

Guidelines for Correspondents

Each of the P&I Clubs in the International Group (for further information on the International Group of P&I Clubs see www.igpandi.org) relies heavily on the worldwide network of P&I correspondents. Correspondents are the clubs' "eyes and ears" and, whilst each club may have its own particular instructions relating to claims handling and reporting, these guidelines have been designed to cover issues common to all clubs and will be updated as appropriate.

It is important to remember that whilst the International Group covers 90% of the world's shipping for P&I risks, there are other providers of P&I insurance, usually on a fixed premium basis. They will have their own requirements, particularly in relation to the payment of fees and the giving of guarantees.

The main purpose of these guidelines is to provide the foundation for a common approach to the handling of incidents and to encourage a consistent response by all correspondents when instructed by an International Group club.

1. Introduction

Each year correspondents are provided either with a copy of each club's Rule Book and List of Correspondents by mail or have access to these on the club's website, shortly after the commencement of the clubs' policy year, which falls on 20 February. The correspondent, by agreeing to be listed and by providing details of their staff and their out of hours office contact details, warrants to the club that they have authority to publish the information in their printed List of Correspondents and/or on the club's website.

Many correspondents operate networks of offices some of which may be owned or are subsidiary companies, others may be independent companies operating as sub-contractors or under agency or franchise agreements. Correspondents should advise P&I clubs of the legal status of all offices that are included in their network.

The List of Correspondents is a directory for the use of Members of P&I clubs and others who regularly do business with the clubs. The listing of a correspondent is for information purposes only and does not represent or undertake any kind of contractual or agency relationship between the correspondent and the P&I club or the club's manager. Correspondents are not agents for, or authorised to accept, service of any proceedings or process on behalf of the P&I club. The inclusion in any year's list of correspondents does not create any implied or actual right of the correspondent to be listed in any succeeding year's list. It must be emphasised that the correspondent, although listed and named by a P&I club, acts principally for the shipowner/charterer whose vessel is entered with that P&I club.

The nature of the risks which shipowners and charterers face from time to time and for which the International Group clubs provide insurance cover are comprehensively described within each rule book. Correspondents should be conversant with the rules of each club for which they act but fortunately, in view of the pooling agreement between Members of the International Group, the clubs' rules are similar.

It is important to bear in mind that not all members of each club are covered for all the risks described within the rule books and it will therefore always be necessary to seek confirmation from the club concerned that the vessel is entered and, if so, the precise nature and extent of the club's cover.

The correspondents, where permitted by local regulations, should operate a designated client bank account for the receipt of funds advanced by a member or in some exceptional circumstances by the club, for the payment of claims, disbursements or where third party fees are paid via the correspondent. The account should be separate from the correspondent's day to day business accounts.

2. Guarantees

Unless specific arrangements have been made with a particular club, the following guidelines apply.

Where appropriate, the club may issue a letter of undertaking or other form of guarantee to secure claims which fall within the scope of cover. This will avoid delays which may otherwise result from the arrest of a member's ship or other assets. Under no circumstances will a Club issue a guarantee to a sanctioned entity (see Section II on Governance).

A correspondent has no power to issue a letter of undertaking or other form of security under any circumstances without the express authority of the club. The provision of club security is discretionary and will depend upon a number of considerations. This applies however small the amount of the guarantee required might be or despite the pressure which may be put upon the correspondent by the member or his local agent.

Once a security demand has been made known to the correspondent, the club will need to be informed as soon as possible of the name of the beneficiary along with the quantum and form of security which is being requested by the claimants in order to consider whether it is appropriate to arrange the provision of security.

If a bank guarantee is being demanded and there is no prospect of claimants accepting a club letter of undertaking, the correspondents should enquire whether an undertaking to provide a bank guarantee within, for example, seven days would enable the arrested or detained ship to depart. Such an enquiry should only be made however, after consultation with the club and with the club's express authority.

As a matter of general policy, clubs do not provide either anticipatory security or security for an unlimited amount. Generally, club undertakings only cover a member's legal liability and will always be in respect of specific, quantified losses or damage and for a specific sum, both of which should be expressly referred to in the terms of the guarantee. The amount of the guarantee should always be expressed in terms which make it quite clear as to whether it includes or excludes provision for interest and costs. It is usually preferable if the amount is inclusive of interest and costs.

3. Conflicts of interest

There are at least two different circumstances where a correspondent may find himself with a conflict of interest.

First, the situation may arise where one club has the entry of two different members who are involved in the same incident. For example; the owner and charterer of a ship may be involved with a cargo problem at either the load or discharge port and both are entered with the same club, or two ships owned by separate owners but entered in the same club are involved in a collision. Secondly, a conflict situation may arise in the same circumstances as outlined in the examples given earlier but where the Members are entered in different clubs and the correspondent acts for both clubs.

In the first situation, where two members of the same club are involved in an incident, the club should of course be aware of the prospective conflict of interest, but the correspondent should, if the club has not advised him of this, inform the club accordingly.

In the second situation, where the members of two different clubs are involved, the individual clubs are unlikely to be in a position at the time the incident occurred to know of the conflict and both would, under these circumstances, expect the correspondent to inform them of the situation. This information should be given to the clubs immediately, so that the clubs after consultation with their members, can decide whether separate representation is appropriate.

In either situation, if the incident is relatively minor and uncomplicated, the club or clubs may decide that it will be sufficient for the correspondent to appoint separate surveyors to act for each Member. Indeed, it may be agreed by all parties that it is appropriate for the same surveyor to act for both. However this is a decision to be made by the club or clubs. Under no circumstances should this decision be made unilaterally by the correspondent.

In the event of a major incident or casualty, it is likely that the club or clubs involved will consider it appropriate for a correspondent to act for only one party although he may be requested also to act for the owner's hull underwriters.

The fundamental point to emphasise is that the club or clubs must be informed of the potential conflict as soon as the correspondent becomes aware that a conflict of interest may arise, thereby allowing the club or clubs to take the appropriate action to safeguard the interests of their members.

4. Appointment of Experts

Correspondents must be familiar with and follow individual club requirements including those related to governance concerning the appointment of third party experts to act on their members' behalf.

From time to time, it may be necessary for the correspondent to appoint a third party expert to provide specialist legal, surveying or other technical assistance.

Correspondents must be familiar with the legal and technical assistance that is available in their locality. Where a correspondent intends appointing an expert from his own or an associated company he must make this clear to the club.

Unless otherwise specified by individual club requirements, the correspondent should obtain prior approval from the club before appointing a third party expert. However, where the situation dictates that prior approval cannot be obtained rapidly and would lead to a delay in protecting the club member's interests, then the correspondent may appoint the third party expert but notification of such an appointment must be provided to the club at the earliest opportunity.

In all such appointments, the correspondent must ascertain whether the third party expert (or any colleague of the expert), has been approached by, or is acting for, any other interested party (please follow the principles of the previous section (3) relating to "Conflicts of interest").

Correspondents need to be familiar with each club's procedures for conducting precautionary surveys of cargo either before or after discharge. For many clubs these surveys are for the member's own account and it is the correspondent's responsibility to make suitable arrangements for the payment of his fees and those of any appointed surveyor. If appropriate, the correspondent is entitled to ask the member requesting their services for these precautionary surveys to make a payment on account of fees. The clubs do not encourage correspondents to chase for instructions to appoint surveyors as many members have their own procedures for the appointment of surveyors for such precautionary cargo surveys.

When a correspondent or a surveyor is attending a vessel, the correspondent needs to advise either the club or local agents of the identity of the attending surveyor so that the master can be informed whom to expect. This helps with the vessel's compliance with the ISPS Code and also avoids unscrupulous surveyors attending on board misrepresenting on whose behalf they are acting. When surveyors have been requested to survey a cargo or dock damage on the quayside they ought to report to the vessel's master confirming that they are in attendance.

If no appropriate assistance is available locally, the correspondent must notify the club at the earliest opportunity, thus allowing the club the opportunity to appoint an expert to attend. In any instance where the club appoints an expert to attend, the correspondent should render all assistance necessary to the expert. When an out of town or foreign expert is appointed by the club the correspondent should extend to them all practical help and ensure that any attending local surveyors or experts are fully co-operative. It should be noted that where oil pollution has occurred ITOPF (The International Tanker Owners Pollution Federation www.itopf.com) are likely to be involved.

5. Reporting

Some clubs have specific guidelines for the notification and reporting of claims-related matters. Correspondents must be careful to follow such guidelines and where appropriate use the notification format required. In instances where the club

instructs the correspondent directly, the correspondent must confirm attendance to the club at the earliest opportunity providing the name of the person handling the matter together with their file reference.

a) First Notification

Apart from being notified by the club, a correspondent may be notified of an incident or actual claim from a number of different sources: the vessel, the vessel's agent, the vessel owner, the charterer or directly from a claimant or the claimant's underwriters. In instances where the first notification to the correspondent has not originated from the club, it is critical for the correspondent to:-

- Ascertain promptly the identity of the club holding the vessel's entry.
- Notify the club, and
- Seek confirmation from the club that the vessel is entered with the club for the liability in question.

Should there be uncertainty as to whether or not a claim will be covered or confirmation of entry is delayed, it is better to get on and deal with the immediate problem, than not deal with the problem simply because you cannot get clarification from the club.

The first notification should, in the case of urgent matters (ship arrest, pollution, collision, groundings, death, serious injury and service of legal proceedings) be made by email and telephone to the club. Where clubs operate an emergency response contact outside of normal office hours, the first notification during this period should be made to the duty claims executive. It should be noted that some clubs have regional offices and correspondents should ascertain from the club in question the office to which they should report. For non-urgent matters, the first notification should always be sent by e-mail.

Whenever possible always try to identify the claims team, syndicate or individual to whom you need to send an e-mail. This will minimise any delay in obtaining a timely response that could occur if the e-mail first notification is sent to a general e-mail address of the relevant club.

The correspondent should ensure that the first notification to the club includes most, if not all, of the following:-

- The correct reporting of the vessel's name together with any relevant additional information which may assist the club in confirming the vessel's entry – for example, the gross tonnage, flag, port of registry, name of registered owner, and IMO number.
- The date of the incident.
- The port/place where the incident occurred.
- The party requesting assistance and the nature of the assistance requested.
- A description of the incident.

- 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 any security demands and the legality and reasonableness, if known, thereof.
- The identity of the person handling the matter in the correspondent's office, the correspondent's reference and, where appropriate, after office hours contact details (home and mobile telephone numbers), together with those of any "third party" experts".

b) Subsequent reports to the Club

It is important that you keep the club fully advised or, if requested, the Owner's appointed lawyers, of what is happening at all times. If surveyors, lawyers or other experts are appointed to attend the vessel, they must be encouraged to give you, as correspondent, frequent reports on what is happening. Where possible you should ensure that all information from these sources is channelled through you and that you are controlling the case locally. "No news is good news" does not apply. Communication by phone is extremely important and can offer a more flexible means of communication which often imparts more information and nuances than written messages. Clearly in the initial period following an incident, reports (including any "third party experts" reports) will be required on a more frequent basis, including but not limited to:-

- Cause of the incident.
- Specific details identifying the property damaged/person or persons injured etc (as applicable).
- Steps which may need to be taken locally or otherwise to protect the member's position, including but not limited to measures required to preserve the member's right of redress against third parties.
- Claimed amount and correspondent's or expert's assessment of quantum (subsequent updates should include any material changes).
- Current status of any authorised negotiations with claimants or their representatives.
- Any relevant hearing dates.

c) Communications

The Group clubs rely upon correspondents being contactable 24 hours a day.

It is, therefore, essential that correspondents keep the club advised of any changes to staff/office communications details. As clubs have websites, including the contact details for listed correspondents, correspondents should regularly check their entry to verify that the club is maintaining correct contact details.

6. Claims Handling

Incidents may lead to claims being pursued either in the country concerned or in another country by virtue of the terms of contract or by agreement between the parties.

Should a correspondent receive claims documents he should notify the relevant club office and seek instructions.

The club or member may wish to handle a claim themselves. In other cases the correspondent may be authorised to enter into negotiations locally, in order to settle the claim amicably.

Should you be asked to handle the case you should provide your best monetary estimate of the likely liability with a separate rough estimate in respect of legal and other costs likely to be incurred due to services to be rendered by yourselves, lawyers, surveyors, experts and other third parties. Your best estimate will assist the club in setting an appropriate reserve.

If the claimant starts legal proceedings, the club should be advised immediately by email and telephone. It should be borne in mind that for each type of claim the member concerned may have a deductible and it may well be that the club is not financially involved in the claim. However, unless otherwise instructed by the club, claims should be handled notwithstanding the existence of any deductible.

You should not enter into settlement negotiations or agree to any settlement proposal on behalf of the club or its member without having received express authority to do so from the club, unless acting in accordance with standing instructions from any club.

You should advise the club of all developments in any pending case that may be of significance to the club and/or the member, even if there do not appear to have been any developments. Status reports should be submitted on a regular basis, perhaps every six months or more often depending on the nature of the case.

Time extension

Most importantly no time extension is to be granted to any party without having received express authority from the club or from the member.

Claims Settlement

All settlements must include the return of the original of any club or bank guarantee. A suitably worded receipt and release document, which should be submitted in draft to the club for approval, must be obtained.

As clubs are Indemnity Associations, settlement funds are likely to be forwarded directly by the member; there may however be some exceptional occasions when the club itself will settle directly. In those cases it is likely to be preferable that funds are remitted to the correspondent's client account for onward transmission.

In some instances the member may no longer be in existence and unable therefore to fund any settlement. Other than in death and personal injury matters if no

guarantee has been issued by the club it is unlikely the club will be able to assist further and the correspondent may be asked to close his file and submit his account for services to date.

Trial – Arbitration – Mediation

Once again, most importantly, no claim is to be taken to trial, arbitration or mediation without prior instructions from the club.

Pollution Incidents

In the event of an incident giving rise to extensive pollution from an entered vessel it is likely that the club concerned will appoint ITOPF to assist the member and the club and, if so, every assistance should be given to the representative.

7. Freight, Demurrage & Defence Cover (FD&D)

The majority of clubs in the International Group offer a separate cover for their members' legal costs in defending or prosecuting certain claims on an indemnity basis. When asked to handle such claims it is important to be aware of the extent of the cover provided by the individual club. As with instructions on operational matters such as draft surveys do not assume that the club will be responsible for the payment of fees. In some instances, you and/or local lawyers appointed by you will be instructed on behalf of the member and fees will initially be for the member's account. In other cases the club may accept responsibility for payment of fees. Should there be any doubt whatsoever, you should contact the club concerned before incurring substantial costs.

8. Billing

Correspondents need to be familiar with the billing requirements of each club. Many clubs use the "feesable" www.igfeesable.net system which enables correspondents and third party suppliers to use a universal format of invoice and has changed the way in which invoices are processed. It remains important that all invoices contain as much information as possible in respect of services provided and the basis for the fees charged. Additionally, the inclusion of references of both the correspondent and club are important too.

a) To whom should the invoice be addressed?

Correspondents should always check with the Club as to whom the invoice should be addressed and the invoice should be submitted in accordance with the applicable local VAT regulations.

b) Disbursements and supporting documentation

The invoice should be apportioned between fees and disbursements. The basis upon which fees are calculated should be clearly set out, indicating the hourly or daily rates applicable and the time spent involved in the incident. If the correspondent's invoice partly or totally covers disbursements incurred by the correspondent, a breakdown of these, together with all supporting vouchers should be provided as attachments to the invoice.

If the invoice includes an item or items for any third party service providers e.g. surveyors, this should clearly be identified and a copy of the third party service provider's invoice should also be attached. It is helpful if the correspondent's invoice indicates whether the third party's invoice has been settled by the correspondent or remains unpaid. Generally, correspondents should not settle any third party's invoice without the express authority of the club although an indication by the correspondent as to whether they consider that invoice to be reasonable would be helpful. If payment of the third party's invoice is to be made to an account other than that of the correspondents this should be clearly indicated. When you are put in funds by clubs to pay third party disbursements, we expect that you will forward such funds without delay.

c) Payment instructions

Clubs prefer to make electronic payment. Payment by cheque or banker's draft is no longer an option. All clubs will operate a strict policy of requiring the beneficiary of the payment to be identifiable with the person or company on whose behalf the invoice has been issued.

d) Interim invoices

Generally speaking there is no requirement for interim invoices to be submitted, but the club claims handler may decide otherwise. However, it is preferable for interim invoices to be submitted if the involvement of the correspondent is likely to be ongoing. This assists the club in having greater control of the costs being incurred in particular cases and will, of course, be in the interests of the correspondents themselves.

e) Final invoices

Once a case has been concluded, or the involvement of the correspondent is no longer required, a final invoice should be submitted as soon as possible. The correspondent should check to see whether any third party service providers need to submit final invoices and it is helpful if the correspondent's invoice is clearly indicated as being final. Unless the individual club has other specific requirements which must be followed, there are no time limits within which final invoices should be submitted; however as a general guideline, correspondents should endeavour to have submitted their final invoices within 3 months of the case being concluded or when their involvement is no longer required.

f) Invoice enquiries

It is not unusual for invoices or specific items contained in them to be questioned or for more details to be requested. This should not be interpreted as criticism as it may be required for auditing purposes or to enable the club to provide the member with an explanation of the breakdown of the invoice. In the event that there is a dispute between the club and the correspondent, the club will generally ensure that the undisputed portion of the invoice is settled without undue delay.

9. Contingency Planning

It is an essential part of a correspondent's business plan to include contingency plans. There needs to be a business continuity plan for the correspondent's own business and another for handling a major maritime casualty. Contingency planning hopefully enables a company to respond efficiently and effectively to an incident and provides a readymade outline of procedures, contacts and checklists of actions to be taken. It forms a core upon which a response can be operated and hopefully avoids risks of issues being overlooked in the "heat of the moment" or time being lost searching for contacts.

A business continuity contingency plan enables the correspondent to respond effectively should an event occur which results in either the destruction of their office or denial of access to the office. The plan assists the correspondent in continuing to operate and would include details of how to find alternative premises and more importantly access to communications facilities. A correspondent who can't communicate, particularly by email, is not going to be able to serve the needs of the ship owners. A contingency plan also provides for records and files to be quickly reconstructed and this usually requires maintaining regular computer backups stored off site.

The Maritime Emergency Contingency plan will help a correspondent in his response to a major incident. It will provide a careful guide as to issues to be considered and details of essential contacts. It is not satisfactory to be searching for contact details when an emergency occurs quite possibly over a holiday and involving a type of vessel or incident which the correspondent is not familiar. The initial response to an emergency is critically important and having a plan to follow will make that response more effective.

It is important that a correspondent's staff are familiar with both plans and their roles within them. Plans should be regularly tested and deficiencies corrected. Most importantly plans must be kept up to date.

10. Provision of general information on local matters

P&I clubs are very dependent upon their correspondents. Without the network of P&I correspondents and the assistance provided to the clubs by their local correspondent, the clubs would have significant difficulty in handling claims matters for their members.

It is not merely in the valuable assistance provided in the handling of claims however, that P&I Correspondents are essential to the clubs. P&I correspondents are in an advantageous position to advise of developments in matters which will have an impact upon the operation and liability of ships trading to ports within a correspondent's local area.

Correspondents are encouraged to advise the clubs, by whom they are listed as P&I correspondent, of any developments which may be relevant to ships trading within the correspondent's local area.

From time to time, the club may wish to include this information in publications or on their website for the benefit of members of the club. Correspondents should identify the responsible person(s) to contact within the club(s) for which they are listed as correspondent, and also be familiar with the various club publications/website pages where such information may appear. The correspondent should always provide contact details of the responsible person within the correspondent's office in the event that follow-up bulletins/clarification is required.

11. Governance

a) Bribery

Correspondents are expected to operate to the highest ethical standards. They should be aware that most P&I clubs are domiciled in countries that have strict anti-bribery laws such as the United Kingdom's Bribery Act 2010 and the United States' Foreign Corrupt Practices Act, and even those clubs that may be domiciled in other jurisdictions are likely to be subject to these laws, as well as their own countries' anti-bribery laws. All clubs in the International Group have implemented best practice systems to deal with any form of bribery and financial crime. Those systems extend to all service providers instructed to act in the interest of members' business.

The UK's Bribery Act, effective from 1 July 2011, is probably the most extensive anti-bribery legislation and compliance with its provisions represents best practice in combating bribery worldwide. It is therefore essential that all club correspondents, and those instructed by correspondents to assist with members' business, strictly comply with the standards set by that Act.

In summary, under the UK's Bribery Act, the criminal offence of bribing is defined as offering, promising or giving a financial or other advantage to another person (whether in a private or public position) intending to induce or reward that person for improperly performing a relevant function or activity. What amounts to a relevant function or activity is widely defined. It is also an offence to offer, promise or give a financial or other advantage to a person where it is known that acceptance would itself amount to improper performance of a relevant function or activity.

If the above conditions are satisfied, the party being bribed is also guilty of a criminal offence, and indeed they will also be guilty where a relevant function or activity is performed improperly in anticipation or in consequence of them requesting, agreeing to receive or accepting a financial or other advantage.

In addition, when a public official outside the UK is offered, promised or given any financial advantage, with the intention of obtaining or retaining business or an advantage in the conduct of business, an offence is committed even where there is no intention to induce improper performance of that official's functions.

It should particularly be noted that the above offences clearly criminalise so-called ‘facilitation payments’, which can be summarised as small bribes paid to facilitate routine government action. No matter how small, or how well established the practice is in any jurisdiction, such activities must not be allowed to happen.

Correspondents need to be aware that, where bribery is committed by someone associated with, and in order to obtain or retain business or an advantage in the UK (which may include many members and the clubs themselves), that organisation may be prosecuted for an offence of failing to prevent bribery even when it has no knowledge that the bribery is taking place. Such associated persons might include (but are not limited to) correspondents, lawyers, experts, surveyors and other forms of service providers, and so it is important that correspondents secure compliance with the necessary standards of conduct from those they engage to assist in the handling of matters referred to them.

Correspondents are reminded that any individual or company that engages in bribery of any kind does so without the club’s agreement or authority and that such activity is in clear contravention of the club’s policies.

Reference should be made to detailed guidance issued by the individual clubs for further details of their bribery prevention policies and for further clarification of correspondents’ responsibilities under anti-bribery legislation.

Of course, compliance with the requirements of individual clubs’ bribery prevention policies and the Act must be in addition to correspondents’ compliance with any other anti-bribery legislation that may affect them.

b) Money Laundering

Correspondents should take care to ensure that they, their subcontractors and third party service providers do not contravene any applicable anti-money laundering or tax evasion legislation in the jurisdictions in which they operate. Carrying out financial transactions that are not in accordance with normal business practices may give rise to a criminal offence. Correspondents are also reminded that clubs operate under strict controls and the majority are regulated by the United Kingdom’s Financial Conduct Authority and as such are required to comply with the general law on money laundering. Those regulations in the United Kingdom require that businesses, subject to them, follow procedures to identify their clients and to ensure that transactions are legal. The United Kingdom Proceeds of Crime Act 2002 (POCA) is a wide-ranging piece of legislation of which Part 7 is relevant to money laundering.

c) Sanctions

Correspondents should be aware that economic sanctions and regulations imposed by the United Kingdom, European Union, United Nations or USA, whether directly or indirectly, will ultimately impact on the measure of assistance clubs can offer members in countries which are subject to any form of sanctions. In particular, clubs may not be able to assist members in providing a letter of undertaking or bank guarantee to secure a claim.

The situation on international sanctions is constantly changing and where specific advice is needed on any aspects and its potential effect, the correspondent should contact the club concerned.

d) The Data Protection Act

Correspondents will be aware that they are subject to controls arising under data protection legislation, such as the UK Data Protection Act 1998. This requires that all personal data is handled carefully and is not distributed more widely than absolutely necessary. The term “personal data” refers to personally identifiable information about an individual such as their name, job description, health-related data, birthday, e-mail address or mailing address, etc. Correspondents will be in receipt of such information on a daily basis in respect of claimants and crew members and the duty to carefully store and handle such information extends to correspondents as recipients of the data, as well as the club whose member is involved.