

# Managing the cost of claims

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# Managing the cost of claims

Paying claims when disaster strikes is the most tangible benefit from the insurance industry. Claims levels fluctuate due to many factors; the insurance industry performs an extremely difficult and hugely undervalued service in smoothing the balance sheet of UK plc. What is not done so well is managing the cost of claims.

There is a surfeit of words in insurance publications and press, attempting to explain why claims costs run at what is generally agreed to be an unacceptable level. Unfortunately, the words usually stop at this conclusion and lay blame at someone else's door. This booklet provides practical advice and guidance with no attempt to make judgements of this nature.

Effective management of claims costs begins with the understanding of how liability arises and the applicable legislation, and is executed through pro-active incident and claims management. We share our practical experience of how best to manage property, liability and motor incidents, together with case studies and frequently asked questions, to help you keep claims costs down.

Working together we can increase the effectiveness of the claims process resulting in speedier resolution, lower legal costs and sustainability of premiums. I hope you find this booklet of use.



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# Liability claims

Liabilities covered by Employers' Liability or Public Liability (EL/PL) policies arise where the policyholder has responsibilities recognised by law. Such Liabilities arise:

- at Common Law (usually from a tort i.e. civil wrong, committed by the policyholder. The most common torts are negligence, nuisance and trespass).
- under legislation and regulations (law passed by the UK parliament and also that arising from the EU via EU Directives).

Some legislation may also impose Liability which is absolute or strict. The legislation effectively removes any defence to a charge.

Most claims in the UK are concluded without recourse to legal proceedings.

The framework for dealing with claims pre-proceedings is underpinned by the Pre-Action Protocol introduced by Lord Woolf to encourage:

- more pre-action contact between the parties
- better and earlier exchange of information
- better pre-action investigations

so that:

- the parties are put in a position to settle cases fairly without litigation
- any litigation is able to run to the courts timetable if proceedings become necessary.

The Pre-Action Protocol introduced time frames, most importantly from the customers' point of view as follows:

- The Employer/Insurers should respond to any letter of claim within 21 days of its receipt.
- The Employer/Insurers then have 3 months from the date of acknowledgement to investigate legal liability. Following this they will need to advise the claimant if liability is conceded or in dispute. If the latter applies, documents in support of the denial must be disclosed.

The protocol encourages the use of a single medical expert by the parties. Recent amendments to protocol have highlighted the need to consider rehabilitation of the injured person at the point when the claim is made.

The cost of Liability claims has increased over the past few years. There are various reasons for this, such as the proliferation of unregulated accident management companies and their aggressive advertising, new types of claims, plus changes in case law and legislation which over the last 10 years have all had an impact, particularly for incidents involving personal injury.

The Health and Safety Executive's (HSE's) own statistics note that each year employee incidents and ill-health, cost British employers an estimated £3.9b to £7.8b, of which £910m to £3,710m comes from incidental damage to property and equipment. However, these costs are not all recoverable under insurance policies. The hidden or uninsured losses are ten times the cost of insurance premiums paid (Source: HSE). Some cost implications that are often overlooked include:

**Dealing with the incident** – Time spent administering first aid treatment, a hospital referral or home rest, all result in downtime. Making the area safe and making machinery serviceable are more costs for which the business is accountable.

**Investigation of the incident** – Time spent reporting the incident, holding meetings to discuss it and investigating it internally. Furthermore, time spent with an HSE or Local Authority inspector and external consultants' fees to assist with the investigation can rapidly accumulate into hidden costs.

**Getting back to business** – Rescheduling work, recovering production, repairing damage and cleaning the site slow production and reduce efficiency. Hiring replacement tools, human resource support and equipment may also be required.

**Business costs** – Absentee costs are deceptive. Besides the salary of the injured worker, a combination of replacement staff salaries, lost time, reduced productivity and quality add to escalating costs. Additional costs for training new or temporary staff, overtime and contract penalties can all be devastating to any business.

Avoiding an incident is the ultimate aim and ways of minimising risk were explained in Zurich's 2003 'How to help stabilise premiums' booklet\*. However, the cost of an incident and subsequent claim can be minimised by effective incident and claims management. The effect is to contain the amount of work the Claimant's legal representative has to undertake and can charge for. The information in the following section will assist you in doing this.

\*This booklet is the third in a series of information documents from Zurich UK Commercial, following the award-winning 'Rate increases explained' (2001) and 'How to help stabilise premiums' (2003). All publications are available in electronic format on our website at [www.zurich.co.uk/commercial](http://www.zurich.co.uk/commercial).

## Effective claims and incident management

### What to do following an incident

- Gather as much information as you can immediately after the incident, as evidence often disappears very quickly (types of evidence to gather are outlined in 'The incident investigation' section).
- Do not discard any equipment that was the subject of an incident – it may require inspection later.
- In cases of work related complaints, such as breathing difficulties, skin conditions and musculoskeletal conditions, take steps to remove the 'at risk' employee from the potential source of exposure as quickly as possible.
- Notify claims to your Insurer as quickly as possible.

### The incident investigation

After an incident you should carry out an investigation as quickly as possible. This is to gather the information that may be needed to defend a claim. It is crucial that this investigation is carried out in an objective manner and all findings are recorded. This section includes the types of information you should gather. Usually the quality of evidence gathered at this time, is the single most important factor in defence of a claim.

### What to gather in an incident investigation

- Statements from people involved** in the incident or who witnessed anything at the time of the incident. Supervisor evidence is often key and all statements should be signed and dated. In incidents that involve slips and trips, the statement could come from the last person who cleaned or checked the area where the incident took place.
- Photographs or CCTV evidence** that may support the facts, including photographs of equipment in situ.
- Sketches or drawings** showing any measurements, where applicable.
- Weights and distances** for example if the incident involved lifting of a heavy load, how much it weighed and how far it had to be carried.
- Details of any machinery or equipment** that were involved in an incident (this may include manufacturers instructions for use).

- Evidence of good working practice.** Many types of documentation can help with the defence of a claim if they demonstrate that you have Risk Assessments and Safe Systems of Work (SSOW) in place. Evidence that your employees understand and adhere to these systems is also key. Being able to demonstrate you have this type of audit trail in place is very important because it shows you have taken a proactive approach to issues. Examples of the types of information you should collate to demonstrate good working practice are outlined below.

#### For all types of incident

- Details of Risk Assessments and Safe Systems of Work (SSOW).
- Details of any staff training including copies of training material.
- Evidence to show that Personal Protective Equipment (PPE) is provided for staff use, that staff wear it when appropriate, and that a disciplinary procedure is in place for occasions when staff do not wear the correct PPE.
- Details of staff health surveillance – it is useful to know the condition of a Claimant's health prior to employment – medical record requests can be made under the Data Protection Act as a 'Subject Access Request' (SAR).
- Evidence of a clear system for reporting incidents should be available, including:
  - contact details of the person responsible for health and safety and for collating all the necessary information following an incident
  - incident book entries to include the date and time of the incident (entries should always be completed immediately after an incident)
  - completion of RIDDOR form (see 'Frequently used terminology' section).
- Production or inventory documents – these can be used to demonstrate the Claimant's workload in the case of a repetitive type injury.
- A history of past complaints and the company's consequent actions.
- Evidence of a reporting procedure for all complaints and non-incident related injuries.

#### For incidents involving machinery

- Results of regular machinery checks to ensure equipment is safe and post incident findings of checks with consequent actions taken. The less time taken between the incident and inspection, the greater the chances of defending a claim.

- Details of operation and breakdown procedures.
- Evidence to show that usage instructions are attached to machinery.
- Procedures for the reporting of machine faults.

#### For incidents involving slips/trips

- Results of regular checks to ensure areas are clean and/or housekeeping logs.
- Details of procedures to deal with spillages/slippery floors.
- Evidence of contracts with cleaning companies, including clear indemnity clauses and a cleaning specification.

#### For incidents involving strike by object or person

- Results of regular checks by supervisors relevant to the area or equipment concerned.
- Details of operating procedures to prevent this type of incident.

#### For incidents involving lifting or manual handling

- Evidence of staff training.
- Evidence of staff health surveillance.

#### For incidents involving a fall from height

- Evidence of employee training and the maintenance of equipment.

#### For Work Related Upper Limb Disorder (WRULD) related incidents

- Evidence of your SSOW to prevent this type of incident.

#### For Dermatitis related incidents

- Control of Substances Hazardous to Health (COSHH) data material for all potentially harmful chemical agents.
- Review of production processes that might have lead to a dermatitis claim.
- Departures from SSOW should also be noted.

## Legislation relevant to liability claims

The issues upon which liability will be decided are set at the time of the incident and it is therefore important that the legal requirements are understood. The key to defending a claim is having complied with the legal requirements. Understanding these requirements will not only prevent incidents in the first place, but ensure the incident investigation and claims handling focuses on obtaining the relevant evidence.

There is a good deal of legislation relating to liability claims and it would be impractical to capture it all in this booklet. We have concentrated on the legislation that is relevant to the majority of liability claims with the main focus being legislation relating to Employers Liability (often referred to as 'six-pack').

#### Management of Health and Safety at Work Regulations 1999

Requires that employers undertake suitable and sufficient assessment of risk. Sections also cover the need for the provision of information and training to employees relating to health and safety matters.

The purpose of the assessment is to allow the Employer to develop the appropriate control measures and the necessary organisational procedures to ensure implementation of the controls.

The assessment must be reviewed and, if necessary modified whenever necessary. Reviews could be triggered by:

- Time – periodic reviews are an essential element.
- Changes in technology, workplace or work practice.
- Monitoring which suggests the control measures are no longer effective.
- Accidents or unforeseen events.
- Additional hazards.

A suitable and sufficient risk assessment should:

- Identify the significant risks arising out of the work.
- Enable the employer to identify and prioritise the measures needed to comply with the relevant statutory provisions.
- Be appropriate to the nature of the work.

In particular, a risk assessment should:

- Ensure that all relevant risks or hazards are addressed.
- Address what actually happens in the workplace or during the work activity.
- Ensure all groups of workers who may be affected are considered.
- Identify groups of workers who may be at particular risk.
- Take account of existing preventative measures.

The level of detail in the risk assessment should be broadly proportionate to the risk.

### Provision and Use of Work Equipment Regulations 1998

Requires that all work equipment is safe to use. General employer duties include the selection of suitable equipment, maintenance of this equipment, and employee information and training relating to this equipment.

Some of these regulations place strict liability upon the employer if a breach leads to an incident. An example is **Regulation 5**, which places an absolute duty on the employer to provide work equipment that's in an efficient state, in efficient working order and in good repair. The case of *Stark v The Post Office* (see Case study page 12) reinforces the importance of taking these regulations into account.

### Manual Handling Operations Regulations 1992

Requires that so far as is reasonably practicable, employers should avoid the need for Manual Handling Operations and failing this, advises methods such as training to reduce risk. It also includes details of how to conduct a Manual Risk Assessment.

The objective is to avoid the risk of manual handling. This could be by task reorganisation, automation or mechanical means. If avoidance is not possible, then a reduction should be made. This could be training, reducing weight and/or an ergonomic approach.

### Workplace (Health, Safety and Welfare Regulations) 1992

Places a duty on employers to provide and maintain a safe workplace including all equipment, devices and systems. In particular there are requirements to make provisions for maintenance, the exact nature and extent of which will be dictated by the type of workplace and activities carried out.

Environmental requirements include ventilation, temperature and lighting. The Regulations also make requirements for traffic routes to be of suitable construction and maintained for protection against falls and from falling objects. Traffic routes should be organised and doors, gates and escalators should be suitable and safe.

### Personal Protective Equipment and Work Regulations 1992

These regulations cover an employer's duties to assess and avoid risk related to the provision and use of PPE (Personal Protective Equipment), after the original risk to the employee's health and safety has been reduced to its lowest level by any other means available.

The equipment must be provided and made readily available. Employees must have clear information about where to obtain it and training on how to use it. There should be no charge to the employee. It must be suitable, conform to the relevant standards and must protect against the risk

Although the legislation on liability incidents and injuries affects the Employer, Insurers and brokers can assist by providing the information customers need to help minimise risks associated with such claims. This information can be made available via support personnel and/or informative literature available upon request.

### The Occupiers Liability Act 1957

Imposes a common duty of care on an occupier of premises to ensure that both employees and non-employees will be reasonably safe when using the premises. Risks and hazards should be identified and remedied. If elimination or reduction of the hazard or risk cannot be made, then warnings must be given of the hazard or risk.

## Case studies

### Machinery, tools or materials incident case study 1 – Stark v The Post Office

Whilst working a Postman fell off the bicycle provided for use by the Post Office due to a faulty front brake, and a claim followed.

The Post Office attempted to defend the case on the basis that their system of maintenance was as safe as reasonably practicable. They argued that there was nothing more they could have done to prevent the incident and that they have a comprehensive system of service and maintenance in place for their bicycles.

The Court initially dismissed the claim, however, the Claimant appealed. The Court of Appeal held that because the brake was defective, there was a breach of the absolute duty under Regulation 6 of the Provision and use of Work Equipment Regulations 1992 (now Regulation 5 of the Provision and Use of Work Equipment Regulations 1998 – see Legislation section). These regulations require that all work equipment should be safe to use and that just having a Safe System of Work (SSOW) in place is not enough to defend a claim.

**Despite the fact that the Insured could not defend the claim as in this instance, the very existence of a robust SSOW and programme of preventative maintenance would help prevent these types of incidents in the first place, thereby reducing the number of claims.**

### Machinery, tools or materials incident case study 2

The Insured had allowed the Claimant to use his own tools on site. The Claimant was using his own hammer when a shard of metal went into his hand and injured him. The Claimant disposed of the hammer as it was part of his own tool kit and when making the claim alleged defective equipment.

The post-incident investigation by the Insured could not include an inspection of the hammer as it had been thrown away. As a result the Insured could not provide evidence to defend the claim and could not demonstrate whether or not:

- the hammer was defective
- they had ever inspected it to check it was safe to use
- the shard of metal had come from the hammer at all, as alleged by the Claimant.

**As highlighted in 'Effective claims and incident management' – page 6, the Insured should have taken the following steps:**

- **not to permit employees to use their own equipment at work**
- **collected evidence of regular safety checks on all equipment used by employees should have been available**
- **kept all evidence after the incident and had a demonstrable SSOW in place to show that ensured staff were aware that they should not throw evidence away**
- **inspected the equipment involved in the incident.**

### Slip/trip case study

The Claimant slipped on a discarded ice cream on the floor of a shopping centre, belonging to the Insured, and reported the incident to the shopping centre management. The shopping centre management took the following action:

- they arranged for a cleaner to attend and clean up the spillage immediately
- an incident report form was completed straightaway with a note of the time and date of the injury
- a witness was identified.

The witness confirmed that they had seen a child holding an ice cream and had probably dropped it where the incident took place, just five minutes before.

The cleaners who dealt with the spillage continually patrol the centre cleaning and looking out for spillages. At certain points along their route they sign a log to confirm the time that an area has been checked and cleaned. In this case the cleaner's log revealed that the area had been inspected and was clean just 10 minutes before the incident.

The person who slipped made a claim alleging a breach of the Occupiers Liability Act, on the basis that the Insured had allowed the ice cream to remain on the floor. The claim was successfully defended on the basis that the Insured had complied with their reasonable duty of care:

- They knew when the injury had happened because they had promptly filled out an incident form.
- They had cleaned up the spillage as soon as it was reported.
- They were able to demonstrate when the ice cream had been dropped, because they had identified a witness.
- The cleaning log demonstrated that the area is regularly cleaned, a Safe System of Work was in place to show the area was checked and cleaned regularly, and the area had been inspected and was clean, just 10 minutes before the incident.

**This case demonstrates the importance of taking the steps outlined in the section 'Effective claims and incident management' – page 6, as means of defending a claim. Had the Insured failed to take steps such as identifying a witness and keeping a cleaning log, substantial losses may have been incurred.**

#### Lifting/manual handling case study 1 – O'Neill v DSG Ltd (2002) CA

A Warehouse Manager was moving some electrical goods – he turned and twisted his spine when a colleague called him. He sustained two tears to his lumbar spine.

In defence of the claim, the Insured raised the following:

- the Claimant had been given guidance on Manual Handling Regulations
- the Claimant knew the basic technique for lifting heavy objects
- notices were displayed in the warehouse giving lifting advice.

However, it was alleged that:

- the Claimant had not been given practical training on lifting and manual handling
- the Insured owned a videotape that would have provided adequate training for this specific incident, but had not shown it to the Claimant.

**In order to effectively defend the claim, the Insured should have been able to provide the type of evidence outlined in the 'Effective claims and incident management' – page 6. Examples include:**

- **evidence of a Safe System of Work (SSOW), with documented details of the 'departure' from the SSOW**
- **evidence of practical staff training on lifting and handling, with copies of training material and proof that the Claimant has 'passed' the training, or read and understood training materials (for example a signature from the Claimant to say that they have watched and understood the training video)**
- **contact details of a person responsible for health and safety**
- **an incident book entry including the time and date the incident took place.**

#### Lifting/manual handling case study 2

The Insured's driver was injured whilst they were lifting heavy goods when delivering products to a customer. The investigation following the claim showed the Insured could provide no evidence of a SSOW, and weakened the defence further:

- the products that the drivers had to lift were often 'very heavy' and well in excess of Manual Handling Regulation Guidelines
- many customers were small businesses with no equipment or space to safely unload goods
- the job had been performed over many years by a group of older drivers (50+) years.

The investigation of this case identified a clear source of potentially high value back injury claims in an ageing group of drivers. Taking into account the factors listed here, the likelihood of future claims was high, unless action was taken to resolve the situation. In an attempt to rectify the situation the Safety Manager carried out a Risk Assessment and as a result implemented the following changes:

- identifying and visiting larger customers to check upon safe unloading practices
- excluding drivers from the task of unloading goods
- seeking a solution in relation to small business customers who don't have any lifting equipment or space to unload

- provision of refresher training to all drivers to exclude any unsafe manual handling
- drivers were given 24/7 telephone contact with a Transport Manager to call in the event of unforeseen unloading difficulties.

**Whilst a solution has not yet been identified for all classes of customer, improved Risk Assessment and claims management has reduced the risk of future injuries considerably. The documentation now kept by the Insured will make it easier for them to defend any future claims.**

### Fall from height case study

A worker used a stepladder found on the premises to climb to a regularly accessed storage area on top of a shed. When climbing the ladder, the Claimant fell and injured his leg. The company disposed of the ladder immediately to prevent further incidents of this type.

In this case it was alleged that:

- there were no guidelines issued by the employer covering use of the ladder that was freely available for use by all personnel
- the ladder was faulty and had collapsed under the Claimant's weight.

Whilst there were clear breaches of legislation regarding the failure to risk assess and communicate guidelines to all staff, any possible defence was prejudiced by the fact that there was no post-incident investigation and the ladder had been disposed of. Once the ladder had been thrown away it was impossible to show whether or not the ladder was defective.

**The company should have carried out the following steps to make defence of the case possible:**

- **retained the ladder for inspection**
- **carried out a post-incident investigation to gather the information outlined in 'Effective claims and Incident management' – page 6.**

# Property claims

Property claims fall into two distinct categories:

- **Attritional** – high frequency, low severity losses arising from perils such as theft and accidental or malicious damage.
- **Catastrophic** losses arising from a single event such as a serious fire or severe weather event such as storm or flood.

The early days of any property claim are very important as early actions can accelerate the settlement of the claim and mitigate losses to the business. For many property claims the business interruption aspects far outweigh the material damage claims.

Most critical to managing property risk is putting a business continuity or business interruption plan in place. It's often the ability to continue trading immediately after the incident that determines whether a business survives or not.

As a result, notifying claims quickly is crucial. This means the Insurer can arrange for Loss Adjusters or other specialists to visit the premises where an incident has taken place, recovery and mitigation work can begin as quickly as possible and assistance can be provided with forming a business interruption plan.

This section provides information about the steps you need to take following incidents involving fire, flood and theft in order to provide quick recovery, prevent further losses and help keep the impact of an incident and the resulting claim to a minimum.

## Effective claims and incident management

What to do following an incident

### Fire

- Notify claims as quickly as possible – the catastrophic nature of large fires means this is vitally important so that Insurers can appoint specialists as necessary.
- It is vital that the local area of fire damage is protected and remains undisturbed so the claims investigation can be carried out effectively.

- Identify salvageable items and clarify areas of damage.
- Once authorised by the Insurer, remove any fire damaged items from the area to reduce the level of odours.
- Ventilate the area to help remove smoke and odours.
- Be aware of the potential for secondary damage such as corrosion caused by hydrochloric acid from burnt plastics – for example, machinery may need protection or specialist cleaning.
- Remember that fire residues are often harmful and can cause sore throats and coughs; remember to wear respiratory protection.
- Consider the need to contact customers following the incident where you will be unable to meet orders immediately or in future.
- Consider the critical path to restoring turnover – what, if any, immediate steps can be taken to mitigate the loss?

### Water damage

- Notify the Insurer as soon as possible. Disaster restoration specialists can then be appointed to carry out urgent drying works or ‘cleaning up’ to minimise disruption and claims costs.
- Ensure that the cause of the leak is removed immediately as an ongoing leak will lead to increased damage.
- Ensure that any areas affected by water damage are well ventilated if possible. Good airflow will reduce the potential for mould build up and will assist the drying process.
- If you think that water may have been in contact with the electrics on site, ensure that the power supply is turned off until an electrician has checked that the area is safe.
- Where the claim is for water leakage due to storm damage, it is important that emergency works are carried out to ensure no further damage occurs. The costs of emergency repairs will be met by the policy if the damage was caused by an Insured peril.
- When damage has occurred, carry out a full visual inspection to identify all areas of damage. It is common for water damage to spread over a significant area and it is important to identify the entire scope of damage on day one.

### Theft

- Always contact the Police when a theft has occurred and get a crime reference number.
- Ensure that a full inventory of the missing items is compiled and that the details are passed to the Police and Insurer.
- Notify the Insurer immediately to enable them to advise whether any additional actions, such as the appointment of a Loss Adjuster are required.
- After a forced entry, ensure that the premises are secured before leaving the site.
- If the intruder alarm wires have been cut, try and get them repaired before leaving the site. If this is impossible, then consider employing security guards to ensure the premises are safe.

### The incident investigation

After a loss has occurred it is important that information about the loss is collated as soon as possible. Early and accurate information gathering can identify scope and likely value of damage as well as possible avenues for recovery. This allows Insurers to ensure that the correct resources are then allocated to the claim.

### What to gather in an incident investigation

#### Fire or water damage

- Photographs** and an inventory of items removed from the site, to assist in detailing any claim.
- Third party details** if a third party is responsible for the incident, ensure that all relevant details are obtained and that details are given to the Insurer at first notification.
- Results of visual inspection** provide the Insurer with results of any visual inspection.
- Details of any witnesses** all relevant names and contact details should be recorded.
- Details of any emergency works carried out** and any associated costs.

## Theft

- a) **Crime reference numbers** to assist with the claims investigation, a crime reference number and details of any Police action taken.
- b) **Details about police investigation results** if the Police arrest the perpetrator, the Insurer can pursue any potential recovery.
- c) **Details of the stolen items** early identification of the scope of the loss can assist the Insurer in deciding whether an adjuster needs to be appointed.
- d) **Details of any interruption period** after a theft has occurred the police will often close premises in order to carry out a forensic examination of the scene, Insurers need to know whether there will be any claim for business interruption.

## Legislation relevant to property claims

### Fire and Prevention (Metropolis) Act 1774

This act states there is no liability on owners and/or occupiers premises for the spread of a fire provided that the fire was not deliberate and there is no negligence on their part.

The key impact for the customer is that it will not normally be possible for a recovery to be made when a fire has spread from another premises. If however, there is evidence of negligence on the part of the owner or occupier of neighbouring premises then the customer needs to obtain as much information as possible to assist Insurers in pursuing the recovery.

Brokers need to be aware of the limit on recoveries and should ensure that the customer's expectations are managed. It is useful for customers to be aware of legislation that limits recoveries and it is important that they are aware that a recovery will not always be possible.

### Regulatory Reform (Fire Safety) Order 2005

Due to come into force in 2005, this places a general duty of care on employers, occupiers and owners of all commercial premises to provide and maintain adequate fire precautions.

The person who owns or controls the building is responsible for ensuring the safety of all employees and visitors. The Order highlights a shift towards risk assessment with a named individual being responsible for ensuring compliance. Failure to comply with the responsibilities highlighted under the Act can lead to a fine or imprisonment for the responsible person.

### Water Industry Act 1991

This act specifies the duties and responsibilities of water supply companies in respect of mains water and sewerage supply. It also applies strict liability on water companies for damage caused as a result of leaks from mains supplies.

Customers need to understand that if there is a potential recovery from a water supply company then the need to document a claim may be greater and that there may be the involvement of a Loss Adjuster acting for the water supply company. This is normal and the Loss Adjuster acting for the water company will liaise with the insurance company's Loss Adjuster.

Brokers need to ensure that the customer is aware of the potential for recovery and to advise the customer that they need to inform the Insurer if the cause of the damage is a mains water pipe.

### Theft Act 1968

This is the main Act of Parliament dealing with the law on theft. Section 1 of the Act describes it as follows: 'A person is guilty of theft if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.'

The Act goes on to provide definitions of robbery, burglary, obtaining property by deception etc. Insurers should apply the same definitions in the policy wording where these terms appear.

Brokers and customers need to be aware of the standard definitions of theft within the act and ensure that Insurers apply the definitions to the policy wording.

## Case studies

### Fire case study

A catastrophic fire spread to the Insured's property from a neighbouring warehouse and led to the complete destruction of the building and all contents/stock. The loss was reported the same day.

As a result of prompt notification:

- The Insurer immediately appointed Loss Adjusters who attended the location the same day – they liaised with the Insured and their representatives, Fire Brigade and Police, as well as the Local Authority and Health and Safety Executive.
- Forensic Scientists were appointed to carefully examine the scene.
- The Loss Adjusters effectively took control of the safety issues, avoiding the need for a 'dangerous structure' notice – they authorised immediate demolition of the dangerous affected areas and arranged for installation of perimeter security fencing to prevent further incidents taking place.
- The Loss Adjusters advised the Insured to commence an immediate local search for alternative premises to minimise business interruption.

**As the Insured notified the claim promptly, decisive action was taken by the Loss Adjuster under the instruction of the Insurer. This minimised the damaging effects of the fire and an equivalent warehouse 500m along the same road was found within a short space of time. The loss of profit and business interruption was minimised and the company was trading again just six weeks after the fire.**

### Water damage case study

A burst 36" Thames Water main flooded the Insured's restaurant (ground floor and basement). The Insured promptly reported the incident to the Insurer.

As a result of prompt notification:

- Loss Adjusters attended site the same day and appointed a damage restoration company

- the restoration company pumped out the water and installed a number of dehumidifiers in the affected areas to accelerate the drying process
- Loss Adjusters put Thames Water on notice for the water damage sustained and obtained an early admission of liability.

**The benefit of prompt notification and subsequent action taken by the Insurer meant the Insured could resume trading in a short space of time. In addition, Thames Water was put on notice for the water damage sustained, leading to a substantial indemnity recovery.**

### Theft Case study

The Insured suffered an overnight theft that involved forcible and violent entry and exit at their warehouse. A large quantity of digital camera equipment was stolen, and the Insured suffered minor damage to their building, fixtures and fittings. As a direct consequence of this, the Insured was unable to satisfy existing customer orders. The loss was reported to the Insurer the morning after the theft.

The claims investigation revealed the loss was in excess of £100,000. The Insurer appointed a Loss Adjuster to attend the site on the same day the claim had been notified and:

- approved initial measures to reinstate the premises
- explained exactly what documentation would be required to validate the claim under the terms and conditions of the policy.

**These actions and prompt notification of the claim led to the claim being agreed and settled within six weeks, minimising loss of turnover, through the ability to restock quickly.**

## Motor claims

The cost of motor claims has increased over the past few years. There are various reasons for this such as the growth of credit hire companies, increase of unregulated accident management companies and their aggressive advertising, plus evolving manufacturing techniques of cars increasing repair costs of vehicles. In addition, the overall costs associated with every collision can be significantly higher than the cost recovered through insurance.

Effective claims and incident management is key to reducing the impact of motor claims. This means notifying the Insurer immediately after an incident so the Insurer can manage the claim with you and contain third party costs more effectively.

This section provides guidance on ways to reduce the cost of motor claims with effective claims and incident management.

### Effective claims and incident management

#### What to do following an incident

- Report incidents to the emergency services immediately (if appropriate).
- Write down any key information about the incident (it is useful to ensure that drivers have paper and pens available at all times to make this easier). If possible take photographs of the incident scene/vehicle damage.
- Take a note of third party details to include vehicle damage and any driver/passenger injuries sustained.
- Ensure the Insurer is notified promptly, via telephone where possible, to enable an effective solution to be deployed to both the Insured and any third party involved.
- Use Insurer approved repairers – this reduces cost and cycle times of repairs (see Case study section).
- At no stage should a customer admit responsibility for an incident.

## The incident investigation

It is essential where liability is disputed, the Insurers are notified as soon as possible to enable them to obtain as much information about the incident as possible. The level and quality of this information is increased if the driver involved reports the incident direct.

### What to gather in an incident investigation

- a) **your policy number**
- b) **driver details including name and contact telephone number** if possible landline and mobile numbers
- c) **third party contact details** including name, address and contact telephone numbers plus their Insurer details
- d) **details of vehicles involved** including make, model and registration – in order that Insurer details can be established and the recovery process started if necessary
- e) **witness details** including name, address and telephone numbers
- f) **Police details** if they attend the scene of the incident to include the name and details of the officer who attended, police reference if possible and any potential driver prosecution details
- g) **details about injuries** for example was anyone taken to hospital and what was the extent of injuries
- h) **sketch plans or photographs** the latter which has been made possible with technologically advanced mobile phones with integrated cameras
- i) **any other information** the driver has written down at the time of the incident such as weather conditions, road conditions, number of passengers in the third party/Insured vehicle, the area and extent of damage to their vehicle.

## Legislation relevant to motor claims

### Road Traffic Act (RTA) 1998

Every road user has an obligation to ensure compliance with the statutory requirement of the Road Traffic Act, section 145. This states that any road user must have, at the very least, Third Party insurance, which will ultimately ensure that they are able to cover any liabilities which may be incurred by them in respect of the death and/or bodily injury to any person or damage to any property caused by, or arising out of, the use of a vehicle on a road in Great Britain.

### 4th Motor Insurance Directive

This directive makes significant changes to the rights of motor incident victims. The European Communities (Rights against Insurers) Regulation 2002 forms part of the implementation of the 4th Motor Directive.

The main purpose of the directive is to establish common practices throughout the EEA, and to make it easier for victims of road traffic incidents to make claims when injury and/or damage are caused outside their state of residence.

The most significant aspect of the regulations is that where a claim in tort exists, a Claimant may issue legal proceedings direct against the actual Insurer of the vehicle.

The Government has made it clear that recovery of NHS charges incurred in road traffic incidents will be extended to include any compensable claim for personal injury. Whilst the introduction of this particular legislation has been delayed, it is likely to be introduced towards the latter part of 2006.

## Case studies

### Case study

The Insured's driver had a collision with a third party vehicle. The third party suffered a whiplash injury and there was damage to the vehicle. The Insured notified the Insurer a week after the incident. Costs as a result of the claim were as follows:

- credit hire replacement vehicle 5 days at £42 per day
- labour costs at £28 per hour x 10 hours
- replacement parts at list price £850
- payment for pain, suffering and lost earnings £5,500
- legal fees as the TP instructed a solicitor £1,450.

Total cost £8,290

**Had the Insurer been notified immediately the claim would have been managed through an injury rehabilitation facility, a third party hire facility approved by the Insurer and approved suppliers. The claim cost could have been:**

- replacement car at £20 per day (or a free courtesy car where appropriate)
- labour costs at £24 per hour x 10 hours
- replacement parts at discounted rate £765
- payment for pain, suffering and lost earnings £3,000
- cost of rehabilitation £750
- legal fees were negated as a solicitor was not instructed.

Total cost £4,855 giving a saving of 41%

**This case demonstrates the importance of notifying the claim early and involving the Insurer to manage third party claims effectively from the outset, therefore controlling the outcome of the claim.**

## Frequently asked questions

**Q** Why do we hear nothing back for some time on individual claims after verbal confirmation of the liability stance?

**A** In the majority of cases an early decision can be made on liability if the Insured has good incident investigation procedures. If liability is repudiated it is necessary to wait a reasonable period of time to be sure it has been accepted by the Claimant, before closing the claim. A Claimant has three years from the date of the incident to issue proceedings in personal injury cases. For property damage cases, this period is extended to six years.

If liability has been admitted the next step is to value the claim. In personal injury claims this will involve obtaining medical evidence, which can take several months as they necessitate obtaining further evidence at a later date, when some progress to recovery and a final prognosis has been made.

Therefore the more serious the injury, the longer it will take to value and settle the claim.

**Q** Are claims dealt with offshore?

**A** While some of Zurich UK Commercial's paper based processing is dealt with offshore, our customer facing and technical claims handling is dealt with in the UK.

**Q** In respect of Employers' Liability and Public and Products Liability claims what do we need to report – all incidents? And what is the definition of an incident?

**A** Firstly an incident is anything that may give rise to a claim. Different Insurers have different requirements for what needs to be reported. Zurich ask:

Employer's Liability – to be notified of a major incident, fatal incident or serious injury immediately and claim as soon as they are occur.

Public Liability/Products Liability – to be notified of all incidents likely to give rise to a claim as soon as possible and claim as soon as they occur.

Q Why does Zurich tend to settle claims well within the reserve?

A The reserving process has to achieve two objectives:

1. The assessment of the extent of loss to ensure the Insurer will be in a position to pay the claim at the anticipated settlement date (at an uncertain time in the future and for an uncertain amount).
2. Provision in the Insurer's financial statement for that year – the Insurer must estimate the ultimate loss and set aside a reserve for this amount.

The overall aim is to establish a reserve that will not be exceeded by the ultimate settlement amount.

Q We cannot find an employee's training documents. Will this prejudice the defence of a claim?

A Although it is highly important to maintain records of employee training, in the case of the claim, if these are not available you should get a statement from the person who trained the Claimant. This should include relevant details about the training, so that your Insurer may be able to defend the claim subject to the quality of the evidence in their statement.

Q Should we investigate minor incidents entered into the incident book even if no time from work is lost?

A Yes. As best practice ideally all incidents should be investigated at the time they occur – even what may appear to be a minor incident can often turn into a claim. If no investigation is carried out at the time, it will be difficult to gather the right information later to defend the claim effectively.

Q We employ a lot of agency workers who are already trained when they begin work with us. If they have an incident are we still responsible for producing their training records?

A As agency workers would actually be employed by you at the time of an incident, as part of your duty as an employer, it is incumbent on you to disclose the correct records for any defence or contributory negligence argument. Following an incident you should make early contact with the agency to get hold of the injured party's training documents so that they can be passed to the Insurer following an incident investigation.

# Frequently used terminology

**Causation** – Whether the breach detailed in the claim actually ‘caused’ the injury/condition.

**Claimant** – The person or Company who is named in Court proceedings and alleges they have sustained a financial loss or injury due to the breach of Statutory Duty or common law negligence of the defendant.

**Contributory negligence** – Normally referred to in percentage terms and refers to the amount the Claimant has contributed to the incident and their injury through their own wrong doing – e.g. Not wearing a seatbelt or not wearing personal protective equipment which should have been worn when carrying out a particular job.

**CPR protocols** – ‘Civil Procedure Rules’ (also known as the ‘Woolf Reforms’) governing notification, investigation, disclosure of relevant documents and general handling of pre-litigation claims.

**Date of knowledge** – The date a Claimant is reasonably held to have had the knowledge that the condition suffered was caused by another party.

**Defendant** – The party (an individual or Company) who is named in Court proceedings and who the injured party is claiming against.

**Future losses** – Losses not incurred yet but will be incurred, on balance of probabilities e.g. future wages, future care.

**General damages** – Awards for pain and suffering, loss of amenity and loss of opportunity (heads of damages not calculable).

**JSB Guidelines** – A guide used by the Judiciary and claims practitioners to assist in the valuation of General damages (see above).

**Litigation/litigated** – Court proceedings/claim that has had Court proceedings served.

**Negligence** – General term used to express the wrongdoing of a party.

**Ogden Tables** – Actuarial tables used to calculate future loss claims for future wages, care etc.

**Part 36 Offers** – Offers which can be made by the Claimant or defendant, pre or post litigation, to settle the claim. They can be in respect of quantum or % of liability accepted. If the claim progresses to Trial after a Part 36 offer has been made, the party who failed to beat the Part 36 Offer has cost penalties awarded against them.

**Primary liability** – Breach of Statutory Duty or common law negligence.

**Quantum** – General term used when referring to the overall value of the claim – in other words all types of damages.

**RIDDOR** – The Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995 requires various incidents such as major incidents, fatalities, and incidents resulting in more than 3 days absence from work, to be reported to the Health and Safety Executive within 10 days. RIDDOR stands for ‘Report of an Injury and Dangerous Occurrence’.

**Risk assessment** – A document identifying hazards and the risks associated with the hazard. Details of control measures required should also be contained in a risk assessment and the actioned to eliminate the hazard where possible, or to reduce it to an acceptable level.

**‘Six Pack’ legislation** – Phrase commonly used in reference to the 6 Regulations which replaced the old Factories Act.

**Smith and Manchester award** – An award for potential disadvantage on the open labour market. Where a claimant has sustained an injury that leaves them with a permanent disability, they are at a disadvantage in the competitive labour market (in the event that their current employers are unable to retain them). Although at present there is no clearly foreseeable loss, at some stage in the future their position is considerably weakened should they have to seek new employment.

**Special damages** – Calculable past losses e.g. wage loss, DIY/gardening services or claim for the hire of an alternative vehicle in motor claims.

**Statute barred** – A time limit is imposed by Law within which a Claimant must bring legal proceedings against the defendant to pursue their claim. If this is not done the claim is referred to as being 'statute barred' – i.e. the Claimant is 'barred' by the Law from pursuing the claim. This time period is three years for injury claims and six years for claims involving damage to property.

**Statutory Duty** – A duty imposed on a party by legislation.

**Vicarious liability** – Liability imposed by Law on one party for the negligence of another party for example an Employer is vicariously liable for negligent actions of employees which cause an injury to another party such as another employee.

# Managing the cost of claims with Zurich UK Commercial

Zurich UK Commercial has vast experience in the successful handling of claims.

Our expertise is achieved by:

- efficient claims handling to contain costs
- our ability to understand the effects a claim can have on business such as reputation and ability to trade
- in-house teams dedicated to handling occupational disease claims, which can often be very difficult to handle
- a Catastrophic Bodily Injury team that deals with major trauma injuries.

Zurich UK Commercial was one of the first insurers to advocate the use of rehabilitation to assist the speedy return to work of an injured party and we continue to press for the adoption of rehabilitation policies in industry.

## Useful contacts

An electronic version of this booklet is available at [www.zurich.co.uk/commercial](http://www.zurich.co.uk/commercial)

Customers: Contact your broker for additional copies.

Brokers: Contact your Account Executive for additional copies.

For more information about our commercial claims service go to [www.zurich.co.uk/commercial](http://www.zurich.co.uk/commercial) and click on the claims tab.