Guidelines for Correspondents

September 2017

IGP&I

These guidelines provide the foundation for a common approach to the handling of incidents and promote a consistent response by all correspondents when instructed by a Club which is a Member of the International Group of P&I Clubs.[1]

The guidelines supplement individual Clubs' instructions to correspondents and cover issues common to all Clubs.

1. Listing of correspondents

The listing of a correspondent does not represent any kind of contractual or agency relationship between the correspondent and the Club, nor does it create any right to be included in any subsequent list. Correspondents are not agents for the Clubs and are not automatically authorised to accept service of any proceedings on behalf of the Clubs or any subsidiary or associated companies. The correspondent, although listed and named by the Club, will usually act for the shipowner/charterer whose ship is entered with the Club.

Correspondents must be contactable 24 hours a day and they must keep the Club advised of changes to staff/office communications details. Correspondents should regularly check their entries on Clubs' websites and apps to verify that the Club has the correct contact details.

2. Governance

Correspondents must operate to the highest ethical standards and have appropriate systems and procedures in place.

A) BRIBERY

Clubs have best practice systems to deal with bribery, including "facilitation payments", and financial crime. Those systems extend to all correspondents and service providers. Compliance with the requirements of individual Clubs' strict bribery prevention policies and anti-bribery laws,[2] must be in addition to correspondents' compliance with any other anti-bribery legislation that may affect them.

B) MONEY LAUNDERING

Correspondents should have systems in place to ensure they and their subcontractors and service providers do not contravene anti money-laundering or tax evasion legislation. Such systems should include procedures to identify their clients and ensure that transactions are legal. Financial transactions that are not in accordance with normal business practices may give rise to a criminal offence.[3]

C) SANCTIONS

Correspondents should be aware that sanctions and regulations imposed by a state, international organisation or other competent authority, whether directly or indirectly, affects the assistance Clubs can offer Members in countries subject to sanctions. In particular, Clubs may not be able to assist Members in providing a letter of undertaking or bank guarantee to secure a claim.

[1] *www.igpandi.org*
[2] *for example, the UK Bribery Act 2010 and the United States Foreign Corrupt Practices Act 1977*
[3] *for example, the UK Proceeds of Crime Act 2002 (POCA), part 7*

It is the correspondent's responsibility to ensure that all third parties that they instruct or remit funds to are not listed as prescribed persons or organisations on any trade or economic sanctions lists, in particular, those published and maintained by the United Nations, the European Union and the United States.

The situation on sanctions can change and the correspondent should contact the Club concerned for specific advice.

D) DATA PROTECTION

Correspondents should be aware that Clubs, correspondents and service providers are subject to data protection legislation.[4] Correspondents will routinely receive personal data for claimants and crew members. "Personal data" refers to information about an individual, such as their name, job description, date of birth, email address, mailing address or health-related data. All personal data should be handled and stored carefully and distributed securely and no more widely than necessary.

E) SLAVERY AND HUMAN TRAFFICKING

As part of the Clubs' business and supply chains, correspondents must conform with the Clubs' zero-tolerance position in respect of modern slavery and human trafficking, including compliance with any relevant legislation.[5]

F) CLIENT MONEY

Where permitted by local regulations, correspondents should operate a designated client bank account for the receipt of funds to pay claims. This account should be separate from the correspondents' day to day business accounts.

G) PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS INSURANCE

It is prudent for correspondents to have adequate errors and omissions insurance that provides protection for your services, or those which extend to ownership of an associated company, arising from claims of negligence or failing to perform your professional duties.

3. Conflicts of interest

A conflict check must be undertaken as soon as instructions are received and the Club or Clubs must be informed of any potential conflict immediately.

The two most common circumstances where a correspondent may encounter a conflict of interest involve an owner and charterer (for example, when they have a cargo problem at a discharge port) where:

a. both parties are entered with the same Club, or
b. the parties are entered in different Clubs and the correspondent is listed by both Clubs.

4. Reporting

A) FIRST NOTIFICATION

A correspondent may be notified of an incident or claim from a number of sources other than the Club, such as the Member, the ship's master, local agent, owner, charterer or directly from a claimant or the claimant's insurer.

For urgent matters (death, serious illness and/or injury, pollution, ship arrest, collision, groundings and service of legal proceedings), the first

[4] *for example, the UK Data Protection Act 1998 and, from May 2018, the EU General Data Protection Regulation (GDPR)*
[5] *for example, the UK Modern Slavery Act 2015*

notification to the Club should be made by both telephone and email to the Club. For non-urgent matters, the first notification should be sent by email. In order to minimise any delay in obtaining a response when sending an email, try to identify the claims team or individual and only use the Club's general email address if this cannot be done.

Correspondents should be familiar with the risks covered by each Club, as set out in their Rules. Not all Members will be covered for all these risks and so correspondents should seek confirmation of the extent of the cover from the Club. However, the correspondent is recommended not to stop dealing with matters whilst waiting to receive such confirmation. The first notification to the Club should include:

- The ship's name and IMO number.
- Description of the incident including the date and the port/place where the incident occurred.
- The party requesting assistance and the nature of the assistance requested.
- Any steps taken by the correspondent.
- The current status and proposed future action, including details of any deadline/time limits which the Member may be required to satisfy.
- Details of security demands and reasonableness thereof.
- Contact details for the correspondents and any service providers appointed.

B) SUBSEQUENT REPORTS TO THE CLUB

Communication by phone remains extremely important and can be a useful addition to email reporting. Surveyors, lawyers or other experts must be encouraged to give you, as correspondent, timely updates which add value for the Club and Member. Where possible, the correspondent should ensure that all information from these sources is channelled through them and that they control the case locally.

In the initial period following an incident "no news is good news" does not apply and reports (including service providers' reports) will be required on a frequent basis, including:

- Details of the property damaged/person or persons injured etc (as applicable).
- Cause of the incident.
- Steps to be taken to protect the Member's position, including measures to preserve the Member's right of redress against third parties, including any time limits.
- Claimed amount and any assessment of/material changes to quantum.
- Current status of any negotiations with claimants or their representatives.
- Any hearing dates.

5. Appointment of local surveyors or other third parties (service providers)

Ideally the correspondent should obtain approval from the Club before any service provider is appointed. Where prior approval cannot be obtained, the correspondent may appoint the service provider to avoid delay but the Club must be notified at the earliest opportunity. The best service provider suitable for the task must be appointed, provided they are not conflicted, regardless of whether they are in-house or independent.

If the Club sends an expert to attend, the correspondent should provide them with any assistance necessary, including promoting co-ordination with any attending local service providers.

6. Claims handling

Claims may be pursued locally or in another country because of contractual terms or by agreement between the parties. If a correspondent receives claims documents, they should seek instructions from the Club. The Club or Member may wish to handle the claim; alternatively, the correspondent may be authorised to handle the claim. If so, the correspondent should provide as soon as possible their opinion on the merits of the claim and best estimate of the overall claim and fee exposure. The best estimate should be updated as appropriate to assist the Club in setting a reserve. If a claimant starts legal proceedings, the Club should be advised immediately.

A) TIME EXTENSION

No time extension is to be granted to any party without authority from the Club or the Member.

B) CLAIMS SETTLEMENT

Correspondents should not enter into settlement negotiations or agree to any settlement proposal without authority. An agreed settlement must include a receipt and release document, approved by the Club in advance, and the cancellation and return of any guarantee.

If the Member no longer exists, they will be unable to pay claims. Other than in death and personal injury matters, if no guarantee has been issued it is unlikely the Club will be able to assist further and the correspondent may be asked to close their file and submit a final invoice.

C) COURT PROCEEDINGS – ARBITRATION – MEDIATION

No claim is to be taken to court, arbitration or mediation without instructions from the Club and Member.

7. Guarantees

The correspondent should inform the Club immediately if they receive a request for security and/or a threat of arrest or detention of the ship or another asset. In order to consider whether it is appropriate for the Club to provide security, the Club must be informed as soon as possible of the name of the beneficiary, the quantum and form of security requested.

The provision of Club security is discretionary and depends on a number of factors, regardless of the guarantee amount or pressure from interested parties. The security may be provided directly to the claimant by the Club or, by agreement, via the correspondent.

A correspondent must not agree to issue a letter of undertaking (LoU), or other form of security, without the approval of the Club. A Club will not authorise a guarantee to a sanctioned entity.

The following forms of security may be considered in order of preference:

1. LoU. Clubs recognise that this is not an option for all claimants in certain jurisdictions.

2. Interim security to be replaced by a bank guarantee or bail bond within a specified time-frame.

3. A bank guarantee or bail bond with no interim security.

Clubs do not provide anticipatory security or security for an unlimited amount. Club security only covers a Member's legal liability and will

be for a quantified claim amount, which should be referred to in the terms of the guarantee. It is preferable that the amount of the guarantee includes interest and costs.

8. Freight, demurrage & defence cover (FD&D)

Clubs offer a separate cover for their Members' legal costs in defending or prosecuting certain types of claims. The involvement of the correspondent in FD&D matters will vary, and will often be minimal, as legal input is often necessary. The correspondent, whether legal or commercial, should determine the extent of Club cover and should not assume that any fees will be paid directly by the Club.

9. Contingency planning

The correspondent's contingency plans should include a business continuity plan and a plan for handling large claims and major casualties. Their staff must be familiar with these plans and their roles within them. Plans should be regularly tested and updated.

10. Invoicing

Correspondents should be familiar with the invoicing requirements of each Club. Some Clubs use the "feesable"[6] system which enables correspondents and third party suppliers to use a universal invoice format.

For Member's own surveys, or matters not covered by Clubs, it is the correspondent's responsibility to make arrangements for the payment of fees and disbursements. The correspondent may request a payment in advance from the Member.

A) INVOICING INSTRUCTIONS

Correspondents should check with the Club who the invoice should be addressed to.

Invoices should contain the Club's and the correspondent's references, together with the beneficiary's banking details.

Fees and disbursements should be shown separately. The fee calculation should show the hourly or daily rates and the time spent. Receipts or other evidence should be provided for disbursements. Correspondents should not settle any third party's invoice without the authority of the Club.

B) PAYMENT INSTRUCTIONS

Clubs prefer to make electronic payment for invoices they pay directly. The beneficiary of the payment must match the person or company issuing the invoice.

[6] *www.igfeesable.net*

C) INTERIM INVOICES

To assist the Club in controlling costs, interim invoices (including those of service providers) should be submitted unless the Club decides otherwise.

D) FINAL INVOICES

Procedures for the submission of final invoices will vary from Club to Club. A final invoice, clearly marked as such and including any outstanding service providers' costs, should be submitted as soon as a case has been concluded or when the involvement of the correspondent is no longer required, normally within three months unless the Club specifies otherwise.

E) INVOICE ENQUIRIES

Occasionally, clarification of invoices or items contained in them may be required. For invoices to be paid by Clubs, in the event of a dispute between the Club and the correspondent, the Club will settle the undisputed portion of the invoice as quickly as possible.

11. Provision of general information on local matters

Correspondents are encouraged to advise Clubs of general information relevant to ships trading within their local area. Clubs may wish to include this information in their websites, apps and publications for the benefit of their Members.

THE IMPORTANCE OF CORRESPONDENTS

As the local "eyes and ears" of the Clubs, correspondents perform a key role looking after the interests of Clubs and their Members around the world. This updated version of the Guidelines has been prepared to enable correspondents, and in particular the next generation, to work closely together with the Clubs to continue to meet Members' expectations for the delivery of the highest quality services in a rapidly changing world.

REFERENCES

The International Group of P&I Clubs
www.igpandi.org

UK Bribery Act 2010
http://www.legislation.gov.uk/ukpga/2010/23/contents

United States Foreign Corrupt Practices Act 1977
https://www.justice.gov/criminal/fraud/fcpa/docs/fcpa-english.pdf

UK Proceeds of Crime Act 2002 (POCA)
http://www.legislation.gov.uk/ukpga/2002/29/contents

UK Data Protection Act 1998
http://www.legislation.gov.uk/ukpga/1998/29/contents

UK Modern Slavery Act 2015
http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted

Feesable billing system
www.igfeesable.net

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