

# Don't get caught out...

if you run a business.



**Whilst we aim to arrange your policy to give you a suitable level of insurance protection, it is an indisputable fact that insurance policies do not cover every eventuality.**

It is also well known that insurance policies can be subject to quite onerous terms and conditions, which if breached, could leave the unsuspecting policyholder without cover at the time they need it most. It is therefore vital that you are aware of your policy terms and conditions, and comply with them at all times.

This document is not a comprehensive guide to all your terms and conditions, but it aims to highlight some of the most common issues that face policyholders.

### **Average**

Property insurance policies are subject to the Condition of Average, which stipulates that if you do not set your cover at the amount to fully replace the property in the event of Damage, any claim will be reduced in proportion to the level of underinsurance.

If a building that would cost £1.5m to reinstate is only insured for £1m (two thirds), any claim will be reduced in direct proportion – the insurer will only pay £500,000 in respect of Damage costing £750,000 and the policyholder will be required to make up the shortfall.

A building should be insured for the full rebuilding cost, which includes additional costs such as the cost of demolition, site clearance and all professional fees. It is extremely unlikely that the rebuilding cost will be the same as the property value, and a sum insured should not be based on the purchase price or market value of the building.

Contents and equipment should be insured for the full replacement value as new, and not for their written down value as second hand goods.

### **Business Interruption**

You must insure your Loss of future income for the full amount that the business could potentially lose in consequence of an incident.

The main problem to note is that the insurance definition of terms such as Gross Profit may be different to definitions used in accountancy.

It is vital that you are familiar with the definitions in your insurance policy and set cover correctly. As a common example, an accountant will normally exclude payroll from a Gross Profit figure, whereas an insurer will include such payroll.

It is important to include payroll so that your insurance policy will continue to pay the staff wages following an insured incident.

You must also ensure that cover is in place for a suitable Indemnity Period, which is the time following an incident that it will take for the business to recover to the levels that it would have achieved if the incident had not taken place.

As it will usually take a long while for customers to return to a business, it is almost certain that the indemnity period will need to be longer than the time it will take for the premises to be rebuilt and for the business to resume trading. This can be longer than 12 months, which is the normal indemnity period within an insurance policy.

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## Compliance with Policy Conditions

As well as terms and conditions that apply generally to all policies, there are innumerable conditions that may apply to your policy depending on the nature of your trade or business. If you do not comply with a Condition Precedent to liability, the insurer can refuse to pay any claim which arises as a consequence of the breach.

A Warranty is even more onerous, and breach of a policy Warranty will allow the insurer to avoid the policy from the date of the breach, and can refuse to pay claims even if the breach has been rectified or was not connected to loss. The Government has recognised the unfairness of this position, and the Insurance Act 2015 (effective August 2016) abolishes Warranties and changes them to Suspensive Conditions.

## Disclosure of Information / Fair Presentation

One of the major areas of dispute can occur where the insurer believes that a policyholder has not given them a true or complete picture of the risk. This allows the Insurer to treat the policy as if it has never been in force on the basis of “non-disclosure of material facts”.

We are pleased to say that this particularly onerous position was changed by the introduction of the Insurance Act 2015, which became law in August 2016.

The act aims to make the balance between policyholder and insurer more equal by requiring the policyholder to make a “fair presentation” of the risk, and provided this is done, the onus is transferred to the insurer to ask for any additional information which it believes may be material to its underwriting. In order to be classed as a fair presentation, the policyholder must include all relevant information that it ought to know following a reasonable search of the information available to it.

As well as the actual “physical” risk being insured, insurers wish to know about the “moral” risk of a policyholder – this could relate to financial

matters such as CCJs, liquidations or bankruptcies; criminal charges or convictions; or regulatory problems including investigations or enforcement action by the authorities.

If you suffer any accidents or incidents which could result in a claim, even if one is not pursued, these may be material to the insurance and must be disclosed.

All insurance policies can be avoided if there is fraud when the cover is placed, or in the event of a claim – this could include items such as deliberate misinformation at the time cover is placed to fictitious losses or exaggerations on genuine losses.

## Limit of Indemnity

For Employers’ and Public Liability insurance, the insurer will pay up to your chosen Limit of Indemnity for any one incident. For Products Liability insurance, the insurer will pay up to the Limit of Indemnity for the total of all losses in any one insurance period.

You must set your Limit of Indemnity at a level that you believe is sufficient to cover all your potential liabilities to third parties should the unthinkable happen, and you cause a catastrophic loss.

Whilst most liability claims relate to minor injuries for slips and trips etc, there is always a remote possibility of something far worse happening.

At the time of writing, the largest single compensation payment in the UK could reach £23 million, and whilst this relates to a very specific set of circumstances, it does show the potential liabilities that could be incurred.

This related to a single person, but if there are multiple people involved, the accumulated figures could be astronomical.

## Reasonable Care

All policies have a requirement for the policyholder to take all reasonable steps to protect their property, and to prevent any damage or accidents

As a rule of thumb, you should act as if you were not insured and take whatever

measures you would if the loss was payable by you and not an insurer. Insurers will not pay claims where a policyholder is reckless with their property on the basis that “it doesn’t matter because it’s insured”.

## Say Nothing!

If you are in the unfortunate situation where a claim may be made against you, it is important that you do not discuss the matter with the claimant or enter into any correspondence prior to speaking to the insurer. In no circumstances should you ever admit liability for an incident.

Your insurer may feel that its position has been prejudiced by entering into correspondence and refuse to deal with the claim on your behalf.

If you are put on the spot, you should listen to what has been said, but politely respond to say you will not be able to comment until the circumstances have been fully investigated.

We hope this gives you some guidance relating to common insurance pitfalls and would be happy to discuss any aspects of the above with you as part of your insurance arrangements.

**Feel free to call us on 0151 255 2600 or email mail@mofs.co.uk**



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