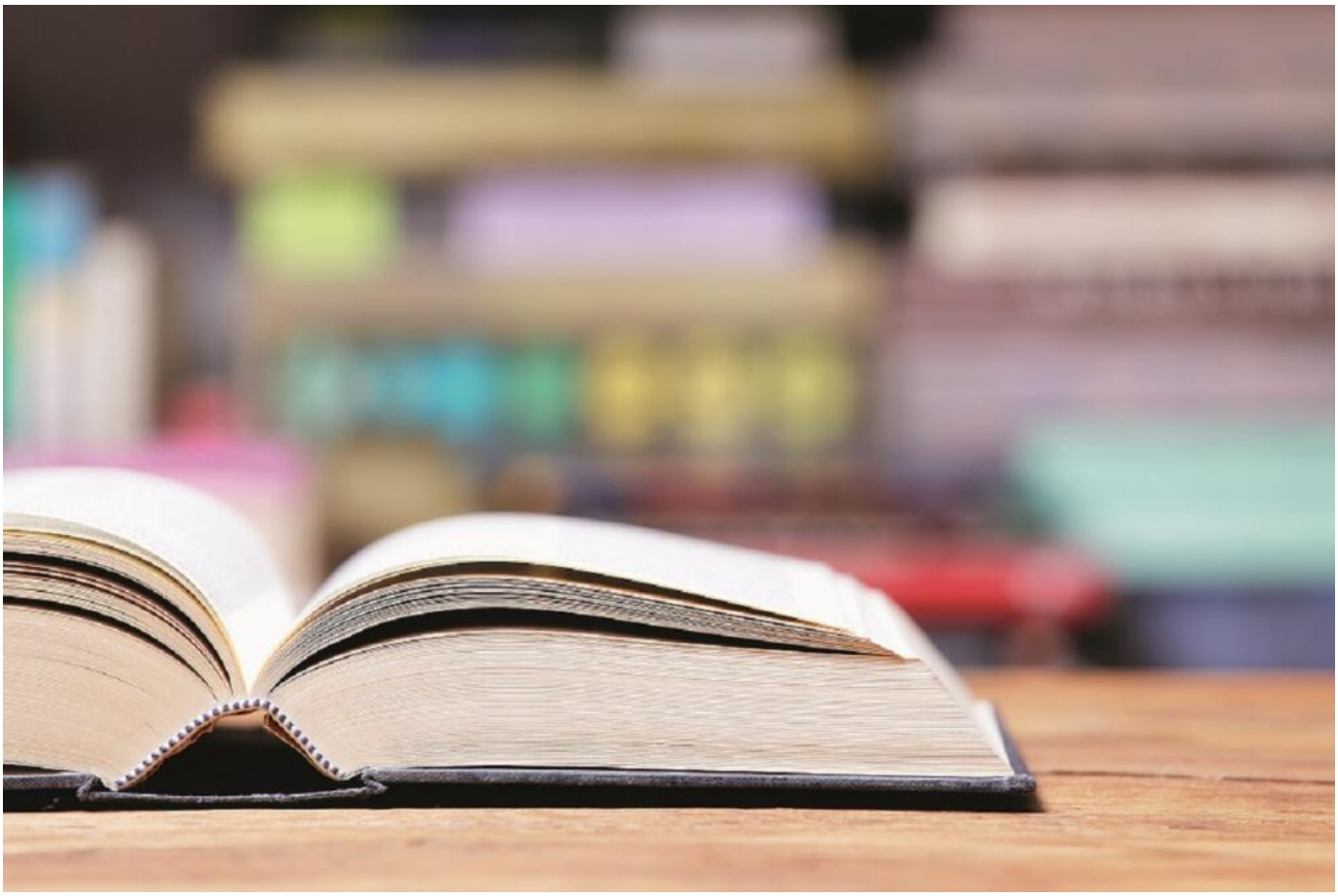
An open book

Professional standards



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Karen Eckstein provides guidance on why being transparent and forthcoming on the proposal form for PI insurance will help you avoid problems in the long run

Key Points

What is the issue?

The proposal form is your opportunity to present your business to insurer in the best possible light. It is not merely a form filling exercise.

What does it mean to me?

If there are questions that you are not sure about, don't just tick the box Yes or No, put an explanation. Insurers will usually prefer to have more information than less. You have to be honest and truthful.

What can I take away?

The more information that you can give Insurers at the proposal stage, and the more accurate that information is, the less likely it is that any policy points will arise.

A previous article, 'Better protection', in the March 2017 issue of *Tax Adviser*, explained how to avoid problems in professional negligence claims. It discussed how to avoid professional negligence claims arising, and looked at what to do if the worst happens and a professional negligence claim arises. And in that event, what should be done to avoid problems arising with your professional indemnity insurer.

The relationship between the professional ('the insured') and his insurer is an important one. At the heart of that relationship lies a key document, 'the proposal form'. The proposal form is the document by which the Insured enables the insurer to know who he is, what he does, how he operates. It is the insurer's one opportunity to get to know the insured and understand the nature of the insured's business. It is his window onto the insured's method of operating, his best first chance to understand the insured.

Many Insureds see this form as 'a bit of a pain'. They see it as a bit of a 'form filling exercise', something that has to be got through as quickly as possible, so that they can buy the necessary insurance as cheaply as possible to enable them to continue in practice.

In my view, that approach is a mistake and gives rise to problems going forward, and I hope this article will address those issues.

Many insureds do not understand the nature of the relationship between the Insurers and the broker and themselves. They think that the broker and the insurer are one and the same. Many insureds 'go direct' to an insurer and do not have the, often invaluable, assistance that a broker can provide. A broker's assistance can be extremely helpful, particularly when policy issues arise; or when a claim is made. A broker can also be very helpful in completing the proposal form, or when queries

arise on the proposal form. In this article both an Insurer and a broker discuss issues arising on the proposal form, and their unique perspectives on the proposal form are illuminative.

In ‘layman’s terms’, the insurer is there to provide the product that the Insured is purchasing. It is the insurer who will pay out on any valid claims made, in the event that the same becomes necessary.

It is the insurer, therefore, who will want to know as much as possible about the Insured when considering the proposal Form. The insurer, therefore, will have drafted the proposal form wanting to understand how the insured operates, what sort of work he does, what sort of claims history he has had, what systems he operates, what staff he has.

The questions that the Insurer has put on the proposal form are designed to enable the insurer to assess the risk that he is taking on when he agrees to provide insurance. Given that even a fairly straightforward mistake can give rise to a claim costing hundreds of thousands of pounds, if not more, it is not unreasonable for the insurer to want to have a fairly good understanding of the insured’s business, not just the sort of work undertaken, but who is in the business and how they operate themselves.

The broker acts for the insured, i.e. the professional. Although the broker will have good relationships with a number of insurers, his role is to act for the Insured. He will, therefore, be able to assist the Insured in the completion of the proposal form (and answer queries arising in that respect). He will assist the Insured in identifying the appropriate market to place that insured’s risk. It may well be that he is aware of three or four different insurers who might be available in the market place and he will use his expertise to decide which is the best insurer (or insurers) for that particular insured. If that insurer has questions about the insured, he will be able to best present the ‘risk’ to the insurer so as to maximise the insured’s prospects of obtaining cover at reasonable cost. He will be able to advise, for example, on the level of excess that the insured could take (the first amount that the insured would pay in relation to any claim), and also advise as to the limit of indemnity that the insured might wish to purchase (the maximum amount that the insurer will pay in relation to any claim). If an insured has, for example, a poor claims history (perhaps there was a problem in the past that has now been resolved) he will be able to present that to insurers in the best possible light (perhaps by explaining what steps the insured has taken to put right past problems).

As I hope I have explained, a broker can be invaluable in assisting an Insured in obtaining appropriate cover.

As mentioned in previous articles, there is a need to survey the firm so that, when completing the proposal form, the insured is confident that they are reporting to insurers that they are aware of all claims and circumstances which might give rise to a claim. Clearly, such a survey takes time and therefore completing the proposal form is not something that should be done at the last minute. In my view, an insured should be preparing for renewal at least two to three months before the renewal date, if not more.

What will you do if your insurer decides not to renew? You need to be taking steps *early* to ensure that your cover continues and again, this is something that a broker can assist you with.

The proposal form, therefore, is your opportunity to ‘sell’ your practice to the insurer, to present your business to Insurers in the best possible light. It is not merely a form filling exercise. If there are questions that you are not sure about, don’t just tick the box ‘Yes’ or ‘No’, put an explanation. Insurers will usually prefer to have more information than less. You have to be honest and truthful (and see what the broker says below). However, this doesn’t prevent you from giving further explanations where you think it is appropriate.

Think about the language that you use. Don’t be slapdash. This is your opportunity to ‘market yourself’ to the insurer. Think of it as a piece of marketing material. Be careful and accurate.

If you have a relationship with another professional, think about how you are going to describe that relationship. Is it a contractual relationship? For example, do you have a referral arrangement, whereby you refer clients to a third party and get paid a fee? If so, describe it as such.

Or is it the case that you recommend clients to other professionals, because you quite rightly recognise that they require services that are outside your area of expertise, but you do not receive any reciprocity or referral fee for doing so? If so, do not describe that as a ‘referral arrangement’ (which has an entirely different meaning and which will give rise to queries by insurers). Recognising that you do not have an area of expertise and that you advise clients to seek alternative expertise is a positive sign (insurers do not like to insure people who act outside their area of

expertise). Falsely describing that as a referral arrangement, however, will give rise to unwarranted queries from insurers, who may be wary of referral relationships and may enquire into them. Take care, therefore, about how you describe such activities.

If you have hived off an area of your business into a separate company, but refer work into that separate company, but the ownership of that company is connected, then let insurers know.

How do your engagement letters deal with that issue? Let insurers know.

If you have expertise in a particular area, and are known for it, again let insurers know.

Take as much care as you can over the completion of your proposal form. Make sure it is accurate.

You do not want insurers to take a policy point over incorrect or incomplete disclosure.

I have acted for insurers on a number of cases where policy points are taken where incorrect or incomplete information is given to insurers (whether that be at the proposal form stage, or at a later stage). It is not a nice situation to be in, where a claim is made against an insured, but insurers cannot ‘confirm cover’ because there is a policy issue. The more information that you can give insurers at the proposal stage, and the more accurate that information is, the less likely it is that any policy points will arise.

As mentioned above, don’t forget that the proposal form is the insurers’ opportunity to assess you as a potential risk. A percentage split of work types which does not add up to 100%, firstly is inaccurate, but secondly it does not give an insurer a very good impression of you as a potential insured. If you do not take care over such an important document as the proposal form, will they decide that you don’t take care over your clients’ files? That lack of care might be sufficient to make an insurer decide not to insure you in the first place.

Charlotte Lawson, an underwriter with Hiscox (who are one of the dedicated insurers to CIOT and ATT) says that the proposal form designed for CIOT and ATT members is under review to ensure that it meets the needs of members and enables Hiscox to fully understand the work undertaken by the specific members so that Hiscox can happily provide cover to those members.

Hopefully, this makes it clear that what the Insurer wants, is to understand the member and their business better, and if any questions come back from the Insurer, this is not an ‘attack’, but an attempt to understand the Insured better and their practice more, to enable them to make an informed decision as to whether or not to cover and, if they are going to cover, the level of premium to be levied.

Charlotte Ali of CIOT/ATT Professional Standards says: ‘When we get PII queries from members, they are often about proposal forms and obtaining PII cover. This can be because members have not gone to insurers who provide CIOT/ATT compliant cover or they have not used a broker who is a specialist in the field and able to answer their specific queries. On many occasions, the problems being encountered by our members would be resolved by following the helpful comments made in this article. I endorse what Karen says, prepare for renewal early, ideally at least two to three months in advance of renewal, consider using a good broker to help you, and if you have any problems, we are always here to help.’

Preparing for renewal is important. As Jasmine mentions in her comments, the Insurance Act does require Insureds to provide a ‘fair presentation’ of their risk and to disclose every material circumstance which the Insured, their senior management or persons responsible for arranging their insurance, knew or ought to know following a reasonable search. It is important, therefore, that proper steps are taken to prepare for renewal by completing the proposal form. Taking those steps early, and treating the proposal form as an important document and not merely a form filling exercise, means that renewal should be completed without difficulty. The broker is there to help you and the insurer is not your enemy. He wants to insure you, he is in business to insure you, he just needs the relevant information to enable him to make the appropriate decision.

Image

MORE THAN JUST TICKING 'YES' OR 'NO'



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Many clients feel daunted or even offended at the thought of having to complete a proposal form. It is important to remember that the more information you provide your insurance broker and insurers with, the more we can fully understand your business activities, how you really work and provide a policy which meets both your requirements and is adequate for your exposure. Also under the Insurance Act 2015, you have a new duty to provide a 'fair presentation' of your risk to insurers. This means you must now clearly disclose every material circumstance which you, your senior management or persons responsible for arranging your insurance, know or ought to know following a reasonable search. A material circumstance is one that may influence an insurer's judgement over whether to take the risk and, if so, on what terms. If you are in any doubt as to whether a circumstance is material you are advised to disclose it.

When completing 'Yes' or 'No' answers on a proposal form, do not feel like you simply need to tick a box. If you have supporting information or are in-between a Yes/ No then we like to see answers written in the blank space at the back of the form, as an appendix or underneath that question. Proposal forms are designed to collect key information, but not all clients will fit a straight Yes or No.

Do not rush completing the proposal form and always provide as much information as possible, even if there is not a question specifically asking for something, if you feel this is relevant to your business it is always best to include it. Taking your time is important as if there are mistakes we will need to come back with further questions which slows the process.

Some common mistakes we see are as follows:

- Percentage splits which do not add up to 100%
- Where people are overly cautious and say 'Yes' to questions when they mean 'No' – if you are unsure it is always best to include supporting details
- Turnover estimates/values left blank. We always need an estimated turnover for the next 12 months (new business) or actual turnover for the last financial year (existing company) as this is key to our calculations'

Image

INSURERS NEED TO UNDERSTAND YOUR BUSINESS



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I endorse everything Jasmine says. Stackhouse Poland work closely with Hiscox.

Hiscox are always happy to try to provide cover to CIOT and ATT members. We have worked closely with the CIOT and ATT working party on Professional Indemnity Insurance over the years (having been a longstanding insurer to both bodies' members and a supporter of both bodies for many years) and feel that we have developed a good understanding of the work undertaken by the members of both bodies. We value the relationship that we have with Stackhouse Poland and CIOT and ATT.

When completing the proposal form, please provide as much detail as possible. I would much rather know more about you, than less. Your answers do not need to be binary. Especially when you are giving information about your business activities, selecting 'other business activities' with no additional information is not helpful. The more I know about you, the better it is and the easier it is for me to make a decision about providing the correct cover for you.

If you do have to tick the 'other' box, please provide an explanation, because it avoids me having to come back and ask more questions.

In terms of specific work, if you do provide offshore advice, please confirm whether this is UK tax or non-UK tax. If it is the latter, please provide some additional information and your experience in this field. Secondly, the question relating to solicitors is asking whether you carry work out for any solicitors firms rather than individuals.

All too often I have to ask further questions. This is not critical in any way of the member, it is just so that I can understand a bit more about you and your business. It is not to challenge you, it is to help me understand you more.

Finally I frequently receive a proposal form, which is not signed or dated. In order for me to be able to consider the proposal form, and to meet with my own compliance obligations, the form has to be signed and dated prior to incepting a policy. Therefore it is best if this is completed from the outset, again to reduce the amount of outstanding queries.