redress mechanism means that you must notify your firm's insurers at an early stage that a complaint exists, as awards made under the chosen scheme may be covered under your firm's professional indemnity insurance policy. There is no conflict between the objective of the complaints handling procedure requirements and the duty to notify insurers of claims or circumstances that may give rise to a claim.

Your firm must follow the complaints handling procedure requirements set out in the RICS Rules of Conduct for Firms, but remember that your insurance policy requires that you do not make any offer, or promise of payment or compromise. Your firm should therefore always ensure it notifies complaints received under the RICS complaints handling procedure to its insurers.

As the ultimate way to resolve a complaint is through independent redress, backed by your firm's insurance policy, insurers need to be kept informed of how the complaint develops. Handle the complaint with the guidance and approval of your firm's insurers at all times, so that your firm's position is protected and your insurers' defence is not unwittingly prejudiced should the complaint proceed to redress or a claim against your firm's policy.

14. What to do when your firm receives a complaint

These notes are intended as a general guide, as all insurers handle notices of potential claims differently. You need to discuss with your firm's insurers or broker to understand exactly what they need from the firm.

You should make sure that:

- your firm has a complaints procedure in place that meets the RICS requirements
- your firm's files are always in good order and easily retrievable
- your firm understands what its own insurers expect of it when handling a complaint.

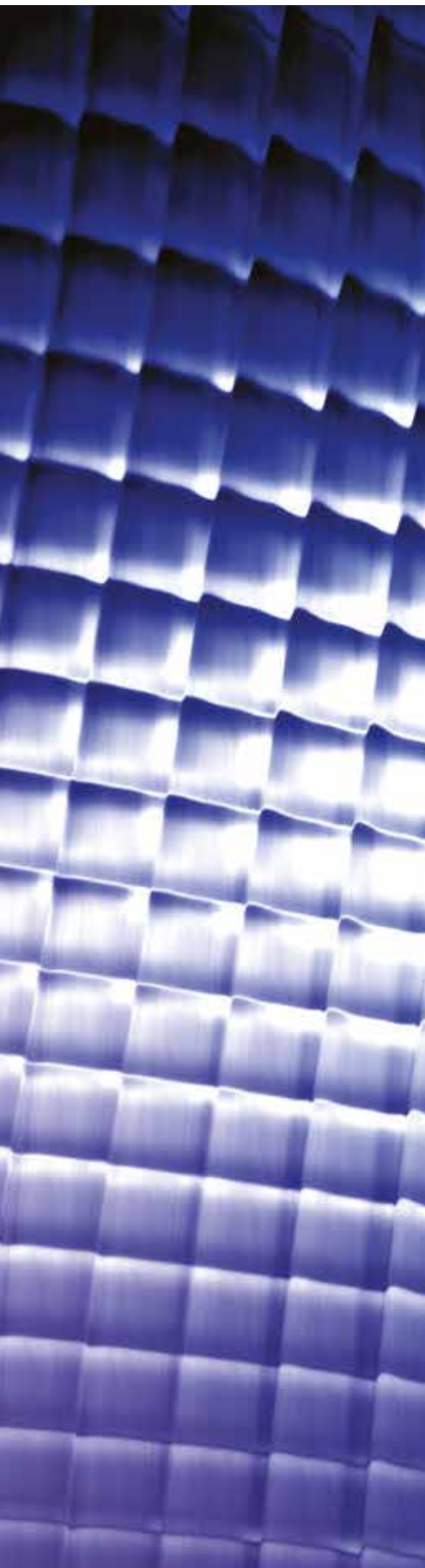
When your firm receives a complaint

Acknowledge receipt, confirming your understanding of the complaint. You should not, however, admit liability to the complainant.

Notify your firm's insurers or broker that you have received a complaint as soon as reasonably practicable after receiving it. You should supply them with at least the following information and double check the notification provisions of your policy:

- copy of the letter of complaint
- copy of any 'report' that is the substance of the complaint
- copy of your firm's complaints handling procedure
- any site notes, photos etc.
- copy of your acknowledgement of the complaint (your insurers will probably not want to see this, but check with them)
- a note of your firm's recommendations or draft response to the complainant.

If the complaint is about a valuation or survey, some insurers will be happy for your firm to re-inspect the property immediately. Check your firm's own insurers' view on this issue. If your firm does reinspect the property, a copy of the re-inspection report will need to be sent to your firm's insurers or broker.



Ideally, you should notify your firm's insurers or broker with all of the information above. If you can't provide the information straightaway, you still need to notify them immediately, then give them the information as soon as you have it.

What happens next

- Follow the process laid down in your firm's complaints handling procedure, keeping your insurers informed and involved at all times. Ensure your firm has its insurers' approval of responses to complaints.
- If the complaint remains unresolved and your client refers the matter to your chosen redress scheme, you must use that, unless the complaint looks as though it will become a claim against your firm that is outside the scope of the redress scheme (i.e. the claim exceeds £25,000 or whatever the scheme limit is).
- At the independent redress stage you must fully co-operate with your firm's insurers, as any awards made under a scheme should be covered by your firm's professional indemnity insurance policy.
- If the complaint turns into a claim against your firm and proceedings are started, you must cooperate with your insurers to help them and to comply with the CPR. You should acknowledge the letter of claim and pass it to your firm's insurers or broker immediately.
- Once a Claim Form has been served, your firm will have a limited timescale to file its defence. Your firm's insurers must have as much paperwork as possible as early as possible, so that they can put together a defence. There are strict deadlines to adhere to as set out in the CPR. You might wish to refer to specialist legal advice at this stage.
- The following is a summary of how your firm's insurers might deal with a notification, depending on whether they feel your firm was at fault. You should discuss the following scenarios with them to ascertain how they would deal with each situation.
- If you feel that your firm is at fault with regard to the complaint made against it, and the amount is below the excess, then your insurers may support a settlement attempt.
- If you think that your firm is at fault and the amount is above the excess, then your insurers are likely to insist on an investigation of the complaint. Tell the complainant, with your firm's insurers' agreement, that the matter is in the hands of your firm's insurers. Insurers support the RICS complaints handling procedure and if the complaint is for less than £25,000 they may well recommend the independent redress route.
- If you think that your firm is not at fault and your firm's insurers support your defence of the complaint, they will instigate their own investigations.

15. How will all this affect my firm's premium?

People are often concerned about the effect of notices on their premiums. If insurers get a regular annual 'laundry list' of potential claims, their first question will be 'how serious are they and what are the facts?'. If there are no facts and there is no information about the likely outcome, they will regard potential claims as serious and look at penalising a firm by increasing the self-insured excess, or increasing the premium, or both.

Your firm's insurers will probably regard your firm as conscientious and diligent and will be unlikely to penalise the insurance terms if you accompany each notice with:

- a brief but informative summary of the nature of the complaint and whether it is sustainable or not
- details of what steps are being taken to resolve it and what the financial outcome is likely to be. Premium increases are usually a fraction of the cost of a denial of coverage. Not only is the cost of defending and possibly paying an uninsured claim more than most businesses can sustain, there is also an obligation to disclose the material fact of your firm's failure to notify the claim to future insurers. This in itself can lead to higher insurance costs or difficulty in getting insurance cover at all.



Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres of the world, our market presence means we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

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