GUIDE FOR NOTIFYING CIRCUMSTANCES/CLAIMS UNDER A PROFESSIONAL INDEMNITY POLICY

1. This guide is intended to assist you in understanding the University’s professional indemnity policy of insurance, and our obligations under it.

Notification

2. Professional indemnity policies are usually written on a ‘claims made’ basis (that is, not an ‘occurrence’ basis). The policy, which will respond to a claim and govern the terms of cover, will be the policy in force when the claim is first made against you and notified to insurers – or when a circumstance which might give rise to a claim is first notified to insurers and accepted.

2. It is essential to understand that it is the existence of a claim or circumstance which is crucial – and not whether the claim or potential claim has any merit. Whether the University will ultimately be liable in respect of the claim is not important for notification purposes.

3. It is extremely important for us to notify the insurers in accordance with the policy wording which states that “the Insured (the University of Glasgow) shall give written notice to the insurer as soon as possible after becoming aware of circumstances which might reasonably be expected to produce a claim against the University, or loss, irrespective of the University’s views as to the validity of such claim”.

However, it has been agreed with the University’s insurance brokers that the University’s own internal procedure can be used to deal with a complaint, without the need to notify the insurers, until the procedure has been exhausted. The exception to this arrangement is that as soon as the potential for financial recompense is recognised, then the circumstances must be advised to the insurers. Such notification should be made through the University’s Insurance Section.

4. While actual claims are not usually difficult to identify (e.g. a solicitor’s letter), a ‘circumstance’ is often not defined and is left to the University’s own judgement. A circumstance can be –

- an indication or intimation of an intention to make a claim against the University;
- direct or indirect criticism about the University’s performance or services provided or a dispute about performance or services;
- an awareness of a failure in performance or services which might result in a loss to a third party; or
- a real doubt about the efficacy of the University’s performance or services which might result in a loss to a third party.

5. If there is a delay in notifying of a circumstance or claim, it is possible that the University will be denied cover under the policy entirely. In other cases, if the delay has caused ‘prejudice’ to the insurers, they might be entitled to reduce
their indemnity to the extent of that prejudice. **It is therefore important to implement ‘notification procedures’ within your own area.** The attached form (or claims bordereaux) should be used for the purpose of notification.

7. If you are uncertain about whether you ought to notify a circumstance (or claim), you must discuss the matter with the University’s Insurance & Risk Manager.

*Communication with third parties*

8. It will almost always be a condition of a professional indemnity policy that the University does not admit liability to, or enter into any settlement with, a third party without the consent of the insurers. It is important, therefore, to avoid becoming involved in discussions with any third party claimant – or potential third party claimant - about the merits of a claim against the University.

9. Any formal letters of demand should be merely acknowledged, with a statement that the matter will be investigated and that a further response will follow. Any correspondence between you and the (potential) claimant should be given to the University’s Insurance and Risk Manager when notifying a claim or circumstance.

10. Until solicitors are appointed by insurers to act on the University’s behalf, insurers might require you to communicate direct with a claimant. Insurers should, however, approve any correspondence you propose sending. Draft correspondence should be sent via the Insurance and Risk Manager who will seek such consent on your behalf.

*Appointment of solicitors*

11. The policy will usually give insurers control over the appointment of solicitors on the University’s behalf.

*Pre-action protocols in the UK* 

12. You should be aware that civil procedure rules have been introduced prescribing protocols for professional negligence claims prior to litigation. They are intended to establish a framework for early exchange of information so that a claim can be fully investigated, and possibly resolved, prior to litigation. They do not replace any complaints procedures which are relevant and applicable to the University.

Certain deadlines must be met:

(a) you must acknowledge any ‘letter of claim’ within 21 days; and

(b) from the date of such acknowledgement you have three months in which to investigate the claim made and indicate whether liability is admitted. Reasonable extensions of this period can be given.
If cover under the policy is intended to be sought in relation to a circumstance or claim, it is recommended that you do not take any action, without the consent of insurers, beyond sending a letter of acknowledgement. The Insurance & Risk Manager can assist you in liaising with insurers during this process.

The protocols in their entirety can be viewed at www.dca.gov.uk under ‘legal policy’.

* If outside the UK, you should check legislation or regulations in your local jurisdiction.