

DUTY OF DISCLOSURE

Basic rules to avoid problems with claims

Please read this document carefully as any failure to disclose material information to your insurers may adversely affect the validity of the insurance contract. If you have any questions, please do not hesitate to contact your Account Executive in the first instance. Please note that this memorandum does not purport to constitute legal advice. If appropriate you should, in addition to speaking with your Account Executive, consider taking your own independent legal advice on this subject.

Obligation of insured

An insured should at all times act with utmost good faith towards insurers.

The insured must disclose to insurers all information, facts or circumstances which are, or ought to be, known to the insured and which are material to the risk.

When providing information or completing a proposal form the insured should take care that the details provided are complete and accurate.

Where a proposal form is used, insureds should note that their duty of disclosure is not confined to the questions listed in the form and that all material facts should be disclosed to insurers regardless of whether the insurer has asked for it.

What is material?

Under English law, every circumstance is material if it would influence the judgment of a prudent insurer in fixing the premium and/or terms of the insurance, or determining whether to accept the risk. A circumstance may be material even if disclosure would not necessarily have led to an increased premium or declination of the risk.

If the insured is unsure whether a fact is material, our advice is that it should be declared.

When to disclose

At original placement / renewal an insured's duty of disclosure applies throughout the negotiation preceding placing of the insurance policy until the insurer has agreed to accept the risk and set the terms, price and level of participation and the insurance contract finalised.

Post contract duty of disclosure extends to:

- when the insured wishes to vary terms of the original insurance contract so the insurer takes on additional risk;

- if there is an increase or alteration in risk;
- an extension to the policy period.

Non disclosure

Non disclosure by the insured allows the insurer to avoid the policy even if the non disclosure is accidental and irrelevant to a claim; a insurer can also therefore seek repayment of prior paid claims under the avoided policy.

Illustrative examples of material information:

- Business activity (or change to business activity) including processes, products and geographic presence;
- New companies, markets, acquisitions, disposals;
- New processes such as a new machine or new method;
- Additional premises / insurable items;
- Change to premises;
- Unoccupancy of premises;
- Letting part of your premises to a third party;
- Business financial status;
- Loss history / experience including potential claims circumstances / incidents. This could apply to uninsured as well as insured matters;
- Criminal conviction / regulatory investigation or enforcement / Health and Safety investigation or prosecution;
- insurer previous declination, refusal to renew, imposed terms / restrictions in cover, mid term cancellations.

THIS LIST PROVIDES EXAMPLES ONLY; IF IN DOUBT – DISCLOSE.

The information contained herein is based on sources we believe reliable and should be understood to be general risk management and insurance information only. The information is not intended to be taken as advice with respect to any individual situation and cannot be relied upon as such.

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