



THE CHARTERED INSTITUTE  
OF LOSS ADJUSTERS

# EXAM JANUARY 2025 ONWARDS

COURSE BOOK

# CHI INTRODUCTION TO THE INSURANCE INDUSTRY

## WELCOME

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The CH 1-4 Course Books are dedicated to Mike Odell,  
Examiner, Trainer and Exams Consultant for The CILA.  
His passion for educating and supporting the  
membership through examinations will be deeply missed.

Welcome to the CILA CH1 Introduction to the Insurance Industry.

This learning material has been designed with two main concepts in mind:

1. That it is easily understandable.
2. That it engages the learner, promoting questions such as *why*, *who* and *how* does this affect me?

The learner could simply read and learn the material, but the concept of adding “Activities” and “Putting it into Practice” is designed to help the learner explore the subject to a greater depth.

Those who adopt a positive, proactive approach will benefit as they will enhance their learning, becoming ever more useful in the workplace; the resulting rewards for this are immense.

There are deliberately no suggested answers to either the Activities or the Putting it into Practice questions. These are set for you to explore.

## CONTENTS

<b>1. Risk and Risk Transfer</b>	<b>6</b>	3.5 Void and Voidable Contracts	23
1.1 What is Risk?	8	3.6 Interpretation of Ambiguous Terms	23
1.2 Risk Transfer	8	3.7 Contracts of Utmost Good Faith	23
1.3 Key Points to Remember	10	3.8 Key Points to Remember	24
<b>2. The Parties</b>	<b>11</b>	<b>4. Legal Liability</b>	<b>25</b>
2.1 The Policyholder	13	4.1 Legal Liabilities	28
2.2 Insurers/Insurance Companies	13	4.2 Torts	28
2.3 Co-Insurers	13	4.3 Negligence	28
2.4 Reinsurers	14	4.4 Duty of Care	29
2.5 Insurance Brokers	14	4.5 Defences	29
2.6 British Insurance Brokers Association (BIBA)	14	4.6 Nuisance	30
2.7 Managing General Agent (MGA)	14	4.7 The Rule in Rylands v Fletcher (1868)	30
2.8 Lloyd's of London	14	4.8 Trespass	31
2.9 Lloyd's Broker	15	4.9 Contract	31
2.10 Underwriter	15	4.10 Statutory	31
2.11 Underwriting Agency	15	<b>5. Insurable Interest</b>	<b>33</b>
2.12 Financial Conduct Authority (FCA)	15	5.1 The Principle	35
2.13 Financial Ombudsman Service (FOS)	15	5.2 Gambling Act 2005	36
2.14 Chartered Loss Adjusters	16	<b>6. The Duty of Fair Presentation</b>	<b>37</b>
2.15 Chartered Institute of Loss Adjusters (CILA)	16	6.1 The Principle	39
2.16 Chartered Insurance Institute (CII)	16	6.2 The Legal Position – Statute Law	39
2.17 Loss Assessors/Claims Consultants	16	6.3 Knowledge of Insured	40
2.18 Association of Insurance and Risk Managers in Industry and Commerce (AIRMIC)	16	6.4 Knowledge of Insurer	41
2.19 British Damage Management Association (BDMA)	16	6.5 Remedies for Breach	41
2.20 Association of British Insurers (ABI)	16	6.6 Deliberate or reckless breaches	42
2.21 European Federation of Loss Adjusting Experts (FUEDI)	17	6.7 Summary	42
2.22 International Federation of Adjusting Associations (IFAA)	17	<b>7. Indemnity</b>	<b>43</b>
2.23 Agency	17	7.1 The Principle	45
2.24 Other parties	17	7.2 The Legal Position – Case Law	45
2.25 Key Points to Remember	17	7.3 Indemnity – The Policy	45
<b>3. Contract Law</b>	<b>18</b>	7.4 Indemnity – Financial Interest	46
3.1 Offer, Acceptance and Consideration	21	<b>8. Proximate Cause</b>	<b>47</b>
3.2 Privity of Contract	22	8.1 Proximate Cause Definition	49
3.3 Express and Implied Conditions	22	8.2 Other Considerations	50
3.4 Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contract Regulations 1999 and Consumer Rights Act 2015	22	8.3 Burden of Proof in Relation to Proximate Cause	50
		8.4 Key Points to Remember	50

## CONTENTS

<b>9. Contribution</b>	<b>51</b>	<b>12. Communication</b>	<b>67</b>
9.1 Definition	53	12.1 Sociolinguistics	69
9.2 The Legal Position	53	12.2 Referential and Affective	70
9.3 Contribution and the Policy	54	12.3 Better Written Communication	70
9.4 Apportioning payments when Contribution arises	55	12.4 Ordering of Words (Given and New Information)	70
<b>10. Subrogation</b>	<b>57</b>	12.5 Active and Passive	71
10.1 Definition	59	12.6 Key Points to Remember	71
10.2 The Legal Position	59	<b>13. The Financial Conduct Authority</b>	<b>72</b>
10.3 Other Important Features of Subrogation	60	13.1 Regulation of the Insurance Market	75
10.3 Subrogation Terminology	61	13.2 ICOBS 8.1 and 8.2	75
10.4 How Subrogation Rights Arise	61	13.3 Fair Treatment of Customers	76
<b>11. Customer Service</b>	<b>62</b>	<b>14. Data Protection</b>	<b>77</b>
11.1 Competition	64	14.1 Data Protection Legislation	79
11.2 Customer Retention	64	14.2 Consequences of a Breach of the Act	79
11.3 Measurement of Customer Service	64	14.3 Protecting Information	79
11.4 What Affects Customers' Perception of Service	65	14.4 Special Categories of Data	80
11.5 The Effects of Good Customer Service	65	14.5 Subject Access Requests	80
11.6 What to do when Something Goes Wrong	66		
11.7 Key Points to Remember	66		

# RISK AND RISK TRANSFER

## I. RISK AND RISK TRANSFER

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### Introduction

Risk and risk transfer are at the very heart of insurance.

This section explains what is meant by risk and risk transfer and also considers what risks can be transferred and to whom.

## 1.1 What is Risk?

Risk is a chance or possibility of danger, loss, injury or some other adverse outcome.

The reality is that everything we do has some risk attached to it. In fact, risk is something that frequently prevents us doing things we would like to do. For example, consider a qualified dentist, Anna, who is employed in a dentist's surgery. She considers opening her own surgery but perceives the risk of losses by theft, fire or malicious damage to be too great and therefore decides not to attempt the new venture.



### Activity

*Make a list of things that you have considered doing but decided the risk was too great.*

Some risks prevent us from doing things, but more often we find ways to mitigate risks. For example, instead of crossing a road we may choose to use a footbridge or subway.

Without taking some risks in life, progress and success would never be achieved. Think of the cricketer batting in the World Cup final. He is bowled a ball that he thinks he could hit for "6" but if he takes that shot he risks being caught out. Taking a risk, he hits the ball and scores the "6". Later when asked about the shot he says, "it was a calculated risk, I knew that it was a risk worth taking".

In the 1600, 1700, and 1800s, merchants took huge risks sailing across the oceans to find new markets, goods, and treasures that might make them a fortune. At one time sailors believed they would sail off the edge of the earth, what a huge risk to take!

## 1.2 Risk Transfer

Having explained what is meant by risk, we can now look at the subject of risk transfer.

Consider Anna the dentist. What might she have done if she had realised that some of the risks associated with her new venture could have been transferred to someone else? Or indeed the merchants, some of whom were unfortunate enough to become shipwrecked rather than finding their fortune. Anna may have decided to take up her venture and the shipwrecked merchants may have been able to recover their losses.

Risk transfer is about recognising a risk and then making arrangements with someone else to either take or share that risk. Risk transfer can often enable us to do things that we did not think possible in the first instance.



### Activity

*Consider how you share risk with others on an informal basis in your everyday life. For example, you might make an agreement to pick up your friend's child from school in the event that your friend is delayed at work.*

Insurance is a form of risk transfer. For example, if Jack were to borrow money to buy a new car there is a risk that he may lose his job and be unable to meet the repayments. However, at the time of borrowing the money, he could transfer all or part of this risk by taking out insurance to cover the repayments should he become unemployed.



### Activity

*Make a list of ten risks that can be transferred to an Insurance company.*

Understandably Insurance companies do not take on risk for free but charge a fee or "premium" for doing so. The amount of premium will be influenced by the likelihood and consequence of the risk occurring. For example, the insurance premium for a vintage sports car driven by an inexperienced driver will be much more than the insurance premium for a family car driven by an experienced driver. It is more likely that the inexperienced driver will have a crash. In addition, the cost of repairs and/or replacement to the sports car is likely to be more costly.

When an individual decides to transfer a risk by taking out an insurance policy, the Insurance Company will ask numerous questions about the risk in order to decide whether to accept it and, if yes, the appropriate fee to charge.



### Activity

*Look at an insurance proposal form and the type of questions asked by the insurance company in order to understand the risk that they are accepting.*

As part of the handling of a claim, the Insurance Company may ask you to check that the actual details of the risk match the details that were provided at the proposal stage. For example, Loss Adjusters are often asked to estimate the total value of contents within a home when attending the property to deal with a contents claim. If the actual value of the contents is significantly more than what was suggested by the Policyholder at the proposal stage, the Insurance Company may question whether they would have accepted the risk or charged a higher premium.

In most cases there is no legal requirement to take out insurance cover and it is a personal or business decision to decide whether or not to arrange insurance or take on the risk. For example, Victoria buys a new racing bicycle. She could decide not to insure it, save money and take the risk herself, or she could decide to purchase insurance and allow the Insurance Company to take the risk.

Examples of insurance cover that is a legal requirement are Motor (Third Party) insurance and Employers Liability Insurance.

We can therefore adopt different approaches when faced with risk:

1. Decide that the risk prevents us from doing what we had considered
2. Accept the risk or part of the risk ourselves
3. Accept the risk ourselves but take measures to reduce the likelihood and impact
4. Share the risk with others
5. Transfer the risk by purchasing insurance.



### Activity

*Consider how climate change is influencing the number and type of property claims that are made. Can you identify any risks that Insurance companies may not accept in the future if climate change continues?*

Having considered risk transfer, we can now take account of the cost of risk transfer. Insurance Underwriters consider each risk before they agree to accept the risk and, if so, at what price (premium) and on what terms (conditions, excess, exclusion, and warranties). Only by understanding the risk presented can an Insurer assess what should be charged to take on the risk.



### Activity

*Make a list of features of a house, its occupants and location that you believe would mean that the risk of fire, flood, theft, and escape of water is lower. Now make a list of features that you would expect would make the risk of the same things higher.*

### 1.3 Key Points to Remember

- Risk is a chance or possibility not a definite outcome. Insurance policies are not intended to cover events that will happen but rather events that could happen.
- The insurance industry exists because individuals and businesses often want to share or transfer risks to another party.
- Insurance companies charge a fee or “premium” to accept risks. They use their experience of claims to determine whether they will accept a risk and the appropriate premium to charge.
- Claims handlers are expected to be aware of the factors that can influence an Insurance company as to whether to accept a risk and what premium to charge. If the actual risk differs from that described at the proposal stage, the Insurance company may be entitled to reduce the amount paid or indeed decline the Policyholder’s claim altogether.
- By accepting the risks of many individuals, insurance companies are in effect spreading their non-exposure to risk. If an insurance company accepts Anna’s premium for her new dental practice, along with premiums from a further 1,000 dentists, should she suffer an adverse event that is insured, the payment required to be paid to Anna will be made from all the premiums collected. You can see from this example how the insurance company reduces its own exposure by calculating the correct premium.



## THE PARTIES

# 2

# THE PARTIES

## 2. THE PARTIES

### Introduction

As with any market there are:

1. Buyers of Insurance including: Private individuals, Businesses, Public Bodies (Such as local authorities), Not for Profit organisations, and Associations/clubs.
2. Sellers of Insurance including: Insurance Companies either composite (insuring a wide range of different insurance products) or Specialists (insuring a particular type of insurance e.g. Aviation), Lloyds of London, Mutual Insurance Companies, and Lloyds of London.
3. Intermediaries including; Agents, Brokers, and Lloyds Brokers.

While working in the insurance industry, you will encounter different types of people, job roles and organisations. This section lists the main parties that operate within the insurance industry and provides an overview of each role.

## 2. THE PARTIES

### 2.1 The Policyholder

The Policyholder (commonly referred to as the Customer or Insured) is the party or parties whose interests are insured or covered by the Policy. Policyholders can be individuals, partners, limited companies, public limited companies, trustees, government bodies, local authorities etc.

In financial services there are two main types of Policyholder: Consumers and Non- Consumers (Business customers).

The FCA defines a Consumer as "Any natural person acting for purposes outside his trade, business or profession". We will look at this subject in more detail when we consider the FCA.

Parties may have different legal status depending on their role. This means that an individual may have the role as a Consumer in their private life and receive the additional support and protection that this brings. In their role as a business owner the level of support and protection tends to be more limited. An example is the different levels of legal protection in the event of a dispute about their Policy.

The principle of Privity of Contract means that the contract of insurance is between the Policyholder(s) and the Insurers. When handling a claim, you must identify the legal identity and entity of the Policyholder. The two main reasons for this are:

- a. Insurable Interest (to be considered later) must be established
- b. Payment of claims must be made either to the Policyholder(s) or as directed by the Policyholder(s). Care must be taken here. The promise to indemnify is to the Policyholder and payment to any other party without a clear written or authority (a mandate may result in a dispute and the need to pay out again).



#### Activity

*Nigel submits a claim for a watch that he broke when he fell off a roof. The claim is covered and is to be paid. Elizabeth, Nigel's wife, telephones you and says she has bought Nigel a replacement watch as a gift and so the money should be paid to her bank account. Decide what you believe you should do and verify the procedure with a senior colleague.*

### 2.2 Insurers/Insurance Companies

Insurers or Insurance companies provide and sell insurance Policies. They accept risks for a premium and make payments, in accordance with Policy cover, for claims associated with those risks. All UK Insurance companies are regulated by the Financial Conduct Authority (FCA).



#### Activity

*Identify the five largest Insurers in the UK or within your jurisdiction and find out the different types of insurance cover they provide. Seek to find out how much money is paid out each year in claims.*

### 2.3 Co-Insurers

Co-insurance refers to a contract of insurance where the risk is shared between two or more insurance companies. There is one policy and the percentage of each co-insurer is shown in the policy. The co-insurer taking the higher percentage of the risk is referred to as the lead insurer.

An insurer will use a co-insurer when the coverage amount is much too high for them to cover on their own.

Claims handling will usually be managed by the Lead Insurers, but care should be taken concerning the agreement in place.



## 2.4 Reinsurers

Reinsurers provide insurance to support insurers to manage the risks they insure. Reinsurance is:

- the business of insuring an insurance company or underwriter against suffering too great a loss from their insurance operations; and
- allowing an insurance company or underwriter to lay off or pass on part of their liability to another insurer on a risk which they have accepted.

## 2.5 Insurance Brokers

Insurance Brokers arrange policies and provide advice to their Clients on insurance matters. Brokers will typically have relationships with a range of Insurance companies and will have a good understanding of the policies they offer. This enables Insurance Brokers to find the most appropriate policy for their Client and to negotiate an agreeable price.

A Broker acts for the insured and is remunerated by a fee or commission. The commission is usually referred to as brokerage. Brokers are also agents for the insurance company and will be required under the terms of a contract to undertake duties on behalf of the insurance such as collection and payment of premiums.

All Insurance Brokers, must be registered with and are regulated by the FCA. Some Brokers are Chartered as they meet the requirements of the Chartered Insurance Institute (CII) who grant this title.



### Activity

*Look at the website of an Insurance Broker and identify the key benefits that they promote to potential customers.*

*Consider what role a Broker might play if one of their Clients wishes to make a claim.*

## 2.6 British Insurance Brokers Association (BIBA)

BIBA is the UK's leading general insurance intermediary organisation representing the interests of insurance brokers, intermediaries and their customers.

BIBA membership includes around 1800 regulated firms, employing more than 100,000 people. BIBA is the voice of the sector advising members, Government, regulators, consumer bodies, and other stakeholders on key insurance issues.

## 2.7 Managing General Agent (MGA)

A managing general agent (MGA) is a specialised type of insurance agent or broker that has been granted underwriting authority by an insurer and can administer insurance programs and negotiate contracts for an insurer.

An MGA undertakes many of the functions normally undertaken by the insurer including confirming coverage, underwriting and pricing, settling claims, and appointing retail agents in a certain territory.

## 2.8 Lloyd's of London

Lloyds of London is an insurance and reinsurance market located in London and was incorporated under an Act of Parliament, the Lloyd's Act, in 1871. It is generally known simply as Lloyd's,

Lloyd's also has a presence and representation in many parts of the world. (<https://www.lloyds.com/lloyds-around-the-world>)

Lloyd's provide facilities and services such as administration support. In this way Lloyd's of London ensure that the Lloyd's market can trade effectively. Lloyd's as an organisation do not transact insurance business; they provide facilities so that others may do so.



### Activity

*Learn about the history of the Lloyd's market @ History - Lloyd's ([lloyds.com](https://www.lloyds.com))*

## 2.9 Lloyd's Broker

A Lloyd's Broker is a broker who has been approved by the Council of Lloyd's and is therefore entitled to enter and arrange insurance contracts in the underwriting room at Lloyd's.

## 2.10 Underwriter

The Underwriter is the person who accepts risks on behalf of an Insurance company or Lloyd's Syndicate. A Lloyd's syndicate is a group of underwriters in the Lloyd's insurance market.

Additionally, the Underwriter will impose certain terms and conditions according to the risk. Within an Insurance company there will be Underwriting Departments that take on this role.



### Activity

*In the handling of claims you may hear the phrase "referred to Underwriters".*

*Speak to your colleagues and ask them for examples of claims that have been referred to Underwriters. Find out why they were referred and the outcome.*

## 2.11 Underwriting Agency

An Underwriting Agency in effect underwrites business and places the risk with Insurers or with Lloyd's Underwriters. The Underwriting Agency does not hold the risk but will frequently be a specialist in niche areas and be able to provide expertise in their particular market.

## 2.12 Financial Conduct Authority (FCA)

The Financial Services and Markets Act 2000 was amended by the Financial Services Act 2012 leading to the formation of the Financial Conduct Authority (FCA). The FCA regulates the financial services industry in the UK and has three operational objectives:

- To secure an appropriate degree of protection for consumers
- To protect and enhance the integrity of the UK financial system
- To promote effective competition in the interests of consumers.

Refer to Chapter 13 for full details about the FCA.

## 2.13 Financial Ombudsman Service (FOS)

As stated under "Policyholder" (Section 2.1), Consumers are defined by the FCA, and this definition has relevance when considering the FOS. The FOS is an organisation set up to settle individual complaints between consumers and businesses providing financial services. In effect the FOS will take up a complaint on behalf of the consumer and others who fall within the following categories:

- Private individuals
- Certain businesses with an annual turnover of under £6.5m and either fewer than 50 employees or an annual balance sheet below £5m, although restrictions can apply
- Charities up to a prescribed limit
- Trusts up to a prescribed limit.

The above categories are referred to as eligible complainants. A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant.

In some circumstances the FOS may take up complaints on behalf of someone who is neither a customer nor a potential customer. This might include an employee covered by a Policy in the name of their employer.



### Activity

*Find out who handles complaints within your organisation. Ask for their advice on what you should do if a Policyholder says that they intend to complain to the Financial Ombudsman Service.*



### 2.14 Chartered Loss Adjusters

A Chartered Loss Adjuster can be appointed by the Insurer or Lloyd's Underwriter to investigate the cause of a loss, ascertain whether the loss is covered by the insurance Policy and, if so, calculate the financial liability of the Insurer/Underwriter. Loss Adjusters will also frequently oversee the repair or replacement of items if that is the agreed settlement method. Loss Adjusters may also be appointed by a Policyholder to handle either an uninsured loss or to present and negotiate the claim with an insurer on their behalf. When presenting claims on behalf of a Policyholder, the Loss Adjuster must be registered with the FCA. Registrations can be checked via the FCA website.

### 2.15 Chartered Institute of Loss Adjusters (CILA)

The Chartered Institute of Loss Adjusters was founded in 1941 and was granted a Royal Charter in 1961. The Royal Charter and the CILA Code of Conduct stipulate the professional conduct required of its members.

The Chartered Institute of Loss Adjusters elects members to Associates (ACILA) or Fellows (FCILA) once they have successfully completed the examinations and have the required level of experience.

All members are bound by the rules and regulations contained within the CILA Royal Charter, Bye Laws and Code of Conduct to ensure the highest possible standards in claims handling are maintained.

The CILA website can be found by following this link: <http://www.cila.co.uk>

### 2.16 Chartered Insurance Institute (CII)

The CII is a Chartered body representing the interests of all those working in the Insurance Market. It provides examinations and qualifications to demonstrate high levels of competence and strives to promote excellence within insurance.

### 2.17 Loss Assessors/Claims Consultants

A Loss Assessor, often referred to as a claims consultant, is appointed by a Policyholder to assist in the presentation of their claim. Loss Assessors are regulated by the FCA and are often members of the Institute of Public Loss Assessors. Loss Assessors charge the Policyholder a fee for their services.

### 2.18 Association of Insurance and Risk Managers in Industry and Commerce (AIRMIC)

AIRMIC is the association for everyone who has a responsibility for risk management or insurance in their organisation. A Risk Manager will oversee an organisation's comprehensive insurance and risk management program, assessing and identifying risks that could impede the reputation, safety, security, or financial success of the organization.

### 2.19 British Damage Management Association (BDMA)

This is an association set up to promote the interests of individuals or firms providing damage mitigation services, such as recovery and restoration contractors. They promote best practice in this area and represent their members to the public and the insurance industry.

### 2.20 Association of British Insurers (ABI)

The ABI represents the collective interests of the UK's insurance industry. The Association speaks out on issues of common interest, helps to inform and participates in debates on public policy issues, and also acts as an advocate for high standards of customer service in the insurance industry. The Association has around 400 companies in membership. Between them, they provide around 90% of domestic insurance services sold in the UK.

### 2.21 European Federation of Loss Adjusting Experts (FUEDI)

The FUEDI aims to promote the independent and impartial profession of loss adjusting in Europe recognising the importance of high standards of professional conduct and competence as well as co-operation amongst professional associations.

### 2.22 International Federation of Adjusting Associations (IFAA)

The IFAA is the worldwide organisation representing the interests of Loss Adjusting Associations located throughout the world.

### 2.23 Agency

While the law of agency goes beyond the scope of this section, the reader should appreciate that, in certain circumstances, one party may act on behalf of another. This immediately brings two issues to the fore. Firstly, when handling a claim, the handler should be sure of who they are dealing with and in what capacity. Secondly, when acting on behalf of another party, the handler might be creating liabilities for other parties.

For example, Delegated Authority is often given to Brokers, Loss Adjusters and Damage Mitigation companies. When acting in such a capacity, the handler may incur liabilities on behalf of the Insurers.



#### Activity

*Check what Delegated Authority the company you work for grant or have from other companies. It is important that you understand the nature and extent of the Delegated Authority. Verify with others what processes are in place to ensure Delegated Authority arrangements are not breached.*

### 2.24 Other parties

The following are other parties that you may also come across.

A Forensic Accountant uses their accountancy skills to investigate financial discrepancies and inaccuracies such as fraudulent activity, financial misrepresentation, or misconduct.

An insurance claims investigator, often referred to as a special investigator, is responsible for collecting, gathering, and analysing forensic evidence from incidents, interviewing witnesses and identify potential/suspected fraud.

A forensic Scientist will undertake a scientific investigation at the damaged site to provide a report detailing the cause of the damage.

### 2.25 Key Points to Remember

- There are numerous parties that operate within the Insurance industry, each performing a different role and with different interests. If you do not understand the nature of the person you are speaking to or dealing with, find out!
- The majority of Policyholders will be unfamiliar with the different parties that may become involved in the handling of a claim. This can lead to confusion, and sometimes distress, when multiple parties are engaged. You must therefore be able to clearly communicate your role to



## CONTRACT LAW

# 3

# CONTRACT LAW

## 3. CONTRACT LAW

### Introduction

First of all, it is important to understand that there are two main areas of the law, namely criminal and civil. Criminal law concerns matters that would ordinarily be dealt with by the Police, such as murder, rape, assault, and theft. The remedy for Criminal law is a punishment such as imprisonment, community service, fines etc. Civil law relates, generally, to matters of dispute between two or more parties. The disputes need not amount to a crime and the remedy for Civil Law is an award of compensation, a court order to stop or undertake an action etc.

For instance, if Sheena walks into a room and accidentally knocks a cup of coffee over Henry, this may be a civil wrong. Sheena may have a liability to Henry, but it is unlikely to be considered to be a criminal offence.

However, should Sheena have an argument with Henry and let's say the argument spirals out of control and Sheena throws the coffee over Henry, this may now amount to a criminal wrong.

Generally in insurance we are concerned with civil law, but to complicate matters we sometime use criminal law to provide meaning within our civil context. For instance, theft is an insured Peril and the Theft Act 1968 provides a definition of theft.

As a general principle, English law has developed over centuries through systems known as common law and Equity. This law is not written down as such and in essence comes from established cases. Principles of cases are referred to for guidance and you will see cases in the text in the format 'Mitchell v Branning (2011)'. Statute law is written law and is referred to by the name of the Act of Parliament.

This section deals with contract law, which falls within the domain of civil law.

### 3. CONTRACT LAW

#### Introduction (continued)

An Insurance Policy is a contract and so the Law of Contract is fundamental to Insurance. An understanding of the Law of Contract is important not just to understand the Policy of Insurance but also to understand contractual relationships that affect the Insurance position.

So what is a contract?

In effect it is an agreement. Not all agreements are contracts so we have to understand what turns an agreement into a contract. A contract is an agreement made with the intention that it is legally binding. Contracts do not have to be in writing. They can be oral, written or made under seal.

This section outlines the following:

- Offer, Acceptance, and Consideration
- Privity of Contract
- Express and Implied Conditions
- Unfair Contract Terms Act 1977 and Unfair Terms in Consumer Contract Regulations 1999
- Void and Voidable Contracts
- Interpretation of Ambiguous Terms
- Contracts of Utmost Good Faith.

### 3. CONTRACT LAW

#### 3.1 Offer, Acceptance and Consideration

The essential elements of a legally binding contract are:

1. Offer
2. Acceptance
3. Consideration.

##### 1. Offer

An offer must be made, such as "I offer to pay £25 for this object". The offer must be stated clearly and a vague statement will not be held by the Courts to be enforceable. An example of a vague statement that was not upheld was found in the case of *Guthing v Lynn* (1831). The buyer promised to pay the seller an extra £5 "if the horse is lucky for me". The court decided that this was too vague to be enforceable. No indication was given of what the promise really meant. An example of a clear offer could be that £5 extra will be paid "if the sale is completed by the 9th June this year".

##### 2. Acceptance

Acceptance in simple terms is an agreement to the offer. The acceptance must be identical to the offer and must not try to introduce new terms. For example, in

*Jones v Daniel* (1894) the court held that when the person to whom the offer was made responded by sending out a contract with additional terms this amounted to a counteroffer rather than acceptance.

##### 3. Consideration

Each party to the contract must receive something of value. Consideration is the price paid for the other's promise. It is usually money but could be something else such as a person's labour or perhaps an item.



#### Putting this into practice

*Jill advertises her car for sale in a local paper. Mick views the car and says "I like it and I will pay you £4,000 for it". An offer is made. Jill says "I accept if you pay £4,500". This does not amount to acceptance as Jill has altered the terms.*

*Mick says "That's too much but I'll pay you £4,250 if you promise the car will be nice to me." The reference to the car being nice to Mick is too vague and is not enforceable. Jill does not accept this offer.*

*Mick then says, "Okay, I really like the car. I will offer £4,300". This is a clear offer. Jill says "Yes I accept that". There is now Offer and Acceptance. The car and the money are the Consideration.*



#### Activity

*Consider how insurance policies are sold and the steps that are taken to explain and agree the contract from the offer stage through to the acceptance and consideration.*

*Think about the differences between purchasing an insurance policy via a Broker, direct from an Insurer, over the telephone or via an internet site.*

#### How does this apply to a contract of insurance.

- **Offer.** When applying for insurance, the customer will complete and submit a proposal form/online questionnaire of a particular insurance company. This is your offer.
- **Acceptance.** If the insurance company agrees to insure you, this is called acceptance.
- **Consideration.** This is the premium or the future premiums that you have to pay to your insurance company.

### 3.2 Privity of Contract

Privity means that only people who are party to the contract can sue or be sued under the contract.



#### Putting this into practice

*Your landlord engages a flooring company to recarpet your flat. After a month, the carpets start to wear very badly. You are unable to take direct action in contract against the flooring company as you are not a party to the contract which is between your landlord and the flooring company.*

### 3.3 Express and Implied Conditions

**Express conditions** are conditions that are stated in the contract. For example, an Insurance Policy might state that all claims must be reported to the Insurer within a given time frame.

**Implied conditions** need not be stated in the contract, but as the name suggests are simply implied. Using the example above, reporting a claim by Morse code, carrier pigeon or telepathy would not normally meet the terms of the contract, but this does not need to be stated. The implied condition is that reporting a claim means contacting the Insurer by a commonly accepted method of communication, i.e. telephone, e-mail or letter.



#### Activity

*Consider the appointment of a glazing company to make secure a property that has been broken into. What might be the express conditions and the implied conditions of such a contract?*

### 3.4 Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contract Regulations 1999, and Consumer Rights Act 2015

The Courts and Parliament recognise that while we are free to contract with anyone we choose (with some exceptions) the relative bargaining strength of each party is not the same.

Consider your bargaining strength as a private individual when you purchase something from a mobile telephone company. The company will have standard terms and conditions when you take out a "contract phone". They will not let you change certain terms when making the contract.

The above Acts are intended to protect weaker parties in a contract. If contract terms are deemed to be unfair, the Courts are likely to rule that the terms are unenforceable.

The majority of rights and protections can be found in the Consumer Rights Act 2015 (CRA) which consolidated and clarified existing consumer protection legislation. The CRA introduced two new areas of law:

1. Consumer rights regarding digital content, such as music, e books etc, giving clear rights to consumers for the repair/replacement of faulty material.
2. The CRA provides clear rules for what should happen if a service is not provided with reasonable care and skill or as agreed.



#### Activity

*Examine a contract from a utility supplier, mobile phone company or similar. Read through all the terms. Look for terms that you think may be unfair.*

*Putting yourself in the place of the Court, would you allow these terms?*

*Your assessment might not be the same as a Judge's but this activity will highlight how disputes can easily arise in relation to the terms of a contract.*

### 3.5 Void and Voidable Contracts

**Void** simply means not **valid**, the contract is not legally enforceable from the day it was set created.

A contract can be void for various reasons, here are some examples:

- a. The contract relates to an illegal activity
- b. Fulfilment of the contract is impossible, e.g. a contract to deliver a star to a customer
- c. The contract relates to an event already in the past, e.g. a contract to admit entry to a show that has already taken place.

**Voidable** contracts are contracts where one party has the option to void the contract but may choose not to. The option to void a contract occurs frequently in Insurance. For example, there may be a minor breach of a Policy Term making the contract voidable at the Insurer's option. However, Insurers may decide to overlook a minor breach of condition. (Refer to Chapter 5 – Fair Presentation for details of the remedies available in the event of non-disclosure or misrepresentation by the Policyholder.)



#### Activity

*Ask an experienced colleague for examples of where there has been a breach of Policy conditions but the Insurer has agreed not to void the Policy. Ask them to explain the reason for the Insurer's decision in each example.*

### 3.6 Interpretation of Ambiguous Terms

People often complain about the "small print" or the fact that they are unable to understand contracts. While Insurance companies now make strenuous efforts to ensure that Policy wordings (the contract) are clear, there are occasions when there is a dispute about what is actually meant by a term in a Policy.

If a dispute arises concerning a term with more than one possible meaning, the *contra proferentem* rule is applied. This Latin phrase simply means that where a contract term

is ambiguous the meaning that is least advantageous to the writer of the contract will be used.

The Insurance Act 2015 reinforces the requirement for insurers to highlight and clearly explain the meaning of policy terms and conditions.



#### Putting this into practice

*Jane takes out an Insurance Policy. The Policy wording states that telephones are covered against Accidental Damage. Jane drops her mobile phone and as a result it breaks. She attempts to make a claim under the Insurance Policy and is told that "telephones" does not include mobile phones.*

*If the Policy wording does not clearly state that mobile phones are excluded, it is most likely that, using the *contra proferentem* rule, any legal decision would be in Jane's favour.*



#### Activity

*Review some policy booklets and assess how clear the wordings and definitions are. Look for any ambiguities and consider how the Courts might interpret these on the basis of the *contra proferentem* rule.*

### 3.7 Contracts of Utmost Good Faith

Insurance Policies are contracts of utmost good faith and so it is important to understand what is meant by this principle. Utmost good faith is covered in more detail later in the course and the following is only an introduction to the subject.

The easiest way to understand this principle is to appreciate the difference between contracts of utmost good faith and contracts to buy goods which are normally described as "buyer beware" (*caveat emptor*). Most contracts, while sometimes subject to statutory requirements, are not of utmost good faith. For example, the sale of a secondhand car is "buyer beware". The buyer can see the car, drive it, have a mechanic look at it etc before purchasing it. The buyer therefore has the opportunity to find out all relevant information in advance of the purchase.



When taking on an insurance risk, an Insurance Company does not have the advantage of being able to inspect each and every risk. For this reason, the principle of utmost good faith arose. This was demonstrated in the case of *Carter v Boehm* (1766) when the court stated that all material facts needed to be disclosed to an underwriter. A material fact falls into two categories:

1. Circumstances that are material to the physical risk;
  - a. Nature age and construction of a building e.g. brick, concrete, timber etc.
  - b. The location of a property e.g. adjacent to a river
  - c. Whether a property is protected by an intruder alarm
2. Circumstances that are material to the Moral Hazard, the policyholder's character:
  - a. A criminal record
  - b. Bankruptcy
  - c. Previous insurance claims

The person taking out the insurance is required to provide to the Insurer all relevant details about the risk. Failure to do so would make the Policy voidable at the Insurer's option.

The principle of Utmost Good Faith in insurance contracts has been replaced by the introduction of new obligations for consumers and businesses when applying for insurance set out in the Consumer Insurance (Disclosure & Representation) Act 2012 and the Insurance Act 2015. (Refer to chapter XXX Fair Presentation for further details).



#### Putting this into practice

*When selling a secondhand car, the current owner does not need to tell the would-be buyer that the car has been modified. However, the owner would have to provide this information to a potential Insurer.*



#### Activity

*Make a list of information that you think a potential Insurer would want to know about a house that the owner might not necessarily want to tell a potential purchaser.*

### 3.8 Key Points to Remember

- An Insurance Policy is a contract and as such the law of contract applies.
- The essential elements of a contract are Offer, Acceptance, and Consideration.
- Only people who are party to the contract can sue or be sued under the contract.
- Contracts and therefore Insurance Policies can contain both Express and Implied Conditions. Express conditions are stated in the Policy, but implied conditions are not.
- Contract terms that are unfair are unlikely to be enforceable.
- Contracts, including Insurance Policies, can be void or voidable dependent on the circumstances.
- If the wording of a contract is ambiguous, the position that is least advantageous to the writer will be adopted.



## LEGAL LIABILITY

# 4

# LEGAL LIABILITY

## 4. LEGAL LIABILITY

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### Introduction

Claims handling can involve handling first party and third party claims. Knowledge of legal liabilities is required for both.

In the text we refer to a range of parties as follows:

First Party – Individual or business that suffers injury or damage

Second Party – The insurance company

Third Party – Anyone else involved in an incident

Third party claims can arise when damage or injury have been caused by one party to another. Whether one party is responsible for the injury or damage will depend on whether there is a legal liability.

In handling first party claims, it is always necessary to consider whether there is another party responsible for the damage and, if there is, it is likely that you will wish to pursue a claim in “subrogation”. This is an essential part of the role of a claim handler/loss adjuster handling a first party claim as the successful recovery of claim payments reduces the overall cost of claims. Subrogation as a principle of insurance and is considered later in this book, but it would not be possible to apply the principle of subrogation if the rights of recovery that exist are not recognised.

This section provides an insight into how a legal liability will arise. It considers some practical examples when liabilities arise and provides an indication of the nature of the evidence that might be required.

## 4. LEGAL LIABILITY

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### Introduction (continued)

Of course, lawyers make a living out of legal disputes and it is not expected that this section will provide you with all the answers but it should give you a start.

Successfully defending a claim being made against your Insured or recognising a potential recovery and succeeding to secure monies due is a rewarding experience. It protects the interest of the insurer and that surely is beneficial to the policyholders.

When exercising subrogation, it should be remembered that the cover provided by the policy may be different from the legal liability that exists. As a result, a full recovery might not always be possible. When handling a recovery, it is important to take this into account and to manage expectations concerning this.



## 4.1 Legal Liabilities

Legal liability arises under three main headings.

1. Tort (a civil wrong)
2. Contract (an agreement between two or more parties)
3. Statutory (Acts of Parliament).

## 4.2 Torts

A tort is a civil wrong. A good way to appreciate a civil wrong is to consider the difference between a civil wrong and a criminal wrong. A criminal wrong might be, for example, a person going to a night club and deliberately kicking another person causing them to suffer a nasty gash in the leg. A civil wrong on the other hand could be where the same injury results but from an accidental incident, for example a visitor to a night club falls on a floor that had been left wet and slippery.

In fact sometimes it is possible to be so careless that a criminal action can also be brought, for example causing death by reckless driving, which can result in a prison sentence. Similarly an employer can be criminally liable for injuries to staff. This criminal liability is beyond this course but it is important to be aware that it exists.

The outcome or remedy for a civil actions is commonly a requirement to pay financial compensation where as the outcome or remedy for a criminal action is a punishment such as imprisonment, community service or a fine.

There are a number of torts and these include:

- Negligence
- Nuisance
- The rule in Rylands v Fletcher (1868)
- Trespass
- Defamation of character.

Defamation of character is outside of our needs in terms of this course material, but as a matter of interest it concerns situations where a person's character or reputation are maligned. It can however have some impact on what we do, say and communicate when we are dealing with

claims. We should not defame someone and therefore the manner in which communications are made should be in contemplation of possible repercussions should someone be defamed.

## 4.3 Negligence

The first tort we will consider is that of Negligence. The definition of negligence was provided in a case dating back to 1856 in the name of Blyth v Birmingham Water Works Company (1856): "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do".

To succeed in a case where negligence is alleged, it is necessary for the claimant to prove the following three points:

- That a duty of care was owed to the person suffering the loss
- That there was a breach of that duty of care
- That damage resulted from the breach of the duty of care.



### Activity

*Taking account of the definition of negligence, imagine a plumber had installed a radiator which leaked a few weeks later. List some things that the plumber may have omitted to do, or may have done that perhaps he should not have done. These are the actions or inactions that you would need to consider to establish whether the plumber could be held responsible for the damage arising.*

An example of an omission could be, for example, that a plumber fits new water pipes but fails to pressure test them and, as a consequence, after a short period of use the pipes separate resulting in an escape of water. Alternatively, a person might light a bonfire very close to a fence resulting in ignition of the fence. This is something a prudent and reasonable man would not do.

## 4.4 Duty of Care

This principle relates to the extent of our duties. Effectively, each of us owes a duty of care to anyone who should be in our "reasonable contemplation when we do something or fail to do something that a reasonable person would do".

The question arises therefore as to who should be in our reasonable contemplation at any one time. If a driver is about to drive into the road in London, England does he need to consider the effects of this on someone in Australia? The initial response to this would probably be no. However, imagine that the driver negligently drives into a taxi and injures an Australian tourist. As a result of his injuries, the tourist is unable to return to Australia where he was to perform as a singer. The promoter in Australia loses money as a result of cancelled events. The driver's negligence has resulted in losses around the world. We live in a global market, but would the driver have a music promoter in Australia in their reasonable contemplation at the time of driving into the road, probably not.

A case was heard in court on this topic and from this developed what is referred to as the neighbour test. The case was Donoghue v Stevenson (1932) and to put this case into context it should be noted that it is one of the first legal cases most students of English law will learn about.

A crucial part of the decision on this case was a statement made by one of the Law Lords (Lord Atkin) who said that a person should take "... reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

A neighbour is a person so closely connected with and directly affected by (proximate to) my act (or omission) that I should have had them in mind when I committed the act (or omission)".

From this there are two further principles to apply, the first being that the event must be foreseeable, the second being the test.

The two cases mentioned, Blyth v Birmingham Water Works Company (1856) and Donoghue v Stevenson (1932), identify what must be demonstrated to succeed in a case of negligence. Donoghue v Stevenson (1932) details to whom a duty of care is owed and Blyth v Birmingham Water Works Company (1856) provides the measurement of behaviour to determine whether sufficient care was taken.

## 4.5 Defences

Defences to negligence include the following:

- Act of God
- *Volenti non fit injuria* (voluntary assumption of the risk)
- Contributory negligence.

**Act of God** provides a defence in situations where the cause of loss or damage resulted from a "freak of nature" that could not be anticipated or expected. An example of this could be tiles that are blown from a roof (belonging to Bert) causing damage to a neighbour's car.

Imagine that Bert knew that there were loose tiles and did nothing about it. If a storm within normal expectations blew the tiles off the roof, this would not amount to an Act of God. By contrast, had the roof been fixed and it was sound before the storm and the storm was of unprecedented force such that it could not have been imagined or expected, the defence of Act of God may well apply. As you will have noted, the defence relies on something that is beyond expectations, and judgment as to whether the event amounts to an Act of God can be difficult.

**Volenti non fit injuria** (voluntary assumption of the risk) relates to situations where the injured party has accepted the risk voluntarily. An example of this could be a boxer voluntarily accepting the risk of an injury during a boxing match or a footballer during a football match. However, this is not an absolute defence, as demonstrated by the contrasting circumstances of the following examples.

In the first case, Simone is hit by a cricket ball. She is attending a one day international where runs are scored rapidly and the batsmen try hard to hit the ball as far as possible, frequently into the crowd. Simone is hit during the match when a batsman hits a "six" into the crowd. Contrast this to a case where Jo is hit by a ball before the match when the players are having catching practice. In the first case, it can be argued that Simone would have consented to the risk as it was a known possibility that during the match a cricket ball may land in the crowd. However, in the second incident, Jo might argue that she was not paying attention to the catching practice and that the danger of the practice going wrong and the ball going into the crowd was not a risk that she voluntarily accepted.

**Contributory negligence** is where the injured party in some way contributed to the cause or extent of the loss, damage or injury. A good example of this would be a motorist not wearing a seat belt who is injured as a result of negligent driving by another motorist. The injuries are made worse due to the fact that no seat belt is being worn but an injury would have still been occasioned had a seat belt been worn. In the past, contributory negligence was a complete defence. In other words, if you could show that the loss, damage or injury was partially contributed to by the injured party, the entire action failed. This is no longer the case. In the interests of equity, the law was altered by the Law Reform (Contributory Negligence) Act 1945. The courts will now simply reduce the amount of damages in proportion to the degree of contributory negligence.



#### Activity

Research two recent legal cases related to Contributory Negligence (1) *Gul v McDonagh* [2021] EWCA Civ 1503 and (2) *Campbell v Advantage Insurance Company Ltd* [2021] EWCA Civ 1698.

## 4.6 Nuisance

The law surrounding Nuisance has converged with Negligence over the years. There are two types of Nuisance, Public and Private.

A public nuisance is one that affects the public as a whole. To succeed in an action for public nuisance, it is necessary to prove that you suffered beyond the extent of the public in general. An example of public nuisance is selling food unfit for human consumption. Most public nuisances are considered to be a crime, are commonly handled by the local authority and are beyond the scope of this material.

A private nuisance is associated with an ongoing action, rather than a one off incident, that causes disturbance to adjoining property. It has been defined as an “unlawful interference with a person’s use or enjoyment of land, or some right over or in connection with it”.

The important point is that the damage must be suffered by occupants of adjoining land.

Over the years, the Courts have put more emphasis on the cause of the nuisance resulting from negligence, but the basic principal is that you should “so use your land as not to harm your neighbour”.

The remedies for a private nuisance are (1) an injunction which requires the culprit to cease or limit the nuisance, (2) an award of compensation (damages) or (3) abatement which allows the claimant to take action to reduce the nuisance an example is having permission to cut back a tree belonging to a neighbour.

## 4.7 The Rule in Rylands v Fletcher (1868)

This legal case created a “strict liability” which has applied to subsequent similar cases. Strict liability means that, unlike negligence, liability does not depend on proof of fault against the Defendant. It is the Defendant who has to provide evidence they have no liability.

The case of Rylands v Fletcher (1868) concerned the building of a reservoir on land above a coal mine. The water escaped, flooding the mine and causing damage so significant that the mine had to be abandoned. It was decided that the defendant was liable.

The judge stated “A person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape” – Lord Blackburn J.

The precedent has been reviewed in a subsequent case, *Cambridge Water Co v Eastern Counties Leather plc* (1994). In this case, it was held that to be liable there was a need for the type of damage caused by the escape to be foreseeable.

Possible defences to this strict liability are as follows:

- Act of God
- Act of stranger
- Default of claimant
- Consent of claimant
- Statutory authority.

## 4.8 Trespass

Trespass is for our purposes the intentional or negligent interference with the possession of goods of another. The remedies for trespass are:

- Damages – the amount by which the value of the property is diminished, NOT the reinstatement cost
- Injunction – a legal device to prevent the continuance or repetition of the act of the trespasser
- Ejection – reasonable force only may be used to eject a trespasser, and any more than reasonable force could result in a charge of assault
- An action of ejectment to recover the land.

## 4.9 Contract

Liabilities can arise from a breach of contract. This could be a breach of a specific term of the contract or could be as a result of the breach of an implied contract term.

The remedies for a breach of contract are:

- Refusal of further performance
- Action for damages
- Quantum meruit – the amount that is paid is the value of the work completed
- Specific performance – an enforcement of the contract
- Injunction
- Rescission – cancellation/annulment.

An example of breach of contract is where a supplier has contracted to provide raw materials of a certain quality and instead supplies inferior materials. As a consequence, the final product that is manufactured is not satisfactory. The manufacturer will suffer losses that arise from the supplier’s breach of contract in failing to supply the correct materials.

## 4.10 Statutory

A statutory liability arises where the provisions of a statute impose a liability for certain acts or omissions. Examples of this are the Water Industry Act 1991, the Supply of Goods & Services Act 1982, the Sale and Supply of Goods Act 1994, Hotel Proprietors Act 1956, Consumer Protection Act 1987 and the Sale of Goods Act (1979).

Consider the example of a fire caused by a faulty appliance. The Sale and Supply of Goods Act 1994 requires that goods sold in the course of business must be of satisfactory quality. This means that they should be fit for purpose and safe. Therefore, if the appliance was sold in the course of business there may well be a liability for damages resulting from the goods being unsafe.

The Water Industry Act 1991 provides that, other than in certain situations, a water provider is responsible for damage caused by the escape of water from their pipes however this arises.

In Employers Liability claims, many of the responsibilities of the Employer arise from statute. Following the Health and Safety at Work Act 1974, a whole set of statutes were put in place to protect people in the workplace. These include (among others):

- Manual Handling Operations Regulations (1992) (amended 2002)
- Workplace (Health, Safety and Welfare) Regulations 1992
- Provision and Use of Work Equipment Regulations 1998 (PUWER)
- Lifting Operations and Lifting Equipment Regulations 1998 (LOLER)
- Work at Height Regulations 2005.

These Regulations govern the health and safety of those at work. A liability can arise on the part of the employer if an injury occurs at work in a situation where these Regulations have been breached.



**Activity**

Having studied this section, identify parties who may have a legal liability in the following cases:

1. A leak from a pipe causes damage following work carried out by a plumber
2. A motorist crashes a car into a wall
3. Peter buys a television. The following day the TV catches fire resulting in damage to furnishings
4. Trevor stores diesel for his motor vehicles in his garage. One day the diesel escapes causing damage to the neighbouring building.

Think of some possible defences to the following:

1. An aerial falls from a roof damaging the neighbour's house during strong winds
2. Jane suffers damage to her hockey stick during a hockey match
3. Sarah is injured in a car crash. Sarah is a passenger in the car and at the time of the accident she was not wearing a seat belt.



**INSURABLE INTEREST**

**5**

# INSURABLE INTEREST

## 5. INSURABLE INTEREST

### Introduction

This section outlines the fundamental principles of Insurance. When faced with difficulties in deciding whether or not cover exists, these principles generally provide, if not the answer, a very good indicator as to where else to look.

## 5. INSURABLE INTEREST



### Activity

*Make a list of items that you have financial interest in, for example your clothing and personal effects.*

*Think also of items that you use on a regular basis but in which you have no financial interest.*

*Try to think of items that may belong to you but should they get damaged you would be expected to keep making payments for them perhaps because of the terms of a contract.*

### 5.1 The Principle

A policy document will show the physical property insured by the policy, but what is actually insured is the policyholder's financial interest in that property.

Insurable interest must exist before insurance can be taken out. In the case of *Castellain v Preston* (1883) the question was asked:

“What is it that is insured in a fire policy? Not the bricks and materials used in building the house, but the interest of the insured in the subject matter of insurance”.

*Lucena v Craufurd* (1806) states the definition of insurable interest:

“To be interested in the preservation of a thing, is to be so circumstanced with respect to it, as to have benefit from its existence, or prejudice from its destruction”.

The Marine Insurance Act 1906 also defines insurable interest as:

“In particular, a person is interested in a marine adventure where he stands in a legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss or by damage thereto, or by the detention thereof or may incur liability in respect thereof”.

Insurable interest arises if a person or company would:

- Benefit from the continued existence of the property insured, or
- would be prejudiced by its loss, damage or destruction. The four essential elements of insurable interest are:
  1. There must be a physical object which is capable of being lost, destroyed or damaged
  2. The physical object must constitute the subject matter of the insurance
  3. The policyholder must have some legal relationship with that object
  4. The value of that insurable interest must be measurable in monetary terms.

There must also be insurable interest at the time of the loss. The extent of the policyholder's interest is the extent to which he can insure and the extent to which he can recover under the policy.

Insurable interest can arise in the following ways:

- Ownership, mortgagor or mortgagee
- Bailees – A bailee is a person who holds the property of others, either gratuitously (without payment) or for reward (for payment). Examples of bailees include warehousemen, repairers and the like
- By statute – For example, the Hotel Proprietors Act 1956 imposes upon the hotel proprietor, a strict (but limited) liability in respect of guests' property.
- Insurers – Insurers have an insurable interest in the property they are insuring enabling them to reinsure
- Tenants – Clearly, a tenant would be prejudiced if the house or business premises they rent or lease was destroyed.



### Activity

*Put yourself in the position of dealing with an Insurance Claim. How might you identify that Insurable Interest exists and what documentation might you request to demonstrate this.*

## 5.2 Gambling Act 2005

Prior to the passing of the Gambling Act 2005 gambling contracts were unenforceable.

The crucial difference between a gambling contract and an insurance contract is that in gambling on an uncertain event the player can obtain a profit whereas on an insurance policy the Insured is indemnified to the extent of the loss but does not make a profit.

The Gambling Act 2005 (which came into effect on 1 September 2007) repealed Section 18 of the Gaming Act 1845. Section 335 of the Gambling Act 2005 states that:

“The fact that a contract relates to gambling shall not prevent its enforcement”.

The implication for insurance contracts is that the principle requiring an Insured to evidence Insurable Interest when taking out insurance can no longer apply.

The effect is that, for policies taken out or renewed after 1 September 2007, the policyholder no longer needs to show an insurable interest. In practice, it is unlikely that an insurer will provide insurance where a proposer has no interest in the property he wishes to insure. The principle of Insurable Interest is still required to be proved at the time loss or damage occurs and a claim is submitted.



## THE DUTY OF FAIR PRESENTATION

# 6

# THE DUTY OF FAIR PRESENTATION



### Introduction

Most contracts are based on the principle that all parties have an equal opportunity to understand what the effects of the contract will be. For example, if I arrange for my newspaper to be delivered to my house, I understand what will happen and the newspaper seller also understands what is expected.

Insurance is different because the proposer of the risk (the policyholder) is likely to know far more about the risk to be insured than the insurer.

Prior to the passing of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) and the Insurance Act 2015 all commercial and consumer insurance contracts were contracts of “utmost good faith” (Refer to Chapter 3) and required the proposer to make a full disclosure of material facts to the insurer. Breach of this duty could entitle the insurer to declare the insurance contract voidable.

The CIDRA 2012 legislates that representation is less onerous for consumers. CIDRA 2012 requires:

- the insurance company to ask the consumer the questions that will provide the information they need to consider the risk and;
- the consumer to take reasonable care when answering questions related to the insurance risk.

The Insurance Act 2015 applies to Non-Consumers (Contracts for Business insurance) and requires the proposer to provide a “fair presentation of the risk”.

This chapter explains what is meant by a fair presentation by the policyholder, the insurer’s duties and what penalties may be imposed by the insurer where the policyholder has not provided a fair presentation of the risk.

### 6.1 The Principle

Contracts, in general, are subject to the doctrine of caveat emptor (let the buyer beware). This means that each party must ask questions to ensure that they have all the information they need before signing the contract. Statutes such as the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977 modify the doctrine to ensure greater equity between the contracting parties.

Insurance contracts however are subject to the principle of fair presentation and not caveat emptor.



#### Activity

*Think about the type of information that might be relevant to an insurance company when deciding whether to accept a risk or calculating the premium to charge.*

*Consider a home buildings policy which provides cover against Fire, Theft and Flood. What features of the building would be relevant to the insurance company and why?*

### 6.2 The Legal Position – Statute Law

The principles of fair presentation are set out in the CIDRA 2012 and the Insurance Act 2015.

#### 6.2.1 The Consumer Insurance (Disclosure and Representations) Act (CIDRA) 2012

This Act relates to consumer insurance only. Consumer insurance is defined as:

“insurance entered into by an individual wholly or mainly for purposes unrelated to the individual’s trade, business or profession.”

Prior to this legislation, Consumers had to tell an insurer anything that would “influence the judgment of a prudent insurer” in fixing the premium or deciding whether to take the risk.

#### 6.2.2 Non-disclosure and misrepresentation

CIDRA sets out the consumer’s duties of disclosure and representations made before the contract is made or when there is an amendment or renewal.

A representation is a statement of fact made by one party to a contract which induces the other party to enter the contract.

A non-disclosure is the failure by an insured to declare a material fact, which would have affected the insurer’s ability to assess the risk, the terms of the policy and/or premium charged.

In effect, this legislation encompassed the market practice already adopted towards non- disclosure and misrepresentation in consumer insurance.

The Act requires the consumer to take reasonable care to answer the insurer’s questions fully and accurately. It also requires the insurer to ask all questions to enable them to determine whether or not they are able to insure a risk and the terms, conditions and premium to be charged.

#### 6.2.2 The Insurance Act 2015

##### The duty of fair presentation

It is important to understand that this duty of fair presentation applies to non- consumer insurance contracts only. “Consumer insurance contract” has the same meaning as in the Consumer Insurance (Disclosure and Representations) Act 2012, i.e.:

“consumer insurance contract” means a contract of insurance between:

- a. an individual who enters into the contract wholly or mainly for purposes unrelated to the individual’s trade, business or profession.



The Insurance Act 2015 defines fair presentation as follows:

- (3) A fair presentation of the risk is one:
- which makes the disclosure required by subsection (4),
  - which makes that disclosure in a manner which would be reasonably clear and accessible to a prudent insurer, and
  - in which every material representation as to a matter of fact is substantially correct, and every material representation as to a matter of expectation or belief is made in good faith.
- (4) The disclosure required is as follows, except as provided in subsection 5:
- disclosure of every material circumstance which the insured knows or ought to know, or
  - failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.
- (5) In the absence of enquiry, subsection (4) does not require the insured to disclose a circumstance if:
- it diminishes the risk,
  - the insurer knows it,
  - the insurer ought to know it,
  - the insurer is presumed to know it, or
  - it is something as to which the insurer waives information."

Remember this only applies to non-consumer insurance contracts as consumer contracts are dealt with under the Consumer Insurance (Disclosure and Representations) Act 2012.



#### Activity

Taking note of the above, consider a restaurant policy which provides cover for contents, fixtures and fittings, and stock. Which of the following facts must the restaurateur disclose to his Insurers:

- The neighbouring properties are a hardware shop and a Post Office
- The restaurant suffered a fire 2 years ago
- A sprinkler system was installed after the fire
- The value of the wines and spirits held on the premises
- Agency waiting staff are used on a regular basis.

### 6.3 Knowledge of Insured

The 2015 Act breaks down the information the insured is deemed to know or ought to have known and which should therefore be considered as part of the fair presentation. Remember the insured is to make a fair presentation but he cannot present facts he does not know.

By way of example, an insured who is an individual as distinct from, say, a company is deemed to know what is known to the individual himself and what is known to one or more of the individuals who are responsible for the insured's insurance.

An insured who is not an individual, for example a company, is deemed to know what is known to the insured's senior management team or those who are responsible for the insured's insurance.

The type of information known includes what the insured should have known following a reasonable search of information available to the insured.

The insured is deemed to know information held within the insured's organisation or by any other person (such as the insured's agent or a person for whom cover is provided by the contract of insurance).



#### Activity

Obtain an insurance proposal form online and review the questions asked by insurers. Look for any additional statements that ask the proposer to provide any further information that is material or relevant.

### 6.4 Knowledge of Insurer

The insured is not required to present information known to the insurer. It is important to understand who at the insurer company needs to know the information and what information the insurer would be deemed to know.

The Act states under subsection (1) of section 5 that an insurer knows something "only if it is known to one or more of the individuals who participate on behalf of the insurer in the decision whether to take the risk, and if so on what terms (whether the individual does so as the insurer's employee or agent, as an employee of the insurer's agent or in any other capacity)". This would usually be the underwriting department or persons at the underwriting agency.

Further, the Act states that an insurer ought to know something only if:

- "(a) an employee or agent of the insurer knows it, and ought reasonably to have passed on the relevant information to an individual mentioned in subsection (1), or
- (b) the relevant information is held by the insurer and is readily available to an individual mentioned in subsection (1)."

Parliamentary guidance notes advise that this is intended to include, for example, information held by the claims department or reports produced by surveyors or medical experts for the purpose of assessing the risk.

It is also considered that should the loss adjuster identify an underwriting feature and detail this in their report, the insurer would be deemed to be aware of the feature and to know the information.



#### ACTIVITY

Consider the handling of a claim and how the process may reveal facts that were not disclosed at proposal stage. In particular, think about the type of information you obtain from a policyholder whilst considering a claim, either on the telephone, via correspondence or during a visit to their property. How would you check whether this information had previously been disclosed?

Ask your colleagues for examples of non-disclosed material facts. Find out how they dealt with the issue and whether it had an impact on the claim.

### 6.5 Remedies for Breach

Insurers only have a remedy for breach if they can evidence that:

- they would not have entered into the contract of insurance at all, or
- they would have done so on different terms and/or premium.

The remedies depend on the type of breach. A breach can be either:

- Deliberate or reckless or
- Careless

## 6.6 Deliberate or reckless breaches

For a breach to be deliberate or reckless the Insurer has to show that the Insured knew that the misrepresentation or non-disclosure was:

- Untrue or misleading or did not care if it was true or misleading
  - Knew it was relevant to the Insurer or did not care did not care whether or not it was relevant
1. If a breach was deliberate or reckless, the insurer:
    - (a) may avoid the contract and refuse all claims, and
    - (b) need not return any of the premiums paid.

### 2. Careless (Other) breaches

A misrepresentation that is not reckless or deliberate is considered to be careless (Other).

- If, in the absence of the breach, the insurer would not have entered into the contract on any terms, the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid.
- If the insurer would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms if the insurer so requires.
  - a. In addition, if the insurer would have entered into the contract (whether the terms relating to matters other than the premium would have been the same or different), but would have charged a higher premium, the insurer may reduce proportionately the amount to be paid on a claim.
  - b. "Reduce proportionately" means that the insurer need pay on the claim only X% of what it would otherwise have been under an obligation to pay under the terms of the contract (or, if applicable, under the different terms provided for by virtue of paragraph 3), where:

$$X = \text{Premium actually charged} / \text{Higher premium} \times 100$$



### ACTIVITY

Research case law that has considered the interpretation of the law in relation to misrepresentation including:

*Southern Rock Insurance Co Ltd & Hafeez (2017) and Ageas Insurance Ltd v Lee Stoodley, and Advantage Insurance Co Ltd (2018)*

## 6.7 Summary

This chapter has looked at two important UK statutes which have changed the requirements for disclosure of information that would affect whether an insurer would accept a risk and if so on what terms.

The Insurance Act 2015 is of particular interest as it introduces the concept of "fair presentation". In addition, the Act specifies that the insurer will be deemed to know information in certain circumstances. This could include observations by, say, a loss adjuster acting in the investigation of an insurance claim.



## INDEMNITY

# 7

# INDEMNITY

## 7. INDEMNITY

### Introduction

Indemnity is one of the fundamental principles of insurance and it is also a critical to claims handling. This section explains the principle of indemnity and provides practical guidance in its application.

## 7. INDEMNITY

### 7.1 The Principle

The principle of indemnity is that settlement of a valid claim puts the Policyholder in the same financial position as they were in immediately prior to the loss. Remember that the Policy wording will specify how Insurers might indemnify the Policyholder, for example replacement, repair or cash.

The measure of indemnity is calculated by the value of the property at the date of the and place of the loss. In a total loss the sum payable as the indemnity is the value immediately prior to the loss. In the event of a partial loss the value is calculated based on the repair cost, often referred to as diminution of market value.

### 7.2 The Legal Position – Case Law

The leading case is *Castellain v Preston* (1883). This case defined indemnity as follows:

“The very foundation, in my opinion, of every rule which has been applied to insurance law, is this, namely, that the contract of insurance, contained in a marine or fire policy, is a contract of indemnity and of indemnity only, and this contract means that the assured, in the case of a loss against which the policy has been made, shall be fully indemnified, but shall never be more than fully indemnified. That is the fundamental principle of insurance, and if ever a proposition is brought forward that is at variance with it that is to say which either will prevent the assured from obtaining a full indemnity or which will give the insured more than a full indemnity that proposition must certainly be wrong”.

### 7.3 Indemnity – The Policy

Under a policy covering property, the policyholder can only claim the loss suffered. The insurers will undertake to make good the loss by payment of money or, increasingly, by reinstatement or replacement.

The principle of indemnity can be modified, or amended, by the terms and conditions of the insurance policy.

The policy may provide an enhancement to the principle of indemnity by including a “New for Old” basis of settlement. Alternatively, the policy can limit any settlement to the sum insured or policy limit. Policy conditions can result in the policyholder receiving less than an indemnity (e.g. application of average, excesses, etc.).

The principle of indemnity is also maintained by the policy conditions. The Subrogation condition requires the policyholder to pass to the insurers any rights of recovery against a third party.



#### Activity

*You will be studying Subrogation as part of this course, but take a moment to think about circumstances where someone may cause damage and there may be a right of recovery*

Additionally, when the Policyholder has more than one policy covering the loss, the loss is shared by the Insurers. The Policyholder cannot gain more than the loss by claiming from both policies.

The contribution condition requires a policyholder to notify the insurer if they have another insurance policy covering the same property. These are considered in more detail under the Subrogation and Contribution chapters.



#### Activity

*Discuss the circumstances where dual insurance often exists with experience colleagues. When dealing with such claims remember the possibility and check for dual insurance.*

It is very important to check the Policy wording to verify how it specifies that the Policyholder will be indemnified, e.g. by replacement as new, repair, reinstatement etc. You should also check what the position is in the event that the Policyholder does not wish to replace an item under a New for Old Policy. Quite often the Insurer imposes restrictions on the payment that is due in such circumstances and the correct restrictions must be applied. When considering this, it is important to take account of the need to treat the customer fairly. The options under the Policy should be discussed and the Policyholder should understand what the options are and how they will be affected by decisions that are made.

#### 7.4 Indemnity – Financial Interest

In calculating an indemnity, the extent of the Insured's financial interest must be taken into account. Just because something is insured by someone does not mean that they suffer a financial loss. For instance, a Policyholder might have a Policy that covers the contents of their home. An item may be damaged but it belongs to someone else. Unless the Policyholder has suffered a financial loss, any payment would be in excess of an indemnity.



##### Activity

*Review a Policy wording and identify where it states how the claim will be settled. What options are available to the Insurer? Whose option is it as to how the claim is settled?*



## THE PRINCIPLES OF INSURANCE – PROXIMATE CAUSE

# 8

# PROXIMATE CAUSE

### Introduction

In this chapter we focus primarily on insurance policies that provide cover for loss or damage resulting from perils/events listed in the Policy. For these policies determining the actual cause of loss or damage is therefore a fundamental step in the consideration of any claim.

Later in the chapter we reference All Risks policies and consider how the requirement moves to establishing the cause of the damage and validation of any exclusions that apply.

Proximate cause is a key principle of insurance and is concerned with how the loss or damage actually occurred and whether it is indeed as a result of an insured peril.

This section provides a definition of proximate cause and explains how it should be determined in practice.

### 8.1 Proximate Cause Definition

Proximate cause was defined in the case of *Pawsey v Scottish Union & National Insurance Company (1908)* as:

“the active and efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source”.



#### Activity

Use a dictionary to look up the meaning of the word *Proximate*. Look for other words in a thesaurus that might assist you in explaining the term *proximate cause* to a *Policyholder* or *colleague*.

The important point to note is that the proximate cause is the nearest cause and not a remote cause.

Unfortunately, when a loss occurs there will often be a series of events leading up to the incident and so it is sometimes difficult to determine the nearest or proximate cause. Let us consider the following scenario:

Jim, a guitar player in a local band, plays at a gig on a Sunday evening. The gig goes well and an encore is demanded by the crowd. The encore is played but as a result Jim finishes later than he expected and misses the train home. Jim then has to take a bus home and does not get to bed until 01:30 am. In the morning he oversleeps due to tiredness and because he had forgotten to put his alarm on. Jim is now in a hurry and quickly makes his breakfast, including toast which he puts under the grill. The postman then arrives and rings the bell (Jim has normally left long before the postman arrives.) The postman engages in a long conversation with Jim who eventually returns to the kitchen to find that the toast has ignited setting alight a tea towel. The tea towel in turn has scorched the kitchen table.

Jim is not worried about the tea towel or the toast but submits a claim for the table. Fire is covered by the Policy and the proximate cause of the loss must be established. The cause of the loss could be:

1. Playing at the gig
2. The fact the encore was demanded
3. Missing the train home
4. Going to bed late
5. Omitting to set the alarm
6. The arrival of the postman
7. The long conversation with the postman
8. The ignition of the toast
9. The ignition of the tea towels.

Referring back to the definition in *Pawsey v Scottish Union (1908)*, we have to find the

“efficient cause that sets in motion the chain of events”. Arguably, playing the gig (1) set in motion the chain of events. Playing a gig is not normally an insured peril and so if that was determined to be the proximate cause there would be no cover for the damage to the table.

However, the definition in *Pawsey v Scottish Union (1908)* goes on “without the intervention of any force acting independently from a new and independent source”. All causes from 2 to 7 are new forces acting independently from new and independent sources so we can forget all prior causes in the chain. The ignition of the toast (8) and the ignition of the tea towels (9) are the closest causes and therefore appear to fit most comfortably with our definition in *Pawsey v Scottish Union (1908)*. They are not remote causes.

The decision now is whether the ignition of the toast and tea towels constitutes fire as meant by the Policy and, if yes, whether there are any relevant exclusions. (The definition of fire will be discussed later in the course but it can be noted that the fire peril has operated in this instance.)



**Activity**

*Review a sample of claims and look at the sequence of events leading to the loss or damage. Decide what the remote causes are, highlight new and independent forces and identify the closest cause. This will be the proximate cause.*

## 8.2 Other Considerations

It is important to note that the proximate cause need not be the cause immediately before the loss or damage occurs. The last cause could simply be a link in the chain connecting the event with the proximate cause. For example, a fire might cause a water pipe to burst. Despite the resultant loss being water damage, the fire would still be the proximate cause of the incident

## 8.3 Burden of Proof in Relation to Proximate Cause

In the majority of claims, the cause is obvious and so it is relatively easy to establish whether it is a peril covered by the Policy. Difficulties arise when there are exceptions in the Policy or when more than one cause has operated and not all are covered. As already discussed, the proximate cause must be identified before it is possible to decide whether the loss or damage is covered by the Policy.

There is a general rule that applies to the burden of proof. The Policyholder must demonstrate that an insured peril has caused the loss or damage and, having done so, it is then for the Insurer to demonstrate the operation of any exclusion (if they wish to deny policy liability).

The situation is slightly different with an All Risks Policy. In this instance, the Policyholder need only demonstrate that damage has occurred to the insured property during the period of insurance. If an Insurer wishes to apply an exclusion, the Insurer must then prove that the cause was one of the excluded events.

If one or more perils have operated and one or more of these perils are covered by the Policy, the resultant loss or damage will be covered. However, in some cases that is not the end of the matter as different excesses may apply to the various perils concerned. You will then need to make a decision as to under which peril to pay the claim (and therefore which excess to apply). Be aware that your choice of peril can have repercussions for reinsurance or dual insurance matters.

**Activity**

*Consider an escape of water claim. What types of proof could an Insured provide to demonstrate that the damage is as a result of an escape of water? Now do the same exercise for a storm claim.*

## 8.4 Key Points to Remember

- You must establish proximate cause in order to decide whether a claim is covered by the Policy.
- Proximate cause is defined as “the active and efficient cause that sets in motion a train of events which brings about a result, without the intervention of any force started and working actively from a new and independent source”.
- The Policyholder is required to demonstrate that an insured peril has caused the loss or damage claim. If the Insurer then wants to reject the claim, they must demonstrate that an exclusion applies.



## THE PRINCIPLES OF INSURANCE – CONTRIBUTION



# CONTRIBUTION



### Introduction

Sometimes a claim may be covered by more than one policy and in such instances each Insurer may only be required to make a partial contribution to the Policyholder's overall claim.

This section explains what is meant by contribution and when it arises. It also discusses the policy position and outlines the methods for calculating contribution.

### 9.1 Definition

Contribution arises when two or more policies exist covering the same subject matter, i.e. the same item, against the same peril causing the loss or damage, at the same time and providing cover to the same person or legal entity. The principle of contribution flows naturally from the principle of indemnity. You should not profit from an insurance claim and so if you have two or more policies covering the same item you cannot claim from all the policies and therefore recover more than your loss.

People are sometimes confused about the principle of contribution and often think it relates to those situations when the Policyholder is required to contribute to a loss. This is not the case. The principle of contribution relates to situations when two or more Insurers contribute to the loss.



#### Activity

*Reflecting on the information provided above, consider the following claim scenario:*

*Mrs Miggins has submitted a claim for the loss of a watch. She tells you that she has another policy in force covering the watch and describes how pleased she is that she will be able to get more than she paid for. Her comments are innocent but you need to explain to her that this will not be the case.*

*Think about how you would explain the principle of indemnity and how this leads on to the principle of contribution.*

### 9.2 The Legal Position

The legal position concerning contribution has been set out in several legal cases. The most referred to case is *Godin v London Assurance Co (1758)* in which it was stated:

"If the insured is to receive but one satisfaction natural justice says that the several insurers shall all of them contribute pro rata to satisfy that loss against which they have all insured".

In another leading case, *Scottish Amicable Heritable Securities Association Ltd v Northern Assurance Co (1883)*, the following was said:

"That principle (i.e. contribution) or rather that rule of practice depends on the doctrine - one not of law only but of common reason - that a man who insures his interest in property against loss by fire whether that interest be that of a proprietor or creditor, cannot recover from the insurer a greater amount than he has lost by the contingency insured against. So, in the case of double insurance of the same interest with different insurance companies, the assured will not be entitled to recover more than the full amount of the loss he has suffered".

Contribution is also addressed in the Marine Insurance Act 1906. It is accepted that the principles outlined in the Act have application to insurance generally:

"The assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to recover any sum in excess of the indemnity allowed by this Act".

As already discussed, contribution occurs when there is more than one policy covering the same subject matter. However, the policies do not need to cover exactly the same perils or property. They need not be identical but there does have to be an overlap in the cover provided.

At common law, contribution will only apply when the following conditions are met:

- There are two or more policies of indemnity
- These policies cover a common insurable interest
- These policies cover a common peril which gave rise to the loss
- These policies cover a common subject matter
- Each policy is liable for the loss arising.



#### Activity

*Ask a senior colleague to describe your company's procedures to ensure that any potential contribution is identified as part of the claim process.*

Contribution often arises accidentally as consumers buy insurance policies not appreciating that they already have cover elsewhere. For example, one policy might cover the buildings of their home and when buying cover for their contents they inadvertently buy cover for the buildings too.



**Activity**

*When you go shopping you are often invited to purchase additional insurance for goods and services that you are buying. You may also receive telephone calls inviting you to buy insurance policies. Make a list of the types of cover you have been invited to purchase. You could use this list as a prompt when asking Policyholders about the possible existence of other policies.*

There is nothing to prevent a Policyholder having two or more policies covering the same event. It is not illegal. However, should a Policyholder knowingly claim from more than one policy and not tell the separate Insurers it may be considered as fraud.

**9.3 Contribution and the Policy**

Having established that contribution arises, you have to decide how to share or apportion the loss between the different insurers. Like any form of sharing, the intention is to be fair, but sometimes there can be a dispute about what is considered to be fair. For this reason, there are rules and protocols to be followed. Most important of all is that the Policyholder must not be inconvenienced or penalised.

The method of calculating how much each insurer is to pay will depend on the type of policy and whether there is an agreement in place. It is useful to check whether the policies are subject to average and whether they cover exactly the same property. If they cover the same property, they are called concurrent. If the policies cover some of the same property but not all, they are referred to as non-concurrent.



**Activity**

*Perhaps with the help of a dictionary, find a form of words that you could use to explain what is meant by two concurrent policies.*

The insurer’s approach to contribution will typically be explained in the policy wording. Policies often exclude all Policy liability if there is another policy in force or alternatively, may state that if there is another Policy in force the Policy will only pay a rateable proportion of the loss. In other words, it makes it clear that the Policy will only be liable to share the loss.

However, what happens if both policies say that they will not cover the loss if another Policy is in force? Would this mean that the Policyholder would receive nothing? That would not be fair to the Policyholder and the impact would be that the two exclusions would effectively wipe each other out.

When dealing with contribution issues, you need to examine the policy wording in order to fully understand the position. In the recent case of National Farmers Union Mutual Insurance Society Ltd v HSBC Insurance (UK) Ltd (2010) the court decided that contribution did not apply because of the specific Policy wordings. The case referred to fire damage to a property between exchange of contracts and completion of the sale, and it highlights that contribution is dependent on the precise policy wordings. The detail of the case is beyond the scope of this course, but you may like to search for further information via an internet search engine.

**9.4 Apportioning payments when Contribution arises**

When sharing a loss between policies, different methods can be used to apportion the loss. Some seem fairer than others and it has become industry practice to apply certain methods in certain situations. The method of sharing the loss, known as apportionment, depends on the type of cover and whether a market agreement applies. The different scenarios and methods are listed below:

- Non-average, concurrent: Sums insured
- Non-average, non-concurrent: Independent liability (the mean method can be used as an alternative)
- Average concurrent: Independent liability
- Average non-concurrent: Independent liability
- Liability policies: Independent liability
- Alternative accommodation: Independent liability
- ABI and AOA agreements: Independent liability

The most common method, independent liability, is demonstrated in the example below. Independent liability means the amount that the Insurer would pay if no other policies existed.

**Policy A**

Sum Insured	£10,000.00
Excess	£100.00
Independent Liability	£6,000.00

**Policy B**

Sum Insured	£20,000.00
Excess	£10.00
Independent Liability	£6,090.00

**Agreed Loss £6,100.00**

**Policy A Pays**

<u>Own Independent Liability</u>	x loss	
Total Independent Liabilities		
£6,000.00	x £6,100	= £3,027.30
£12,090.00		
<b>Amount payable</b>		<b>£3,027.43</b>

**Policy B Pays**

<u>Own Independent Liability</u>	x loss	
Total Independent Liabilities		
£6,090.00	x £6,100	= £3,072.70
£12,090.00		
<b>Amount payable</b>		<b>£3,072.57</b>

**Total £6,100.00**

It is often the case that one Insurer pays the claim in full and uses the above calculation to recover the contribution from the other Insurer.

On the above basis, the amounts to be paid by each Insurer can be seen. Interestingly the independent liability basis often produces a result so that Insurers pay 50% each.

Other methods of calculation are beyond this course, but using the earlier table you should be able to establish which method to use and to seek guidance accordingly.



**Activity**

*Contribution commonly arises when cover is available for alternative accommodation under both a buildings policy and a contents policy. Think about the types of costs that can be incurred in relation to alternative accommodation and how these items may have been handled during the course of the claim. Now consider how the buildings and contents Insurers might reach an agreement on the apportionment of the alternative accommodation costs. What issues might lead to dispute?*

### 9.5 Key Points to Remember

- The principle of contribution flows from the principle of indemnity, i.e. a Policyholder should not profit from an insurance claim, but rather should be placed in the same position they were in before the loss.
- In the handling of any claim, it is always important to ask the Policyholder whether there are any other relevant insurance policies in force, either in their own name or perhaps in the name of others.
- Check what the Policy wording says about dual insurance.
- Use the appropriate method of apportionment for the circumstances. If contribution is under one of the market agreements, always check those agreements to see whether any conditions or exclusions apply.
- Should you identify a contribution opportunity you should start discussions with the other Insurers at the earliest opportunity. If you intend to ask another Insurer to contribute to costs that have already been paid, you must be able to justify and support each payment.



THE PRINCIPLES  
OF INSURANCE –  
SUBROGATION

10

# SUBROGATION

### Introduction

This section provides an elementary understanding of one of the central, key principles of insurance, subrogation.

### 10.1 Definition

Subrogation concerns recoveries where it is the right of one person to stand in the place of the person he has indemnified and pursue that person's legal rights and remedies. A good example would be where a Policyholder's wall is damaged by a negligent motorist. The Insurer indemnifies the Policyholder and then the Insurer has the right to take up the legal rights and remedies that the Policyholder would have had.



#### Activity

*Consider the types of events that lead to claims being made in which subrogation arises.*

### 10.2 The Legal Position

The most quoted case supporting Insurers' right to exercise rights of subrogation is *Castellain v Preston* (1883) where it was stated that subrogation:

*“does not arise upon any terms of the contract of insurance; it is only another proposition which has been adopted for the purpose of carrying out the fundamental rule (indemnity) which I have mentioned and it is a doctrine in favour of the underwriters or insurers in order to prevent the assured from recovering more than a full indemnity; it has been adopted solely for that reason”.*

The common law position of subrogation is that it can only be pursued after payment has been made by the Insurer to the Policyholder. However, usually the Policy alters this situation and gives the insurer the right to pursue the recovery before or after payment has been made. This is illustrated by the ABI standard fire policy:

*“Any claimant under this policy shall at the request and expense of the insurer take and permit to be taken all necessary steps for enforcing rights against any other party in the name of the insured before or after any payment is made by the insurer”.*



#### Activity

*What do you think are the advantages of the Insurer being able to commence an action for a recovery before the Policyholder has been indemnified?*

*Find out what processes are followed where you are employed to ensure recoveries are pursued.*

As well as giving insurers the opportunity to pursue subrogation rights before payment has been made under the policy, the subrogation condition also makes it clear that the policyholder is to assist the insurer in any recovery action taken. Any legal action is taken in the name of the Policyholder. This has the advantage that the Insurer's name is not highlighted in the Court action.

### 10.3 Other Important Features of Subrogation

There are other key features of subrogation that should be taken into account when handling a claim. It is important to remember that the Policyholder may have suffered losses that are not covered by the Policy. Examples of such losses might include:

- The amount of any excess or deductible
- Penalties due to underinsurance
- General inconvenience
- Loss or damage to property not covered by the Policy.

Subrogation arises out of the principle of indemnity. Logically, if the Policyholder is not indemnified for part of the loss, subrogation cannot apply to that uninsured part of the loss. If subrogation does not arise, it would not be fair that the Policyholder is prevented from making a recovery for those uninsured losses.

An important rule is that only one legal action may be brought against the person from whom a recovery is sought. This means that, if either the Insurer or Policyholder were to bring an action without taking account of the other's losses, the other party would be barred from making a recovery.

For this reason, it is of utmost importance that the Policyholder understands the situation. The question therefore arises as to how to deal with uninsured losses when considering the recovery.

In practice, this will depend upon the situation in question. Often an Insurer will be willing to highlight uninsured losses to the party from whom a recovery is being sought. Should it get to the stage that legal proceedings are entered into, it is vital that both the Policyholder's and the Insurers' losses are included in the action.



#### Activity

*Having found out about the processes within your firm to ensure recoveries are dealt with, find out how you should deal with uninsured losses. Think about the advice you might give to a policyholder who is worried that their uninsured losses might be overlooked.*

Another feature of recoveries is how the money recovered should be allocated between the Insurer and the Policyholder. It is not uncommon for the amount of a recovery to fall short of the full cost of the claim and the uninsured losses.

Where a full recovery is not received a legal precedent was established by Lord Napier in the case of *Ettrick v Hunter* (1993). The case determined that the Policyholder is entitled to their uninsured loss first, but the policy excess will be the last element to be paid back to the Policyholder. This is often referred to as the Insurer "pays up and recover down".

The following example demonstrates the general principle:

Insured's loss	£160,000.00
Settlement received from third party insurers	£130,000.00
Insurer's outlay	£100,000.00
Policy excess	£25,000.00

There is a shortfall of £60,000 between the Insured's total loss and the payment made by the policy.

As the excess was £25,000 the balance of the uninsured losses is £35,000.

The case determined that the policyholder should receive the insured loss (excluding the excess) £35,000 first.

The Insurer then receives repayment of the money paid under the claim settlement, £95,000, leaving a shortfall of £5,000.

Therefore, the Insured does not recover the excess of £25,000.

### 10.4 Subrogation Terminology

There is some terminology or jargon associated with subrogation:

Third Party	The person from whom a recovery is sought Pre
Action Protocol	Rules which recovery actions should follow
Third Party Claimant	Someone who is making a claim against a Policyholder Quantum The amount of money involved
Statute Barred	A legal action that cannot be pursued as the time limit laid down by law has expired.

### 10.4 How Subrogation Rights Arise

Rights of recovery/subrogation may arise in law under the following headings:

- Statute
- Tort
- Contract.

To become competent at handling issues surrounding subrogation and to recognise opportunities to pursue recoveries, the law surrounding relevant statutes, torts and contract must be appreciated. These aspects are dealt with in this course under legal liabilities.



## CUSTOMER SERVICE





# CUSTOMER SERVICE

## 11. CUSTOMER SERVICE

### Introduction

Insurance Companies, Loss Adjusters, Insurance Brokers and indeed anyone providing a service has competition. Customer service is often a key factor by which companies compete for business. As a result, the majority of roles within the claims handling sector require good customer service skills. In claims handling, it is not always clear who the customer is. For a Loss Adjuster, it might be the Policyholder, the Insurer or the Broker.

This section explains why customer service is important, how it is measured and how customers' perceptions are formed. It also discusses what to do when things go wrong.

One key area of customer service is the FCA's requirement of "Fair Treatment of Customers". This has become a way of ensuring that all interactions with the Policyholder are fair, and the FCA's six Consumer Outcomes (see section 13.2) set the minimum standard.

### 11.1 Competition

While there are certain insurance covers that are compulsory, such as Third Party motor insurance, there is no requirement to purchase insurance cover from a particular provider. There are hundreds of insurance providers and they typically compete against each other by using:

- Price
- Extent of Policy cover
- Accessibility of product, i.e. internet, Insurance Brokers, direct
- Customer service.



**Activity**

*Think about the last time you purchased an electrical item. What helped you to decide the make and model to buy and which supplier to buy it from?*

### 11.2 Customer Retention

Winning new customers is an expensive task and so customer retention is a goal of most companies. For an Insurer, customer retention means the continued renewal of Policies by Policyholders each year.

Imagine that as an Insurer you have launched a new product, for example a Policy covering veterinary fees for pets. You decide to advertise your new Policy on television, radio and via the internet. The cost of the advertising is high and so you want to gain as many customers as possible to make the launch worthwhile.

Now imagine the likely reaction of these new customers should there be difficulties when they need to make a claim. Would they renew the Policy or would they be likely to seek an alternative?

Some people would give your company a second chance, others may not have an incentive to seek cover elsewhere, but many would simply switch Insurer. The loss of significant numbers is likely to gain poor publicity and the cost of gaining new customers would escalate.



**Activity**

*Via the internet, look for blogs about customer service from well-known companies. Review the comments made and note the aspects that commonly create customer satisfaction and dissatisfaction.*

*Think of the other ways that customers regularly publicise their views on the service they have received.*

### 11.3 Measurement of Customer Service

Most companies will have a range of measures to assess whether they are delivering customer service, for example the average time taken to answer the telephone. In reality, the measurement of customer service is whether the customer perceives that they have received poor, good or excellent customer service.

Customer perceptions are likely to be based on the original expectations of the service they have purchased. For example, if an individual purchases a car breakdown recovery service which promises to keep the individual informed of expected recovery time, the individual expects this to happen in the event of a breakdown. Their perceptions of whether they have received a poor, good or excellent service will undoubtedly be linked to how well they were kept informed of expected recovery time. The setting and management of customer expectations is therefore critical in delivering customer service.

Companies often use customer satisfaction surveys to understand the perceptions of their customers. Typically, the customer will be asked to assess different elements of the service they have received by selecting the most appropriate description or by a numbering system. For example, the customer might be asked to select from the following descriptions:

- Unacceptable
- Tolerable
- Adequate
- Desired
- Exceptional



**Activity**

*Ask your line manager or review your company website to establish what level of service your company aims to provide. Find out what measures your company uses to assess whether they actually deliver this level of customer service.*

### 11.4 What Affects Customers' Perception of Service

Throughout this course, we have used the term "Policyholder" to make it clear that we are identifying the person who has purchased insurance cover. However, it is usual to call the Policyholder the "Customer". We deal with many parties and it is not always clear who the customer is. This section deals with the customer, whoever that may be in any circumstance.

We have already identified that customers' perceptions are likely to be linked to their original expectations of the service. There are also some aspects of service delivery that commonly affect customers' assessment of the service they have received:

- How reliable the service was, for instance, could they get to speak to someone who could help them when they needed information
- How confident the customer was with the service provider. This may well depend on the competence and credibility of the staff encountered
- How understanding or empathetic the service provider was. This might be affected by the quality of communications. A frequent complaint customers make is that the service provider seemed not to care about the customer's predicament
- How responsive the service provider was to difficulties. Customers are looking for a prompt and helpful response to problems
- Whether the customer believes they were treated fairly.

It is worth noting that customers' perceptions of service can also be influenced by:

- The price paid for the service
- The emotional state of the customer
- The situation the customer is in at the time
- Comments made by friends and relatives.



**Activity**

*Think about your role; make notes about how important the issues highlighted in bold are to your customers. Consider what you could do within your role to improve customers' perceptions of your service.*

### 11.5 The Effects of Good Customer Service

When a customer believes they have received good service, they are likely to respond in a positive way. For instance, they are likely to tell friends and family who may in turn may choose to use that service provider. This is referred to as word of mouth recommendation. The customer is also likely to return to the service provider, potentially on a long term basis. The natural result of both of these is an increase in income to the company and lower costs incurred in customer retention.

### 11.6 What to do when Something Goes Wrong

When dealing with claims, we are providing a service to people who have experienced a loss and there are bound to be stresses attached to this. There are lots of opportunities for problems in the handling of claims and unfortunately sometimes things do go wrong. How we respond in such instances will affect the customer's perception of the service they have received. We will undoubtedly get a negative reaction from the customer if we:

- Act as if nothing is wrong
- Blame a colleague
- Blame the customer
- Ignore the issue.

We could however react in the following positive ways:

- Acknowledge the issues causing the problem
- Provide an apology
- Take responsibility for resolving the issues
- Provide a means of compensating the customer.

While the final action, providing compensation, may be outside of your control, you could recommend to your line manager that the customer receives some form of compensation.



**Activity**

*Find out who deals with complaints in your company and get their tips on avoiding complaints. Ask for examples of complaints that have been received by your company and review how they were dealt with.*

### 11.7 Key Points to Remember

- No business can survive without customers and, for service providers, customers are most likely to be gained and retained based on customer service.
- Acquiring new customers is much more expensive than retaining existing ones.
- Customer service is measured by the experience and perceptions of the customer.
- Customer perceptions are likely to be based on original expectations. Understanding and managing those expectations is fundamental to the delivery of good customer service.
- At every point at which you have contact with a customer you are being judged by that customer. The effect you have on them not only affects their feelings towards you but also affects the way they perceive your colleagues and your company.
- Customers have the power to influence others to either buy your services or not.



**COMMUNICATION**

**12**

# COMMUNICATION

### Introduction

This section provides an explanation of some of the theory of communication. It is intended to:

- Assist understanding of how communication works
- Provide an understanding of how to use language effectively.

### 12.1 Sociolinguistics

Sociolinguistics is the study of the relationship between language and society. Understanding this and using some of the knowledge will be highly beneficial when communicating, particularly when dealing with some of the difficult and emotive aspects of claims handling.

Under the heading of sociolinguistics, we are concerned with the relationship between the language used and the social setting. Consider the following dialogue:

Alice: Hi Dad.

Dad: You're late today.

Alice: Yeah that bloody woman asked me to sort all her files out last thing again. Dad: Your Nana's here.

Alice: Sorry, is she eating with us?

The dialogue shows us that had Alice been aware of her Nana's presence she would have used different words and perhaps a different tone.

This can be demonstrated by the following dialogue that Alice may also have had:

Managing Director: Alice, good to catch you here, I am most grateful to you for putting in these extra hours.

Alice: Thank you, I do like to keep ahead of things, it helps us all.

Managing Director: Yes, true. Good night.

Alice: Good night.



#### Activity

*Have a look at the two dialogues above and identify within them the words that identify the friendly relationship between Alice and her father compared to the formal relationship between Alice and the Managing Director.*

We have established that we communicate differently according to the social setting. This gets more complicated however. We adapt our language not only to the person we are addressing but also to who else is listening and even who else we are concerned or perhaps hope is listening.

The important issue for us is that if we use an unexpected form of language we can get undesirable outcomes. You have doubtless heard the expression "it's not what you say it's the way that you say it".

Some societies are multilingual meaning that different languages are used in different social settings. People may use one language between friends and family, another language at work and another for official or legal matters. Using the official language in a relaxed family environment would appear inappropriate.



#### Activity

*Think about the last conversation you had with a group of friends perhaps in a bar or other relaxed social environment. How would the language you used there have differed had there been a teacher from your former school sitting alongside you.*

Having understood the relationship between language and social setting, we can appreciate the importance of getting speech right if we wish to communicate effectively. In fact when we do communicate effectively in speech, we will start to "mirror" the other speaker. When we get on well with people, our language converges. This shows that there is a bond building and it shows an affinity and respect for the other person. At the other end of the spectrum, when we wish to make a clear point and things are not going well, language will diverge. In fact, sometimes language divergence is used as a means of highlighting disagreement. For instance, think about the politician who might change his tone, the complexity of the words used and even the strength of his accent to underline disagreement with a rival.

## 12.2 Referential and Affective

The language used can serve the function of passing on objective information (facts) and it can express feelings too. Think about the expression “that bloody woman” in the dialogue above. This passes on the fact about who was responsible for Alice being late home and highlights how Alice feels about her.



### Activity

Determine a) what the following comments reveal about the relationship between the speaker and listener and b) the intention of the comments to convey mainly affective (feelings) or mainly referential information (facts):

1. The next train to depart from platform four is the 07:19 to Luton, calling at St Albans and Harpenden only.
2. Hi, my little Blossom, how was your day?
3. Prime Minister, your car is ready for you now.

Hopefully you will have noticed that example 1 above is a recorded or prepared message. It is not intended to express anything other than referential information.

Example 2 suggests that the speaker is wishing to convey a message of how he feels about the person he is speaking to. “My little Blossom” is a term of endearment and is being used to express affection. The secondary purpose of the comment is to demonstrate care and concern about how “little Blossom” is.

In example 3, it is clear that the opening comment “Prime Minister” is being used to highlight respect. It signifies a subordinate speaking to a superior.

This is a simple introduction to sociolinguistics to help provide an understanding of how communication can express much more than the facts that we are conveying.

## 12.3 Better Written Communication

Having spent a long time preparing an essay and eagerly awaiting the teacher’s comments, the student is often upset by comments such as “difficult to follow”, “confusing”, “not clear”, “could not understand” or “write more clearly”. This informs the student that the teacher did not understand the message being put across, but does not help the student to write in a way that can be understood more easily.

The purpose of writing is to convey a message, whether it is a note for the writer such as a shopping list, a thank you letter, an essay putting forward different arguments or a novel. Each of these different messages has one thing in common, i.e. they are to be read later, and if they cannot be understood they are not fit for textbook.



### Activity

Take a text book that you have found difficult to follow. Examine a few pages to try to understand why it is difficult to follow - is it complicated, muddled or not clear?

## 12.4 Ordering of Words (Given and New Information)

A good writer considers the order in which information is presented in a sentence as this helps the reader understand quickly what is being written about.

For example, compare the ease of understanding of these two sentences:

“To perform mathematical computations you can use a mechanical or electronic device, known as a calculator.” Or,

“A calculator is an electronic or sometimes a mechanical device used to perform mathematical computations.”

You may agree that the second sentence is easier to understand because you are told, at the outset, what the sentence is about.



### Activity

Look at a newspaper, magazine or book. Note how the sentences are constructed and, in particular, whether the given information is at the beginning of the sentences. After the first sentence, the given information may be represented by a pronoun such as he, she, it etc.

## 12.5 Active and Passive

The active and passive tenses are most easily understood by the following examples:

Mick liked the book. – Active tense

The book was liked by Mick. – Passive tense

The second version is a little clumsy and arguably the first version is clearer to the reader. In fact, it can be argued that the two sentences do not have identical meanings. This is highlighted in the following comparison:

- a. Sally was invited in by a person wearing a black scarf.
- b. A woman wearing a black scarf invited Sally in.

Reading these two sentences carefully may highlight to you that the first one emphasises the role of Sally and the second highlights the role of the woman wearing the black scarf.

You can now understand that the choice made by the writer between the two phrases could have a subtle difference in meaning and therefore impact. By using the active or passive tenses, the involvement of the participants can be played up or down. Following large scale flooding, an Insurer may wish to emphasise the role played by their staff to help those affected. In this respect, compare the following two sentences:

- a. Our claims team who worked over the weekend contacted all affected Policyholders.
- b. All affected Policyholders were contacted by our claims team who worked over the weekend.

Arguably, the first sentence highlights the work of the claims team while the second shows more empathy with the Policyholders.

So we could change our maxim from “Its not what you say it’s the way that you say it” to “It’s not what you say it’s the way or the order that you say it”.

## 12.6 Key Points to Remember

Language is about getting a message across about our interpretation of the world; we all see the world differently. It is therefore important that we use language in a way that gets our interpretation of the world across to the reader. Keeping sentences short can help with this.

To give an example, compare the following:

- a. Frank put his lunch on his desk. It was made of natural products.

Is it the lunch or the desk that was made of natural products? The following might help:

- b. Frank put his lunch on his desk. The desk was made of natural products.



### Putting this into practice

Look at any internal documents and guidelines that your firm has to assist you in communication, for example standard letters. Discuss with colleagues the benefits of the documents and guidelines.



**THE FINANCIAL  
CONDUCT  
AUTHORITY**

13



# THE FINANCIAL CONDUCT AUTHORITY

## 13. THE FINANCIAL CONDUCT AUTHORITY

### Introduction

The Financial Services Act 2012 gave the Financial Conduct Authority new powers to help them act faster, with the aim of keeping the financial market sound and stable.

The FCA regulate the conduct of nearly 50,000 firms in the UK financial services market. The financial services market includes many organisations such as banks, building societies and the providers of savings, investment and insurance products and services.

They are authorised to:

- Fine, suspend, prohibit, order injunctions, bring criminal prosecutions or take other action to prevent market abuse, such as insider dealing.
- Make a public announcement when they begin disciplinary action against a firm or individual and publish details of warning notices.

They work closely with law enforcement agencies to combat market abuse and other financial crime.

Their stated aim is to make financial markets work well so that consumers get a fair deal. They supervise firms to make sure they act in the best interests of consumers and the market focusing on:

- **Conduct:** for the market to thrive, firms must behave ethically, stick to the rules and meet FCA standards.
- **Competition:** healthy competition between firms is encouraged to keep the market buoyant and help grow the economy.
- **Reducing market abuse:** firms need to have procedures to help them identify and stop market abuse, such as insider dealing and share price manipulation.

### Introduction (continued)

The outputs of the FCA are always subject to review and update and those working in Insurance and particularly those who aspire to high standards such as members of the CILA should ensure that they are up to date with the rules set by the FCA and keep to the ethos set out by the FCA. The FCA require ethical behaviour at all times.

### 13.1 Regulation of the Insurance Market

The FCA regulates the Insurance market and their website has a section dedicated to the handling of insurance claims. This includes an online handbook entitled Insurance: Conduct of Business sourcebook (ICOBS).

The FCA ICOBS are divided into eight sections, including pricing, product information, identifying client needs and advising, communication and Claims Handling. The FCA requirements for claims handling are detailed in the section 8 known as "ICOBS 8 Claims Handling".

ICOBS 8 includes sections related to specific handling procedures. In the coursebook we will focus on ICOBS 8.1 Insurer; General and ICOBS 8.2: Motor Vehicle liability insurers.



#### Activity

Go to this link: <https://www.handbook.fca.org.uk/handbook/ICOBS/8/?view=chapter> (ICOBS 8 - FCA Handbook) to learn more about the FCA requirements for claims handling.

### 13.2 ICOBS 8.1 and 8.2

ICOBS 8.1 details how the Insurance company should operate, in general terms, with regard to the handling of claims.

An Insurer must:

- a. handle claims in a fair manner and within reasonable timescales
- b. guide the Policyholder and help them with their claim. This includes keeping the Policyholder informed of developments
- c. not repudiate a claim unreasonably, or unreasonably terminate or avoid the contract of insurance
- d. once settlement of a claim has been agreed, make the settlement as soon as is reasonable.

The FCA consider the rejection of a claim to be unreasonable, except where there is evidence of fraud, if the rejection of the claim is for:

1. non-disclosure of facts that should be disclosed that the Policyholder could not in reasonable circumstances have had knowledge of
2. non-negligent misrepresentation of a fact material to the risk, or
3. breach of warranty or condition unless the breach is material to the cause or extent of the loss and the warranty or condition was brought to the attention of the Policyholder.

In reality the foregoing is logical and probably agreed by most as good practice. It is about fair treatment of customers and the six Consumer Outcomes (see section 13.2). It is of utmost importance that these guidelines and the requirements of the FCA Consumer Duty are followed in the course of handling claims.

ICOBS 8.2 relates to Motor Vehicle Liability Insurers, and you should review the wording of this on line. Of particular interest is the fact that the FCA requires, among other things, that:

- a. a reasoned offer of compensation must be made within 3 months of the claim where liability is not in dispute
- b. where liability is denied, the insurer must provide within 3 months a reasoned reply to points made by the person making the claim
- c. where liability is not denied, an offer for settlement must be made within 3 months.

The FCA requirements in this respect are there to protect consumers. Where the requirements are not followed, aside from the repercussions from the FCA, there are other important issues. For example, failure to follow the requirements weakens the Insurer's position considerably, as it leads to complaints and the loss of faith and trust.

### 13.3 Fair Treatment of Customers

The FCA state that “All firms must be able to show consistently that fair treatment of customers is at the heart of their business model”.

Further, the FCA require that firms should strive to achieve the following six Consumer Outcomes to ensure fair treatment of customers:

- **Outcome 1:** Consumers can be confident they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- **Outcome 2:** Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- **Outcome 3:** Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- **Outcome 4:** Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- **Outcome 5:** Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- **Outcome 6:** Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

In July 2022 the FCA published final rules and guidance introducing a new Consumer Principle, which require firms “to act to deliver good outcomes for retail customers”.

In response to the FCA consumer duty the FCA wants to see firms deliver a higher standard of customer care and protection, and to go further to equip consumers to make effective decisions in the selection of products and services.

The three key behaviours stipulated by the FCA require firms to:

- Take all reasonable steps to avoid causing foreseeable harm to customers.
- Take all reasonable steps to enable customers to pursue their financial objectives.
- Act in good faith.

Firms were required to implement the rules for products and services from 31 July 2023.



DATA  
PROTECTION

14

# DATA PROTECTION

## 14. DATA PROTECTION

### Introduction

This section provides a basic understanding of the Data Protection legislation in the UK and sets out information that is commonly required when claims staff are dealing with data related to policyholders.

The Information Commissioners Office (ICO) is the UK's independent body set up to uphold information rights. Use this link to find out more about the ICO (Who we are | ICO)

## 14. DATA PROTECTION

### 14.1 Data Protection Legislation

Data Protection legislation was introduced with the Data Protection Act 1998.

The purpose of the Act was to provide protection to people when their personal data is being processed and to ensure that the information is only used for the purpose for which it was intended.

Personal data is defined as any piece of information that someone can use to identify a living person. Personal Data can also be classed as anything that can affirm your physical presence somewhere including CCTV footage or fingerprints. Typically, personal data will include:

- Name
- Details of claim (non medical)
- Address
- IP address or mobile phone ID
- Bank account details

It is essential that any personal data is kept both confidential and private to protect the persons concerned.

In May 2018 the European Commission issued the General Data Protection Regulation (GDPR) which was adopted by all EU member countries including the UK.

Following the withdrawal from the EU the UK government introduced the Data Protection Act 2018 to implement the GDPR within the UK.

The Data Protection Act 2018 introduced:

1. Greater emphasis on control and rights for data subjects (the individual about whom the data refers to)
2. Enhanced requirements to secure an individual's explicit consent to the purpose and use of their data
3. Transparency and accountability requirements
4. Significantly higher fines.



#### Activity

*Consider a typical claim file. What information is kept on the file that you would consider to be personal?*

### 14.2 Consequences of a Breach of the Act

Any breach of legislation will have repercussions both for the Company you work for and for you as an individual. This is because it is a criminal offence to make unauthorised disclosures of personal data about a living individual. Financial penalties for companies can result in a fine up to € 20 million or 4% of our global turnover.

In addition, the person who the information is about may apply for personal compensation due to the damage and distress they may have suffered.

### 14.3 Protecting Information

Within the claim handling role, it is necessary to use personal information, and this is legal providing that the information is only shared with the person to whom it relates. In the context of a claim, this will be the Policyholder. However, the information may also be required by, for example, the Policyholder's Appointed Agent, the Insurer, the Insurer's Appointed Agent, the Loss Assessor, suppliers etc.

You must get permission from the data subject (the person who the information is about) before releasing any information to any other person (and this includes the data subject's partner or any family member). Consent can be verbal or in writing and you should record that it has been obtained.

In respect of the Policyholder's Loss Assessor or Solicitor, it may not be necessary to obtain written permission, but it is necessary to have sufficient reason to believe they are acting on behalf of the Policyholder. For example, if the Policy is in the name of Mr and Mrs Richards then you will be able to discuss the claim with either party, but if the policy is in the name of Mrs Richards only then no details should be discussed with Mr Richards without permission from Mrs Richards.

The Act states that you should make sufficient enquiries to ensure that you are sufficiently certain that you are authorised to divulge details to a third party.



**Activity**

*Find out what procedures are in place where you work to ensure there are no breaches of the Data Protection Legislation*

## 14.4 Special Categories of Data

The Act makes particular requirements with regard to the handling of sensitive personal data.

Sensitive personal data includes:

- Biometric data
- Criminal data
- Medical records
- Genetic data
- Health or sex data
- Racial and ethnic data
- Political opinions
- Religious or philosophical beliefs
- Trade-union memberships

## 14.5 Subject Access Requests

The Act also provides that data subjects have the right to have access to data that is stored about them. This is to protect the data subject and to give them the opportunity to ensure that the data stored is accurate. The data subject may be required to make a nominal payment.

However, this right does not extend to include:

- Information concerning fraud issues that are still under investigation
- Information likely to prejudice negotiations or insurers position regarding the claim
- Information provided by or about third parties which they would not want released



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