

## Four things to bear in mind, when determining when 'something' amounts to a circumstance.

**You may recall our last bulletin on the subject of claims notifications. Since that time, we have continued to see notifications across a number of common areas which have highlighted that there may still be some uncertainty as to whether or not something should be notified to your Insurers, and when.**

To recap, Insurance policies include claims conditions which state that you need to let us know about any claims or "circumstances" which may give rise to a claim. While the wording provides a clear definition of a claim (being a written or verbal demand for compensation or damages from, or the assertion of a civil right or rights against you), in practice circumstances tend to be more difficult to define.

While we cannot provide a definitive list of things to consider, we have provided some things to bear in mind when trying to determine whether or not something amounts to a "circumstance".

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### After an apology and the matter is 'resolved'

As highlighted in previous bulletins, any situation which gives rise to the need to comply with your duty of candour is also likely to be a matter that should be referred to Insurers. However, just because the patient or their family appears to have accepted the apology and doesn't take any immediate action, it doesn't mean that the prospect of a claim has diminished. These matters should be notified to your insurers to safeguard your position.



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### Whinges & Grumbles

It may be that a patient has complained and you do not believe that there is any merit in the complaint. Unfortunately, the patient may continue to hold a different view.



As this can often result in claims being made at a later stage, to safeguard your position, these 'whinges' or 'grumbles' may need to be notified to your Insurers.

We would encourage you to discuss these with us when a complaint is raised with you.

### Request for patient information

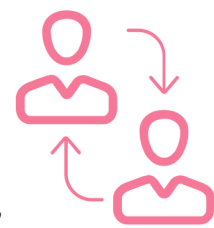
While this request can seem fairly innocent, it can often be the start of a claim.

In cases where the patient has suddenly requested their medical records or a similar request has been made by Solicitors, a claim is often being considered. While this type of request may not result in a claim being made against you, it is always likely to amount to a circumstance which may give rise to a claim. We would encourage you to discuss these with us when the request is made.



### Employers and/or procedures are to blame

While claims for failure to treat or for misdiagnosis are more likely to rest with the Doctor, this may not prevent the claim, or at the very least part of it,



being directed to you. By way of example, the doctor may look to argue that the claim arises from problems with your procedures or the patient may argue that you are vicariously liable as the employer. These matters should be notified to your insurers to safeguard your position.

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We accept that it may not always be easy to identify if something should be notified to your Insurers, but it is important to understand that any delay in notifying a claim or circumstance to your insurers can jeopardise the cover provided under the policy. On that basis, it is often better to err on the side of caution at the outset of the matter rather than be faced with the obstacles that could arise if the complaint subsequently becomes a claim.

This is especially true if the policy has renewed in the intervening period.

As part of our role, we are here to offer advice and assistance in the various matters relating to your policy and can often offer guidance as to whether or not a matter should be notified. So, if you are ever in doubt regarding a potential notification, please feel free to call us to discuss matters and decide what action, if any, needs to be taken.

If you would like any further information or would like to discuss the subject of this note, please do not hesitate to contact our Claims & Risk Management Team.

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