



SOLUTIONS...DEFINED, DESIGNED, AND DELIVERED.

SOLICITORS PROFESSIONAL INDEMNITY INSURANCE 2016

ONE TO THREE PARTNER FIRM PROPOSAL FORM

Please provide a full answer to every question, using the additional information space on page 11 and any additional sheets if necessary. The definitions at the end of the form should be read in conjunction with the form. This form must be signed by a Principal/Member/Director of the practice. If you have any queries while completing the form, please do not hesitate to contact a member of Marsh's solicitors team whose details can be found on page 11.

Section 1: Name and Address

Practice Name

Solicitors Regulation Authority Registration Number

Date Established

Please include all names under which you practice and any other entities for which you are seeking cover, including Trustee and/or Nominee Companies. ***Please provide a sheet of your headed notepaper.***

Main office address:

	Postcode:	

DX Number

Telephone Number

Fax Number

Website

Contact

Contact Email

Do you have any other offices, other than the main office listed above for which you are seeking cover?
If yes, please provide details on a separate sheet. If there is no resident Partner/Member/Director at any of these offices, please identify the office concerned and explain how the office is supervised.

Yes No

Is your practice an LLP or company registered at Companies House or are you seeking to Incorporate within the next 12 months?

Yes No

Is your practice registered as an Alternative Business Structure or are you seeking to register as an Alternative Business Structure within the next 12 months?

Yes No

Section 2: Prior Practices

a) Please list the names of all prior practices of which this practice is deemed a successor practice in the last 10 years. If necessary, list further details on a separate sheet.

Name of Practice	Date Established	Date of Succession	Run Off Cover Purchased? (Y/N)

Have any of the listed practices reported any circumstances or claims in the last six years?
If yes, please refer to Section 8

Yes No

Section 3: Company Ownership / Directorships

Is the practice or any Principal/Member/Director of the practice, connected financially, or otherwise, with any other practice, company or business for which it renders professional services?

Yes No

If yes, please provide details on a separate sheet.

Section 4: Solicitor Details

Please provide all information requested for every Principal, Member, Director, assistant and consultant who will be employed by your practice as at the policy inception. **If any person listed is a Registered Foreign Lawyer or a Registered European Lawyer, please note RFL or REL alongside solicitor status. Please enclose Curriculum Vitae for every Principal/Member/Director in your practice who has not held this position in the Firm for at least three years.**

Please list additional solicitors on a separate sheet.

Surname	Forename(s)	Date of Birth	Solicitor Status (Principal, Member, Director consultant/assistant)	Full Time / Part Time	Date Qualified	SRA Roll No	RFL / REL

Please provide all information requested for anyone who has previously been a Principal, Member or Director in the practice since 1st October 2010 or since inception of the practice, whichever is the later. **If any person listed is a Registered Foreign Lawyer or a Registered European Lawyer, please note RFL or REL alongside Roll No.**

Surname	Forename(s)	Date became Principal/ Member/Director	Date ceased to be Principal/Member/ Director	Full Time / Part Time	Date Qualified	SRA Roll No	RFL / REL

Section 5: Other Staff (State if none)

Number of non-solicitor fee earning staff	Full Time		Part Time	
Number of all other staff (inc secretarial)	Full Time		Part Time	

Section 6: Practice Fees

a) The practice's accounting year end is

Please attach copies of audited accounts for the last two completed years. if not available please provide copies of signed-off management accounts.

Year Ending	UK	USA/Canada	Elsewhere	Total for the Year
2013				
2014				
2015				
2016*				
2017 (estimate)				

***if not available please give an estimate**

b) Has any one client or group of clients generated 20% or more of your annual gross fee income in any of the last three years?

Yes No

If yes, please provide full details on a separate sheet of the client and the work undertaken.

- c) If your practice is represented in the USA/Canada do you have: a local office; anyone holding power of attorney on your behalf; a reciprocal referral agreement; bank accounts in the USA/Canada; or do you act as trustees for any trust which has any USA/Canadian operation? Yes No
- d) Please provide full details (on a separate sheet) of any legal advice given in respect of foreign law, jurisdictions or contracts not subjects to English Law and what you experience your firm has in the different jurisdictions? Yes No
- e) What percentage of your clients in the last 12 months have provided gross fee income of less than GBP 10,000?
- f) During the last three years have you had clients in the entertainment or sporting industries? *If yes, please provide full details on a separate sheet.* Yes No
- g) Does your firm undertake work outside of your specialist activities? *If yes, please provide full details on a separate sheet.* Yes No

Section 7: Practising Certificate and Regulatory Matters

In the last 10 years, has any fee earner in the practice or any fee earner previously employed in the practice:

- a) ever been refused a practising certificate? Yes No
- b) been granted a conditional practising certificate? Yes No
- c) been reprimanded, fined or otherwise sanctioned by the Disciplinary Tribunal? Yes No
- d) practised in a firm subject to an investigation or an intervention by the Law Society or SRA? Yes No
- e) had an award made for inadequate professional service by the Legal Ombudsman, LSCS, CCS or OSS? Yes No
- f) entered into any regulatory settlement agreement with the SRA? Yes No
- g) had a civil or criminal judgment against him / her? Yes No
- h) been investigated by any other regulatory body other than the Law Society or SRA (e.g. FCA, ILEX...)? Yes No
- i) acted as an intervening agent or taken over an intervened firm? Yes No
- j) at any time in the last three years been the subject of a monitoring visit from the Solicitors Regulation Yes No
- k) ever been the subject of any visit from or enquiry by the Forensic Investigation Unit of the Law Society or SRA or received notice of a proposed visit? Yes No

If yes to any of these, please provide full details on a separate sheet and include a copy of all reports issued by the SRA, LCS, CCS, OSS, LeO, Solicitors Disciplinary Tribunal and/or any other regulatory body.

Section 8: Claims and Circumstances

a) Has your practice, or any prior practice, reported any circumstances, incidents or claims to, Qualifying Insurers or the Assigned Risk Pool in the:

- | | | | | | |
|---------------------------|------------------------------|-----------------------------|---------------------------|------------------------------|-----------------------------|
| Insurance Year 2010-2011? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Insurance Year 2013-2014? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Insurance Year 2011-2012? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Insurance Year 2014-2015? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| Insurance Year 2012-2013? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Current Insurance Year? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Please provide claims information from Qualifying Insurers or the Assigned Risks Pool for all indemnity years since 1st October 2010 (or date of commencement of the practice if later) for your firm and any firm to which you are a successor practice.

- b) Have any circumstances, or claims reported by you or any prior practice in the past arisen as a result of the fraud or dishonesty of any Principal/Member/Directory or employee of the practice? Yes No

If yes, please provide details on a separate sheet including how the matter was resolved and the procedures / processes in place to avoid re-occurrence.

c) After making full enquiry of all Principals/Members/Directors and employees in your practice, are you aware of any circumstances, incidents or claims that have not been reported to your current or prior insurers (including any letters of complaint about your service or dispute as to outstanding fees)? Yes No

d) After making full enquiry of all Principals/Members/Directors and employees in your practice, are you aware of any circumstances, incidents or claims that have been notified to your current or prior insurers but have not been accepted by insurers as a valid or effective notification? Yes No

If yes, please provide details on a separate sheet.

e) Please identify any claims or circumstances which are attributable to:
 (i) unauthorised access to your practice's information or computer systems or to your practice's bank accounts or
 (ii) transactions involving bogus or fraudulent practices purportedly acting for the counter party in transactional matters.

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f) What steps have you taken to prevent a recurrence of such claims or circumstances in the future?

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Please note that you have an obligation under your current professional indemnity policy to notify all circumstances and claims as soon as practicably possible. All such notifications of which you are aware that have not been reported to your previous insurers must be declared.

Section 9: Previous Insurance

a) Have you ever failed to pay your premium (including run-off premium) or defaulted on a payment where the premium was financed? Yes No

b) Have you or any solicitor referred to above ever been subject of an IVA or other arrangement? Yes No

c) Have you or any solicitor referred to above ever been convicted of (or charged but not yet tried for) any criminal offences involving fraud or dishonesty? Yes No

d) Have you ever been insured by the Assigned Risk Pool? Yes No

If yes to any of the above, please provide details on a separate sheet

Section 10: Current Insurance

a) Premium (excluding insurance tax)	£	
b) Limit of Indemnity	£	
c) Excess	£	
d) Current Insurer		
e) Renewal Date		

Section 11: Insurance Requirements

	Option 1		Option 2		Option 3	
a) Limit of Indemnity	£		£		£	
b) Excess	£		£		£	

Section 12: Area of Practice

a) Please provide the percentage of Gross Fees allocated to each Area of Practice during the last financial year and the two prior years. **Please round up to the nearest whole percentage.** (For guidance see definitions at the back of the form).

	Last Year	Prior Year	Prior Year 2
Administering oaths, taking affidavits, and notary public	%	%	%
Agency advocacy	%	%	%
Acting as an arbitrator, adjudicator, or mediator	%	%	%
Corporate/Commercial (excluding work to public companies)	%	%	%
Conveyancing - Commercial	%	%	%
Conveyancing - Residential	%	%	%
Criminal Law	%	%	%
Debt Collection	%	%	%
Defendant litigious work for Insurers	%	%	%
Employment	%	%	%
Financial Advice and Services regulated by the Solicitors Regulation Authority	%	%	%
Immigration	%	%	%
Landlord and Tenant	%	%	%
Lecturing and related activities and expert witness work	%	%	%
Litigation (Commercial)	%	%	%
Litigious work other than included in any other category. Please specify	%	%	%
Matrimonial / Family	%	%	%
Non-litigious work other than Included in any other category. Please specify below	%	%	%
Offices and Appointments	%	%	%
Parliamentary Agency	%	%	%

	Last Year	Prior Year	Prior Year 2
Personal Trustee	%	%	%
Personal Injury (Claimant) - Fast Track	%	%	%
Personal Injury (Claimant) - Other	%	%	%
Probate and Estate Administration	%	%	%
Property Selling / Valuations and Property Management	%	%	%
Tax Planning / Mitigation	%	%	%
Town & Country Planning	%	%	%
Trusts	%	%	%
Wills	%	%	%

If you indicate a percentage in any of the areas below, please provide full details on a separate sheet including the highest deal values for these areas over the last 3 years. For FCA/FSA work please request our FS QUESTIONNAIRE.

Corporate/Commercial work, including public companies	%	%	%
EC Competition Law and Human Rights Law	%	%	%
Financial Advice and Services where you opted into regulation by the FCA / FSA	%	%	%
Intellectual Property including Patent, Trademark and Copyright	%	%	%
Marine Litigation	%	%	%
Mergers & Acquisitions including Management	%	%	%
Total must equal 100%			

b) If you have specified Non Litigious work above please provide a breakdown of this work by percentage below

- c) Has your practice or any Prior Practice carried out any work in connection with the recovery of Payment Protection Insurance (PPI) monies, bank charges or Card Security Product fees? Yes No
- d) Has your practice or any prior practice carrier out any work in connection with any tax planning or tax mitigation / avoidance schemes including but not limited to Stamp Duty Land Tax? Yes No
- e) Have you ever been involved in any group litigation or class action claims? Yes No
If yes, please provide details

If yes to any of the above, please provide details on a separate sheet.

Section 13: Personal Injury

a) Has your practice or any prior practice ever accepted referrals from personal injury claims companies and/or their agents? Yes No

If yes, how many personal injury cases (from claims companies) have you undertaken in the last six years?

b) Please advise the percentage of personal injury (claimant) work you have had in each of the following categories in the last 12 months

Fast Track % Multi Track %

c) Please advise your current areas of personal injury work by percentage:

Clinical Negligence %
 Occupational Disease %
 All other Personal Injury (RTA, EL/PL etc.) %

d) Please advise the current number of cases of:

Clinical Negligence
 Occupational Disease
 All other Personal Injury (RTA, employers', public liability, etc.)
 How many open claimant personal injury cases does your firm currently have?

Please specify your average personal injury settlement size for:

2015/16	£	<input type="text"/>	£	<input type="text"/>	£	<input type="text"/>
2014/15	£	<input type="text"/>	£	<input type="text"/>	£	<input type="text"/>
2013/14	£	<input type="text"/>	£	<input type="text"/>	£	<input type="text"/>

e) What percentage of claimant personal injury claims have been funded by unions? %

Section 14: Conveyancing Work

Please only complete this section if you have undertaken conveyancing work in the last 6 years.

a) Please complete the following

Residential Conveyancing		2011/2012	2012/13	2013/14	2014/15	2015/16
A	% of Total Gross Fees	%	%	%	%	%
B	Approx No. of transactions - mortgaged					
C	Approx No. of transactions - non mortgaged					
D	Highest Fee for single conveyance					
E	Average Fee for conveyance transactions					
F	No. of transactions relating to re-mortgage/2nd mortgage					
G	No. of referrals from a broker, developer or intermediary					
H	Highest property value	£	£	£	£	£
I	Average property value	£	£	£	£	£
J	Highest loan value	£	£	£	£	£
K	Percentage of transactions involving lenders who are not members of the Council of Mortgage Lenders	%	%	%	%	%

Commercial Conveyancing		2011/2012	2012/13	2013/14	2014/15	2015/16
A	% of Total Gross Fees	%	%	%	%	%
B	Approx No. of transactions - mortgaged					
C	Approx No. of transactions - non mortgaged					
D	Highest Fee for single conveyance					
E	Average Fee for conveyance transactions					
F	No. of transactions relating to re-mortgage/2nd mortgage					
G	No. of referrals from a broker, developer or intermediary					
H	Highest property value	£	£	£	£	£
I	Average property value	£	£	£	£	£
J	Highest loan value	£	£	£	£	£
K	Percentage of transactions involving lenders who are not members of the Council of Mortgage Lenders	%	%	%	%	%

c) In the last six years has your practice or any prior practice ever undertaken any Right to Buy transactions? If yes, please complete the table below. Yes No

Indemnity Year	2011/12	2012/13	2013/14	2014/15	2015/16
Total Number of Transactions					
Number from referrals e.g. Company/broker or agent					
Number of Direct Approaches					

- d) Is it the intention of the practice to undertake any Right to buy/Right to Acquire transactions in the next 12 months? If yes, please provide full details on a separate sheet. Yes No
- e) In the last six years has the practice or any prior practice undertaken any back to back transactions? If yes, please provide number of cases for each of the last three years. Yes No
- f) Has your practice ever acted in any transactions involving overseas properties/developments? If yes, please provide full details on a separate sheet. Yes No
- g) Has your practice ever undertaken legal work on any Home Income Plans or Equity Release Plans? Yes No
- h) Has your practice or any prior practice ever provided financial advice on any Home Income Plans or Equity Release Plans? Yes No
- i) Are all clients met in person and appropriate checks performed to ensure the identity of your client? Yes No
- j) Is training provided on identifying mortgage fraud to Partners/Directors/Members and staff who undertake conveyancing work? Yes No
- k) Are only Partners/Directors/Members able to sign/issue certificates of title? If **No**, please advise who else is able to sign these certificates in the table below. Yes No

Name	Position

l) In the last five years, have you been suspended or removed from any leader panel? If **Yes**, please provide details below: Yes No

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- m) In the last six years have you received any requests for conveyancing files from lenders and / or solicitors? Yes No
- n) Are you a member of the Conveyancing Quality Scheme? Yes No

Section 15: Significant Changes & Material Information

- Do you expect there to be any significant change to or in your practice in the coming year? Yes No
- Is there any other information that insurers should be advised of that may be relevant to this form? Yes No

Section 16: Risk Management

a) Please provide the name and status of the person responsible for risk management in your practice.

Name Status

b) (i) Please provide the name and status of the person nominated as the COLP.

Name Status

(ii) Please provide the name and status of the person nominated as the COFA.

Name Status

(iii) Please provide the name and status of the person nominated as the Money Laundering Reporting Officer (MLRO).

Name Status

- c) Do you hold client money? Yes No
- d) Do you hold separate bank accounts for client monies and office monies? Yes No
- e) What is the average number of files per fee earner?
- f) What percentage of outstanding fees were invoiced over 90 days ago? %

Section 17: Cyber Fraud

a) What steps have you taken to prevent unauthorised access to your practice's information and computer systems and your practice's bank accounts?

b) What steps do you take to identify bogus or fraudulent practices purportedly acting for the counterparties in conveyancing and other transactional matters?

Please attach copies of all written policies or protocols which you have adopted with a view to preventing unauthorised access to your practice's information and computer systems and your practice's bank accounts.

c) Please outline the steps you have taken to ensure that your members/partners and staff adhere to those written policies and protocols.

- d) Do you have the Government's Cyber Essentials or Cyber Essentials Plus certificates? If so, please attach copies. Yes No
- e) Do you comply with any other cyber or information security standards such as ISO 27001? If so, please attach details and copies of all relevant documents. Yes No
- f) What steps do you intend to take to improve the security of your practice's information and computer systems and your practice's bank accounts?

Section 18: Other Insurances

	Renewal Date
Directors & Officers Insurance	
Cyber Liability Insurance	
Office Insurance	
Public Liability	
Employers Liability	
ATE Insurance	

Would you like us to send you details regarding any of our insurance offerings above? Yes No

Section 19: Confirmation

- | | |
|--|---|
| <input type="checkbox"/> This form — fully completed, signed and dated. | <input type="checkbox"/> Additional information where necessary. |
| <input type="checkbox"/> Claims prints from all participating or qualifying insurers or the assigned risks pool, irrespective of whether any claims or circumstances have been reported by your practice and any practice to which you are successor practice since the insurance year 2011. | <input type="checkbox"/> A copy of all reports issued by the SRA, Legal Ombudsman, the former LCS, CCS, or OSS, forensic investigation unit, disciplinary tribunal and/or regulatory body where applicable. |
| | <input type="checkbox"/> A copy of your management accounts. |

DISCLOSURE OF MATERIAL FACTS — Every proposer or insured, when seeking new insurance or amending or renewing an existing policy must disclose any information which might influence the insurer in deciding whether or not to accept the risk, what the terms of the policy should be or what premium to charge. If you fail to disclose all material facts, this may render the insurance voidable from inception (the start of the contract) and enable the insurer to repudiate liability (entitle the insurer not to pay your claims). If you are not sure whether a fact is material, you should disclose it.

DUTY OF DISCLOSURE AND FAIR PRESENTATION — We would specifically draw your attention to the attached "Duty of Disclosure and Fair Presentation" document. We ask that you read it carefully as, if your insurance contract is governed by English law (i.e. the laws of England, Wales, Scotland or Northern Ireland), any failure to disclose material information to your insurer(s), or any misrepresentation, may adversely affect the validity of your contract. If your contract is not governed by English law We recommend that you obtain independent advice as to your obligations under the relevant law. The attached guidance note does not purport to constitute legal advice but it does reflect the law. If having read the attached document you have any questions, please do not hesitate to discuss this with your usual Marsh contact. In any event, Marsh Ltd. recommends full disclosure of all material facts and circumstances as best practice.

DATA PROTECTION ACT NOTICE — Information, including sensitive data as defined in the Data Protection Act 1998, that you provide to us (including information already received) may be held on a group database and may be shared with other MMC group companies. This information will be used for general insurance administration purposes, for research and statistical purposes and for crime prevention. In the course Of performing our obligations to you, this information maybe disclosed to agents and service providers appointed by us, including insurers, Consultants, market research and quality assurance companies. From time to time industry regulators and our auditors may require us to disclose some or all of the information for legal or regulatory purposes in the UK and abroad. This information may be transferred to any Country including countries outside the European Economic Area for any of these purposes and for systems administration. Where you provide information relating to other individuals, you may only do so with their express consent. Information is only accepted on this understanding.

- By ticking here, we declare that all statements and particulars are true, full enquiry having been made, and we have not omitted, suppressed or mis-stated any material facts which may be relevant to the Insurer's consideration of this insurance proposal and undertake to inform the Insurer of any change to any material fact that occurs prior to the point at which the insurance contract has been concluded and throughout the duration of the contract of insurance. We understand that the information we provide will be used by the Insurer in determining acceptance of the application together with the premium charged for the risk and the terms of any policy provided.
- By ticking here, we confirm that we have read and understood the content of the accompanying duty of disclosure and fair representation document.
- By ticking here, we understand that if the practice acquires, merges with or absorbs another practice during the period of insurance, the Insurer will require similar information in relation to that practice and may charge an additional premium.
- By ticking here, we agree that credit checks may be undertaken against the firm and the partners.

Signature of COLP

Signature of COFA

Print name

Print name

Date

Date

Please return the completed proposal form by email, or by post to:

The Solicitors Team
FINPRO
Marsh Ltd
Tower Place East
London
EC3R 5BU
pi.solicitors@marsh.com

Should you have any queries regarding the completion of this form do not hesitate to contact:

William Cooper Vice President	Email: william.cooper@marsh.com	Telephone number: 0207 178 4261
John Gold Senior Vice President	Email: john.gold@marsh.com	Telephone number: 0207 178 4263
Jeanna King Vice President	Email: jeanna.king@marsh.com	Telephone number: 0207 178 4267
Ian Black Senior Vice President	Email: ian.r.black@marsh.com	Telephone number: 0776 607 8409
Grant Lister Vice President	Email: grant.lister@marsh.com	Telephone number: 0113 394 7736

Should you have any queries regarding the completion of this form please do not hesitate to contact the team on 0207 178 4261, or email us at pi.solicitors@marsh.com



It is very important to read and understand the contract you will be entering into when purchasing insurance. Completion of this proposal form/questionnaire does not imply that insurance cover will be offered by insurers. Marsh Ltd is authorised and regulated by the Financial Conduct Authority. Copyright © 2016 Marsh Ltd. All rights reserved.

THE DUTY OF DISCLOSURE AND FAIR PRESENTATION



If your insurance¹ policy is governed by the laws of England and Wales, Scotland or Northern Ireland² please read this guidance note carefully, as any failure to disclose material information to your insurer may adversely affect the validity of your insurance policy. If you have any questions, please do not hesitate to contact your usual Marsh contact in the first instance.

If your insurance policy is not governed by the laws of England and Wales, Scotland or Northern Ireland we recommend that you obtain independent advice as to your obligations under the relevant law. If you are not sure about which law applies to your insurance policy, you should discuss this with your usual Marsh contact.

This guidance note does not purport to constitute legal advice but it does reflect the law. Your insurance policy may contain clauses which vary the strict legal position. If appropriate you should, in addition to speaking with your usual Marsh contact, consider taking your own independent legal advice.

Please tell us if the person in your organisation responsible for arranging insurance changes so that we may explain the duty of disclosure/fair presentation to that person.

REMEMBER – you are responsible for the accuracy and completeness of all the information you provide to us and to your insurer.

1. BUSINESS INSURANCE CONTRACTS³

1.1 YOUR OBLIGATIONS

If you are a business and your insurance policy is governed by English law, you must, at all times, act with utmost good faith towards your insurer. This means that before your policy is placed, at renewal, when varying or extending the policy (and also during the policy period if your policy contains a particular clause stating that any change in the circumstances must be advised to your insurer), you must disclose to your insurer all information, facts, and circumstances which are, or ought to be, known to you and which are material to the risk. When providing information or completing a proposal form or otherwise confirming any information to your insurer, you should take care to ensure that the details provided are complete and accurate.

¹ References to insurance/insured/insurer also apply to reinsurance/reinsured/reinsurer, save for consumer insurance references.

² All references to English law include the laws of Wales, Scotland, and Northern Ireland.

³ A business insurance contract is any contract which is not a consumer contract. A consumer contract is an insurance contract taken out by an individual for purposes which are wholly or mainly unrelated to the individual's trade, business, or profession.

Even where a proposal form is used, you should note that your duty of disclosure is not confined to answering the specific questions listed in the form and/or asked by us or your insurer and that all material circumstances should be disclosed to your insurer, regardless of whether or not your insurer has asked for the information.

IF YOUR POLICY IS PLACED, RENEWED, OR VARIED ON OR AFTER 12 AUGUST 2016

For policies placed, renewed, or varied on or after 12 August 2016 the new Insurance Act 2015 will apply. This means you will have a duty to make a “**fair presentation**” of the risk and you must disclose to your insurer every material circumstance which you know or ought to know. The Insurance Act gives some guidance as to what this means:

- You must disclose every material circumstance which is known by (i) your senior management (the Act defines “senior management” as “those individuals who play significant roles in the making of decisions about how the insured’s activities are to be managed or organised”); **and** (ii) those individuals responsible for arranging your insurance (which includes risk managers and any employee who assists in the collection of data, or who negotiates the terms of the insurance, such as your individual brokers).
- You “ought to know” what should reasonably have been revealed by a “reasonable search” of information available to you. This means you must conduct a reasonable search for, and disclose, material information that is available to you. It is important to note that this includes not only information held within your organisation but also outside it, including information held by your agents, and also held by persons and entities who are to be covered by the insurance.
- You must not make any misrepresentations to your insurer.
- You must provide the information to your insurer in a manner which would be “reasonably clear and accessible” to a prudent insurer. This is a new, standalone, duty.

1.2 WHAT IS “MATERIAL”?

Under English law, every circumstance is material if it would influence the judgement of a prudent insurer in fixing the premium and/or the terms of the insurance and/or determining whether to accept the risk. This refers to “any” prudent insurer, not just the insurer who has been offered the risk. A circumstance may be material even if disclosure would not necessarily lead to an increased premium or declinature of the risk.

In the context of business insurance policies, insurers are likely to regard matters such as, but not limited to, the examples detailed in Appendix 1 of this document as material. If you are unsure whether a fact or circumstance should be disclosed, or whether the duty to disclose information continues throughout the period of a particular policy, we recommend that you disclose the information anyway, as failure to do so may lead to your insurer reducing its claim payment, applying additional terms or even avoiding the policy.

1.3 WHEN TO DISCLOSE

Your duty of disclosure applies throughout the negotiations preceding the placing of your policy until your insurer has agreed to accept the risk and has set the terms, price, and level of participation, and the contract has been finalised.

After the policy has been placed, the duty of disclosure arises again if you wish to make changes to the policy so that your insurer takes additional risk, when there is an extension of the policy period and when a policy condition requires you to advise your insurer of a specific increase or alteration in risk. The duty to disclose material facts and circumstances arises again during the renewal process.

1.4 FAILURE TO DISCLOSE

The consequences of failing to disclose a material fact or circumstance will depend on the precise terms of your insurance policy and on whether the policy was placed (or varied) before 12 August 2016.

(i) If your policy is placed or renewed (or varied) before 12 August 2016

If your policy is placed or renewed (or varied) before 12 August 2016 and if you fail to disclose, or misrepresent, a material fact or circumstance which you know or ought to know, your insurer may avoid the contract (or the variation), that is, it may treat the contract as if it had never existed. Your insurer may be entitled to recover any claims paid out to you prior to the avoidance, and in some circumstances may be entitled to keep the premium.

(ii) If your policy is placed or renewed (or varied) on or after 12 August 2016

For policies placed on or after 12 August 2016 the new Insurance Act 2015 will apply and your insurer's remedy for non-disclosure will depend on whether or not your failure to disclose, or misrepresentation, was deliberate or reckless:

- If you *deliberately* or *recklessly* fail to comply with your duties, your insurer will be able to avoid the policy, that is, to treat it as if it had never existed, and may retain the premium.
- If your failure to comply with your duties was not deliberate or reckless, your insurer's remedy will depend on what the insurer can show it would have done had a fair presentation of the risk been made:
 - If your insurer would not have entered into the contract on any terms, it can still avoid the contract but must return the premium;
 - If your insurer would have entered into the contract but on different terms (not relating to premium), the contract may be treated as if it included those terms from the outset;
 - If your insurer would have entered into the contract but would have charged a higher premium, the amount paid on a claim may be reduced proportionately.

The Insurance Act 2015 will also apply to variations made to policies on or after 12 August 2016 even if the policy inception prior to this date⁴.

2. CONSUMER INSURANCE CONTRACTS

2.1 YOUR OBLIGATIONS

If you are a consumer insured (i.e. a person taking out insurance for purposes wholly or mainly unrelated to your business, trade, or profession), and the insurance policy is governed by English law, then you must:

- Take reasonable care to provide complete, accurate, and honest answers to the questions we and your insurers ask, and not to make a misrepresentation, when you take out, make changes to, and renew your policy.

- You should note that if on renewal of your policy you do not meet your insurer's request to confirm or change details you have previously given, this may amount to a misrepresentation.
- Please also tell us if there are any changes to the information set out in the Statement of Fact, Certificate of Insurance (if applicable), or on your Schedule.
- If any of the information provided by you changes after you purchase or renew your policy and during the period of your policy please provide us with details.

2.2 FAILURE TO DISCLOSE

If any of the information provided by you is not complete and accurate:

- Your insurer may cancel your policy and treat it as if it never existed; or
- Your insurer may refuse to pay any claim, or
- Your insurer may not pay any claim in full, or
- Your insurer may revise the premium and/or change the compulsory excess, or
- The extent of the cover may be affected.

For motor insurance it is an offence under Road Traffic legislation to provide incomplete or inaccurate information to the questions asked in your application for the purpose of obtaining a certificate of motor insurance.

Insurers recommend you keep a record (including copies of letters) of all information provided to them or us for your future reference.

The above duties arise before the policy is placed, when it is varied or extended and when it is renewed. The duties may also arise during the policy period if the policy contains a condition which requires you to advise your insurer of a specific increase or alteration in risk.

If you are not sure whether your insurer needs particular information, we recommend that you provide it to them anyway.

⁴ In the event of a breach of the duty of fair presentation in relation to a variation made on or after 12 August 2016, the insurer will have a similar range of proportionate remedies available to it, depending on whether the breach was deliberate or reckless and what the insurer can show it would have done had the duty not been breached. This may result in the insurer treating the policy as if the variation was never made, reducing your claim payment, applying additional terms, or even avoiding the entire policy.

APPENDIX 1

NON-EXHAUSTIVE ILLUSTRATIVE EXAMPLES OF MATERIAL INFORMATION

Circumstances which may be considered material are:

- Special or unusual facts relating to the risk.
- Any particular concerns which led you to seek insurance cover for the risk.
- Anything which would generally be understood as being something that should be disclosed for the type of risk in question.

By way of example:

GENERAL INFORMATION ABOUT YOUR BUSINESS

- Business activity (or change to business activity), including processes, products, and geographic presence.
- New companies, markets, acquisitions, or disposals.
- Additional premises/insurable items.
- Changes to premises.
- Higher than ordinary degree of risk or liability (specific to your business or industry-specific).
- Business financial status.
- Loss history/experience, including paid and outstanding claims and potential claims/circumstances/incidents/losses that were not reported as claims (whether insured or not).
- Details of criminal charges and convictions of your organisation, its directors or employees; regulatory investigations or enforcement/health and safety investigations and prosecutions.
- Any insurers' previous declinatures, refusals to renew, imposed terms/restrictions in cover, mid-term cancellations, etc.

MATERIAL DAMAGE POLICIES

- Changes in construction and/or purpose.
- New/amended processes.
- Changes to fire protections.
- Increased storage of hazardous materials/attractive stock.
- Any attempted break-in or arson attack.
- Use of temporary/third party premises.

LIABILITY POLICIES

- Changes to business activities (including disclosing historic activities that have ceased).
- The creation or acquisition of new companies for which cover is required.
- Products exported to, or work in, overseas territories (particularly the USA or Canada).
- Work in or on hazardous locations such as offshore installations.
- Health and safety investigations/prosecutions.

MOTOR FLEET POLICIES

- Driving convictions.
- Corporate investigations/prosecutions.
- Undisclosed accidents.
- Changes to vehicle performance.
- Change of use of vehicle.

BUSINESS PERSONAL ACCIDENT AND TRAVEL POLICIES

- Changes to business activities.
- Material differences in the travel pattern (different geographies, number of journeys, etc.).

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

For more information about the duty of disclosure and fair presentation, visit marsh.com, or contact your local Marsh representative.



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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