

GUIDE

Making a claim

If an insured event occurs, it is vital to keep a cool head. The events in the immediate aftermath of a loss and the steps you take to protect your position can be enormously significant in any subsequent dispute.

The odds, at least initially, weigh heavily in favour of insurance companies who have the resources to investigate fully the circumstances giving rise to the claim and, if thought appropriate by the insurer, to repudiate the claim or avoid the policy. It is therefore helpful for claimants to have a grasp of the various processes and procedures involved in presenting an insurance claim. This guide aims to help steer you through some of the key stages of dealing with the loss and making the claim.

Step by step guide

■ Notifying and proving the claim

As soon as the claim arises you should notify your insurer. The burden of proving the claim is on you, both in presenting the relevant information to the insurer to demonstrate the extent of the loss and that it has arisen from an insured risk. The onus is also on you in subsequently presenting the evidence to the court if the insurer refuses to pay. It is vital that you preserve all the evidence required for these purposes, such as damaged plant and machinery, forensic evidence and relevant documents.

■ The insurer's approach

The insurer will lose no time in instructing a team of people (including claims investigators, forensic scientists and lawyers) to investigate your claim and to advise the insurer whether to pay the claim and if so, in what sum. Whilst those investigations should be conducted fairly, clearly they will primarily be for the benefit of the insurer and with the insurer's interests in mind. Care should be taken from the outset therefore to ensure that your interests are safeguarded and that your claim is not compromised in any way.

■ Duty to co-operate

Under the terms of your policy you are obliged to co-operate fully with the insurer whilst it is dealing with the claim. This does not of course prevent you from taking reasonable and proper advice in connection with any problems arising during the course of that investigation.

■ The claims assessor

In the event of a claim arising, you can choose whether to appoint a claims assessor who will act on your behalf and liaise with the insurer's representatives. Most importantly, the claims assessor can advise you on what steps to take and what experts to instruct to protect your position. Many are excellent and have extensive experience of handling large and complex claims. Once appointed, the claims assessor is your agent and you are responsible for his actions.

■ Forensic evidence

Increasingly and particularly in cases of major fires or burglaries, insurers will instruct forensic scientists and other experts such as forensic accountants and private investigators. They will conduct detailed investigation into the circumstances of the loss, the state of your business and even your own personal background. Be ready to instruct your own forensic experts or solicitors on advice from your claims assessor, broker or other professional advisor.

■ Protecting your position

In some cases you may be told that there is no need for you to obtain professional help of your own. You may be instructed to clear the premises after the insurer's forensic examinations have been completed. Before you do this, make sure that your own experts have obtained all the evidence that may be required if the insurer subsequently refuses to pay.





Presenting the claim

■ Seeking professional help

With small claims, presenting the claim does not usually pose a problem. However, with substantial claims, you will usually need professional help. Primarily this help will come from the claims assessor who will research and formulate the material damage, business interruption and any other claims. Care should always be taken not to overstate a claim. To do so may lead to a great deal of difficulty in establishing that your claim is genuine and in some cases may even result in the loss of your claim.

■ The insurance broker

Insurance brokers are almost always regarded as agents of the insured. This may seem strange because they receive their payment from insurers and are often closer to insurers in practical terms, acting as selling agents for particular insurance companies under express authorities enabling them to do so. Information given to the broker is not treated as given to the insurer unless the broker passes it on. If the broker fails to pass on information, the insured is held responsible for that failure. Where an insurance broker fails to pass on relevant information, the consequence of which is to entitle the insurers to avoid the policy, a claim for damages may lie against the broker. The broker is treated as a professional insurance intermediary and as such owes you, the insured, various duties. These include

ensuring that your policy is adequate for your needs, that you are aware of your duties to insurers and that you know and understand all terms and conditions of the policy, non-compliance with which may jeopardise your insurance cover.

Claim checklist

- Notify your insurers of your claim as soon as possible.
- Take all reasonable steps to minimise the loss.
- Make sure that all forensic evidence is preserved.
- Make yourself aware of any policy terms, such as warranties, which may be critical to liability being accepted.
- Collate all evidence necessary to substantiate your claim.
- Do not overstate your claim.
- Seek professional advice if liability for your claim is denied.
- Consider whether your inability to make a recovery against your insurers gives rise to a claim against your broker or other intermediary.
- Be aware of the possibility of claiming for uninsured losses from any third party liable for causing the loss or damage.
- Make yourself aware of the sums insured and their adequacy to ensure that your claim is presented in the most effective way.

Our Team

If you would like further information please contact a member of our team:



Roger Franklin
Head of Insurance Litigation
t: +44 (0)20 7691 4044
e: roger.franklin@edwincoe.com



Nicola Maher
Partner
t: +44 (0)20 7691 4069
e: nicola.maher@edwincoe.com



Oliver Pannell
Partner
t: +44 (0)20 7691 4092
e: oliver.pannell@edwincoe.com



Kate Dwyer
Senior Associate
t: +44 (0)20 7691 4101
e: kate.dwyer@edwincoe.com



Lauren Murphy
Associate
t: +44 (0)20 3974 8125
e: lauren.murphy@edwincoe.com



Michael Whitton
Consultant
t: +44 (0)20 7691 4000
e: michael.whitton@edwincoe.com

For individual profiles please visit our website: www.edwincoe.com

Edwin Coe LLP | 2 Stone Buildings | Lincoln's Inn | London WC2A 3TH | t: +44 (0)20 7691 4000 | e: info@edwincoe.com | edwincoe.com

Edwin Coe LLP is a Limited Liability Partnership, registered in England & Wales (No.OC326366). The Firm is authorised and regulated by the Solicitors Regulation Authority. A list of members of the LLP is available for inspection at our registered office address: 2 Stone Buildings, Lincoln's Inn, London, WC2A 3TH. "Partner" denotes a member of the LLP or an employee or consultant with the equivalent standing.

