Roger Flaxman provides straightforward and practical guidance for brokers who could be faced with a professional indemnity (PI) claim

In the hour of need

There are few things more alarming and disruptive than the realisation that a claim may be made against a broker for negligence. But the situation becomes even worse if it is found PI cover does not give the support expected.

It is one thing to advise clients impartially and dispassionately as a broker, but quite another thing advising yourself when you’re personally and emotionally involved. The first reaction, and often the dominant initial reaction, is denial that a claimant has any cause for grievance whatsoever. While understandable, this stance can be damaging and may ultimately lead to a worse outcome than might otherwise have been achieved.

BIBA has helped many members over the years with their PI claims and the next phase of its PI initiative is to publish a comprehensive guide to professional indemnity policies. But what do you do if you find your claim runs into trouble?

BIBA member Akhil Chaudhry of Jaggi and Co comments: “I cannot praise BIBA’s claims support service highly enough. In more than 20 years we have never had a claim made against us, but when we did, we were sadly let down by our insurers. If it hadn’t been for the BIBA team we would have been uninsured and probably uninsurable as well. We thought the claim against us was unjustified but we now know that is no impediment to lawyers. BIBA’s specialist advisers expertly guided us through this most difficult time and we thoroughly recommend them to other members.”

Problems frequently encountered include disputes about exclusion clauses, knowledge of material facts, non-disclosure or late notification, conditions precedent, activities covered by the policy and the conduct of a claim.

Alan Eyre, managing director with accredited BIBA PI broker Towergate, comments: “Claims handling and resolution are the proof of performance of your PI. When faced with a claim, BIBA members must feel confident they have a strong knowledgeable and supportive team alongside them.”

Neville Miles, director with Lockton another BIBA accredited broker, says: “The quality of the insurance policy and the integrity of the insurers is critical. Lockton will be happy to help members who have any concerns about their PI claims or coverage.”

One firm bought PI from the insurer direct and the other through brokers advertising themselves as specialists in the field. Each broker had correctly, and in a timely manner, declared
circumstances which could give rise to a claim. In each case, insurers initially refused to accept the notifications arguing that there was “insufficient detailed information to constitute a notification”.

This put the brokers in a quandary as both were receiving correspondence from the claimant that they did not know how to handle without expert advice. One broker was still acting as broker to the claimant which potentially posed greater difficulties that could prejudice the outcome of the claim. Both brokers were required to act as “a prudent uninsured” and incurring significant time and expense, not to mention worry.

Hugh Price, director of insurance with solicitors Hugh James and one of the BIBA PI advisers, says: “By dealing with these issues early on – that is, before the parties become entrenched in their respective positions – we can save a lot of time and trouble later. The BIBA specialists prioritise resolving problems quickly and without rancour. As Charles Dickens wrote: ‘The one great principle of the English law is to make business for itself. We take a very different stance’.”

Roger Flaxman is BIBA’s professional indemnity consultant

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**Dealing with a PI claim**

A top tip for every broker facing a PI claim is to stop, look and listen.

**Stop:** Do nothing until you have taken stock of the facts. Do not react – particularly by email. Keep calm and look at the facts. If someone makes a complaint, allegation or claim then it must be taken seriously and dealt with professionally.

**Look:** Look carefully and, as far as possible, dispassionately, at what is being alleged. Ask someone else in the firm who is not directly involved with the claimant, to advise and act as co-ordinator. Quietly go through your own files and records to see if you can recognise the situation being complained about and try to understand what is in the mind of the complainant. Try to view the situation from the complainant’s perspective.

**Listen:** Above all, listen. Say nothing and listen to what those about you are saying. Try to find out what the real issues are, consider them carefully and only then, act. Don’t allow emotion to cloud your judgement. It is often possible to see the problem and how to resolve it without fuss.

**Notifying insurers**

At the first practicable opportunity notify PI insurers with a short, dispassionate, detailed account of the complaint, allegation or claim as it has been put to you. There is no need to offer a defence at this stage. Next, ask underwriters for their instructions and promise to send a more detailed summary in a few days when you have collated the information available. Keep in touch with your insurers and make sure you get an acknowledgment of receipt of all your communications. Chase them if you do not receive responses.

In the meantime, do not enter into correspondence, telephone calls or meetings or do anything until you have advised your insurers and asked for their advice as to what to do – and what not to do.

**Difficulties**

If other difficulties arise that threaten to prejudice your policy or your settlement, seek independent advice. You must not risk the business becoming uninsured, and therefore in breach of FSA regulations.

**Further help**

BIBA has recently launched a new support service combining the experienced insurance services of Flaxman Partners, specialist professional liability insurance consultants, and solicitors Hugh James. Any member who has any concerns about their professional indemnity insurance claims or coverage can have a free initial consultation. Their services are then available to members at a special member rate.

Any broker experiencing difficulties or simply needing a second opinion on a PI claim negotiation should contact technical manager Graeme Trudgill at BIBA who may recommend an initial consultation, which is free to members.

For more information on the PI initiative, visit the new PI website, www.biba.org.uk