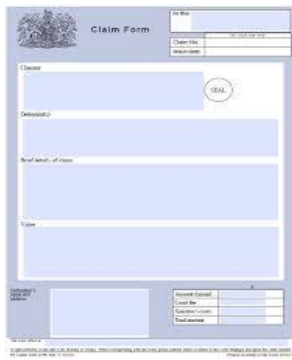


Are You Being Served?

Michael Appleby of BLM LLP explains what members and affiliates should do if they have the misfortune to receive a court Claim Form.

No-one wants to open an ominous looking letter and discover that it contains court papers which have been issued against them. Hopefully this will not happen to you, but if it does, this advice sheet will provide you with the information required to properly deal with a claim.

Failure to deal with a Claim Form appropriately and promptly may have serious legal, financial and reputational consequences for your business. It is important to take the necessary steps to protect your position vis-a-vis the claimant and your professional indemnity insurers.



This is an example of a Claim Form. This form will provide details of the claimant, the claimant's solicitors (if applicable) and the intended defendant(s). It will also provide a brief description of the claim and its value. The Claim Form will also include the court name, address and telephone number along with the court reference which will need to be quoted on any future correspondence. It will usually be accompanied by a document entitled, Particulars of Claim, which will set out, in more detail, the claim being made. Should the Claim Form state that the particulars of the claim will follow, they must be served within 14 days.

Top tips on how to respond to being served a claim form

Should you be served with a Claim Form that initiates a claim against you or your business we recommend that you consider the following tips:

1) Do not Ignore

Doing nothing is not a viable option when a Claim Form lands on your doormat. A failure to notify your professional indemnity insurers promptly is likely to be a breach of your PII policy terms, probably leading the insurer to exclude or limit cover. As a result, it is important to discuss this matter with your brokers and/or insurers as soon as the Claim Form is received, as you only have 14 days from the date of service to acknowledge the claim.

If you don't acknowledge the claim within 14 days, the Claimant would be able to apply for a default judgment. While you may apply to set the default judgement aside, this can be a difficult and expensive process, with no guarantee of success. It could also result in professional embarrassment, as outstanding Judgments can affect your credit and claims record, and cause complications for you or your practice in the future.

It is therefore essential not to bury your head in the sand but to take early action to prevent this from happening.

2) Create a Core Team

If you are not a sole practitioner and there are other members of staff in your business, it is important that someone is nominated to communicate with your broker, insurers and solicitors in relation to the case. Nominating a core team of people, or an individual with knowledge of the claim, will assist with the control of information as well as the investigation and management of your case.

Ensure that your insurers and representatives are kept up to date with any developments at your end, such as further correspondence or documentation that you receive regarding the claim.

3) Inform Insurers Immediately

Litigation can be a very expensive business, so check what insurance policies you have in place and liaise closely with your broker to ensure that you comply with any pre-conditions of cover such as early notification. As noted above, you should provide them with a copy of the court papers as soon as possible so they can take steps to protect your procedural position.

However, you should not attempt to reply to the Claim Form, or any communication from the claimant, without first seeking your insurer's authority. This not only allows you to benefit from Insurers' experience when dealing with the claim, but also ensures that there aren't any issues with the handling of it which could prejudice its investigation and/or defence.

In the event that there is some question as to whether or not cover is in place, either to the court costs or the cause of the claim, your brokers should be able to assist with any queries you may have. In the majority of cases, claims are likely to fall under your professional indemnity insurance, although some could also relate to matters which would fall under a public liability or legal expenses policy. If, after discussing matters with your broker, no cover is in place you should seek legal advice as you may be able to obtain after the event insurance.

4) Check the Court Deadlines

You are required to provide a response to a Claim Form within 14 days of its service; do not miss this deadline. Take urgent advice from your broker and insurer to protect your position. An acknowledgment of service must be served upon the court within 14 days of service of the Claim Form (attached to the particulars of the claim) or 14 days of service of the particulars of the claim, should these be served separately. A copy of the acknowledgment of service should also be sent to the claimant or their solicitors if they are represented.

However, if you have referred the claim to your brokers/insurers as soon as the Claim Form has been received, your insurer's legal advisers will be able to deal with the acknowledgment of service on your behalf.

5) Preserve your Documents

It is important to start collating and saving all relevant documentation once litigation is contemplated. Ensure that you gather all documents that are or could be relevant to the claim. This includes electronic documents such as voicemail recordings, e-mails, text messages and diary entries. Members and affiliates are referred to the Institute's article *Retention of Documents - Shred of Evidence* for an explanation of what members should know about document storage and disclosure. (A copy of this article can be downloaded from the [CIAT website](#).) A full copy of your papers will be required by your insurers and/ or their legal representatives in order to prepare your defence.

Failure to provide relevant documentation either through loss or destruction could result in adverse inferences being drawn by the Court and may damage your defence by reducing the amount of supporting evidence that is available.

Any adviser that you and your insurers instruct will wish to see all the relevant documents as soon as possible so that they can provide you with their considered advice regarding both issues of liability and the value of the claim. It is therefore helpful to create a file of all the relevant documents, putting the documents in chronological order to assist with any future disclosure. Creating a chronology of

events and setting out a written response to the claim may be helpful to your advisers but you must ensure that any documentation that is created is very clearly marked with the following wording: "This document/file was prepared in contemplation of civil litigation. As such this documentation is privileged and must not be read by, or disclosed to, any other party."

6) Consider your Prospects

You should review the case that has been set out by the claimant and bear in mind that insurers will need your comments on the facts, allegations and loss claimed. This will help determine how best to deal with the claim as well as assisting your legal advisers when drafting your defence.

If you have any doubts in regards to the prospects of defending the claim, then you should discuss this with your legal representative or insurer as early as possible. In some cases, it can be wise to consider early settlement of a matter on a commercial basis to avoid prolonged litigation and increased costs, particularly when considering that the majority of settlements are confidential and without admission of liability.

Other important factors to consider when dealing with the claim are the reputational risks of defending a claim to a public trial and your own time and costs when dealing the claim.

7) Notify the Institute of Any Potential Complaints

Aside from the legal implications and procedures detailed above, it would also be reasonable to assume that the claimant may intend to lodge a complaint against you with the Institute should they deem that your conduct has been unprofessional. In order to comply with the Code of Conduct, Clause 8a), "**Breaches of this Code:** The members shall: a) report to the Institute any alleged breaches of this Code by themselves of which they become aware", it is advisable to report any instances to the Practice Department in order to prepare the Conduct Committee should an official complaint be received.

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