

# Block notifications – the Solicitors' PII Renewal 2020

## The problem

Insurers may be wary of renewing – or taking on a new firm – if the Insured faces the prospect of multiple claims arising from notorious areas of repeat work. One such area is investment schemes, typically student lets or hotel units, which have just prompted the SRA (17/08/20) to launch a [thematic review](#). Other work-types we encounter are ground rents and leasehold-related issues, under-settlement of industrial disease claims, and defects in wills and powers of attorney. An error or omission may be repeated through a large number of cases handled by the same fee-earner or members of the same team.

Even where multiple claims have already been made, insurers may have reason to fear those are just the tip of the iceberg. There may be further claims in the pipeline: some firms will have handled hundreds or even thousands of transactions. In some instances, a rogue partner has moved from firm to firm, wreaking havoc.

There are also cases where firms have attempted a home-made notification of circumstances which is wide open to challenge as being inadequate. We have dealt with many such coverage issues, including contested arbitrations.

## An important tool in the broker's armoury

A professionally crafted block notification is therefore an important tool in the broker's armoury. The aim is to park all claims arising out of the circumstances with the firm's current insurer, with a view to going into the marketplace with a clean slate, or persuading the current insurer that renewal is the best hope for recouping their loss. It may also protect the firm from an uncapped excess.

## Notifiable circumstance

The Courts have delivered a number of decisions on this topic, but because notifications tend to be fact-specific, they can be tricky to apply. Broadly, for a set of facts to qualify as a circumstance capable of notification, a claim must be "at least possible" on an objective measure. There has to be a possibility of a claim which is more than just some fanciful or speculative chance of a claim. How material does the possibility have to be? The Courts have indicated that the "test of materiality for notice is a weak one".

It may not be possible to determine whether any given claim which materialises in the future falls within the circumstances notified, until the claim is actually made, per *McManus v European Risk Insurance Co HF* [2013] EWHC 18 (Ch) (approved by the Court of Appeal in [2013] EWCA Civ 1545).

## Making an effective block notification

In order to make an effective block notification of circumstances, it is critical to –

- Understand the law relating to notifications and coverage;
- Analyse the requirements in the policy; and
- Have an in-depth knowledge of professional liability claims, so as to understand the possible source and nature of future claims.

Maximising the prospects of success requires not only drafting skills but the exercise of judgment: too wide, and it's ineffective; too narrow, and it's ineffectual.