



THE CHARTERED INSTITUTE  
OF LOSS ADJUSTERS

# EXAM JANUARY 2025 ONWARDS

COURSE BOOK

## CH3 ADVANCED CLAIMS HANDLING

## 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 CH3 Advanced Claims Handling course book.

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.

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# DAMAGES AND RESERVING OF INJURY CLAIMS

### Introduction

This section provides claims handlers and loss adjusters with guidance regarding the assessment of a Reserve for a personal injury liability claim. In the process, it looks at the components of a typical personal injury claim that need to be assessed when determining the Reserve.

### 1.1 Reserving

As with all businesses, insurance companies seek to invest their funds in order to secure profit for the company and its shareholders. However, insurance company business is the payment of its policyholders' claims and it must ensure that sufficient funds are available to meet this requirement. Therefore, whenever a claim is notified to an Insurer, an adequate Reserve must be allocated to that claim with this amount of money set aside and held in reserve for the particular claim.

It is extremely important that the Reserve is at all times as accurate as possible. If the Reserve is too high, funds will have been unnecessarily held in reserve, rather than invested to improve the insurance company profitability. If the Reserve is too low, and this is a more serious situation, there will be inadequate funds held in reserve against the particular claim and there will be a need to move funds from the Insurer's investment portfolio affecting the business profitability calculations.

It is always more difficult to determine an accurate Reserve when a claim is first notified to an insurer. It is vitally important, therefore, that the Reserve is assessed as accurately as possible on the basis of available information and that the Reserve is then regularly reviewed throughout the progression of the claim as more particulars are clarified or become available.

When assessing a Reserve under a liability policy, the claims handler or adjuster must attempt to assess the policyholder's legal liability for the particular incident as well as attempting to determine the extent of such legal liability.

While this section looks only at the measurement of a personal injury liability claim, it is strongly recommended that all Reserve calculations are based upon the worst probable legal liability scenario evident from the information available at the time of assessing the Reserve. In other words, the Reserve should be determined on the basis that the policyholder is probably legally liable until firm evidence to support a defense is established. The Reserve should not reflect any suspected contributory negligence on the part of the injured Claimant until evidence to support a contributory negligence pleading is established.

If a claims handler/loss adjuster is working for a range of clients, it is possible that these clients may adopt differing reserving philosophies. Some may want to reserve on the "worst case" basis while others might assume "best case" as a philosophy. It is, therefore, recommended that, in such circumstances, the claims handler/loss adjuster sets out the recommended Reserve as detailed in this section and then reflects the particular client's philosophy by amending the figure calculated. By using this method, the claims handler/loss adjuster makes it clear that he has calculated the Reserve in a consistent and professional manner, acknowledging that the Client will expect their philosophy to be reflected.

### 1.2 The Components of a Personal Injury Reserve

A personal injury liability claim may result from a particularly serious injury sustained by a Claimant that has significant life-changing consequences for that Claimant. In these cases, it may be necessary for the claims handler or loss adjuster to assess possible claims under the headings of future loss of earnings, loss of pension benefits, long-term care and mobility, and long-term medication or treatment costs.

The majority of personal injury liability claims involve less severe consequences for the Claimant and this section provides guidance regarding these cases.

It is likely that all personal injury liability claims, regardless of their complexity, will include the following components requiring the claims handler/loss adjuster's consideration:

- General Damages
- Special Damages
- Repayable CRU benefits and NHS charges
- Claimant's costs
- Claims handler/loss adjuster expenses.

An explanation of these components is as follows:

### 1.2.1 General Damages

General Damages are awarded to compensate the Claimant for physical pain, the effect (if any) on his life resulting from the sustained injury and also injury to feelings (psychological injury). General Damages are not determined by any precise financial calculation and can, therefore, be difficult to quantify.

### 1.2.2 Pain, Suffering and Loss of Amenity (PSLA)

This head of damage compensates a Claimant not only in respect of pain and suffering caused by the injury, but also the impact the injury has had on the Claimant's enjoyment of life. Damages for PSLA are known as 'general damages'.

When assessing damages for pain, suffering and loss of amenity, whilst case law can be a guideline, most awards are determined by reference to the Judicial College Guidelines. The current Guidelines (14th Edition) were published on 14th September 2017. The Guidelines present a range of damages for listed injuries, to include psychological and cosmetic ranges of damages.

Some key points to note are:

- The new Guidelines no longer differentiate between gender on damages for scarring, but the subjective view on the psychological effect of the scarring will remain a key issue in any valuation.
- There is no award for shock/anxiety in the absence of any physical or recognised psychological injury.
- The JC Guidelines Committee has recognised the move away from assessing damages based upon the duration of any symptoms in minor injuries and there should be a more holistic and analytical approach when assessing quantum.

The Judicial College Guidelines are not intended to be strictly interpreted; not all injuries fit neatly within a given category and it is possible for awards, particularly in claims involving multiple injuries, to reflect increased levels of compensation. It is, however, unusual for damages to be awarded below the Judicial College Guidelines, albeit, as commented previously, case law can be used as a means of reference.

For example:

- Fracture of one finger, depending upon recovery time – £1,900 to £3,000

Again, most claims handler/loss adjuster offices have access to the Guidelines. It should be noted that, while the case reports reflect actual judicial decisions, the JCG Guidelines are precisely that, a guide for claims handlers/loss adjusters (and others).

### 1.2.3 Special Damages

Special Damages are awarded for provable financial loss, such as the Claimant's loss of earnings, future loss of earnings. The cost to repair a damaged vehicle, the amount paid by the Claimant for medical expenses and past expenditure directly due to the accident (e.g. travel costs to attend hospital).

An example of a Special Damages Schedule can be found at the end of this section.

### 1.2.4 Loss of Earnings

For PAYE claimants, it is usual to obtain 13 weeks' pre-accident earnings details, compare the payments received during the period of absence and calculate a net loss of earnings.

For self-employed claimants, loss of earnings may be calculated by reference to their last three years' tax returns. It is sometimes the case that self-employed persons do not disclose the true measure of their pre-accident earnings to the authorities, but they are only entitled to receive losses that have been disclosed and any shortfall will be to their account.

### 1.2.5 Compensation Recovery Unit (CRU)

If a Claimant is injured through accident or disease and makes a successful claim for compensation, the CRU must be notified of the details of the claim by the party paying the compensation. The CRU records all welfare benefits a Claimant receives and, when damages are paid, the compensator is liable to repay the DWP for any injury-related benefits received.

Notification of a claim is lodged by the compensator upon receipt of a formal claim. Before paying an award (to include interim payments), the compensator will apply for a certificate from the CRU setting out the benefits paid and the amount to be repaid to the DWP.

The injury-related benefits are deducted from the compensation received. They cannot be deducted from general damages. Benefits may be deducted from special damages, but only from past financial losses, e.g. lost earnings, travel expenses for attending hospital, medical expenses and prescriptions. Benefits may not be deducted from future losses, e.g. future care costs etc.

Contributory negligence can be reflected when discharging the Certificate of Benefits. Copy correspondence confirming the liability apportionment should be disclosed to the CRU in support.

Benefit recovery is governed by the Social Security (Recovery of Benefits) Act 1997.

If the claim is settled for general damages only, the compensator is still liable to repay the full amount of listed benefits and/or lump sum payments as shown on the CRU Certificate. Lump sum payments are offset against general damages first.

The period over which liability for repayment of benefits runs is the date 5 years after the day following an accident or injury or, in disease cases, the date a listed benefit is first claimed in consequence of the disease.

### 1.2.6 Recovery of National Health Service (NHS) Charges

The recovery of NHS charges following injury that results in compensation is administered by the CRU on behalf of the Department for Work and Pensions (DWP).

The charges are based on a tariff and include ambulance charges and inpatient and outpatient charges. Outpatient charges are £665 and inpatient charges are £817 daily. Ambulance charges are currently £201 per person per journey.

These charges relate to England, Scotland, Wales and Jersey. NHS cases involving Northern Ireland are handled differently, but along similar lines. NHS charges are administered by the CRU (GB), but the CRU (NI) handles the benefits recovery.

A personal injury liability claim may result from a particularly serious injury sustained by a Claimant that has significant life-changing consequences for that Claimant. In these cases, it may be necessary for the claims handler/loss adjuster to assess possible claims under the headings of future loss of earnings, loss of pension benefits, long-term care and mobility, and long-term medication or treatment costs. These are part of the "Special Damages" and are summarized below.

### 1.2.7 Future Financial Loss

When calculating a claim for future loss, the approach adopted is to assess what lump sum is needed to compensate the Claimant for the alleged future loss.

The starting point is the annual net loss the Claimant will incur in the future. This is known as the multiplicand. In a claim for future loss of earnings, this will be the annual loss of earnings.

The multiplier is then calculated by reference to the number of years between the date of the settlement and the date when the loss stops. In a claim for future loss of earnings, this would be the date when the Claimant would, but for the injury, have retired. However, in a claim for the future costs of providing care, i.e. cases involving seriously disabled persons, the multiplier would be based on the Claimant's life expectancy.

The discount rate is applied to calculate deductions from an injured person's compensation payments to reflect the interest those payments are assumed to earn.

Historically, future financial loss lump sum payments were made on a one-off basis using the multiplicand and multiplier approach. The court now has the power to order the whole or part of the award to be paid by way of periodical payments as opposed to a lump sum figure.

In practice, it is generally the case that an initial lump sum payment is made and the residual award then paid by way of periodical payments. The use of periodical payments is generally only appropriate and sought in relation to larger awards of several million pounds.



With regard to future loss of earnings, a Claimant may be able to resume gainful employment, but in a restricted and/or different capacity, resulting in a partial loss of earnings potential. Equally, the injuries sustained may deteriorate at some future date so that the Claimant has to cease working. In these cases, a Claimant can pursue a claim for future loss of earnings based on the above principles, i.e. calculate an agreed annual net loss sum and apply an appropriate multiplier to reflect the potential for future loss of earnings.

**1.2.8 Claimant's Costs**

When assessing a claim Reserve, consideration should be given to the Claimant's costs. In a personal injury liability claim, the Claimant will almost certainly be represented by solicitors.

There is, unfortunately, limited reference material to provide assistance when determining a costs Reserve. An assessment of the likely complexity of the claim and the likely time required to conclude the case are required when assessing a costs figure. For the purposes of this section and the incorporated case examples only, an "average" costs figure of £6,000 - £8,000 has been applied.

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**1.2.9 Claims Handler/Loss Adjuster Costs**

Allowance should be made when calculating a Reserve for any costs or fees payable to the claims handler or loss adjuster. As with the Claimant's solicitors' costs, the level of fee will depend upon the complexity of the case and the time required to bring the matter to a conclusion.

**1.3 Examples**

The following cases illustrate the calculation of a Reserve following notification of the case and initial investigations.

1. When two employees working for the Insured were attempting to lower a heavy gas cylinder from a pick-up truck to the ground, one of the employees allowed the cylinder to fall and it trapped the other worker's finger against the side of the pick-up truck causing personal injury. Investigations suggested a legal liability would attach to the Insured without any contributory negligence on the part of the injured employee. In any event, the initial Reserve was assessed on a worst probability basis.

The injured employee suffered a crush type injury to the tip of his little finger on his left hand. It was established that he was taken to the local hospital by ambulance for medical attention. It was not believed that the injury would result in any permanent disability or impairment.

Investigations determined that the injured employee was absent from work for a three week period and that the Insured paid him in full during his absence.

The calculated Reserve was as follows:

General Damages	3,000
Special Damages	1,000
CRU	750
Costs	6,000
Claims handler fee	500
<u>Total</u>	<u>£11,250</u>

When assessing General Damages, reference was made to the JCG Guidelines which suggested damages for a fractured finger would be £3,125. The loss of part of a little finger was valued at £2,600 - £3,850. The Guidelines did not incorporate the exact injury suffered by the Claimant and therefore the closest entries to the actual injury were taken and then adapted to reflect the injury suffered. A figure of £3,000 was therefore determined.

The information at the time of assessing the Reserve was that the Claimant would not suffer any loss of earnings. An assessment was made for possible medical expenses, travel costs to attend a hospital examination and the possibility that some care/ assistance might be required with domestic duties on account of the hand/finger injury. A Reserve of £1,000 was therefore established.

As there was no apparent loss of earnings, it was unlikely that the Claimant would have secured any benefits from the DWP. A claim for Recoverable Benefits from the CRU was therefore unlikely. However, it was known that the Claimant was taken to hospital and therefore that NHS charges were likely. A Reserve of £750 was therefore established.

The indications when establishing the Reserve were that this was a short duration claim, given that legal liability was not disputed. Accordingly, a costs Reserve was determined at £6,000.

An allowance for claim handling fees was assessed at £500.

2. A public liability personal injury claim resulted from an accident in which a contractor's employee tripped due to a defect in the car park of the Insured's premises, sustaining injury. The suggestion from progressive enquiries was that the car park may have incorporated a number of trip hazards, but as yet no witnesses to the accident had been identified.

The Claimant suffered a broken metatarsal in his left foot. At the time of assessing the Reserve, it had not proved possible to determine the Claimant's wages information and it was not known whether he had received his full pay during his absence from work.

The following initial Reserve was established:

General Damages	5,000
Special Damages	4,000
CRU	1,600
Costs	8,000
Claims handlers fee	750
<u>Total</u>	<u>£19,350</u>

The General Damages Reserve was assessed following reference to the JCG Guidelines. These outlined suggested damages for simple metatarsal fractures at a figure up to £8,750, but limited to £4,250 or less where a complete or near complete recovery is made. Without medical evidence at the particular time, a reserve of £5,000 was established anticipating a complete recovery from injury, but allowing for possible prolonged symptoms.

Although the Claimant's earnings information was not available, it was known that he was a semi-skilled labourer where his annual salary, in the particular geographical area of the UK, was in the region of £20,000. Information from his employers suggested an 8 week absence from work. There was no confirmation that the Claimant had been paid during the period and therefore a loss of earnings figure was assessed at £3,000, based on  $8/52 \times £20,000$ .

Allowance was made under the heading of Special Damages for medical costs, travel expenses and possible care/assistance with mobility following the accident. An allowance of £1,000 was determined, producing an overall Special Damages Reserve of £4,000.

At this stage of the claim, it was not known whether the Claimant would be receiving benefits from the DSS relative to the accident, for example Income Support. An allowance of £1,000 was determined regarding possible benefits repayable to the DWP. A further allowance of £600 was made regarding NHS charges noting the nature of the accident and the likelihood that the Claimant was taken to hospital. The CRU Reserve was, therefore, £1,600.

With regard to costs, the circumstances of the claim meant that the legal liability outcome was uncertain at the time of establishing the Reserve. Accordingly, allowance was made for the work the Claimant's solicitors would undertake in their efforts to prove the Claimant's case. The time expended by the solicitors and the possible difficulty in proving the Claimant's claim were necessary factors to be considered when establishing a cost Reserve of £8,000.

The claims handler/loss adjuster's fee was established at £750.

The claims handler/loss adjuster dealing with this type of case will, undoubtedly, benefit from viewing a wide range of cases within his office in order to appreciate the different considerations that apply to each and every case.

The following further reading is also suggested:

- JCG Guidelines (Current Edition)
- Case law, case reports and quantum reports
- Procedures for liaison with the Compensation Recovery Unit – a Guide for Companies and Solicitors (available from the Benefits Agency)
- MOJ Guidelines
- Civil Procedure Rules Current updates.

#### Example – Schedule of Special Damages

Name: Mr David Jones  
Date of accident: 15.01.23

Loss of earnings 3 days @ £100 per day	300.00
Travel expenses Bus fares to hospital appointments, 3 return trips @ £6.00 each	18.00
Medication	12.00
Damage to clothing Cycling helmet	25.00
Jeans	40.00
Repairs to bicycle	150.00
<b>Total</b>	<b>£545.00</b>



CIVIL PROCEDURE  
RULES (AS RELEVANT  
TO CLAIMS HANDLERS)

2

# CIVIL PROCEDURE RULES (AS RELEVANT TO CLAIMS HANDLERS)

## 2. CIVIL PROCEDURE RULES (AS RELEVANT TO CLAIMS HANDLERS)

### Introduction

The Civil Procedure Rules (for some time referred to as the Woolf Reforms after the originator, Lord Woolf) were introduced into our civil justice system in April 1999. They were introduced to replace the previous, more complex rules governing the courts. Their intention was to eliminate complexity and reduce cost by shortening the time limits for a case, promoting earlier settlements between the parties and transferring control of cases to the judges rather than the solicitors and barristers representing each party. Cost penalties were introduced for non-compliance and unreasonable behaviour by any party.

It is important to be aware that the overriding objective of the Rules is to enable the court to deal with all cases justly. Rule 1 explains that dealing with a case justly involves ensuring that each party is on an equal footing and that the case is dealt with expeditiously, fairly and in proportion to the importance and complexity of the case and the amount of money involved. One of the problems the Rules were introduced to address was the time (and therefore cost) it took to bring a case to court. By stipulating that proportionate time should be allocated to low value and non-complex cases, the Rules help ensure that all parties with civil disputes have access to justice in the shortest time possible.

Since April 1999, there have been numerous revisions to the original Rules. This is a natural consequence of the Rules being put into practice and certain areas requiring clarification or correction. As with all aspects of the civil law, the Rules will be the subject of ongoing periodic revisions, where ambiguities or the need for clarification is identified by actual cases. However, the concept of the overriding objective, which all parties are expected to observe, will remain.

A notable and very important revision took effect on 1 April 2013, identified as the 60th update. This was followed by the equally important 65th update effective 31 July 2013. These revisions are outlined in more detail in Section 2.9.

## 2. CIVIL PROCEDURE RULES (AS RELEVANT TO CLAIMS HANDLERS)

### 2.1 The Rules

The Rules govern the operation of our civil justice system and consequently their scope is extremely wide. The intention of this section is to outline the most important Rules for loss adjusters and claims handlers. These relate to:

- The Letter of Claim or Claim Notification Form (CNF) and the time limits for a response
- The decision on legal liability
- Document disclosure and witness evidence
- The appointment of experts
- Part 36 offers
- Case management and allocation
- Costs.

It should be noted that the Rules are not strictly enforceable within the Scottish legal system (or the systems within the offshore islands of Great Britain). They are generally followed in principle only.

A very important feature of the Civil Procedure Rules was the introduction of pre-action protocols. Prior to the Rules, a party could immediately commence legal proceedings against another without any prior warning. The protocols stipulate a pre-action (before commencement of litigation) procedure that each party must follow. For claims handlers and loss adjusters concerned with personal injury, clinical negligence, disease and illness, and construction liability claims, specific protocols are in place.

### 2.2 Letter of Claim

The Rules and protocols specify that the Claimant shall send a letter of claim to the proposed defendant in a case. The letter must contain a clear summary of the facts of the case on which the claim against the Defendant is based and it must also include particulars of any injury suffered by the Claimant, sufficient to allow the Defendant (or the Defendant's insurer) to reasonably assess the value of the case (and a claim Reserve).

It is important that the claims handler/loss adjuster informs the Claimant (or the Claimant's solicitor) if the Letter of Claim fails to include a clear summary of the facts and sufficient information regarding the Claimant's injury or loss. If the Letter of Claim is sufficiently worded, the Defendant (insurer/claims handler/loss adjuster) becomes subject to the following time constraints:

- The Defendant has to reply within 21 days of receiving the Letter of Claim, confirming receipt and identifying the insurer concerned
- The Defendant then has a maximum of 3 months from the date the Letter of Claim was acknowledged (or from 21 days after receipt of the letter, if there has been a late acknowledgement) in which to investigate the case and respond with a decision on legal liability.

Prior to the Rules and Protocols, Letters of Claim were often extremely brief and uninformative, for example:

"On 1 January 1999, our Client was injured when working for your Policyholder and damages are claimed".

If a Letter of Claim is rejected as non-compliant with the Protocol, the above time limits do not commence until a compliant Letter of Claim is received by the Defendant.

### 2.3 Admissions of Liability

If the claim is investigated and a legal liability on the part of the Defendant is identified, an admission of legal liability should be communicated to the Claimant as soon as possible. The Claimant's solicitor should not be incurring any costs between the date of the Letter of Claim and the expiry of the investigation period, but in practice the admission should be made as soon as possible.



It is vitally important that the admission is made with certainty and with all necessary authority obtained. Where there is an admission of legal liability that has been made before the commencement of legal proceedings (a pre-action admission), this can only be withdrawn, before the commencement of proceedings, if the person to whom the admission was made agrees. After the commencement of proceedings, a pre-action admission can only be withdrawn if all of the parties give consent or otherwise with the permission of the court.

Each application to withdraw an admission will be considered on its merits. However, as a general rule, consent to withdraw the admission is unlikely to be given without the Defendant demonstrating that new evidence has come to light that was not available at the time the admission was made.

It will be appreciated that the Rules require the Defendant to make an admission of legal liability in a personal injury case without first seeing the Claimant's medical evidence.

As a safeguard, it is generally good practice to state that the admission of legal liability is subject to medical evidence. The actual claim settlement offer in monetary terms is then made after consideration of the medical report and the Claimant's special damages schedule.

## 2.4 Document Disclosure

If legal liability is denied in a personal injury claim or if contributory negligence is pleaded, the denial or pleading must be supported by documentary evidence. In many cases, all of the documents to be disclosed to the Claimant's solicitor in support of the denial are listed within the Pre-action Personal Injury Protocol – Standard Disclosure lists. However, the documentation required to support a denial of liability depends on the facts of the particular case.

Examples of documents supporting a denial of liability include evidence of employee training and the employer's risk assessment for the task the employee was undertaking when injured. The Claimant's solicitors can only insist on receiving documents that are relevant and proportionate to the claim and the denial of liability. For example, the injured employee's training record is disclosable, but the entire employer company training manuals for all employees would be disproportionate in the majority of cases.

If the Defendant fails to provide a response to the Letter of Claim within the stipulated time period or fails to support a denial of liability or contributory negligence pleading with the appropriate documentation, the Claimant's solicitor can commence a pre-action disclosure application. This should be avoided by the Defendant claims handler and loss adjuster as the costs of the application will be payable by the Defendant even if a properly supported response to the claim is belatedly submitted.

The duty to disclose documentation under the Rules is limited to documents that exist within the possession of the Defendant or that can be obtained or found following a reasonable effort or a reasonable search by the Defendant. If any documents are not available to the Defendant or simply do not exist, a disclosure statement to this effect should be signed by an appropriate representative of the Defendant and submitted in place of the documents in question.

## 2.5 Experts and Witness Evidence

Generally the Rules only allow the appointment of one expert in each case for each specialist field. An orthopedic consultant and a psychiatric consultant could both present expert reports in a personal injury claim involving these issues. A forensic or metallurgist report could be submitted regarding the cause of an accident or injury. The expert is generally chosen by the Claimant's solicitor and the Defendant then has 14 days in which to submit any reasonable objection to the particular expert. It is extremely rare for a Court to agree to the appointment of more than one expert (i.e. Claimant's expert and Defendant's expert) in a case.

The Rules do not require the disclosure of witness evidence as part of the document disclosure process mentioned above. However, the overriding principle should be kept in mind. Therefore, in appropriate cases, it may be pertinent to disclose an obtained witness statement which significantly supports a communicated denial of legal liability. Note, however, that in these cases an exchange of witness statements should be sought rather than unilateral disclosure.

## 2.6 Part 36 Offers

Under the Rules, it is open to both the Claimant and the Defendant to offer to settle the claim at a particular monetary sum. This procedure is termed a Part 36 Offer as it falls within Part 36 of the Rules.

There are a number of requirements. The offer must be made in writing and the communication must expressly state that it is a Part 36 Offer. The basis for the offer must be clear. It must be stated that the offer will remain open for 21 days from the date of the communication. It must also stipulate that, after 21 days, the party to whom the offer is made may only accept the offer if the parties to the case can agree on costs or if the Court gives permission.

The response or a failure to respond to a Part 36 Offer has a significant bearing on the costs aspect of the claim. For the purposes of this section, it is sufficient to be aware that, if the party to whom the offer is made refuses to settle the claim at the figure offered and then receives a lower monetary settlement at a later stage in the proceedings or when the case proceeds to trial, the declining party will incur a much greater costs burden, possibly extending to payment of the costs of the party making the offer, from the date of the offer to the date the case was settled.

## 2.7 Case Management and Allocation

The Rules provide that, once a claim becomes the subject of legal proceedings, the Court must actively manage the case. The Rules and principles governing case management are essentially matters for lawyers who will almost certainly handle litigated claims. It is, therefore, sufficient in this section to state that the claim will progress through a series of case management conferences so that the claim is resolved as promptly as possible with costs consequently kept to a reasonable level. As part of the case management process, the Courts encourage the parties to use alternative dispute resolution such as mediation.

When a case is litigated and it becomes clear it is to be defended, an early stage of the case management process is to allocate the case to one of three case management tracks. These are the small claims track, the fast track and the multi track. The allocation takes into account the nature and financial value of each case.

In this section, the important consideration for claims handlers and loss adjusters is that the small claims track is the normal track for any claim where the financial value of the property damage claim is not more than £10,000 and the financial value of any claim for damages for personal injuries is not more than £1,000. Although it is unlikely that any claim for personal injuries will have a financial value (or potential financial value) of less than £1,000, property damage liability claims with a value (or potential value) of less than £5,000 are not uncommon.

The general rule for cases falling within the small claims track (and this includes non-litigated cases) is that each party is responsible for its own legal costs, except for the fixed cost of issuing a Claim Form and any reasonable disbursements incurred.

Small track claims are below £10,000 in value and fall within their own small track process and have their own separate small claims court.

Fast track is for those claims that fall below the threshold of Multi track and above small claims court and are therefore between £10,000 and £25,000. They would usually take no more than one day in court.

Multitrack is for the larger and more complicated claims which are over £25,000.

## 2.8 Costs

In many cases, costs are dealt with by specialist departments or consultants due to the complexity of the Rules. Accordingly, the subject is primarily outside the scope of this section.

As a guide only to claims handlers and loss adjusters required to consider costs in any case, an awareness of the following is essential:

- The non-recoverability of costs under the small claims track
- An understanding of conditional fee agreements and in particular the rules and practices governing success fees and after the event insurance premiums
- That success fees on employers' liability cases are fixed at 25% or 27.5% (if the case is funded by a union).

## 2.9 Updates to the Rules

The 60th and 65th updates to the Civil Procedures Rules are commonly referred to as the Jackson Reforms (after Lord Justice Jackson whose work and proposals led to the changes) or alternatively the MOF reforms.

### 2.9.1 60th Update

The 60th update was effective from 1st April 2013 and the important changes introduced were:

- The abolition of recoverability of success fees and after-the-event insurance premiums from the losing party in relation to any conditional fee agreement signed on or after 1st April 2013
- Amendments to Part 36 of the Rules and Part 36 Offers
- The introduction of an alternative funding procedure to conditional fee agreements known as damages-based agreements
- The introduction of qualified one-way costs shifting (known as QOCS), which essentially means that, whilst a winning Claimant recovers costs from a losing Defendant, a winning Defendant does not recover costs from a losing Claimant except where the Claimant has failed to beat a Defendant's Part 36 Offer or where there is fraudulent or dishonest conduct on the part of the Claimant.

The reader should be aware of the changes from a practical perspective. For study purposes, the importance is that Claimant's costs claims can no longer include a success fee or after-the-event insurance premiums and that the counter to this is that the Defendant is most unlikely to recover costs even if successful.

Of relevance to non-personal injury claims, the 60th update included an increase in the small claims limit for property damage claims from £5,000 to £10,000.

### 2.9.2 65th Update

The 65th update was effective from 31st July 2013 and the following changes resulted.

The Employers' Liability and Public Liability Portal was introduced. This new portal applies to employers' liability and public liability injury cases where the cause of action arises on or after 31st July 2013 or for employers' liability industrial disease cases where the date of the Letter of Claim is 31st July 2013 or later. Note that mesothelioma claims, and public liability industrial disease claims are excluded.

The portal is limited to claims where the valuation of damages (excluding interest) is no less than £1,000 and no more than £25,000 on a full legal liability basis.

Under stage one of the portal process, an electronic notification of a claim (known as a claim notification form – CNF) is posted onto the portal by the Claimant's solicitor.

The Defendant/insurer must acknowledge the CNF within one day of receipt.

The Defendant then has 30 business days to investigate and admit liability for an employers' liability claim or 40 business days if it is a public liability claim.

If there is no admission of full liability within the time period, the claim leaves the portal process. For the claim to stay in the process, the admission must not be subject to contributory negligence or subject to evidence that the claimed injury has resulted from the stated accident or breach of duty/regulation. However, the admission can be withdrawn within 15 days of receipt of a medical report if this shows the injury was not a consequence of the accident. This concludes stage one of the portal process.

Under stage two, the Claimant's solicitor then secures medical evidence regarding the Claimant's injury. Within 15 days of final medical report approval, the Claimant's solicitor must provide the Defendant with a settlement pack comprising the medical report, evidence of pecuniary loss, evidence of disbursements, any non-medical expert report, any witness statements and the Claimant's settlement offer.

The Defendant then has 15 days to consider the settlement pack and the offer and to respond to the offer. Non-compliance with this time limit results in the claim leaving the portal process. If unsuccessful, the claim moves to stage three.

If an offer is made within the 15 days, the parties have a further 20 days in which to negotiate final settlement.

Stage three of the portal process concerns legal proceedings. This stage governs the process of the claim form and the final settlement offer from the Claimant. A District Judge normally then decides the value of the claim.

If a claim remains within the portal throughout its duration, there are stipulated costs payable to the Claimant's solicitors, as shown in the following table. VAT and the cost of disbursements are added to the figures shown in the table.

	Claims of £1k to £10k			Claims of £10k to £25k		
	Stage 1	Stage 2	Total	Stage 1	Stage 2	Total
RTA claims	£200	£300	£500	£200	£600	£800
EL/PL claims	£300	£600	£900	£300	£1,300	£1,600

If the claim falls out of the portal and it is an employers' liability or public liability claim, fixed recoverable costs are payable as follows:

	Pre issue £1,000– £5,000	Pre issue £5,001– £10,000	Pre issue £10,001– £25,000	Issued – Post issue Pre Allocation	Issued – Post allocation Pre listing	Issued – Post listing Pre trial	Trial – Advocacy Fee
	Case settles before issue	Case settles before issue	Case settles before issue				
<b>Road Traffic Accident</b>							
<b>Fixed Costs</b>	Greater of £550 or £100 + 20% of Damages	£1,100 + 15% of Damages over £5k	£1,930 + 10% of Damages over £10k	£1,160 + 20% of Damages	£1,880 + 20% of Damages	£2,655 + 20% of Damages	£500 (to £3,000) £710 (£3-10,000) £1,070 (£10-15,000) £1,705 (£15,000+)
<b>Escape</b>	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
<b>Employers Liability</b>							
<b>Fixed Costs</b>	£950 + 17.5% of Damages	£1,855 + 12.5% of Damages over £5k	£2,500 + 10% of Damages over £10k	£2,630 + 20% of Damages	£3,350 + 25% of Damages	£4,280 + 30% of Damages	£500 (to £3,000) £710 (£3-10,000) £1,070 (£10-15,000) £1,705 (£15,000+)
<b>Escape</b>	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na
<b>Public Liability</b>							
	£950 + 17.5% of Damages	£1,855 + 10% of Damages over £5k	£2,370 + 10% of Damages over £10k	£2,450 + 17.5% of Damages	£3,065 + 22.5% of Damages	£3,790 + 27.5% of Damages	£500 (to £3,000) £1,070 (£10-15,000) £1,705 (£15,000+)
<b>Escape</b>	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	+ 20%	na

Looking again at the reserve calculation in the previous chapter, the costs under the fixed recoverable costs scheme would be £2,355 plus VAT and disbursements. This figure is calculated as:

	£1,855
	£500 (10% of damages over £5,000)
Total	£2,355

However, if it is an industrial disease claim, the Claimant's solicitors' costs are submitted on the traditional hourly rate and time basis once the case leaves the portal.

Where employers' liability and public liability cases, also Industrial Disease Claims, exceed £25,000 damages, they are outside the portal from the outset, and they are dealt with subject to the Civil Procedure Rules.

# CLAIMS HANDLING – BUSINESS INTERRUPTION



## CLAIMS HANDLING – BUSINESS INTERRUPTION

# 3

#### Introduction

Business Interruption losses require careful consideration because if this is not recognised early on in the claim a potentially initially small Business Interruption claim can result in a much greater loss. It is common for the Business Interruption and property elements of a loss to be disproportionate.

This section details the main factors you need to consider however it does not go as far as detailing the method/s for calculating a Business Interruption claim.

As a business owner your key objective is to earn enough money to cover your costs and expenses and achieve a financial return (Profit) from your investment of finance, time and resources. Whilst property damage insurance provides protection for the cost of repairing or replacing assets owned by the business, they also require insurance to reimburse the resultant financial losses. Business Interruption Insurance is there to protect against this.

#### 3.1 What do we Mean by Business Interruption?

Business Interruption relates to the consequential loss of income as a result of property damage and aims to put the Policyholder back into the financial position that they would have been in BUT FOR the damage or loss that has occurred to the physical assets. The Business Interruption loss must flow from the damage. For example, imagine a retail newsagent who has a front window broken.

The shop front is boarded up for a few days. During this period, the shop is trading but customers are put off entering believing that the shop might have damaged stock or may be closed. As a result, income falls. Business Interruption Insurance is intended to enable the retailer to recover this reduction in income.



#### Activity

*Consider several claims that you have dealt with. Try to identify any of those claims that might have resulted in a reduction of income.*

#### 3.2 Identifying Possible Business Interruption Claims

There are a number of elements that indicate there may be a Business Interruption claim:

1. The property loss is to commercial premises
2. The loss inhibits production
3. The loss prevents or restricts sales
4. The loss gives an impression to would-be customers that the business will not be able to trade
5. The business has to close as a result of the incident
6. Potential customers are prevented from or put off approaching the business.

#### 3.3 What to do when Possible Business Interruption Losses are Identified

The aim of the Loss Adjuster or claims handler should be to assist the business owner to minimise the negative effect of the property loss as far as possible. In fact, as detailed later in this section, the Business Interruption policy is designed with this in mind.

There is a clear distinction between helping to reduce the loss that is suffered and trying to avoid making payments that are due to a Policyholder. These could be seen as loss avoidance, where the claims team works with the Policyholder to ensure as much of the loss as possible is avoided, and on the other hand payment evasion, where legitimate claims are evaded by unfair and unjust means.

The latter practice has no place in the professional handling of claims and would certainly be a breach of the CILA Code of Conduct and Charter. It would also be contrary to the FCA requirement to Treat the Customer Fairly (TCF).

When potential Business Interruption losses are identified, a proactive approach is essential. The following steps should be taken:

1. Verify whether there is a Business Interruption policy in force
2. Ask the business proprietor or person responsible what they envisage the effects of the property loss will have on the trading of the business
3. If you are advised that there will be no effect on trading either in the form of a loss of income or Increased Costs of Working, verify this. The purpose of this is to avoid the situation where the business owner discovers there is a loss several weeks or even months later, a loss that perhaps could have been avoided
4. Ascertain what steps can be taken to avoid or mitigate the loss. The policy will generally pay for economic steps taken to avoid or mitigate the loss and therefore this should be pointed out to the Policyholder
5. Notify the Insurer and maintain an appropriate reserve for a potential Business Interruption loss
6. Speak with the broker. You can gain the confidence of the broker who may then assist in the avoidance or mitigation of the loss



7. Consider recommending a payment on account/interim payment. The Insured's cash flow may be adversely affected and a payment, particularly if it enables the insured to proceed with mitigation by way of Increase in Cost of Working, will set the claim off on the right foot. Cash flow per se is not covered under the policy but, as solvency post loss is desirable for all, payments on account/interim payments are usually made. The policy generally does not provide guidance as to how the payment should be calculated. It is sensible to try to forecast any payments in advance considering major reinstatement costs and also allowing for operational overheads in order to keep the Policyholder in a cash neutral position.
8. Liaise with the Chartered Loss Adjuster appointed to represent the Policyholder as their Claims Consultant (if appointed) and the Insured's accountant or assessor.

All of the above steps are taken to pre-empt a larger than necessary loss and the Policyholder deserves your support and reassurance that you are there to assist.

### 3.4 Different Types of Cover

This is not a complete guide to Business Interruption cover, but you should be aware that the following types of cover exist:

- Loss of Gross Profit** – this is the most common form of Business Interruption cover and is usually associated with a standard business, e.g. a shop or factory
- Loss of Revenue/Turnover/Income/Fees** – perhaps a dentistry or accountancy practice which is based on fee income where the business is providing a service..
- In addition to providing protection for the potential reduction in money being earned by the business a Business Interruption policy will also include:
  - Increase in Cost of Working – cover for expenditure to avoid or reduce losses.

### 3.5 Gross Profit

Gross Profit policies are intended to cover the business against their loss of gross profit (as defined in the policy). The policy definition of Gross Profit normally differs from the definition utilised in the Insured's audited accounts. There is no accounting or statutory definition of Gross Profit, this from an accounting aspect provides flexibility to deduct the most appropriate costs for the business from turnover. These costs, almost always for manufacturers for example, will include wages.

The result invariably means that when arriving at the accounting Gross Profit more costs are deducted than will be included in the policy definition. This means that the gross profit in a set of accounts could potentially be significantly lower than the amount produced by applying the policy definition. Failure to appreciate that "Gross Profit" is a technical term with a specific definition in insurance policies is the single biggest cause of under declaration of Gross Profit to insurers.

Gross Profit as defined by the insurer within the policy will usually be along the lines of:

The amount by which:

- The sum of the amount of the turnover and the amounts of the closing stock and work in progress shall exceed
- The sum of the amount of the opening stock and work in progress and the amount of the uninsured working expenses

Many policies specify what the uninsured working expenses (UWE) are, typically:

- Purchases (normally the largest UWE)
- Carriage, packing and freight
- Bad debts

Uninsured working expenses are variable costs to the business that it is assumed will reduce in direct proportion to turnover in the event of a loss and can therefore be uninsured leaving the fixed costs that will continue within the Gross Profit calculation and insured.

This may be shown as follows:

Turnover (Sales, Revenue)	£100,000	
Closing Stock	£ 25,000	
		<u>£125,000</u>
Opening Stock	£ 10,000	
Uninsured Working Expenses	£ 90,000	(£100,000)
Gross Profit		<u>£ 25,000</u>

It is important to understand that a high turnover does not necessarily mean a high profit. In the example above, had purchases (contained within the UWE) been an additional £20,000 then the Gross Profit would have been reduced to £5,000.

### 3.6 Rate of Gross Profit

The Rate of Gross Profit is the relationship between Turnover and Gross Profit expressed as a percentage. Remember that a high Turnover does not necessarily equate to a high Gross Profit. It is the Gross Profit that is insured so this is of importance.

In the example given above, we can calculate the rate of profit as follows:

$$\frac{\text{Gross Profit } £25,000}{\text{Turnover (Sales) } £100,000} \times 100 = 25\% \text{ (Rate of Gross Profit)}$$



#### Activity

Change the sales figure in the above calculation to £125,000 and recalculate the gross profit and then the rate of gross profit.

You should note that although a business might make a Gross Profit they may not necessarily make a Net Profit. By insuring the business for Gross Profit this provides finance to the business to continue the payment of its fixed costs (overheads) such as rent, rates and salaries in the event of a property loss.

### 3.7 Loss of revenue/turnover/fees

For all intents and purposes, the words revenue, turnover, sales and income all mean the same thing. Turnover should always be taken as net of VAT as this is recoverable through the process of submitting VAT returns. The normal definition of turnover is "the money paid or payable to the insured for goods sold and delivered and for services rendered in course of the business at the premises". This definition caters for practically all types of businesses and also aligns with the normal accountancy practice in respect of the figure shown in the profit and loss account of the business or their budget.

### 3.8 Increased Cost of working

Following a loss if the insured can avoid or reduce the extent of any loss of revenue say by overtime work then insurers want money to be spent to mitigate the loss. Policies therefore routinely include Increased Costs of working. Key features include:

- A requirement for costs to be incurred
- For costs to be reasonable and necessary
- Solely to avoid a reduction in turnover
- There must be an actual cash increase in the cost claimed e.g. the electricity cost much actually increase
- Expenditure must not exceed the loss of gross profit that would otherwise accrue (through out the maximum indemnity period) if the expenditure was not incurred i.e. the insured can spend £1 to save £1 but no more (referred to as the economic limit).
- There is usually no explicit requirement for the insurers' to approve the costs before they are incurred

Some examples of potential increased costs

- Security guards retained at the temporary alternative premises.
- Costs of a project manager to drive the mitigation plan
- Overtime payments to employees
- Cost of an open evening for customers post reinstatement



### 3.9 Common Extensions to Cover

The primary consideration for a business interruption claim to be accepted is that the insured property has suffered damage by an event insured under the terms of the property insurance policy.

There are also situations where a business may suffer a loss of trade as the result of an event that does not involve loss or damage to the insured property. The extensions of cover will provide additional protection against specific events including:

1. Denial of Access Extension- where the access to the premises is hindered or prevented and therefore normal trading cannot continue. The standard wording is as a result of damage, however, non-damage denial of access cover is sometimes available.
2. Loss of Attraction Extension- where an event causes damage and reduces customer demand as they are simply put off attending. For example, imagine a shopping precinct where you provide cover for a hairdressers next to a major department store. The department store burns down and therefore the hairdressers, which is not affected by the fire, loses income as people simply no longer visit the precinct.
3. Suppliers/Customers Extensions – Damage at the location of a key supplier or customer could be just as, or more significant to the Policyholder in respect of their business interruption loss as damage at their own premises.
4. Failure of Utilities – this extension responds to Business Interruption losses arising from utility failures and typically covers water (including sewerage), gas and electricity supplies, telecommunications may or may not be included. Two distinct forms of the utility extension are available, the first requiring damage at the generating site and the second responding to failure of the supply at the policyholder’s terminal ends.

### 3.10 Other

As with any policy, there are numerous considerations. These go beyond the scope of this course, but some aspects that you should take account of are:

- Usually there is a requirement for there to be some physical property damage before the Business Interruption policy can operate
- Often terms and conditions that apply to the material damage policy apply equally to the Business Interruption policy
- There is usually a requirement for a material damage policy to be in force
- The policy should cover the full risk, i.e. the full amount of the gross profit at risk should be insured
- When setting up the policy, consideration should be given to the length of time it will take to reinstate the material damage and for the business to recover to pre-incident levels. Policies can cover the loss of profit for varying periods of time such as 12 months, 18 months, 24 months or even longer
- The policy may be set up to cover loss of fees income/ turnover/revenue or fees rather than Gross Profit
- The Policy will normally provide cover for Increase in Cost of Working (ICW). The intention of this is to promote the spending of money to prevent losses of income.

### 3.11 Essential Considerations

The following aspects are key to the recognition of Business Interruption claims:

- If the property claim involves a business, it is essential to consider the possibility that a loss of profit is likely to occur
- The Policyholder should be encouraged to consider ways to avoid or mitigate a potential reduction in profit. Some simple steps could be taken:
  - Displaying a sign reading “Business as usual”
  - Advertising campaign and use of social media
  - Outsourcing some of the work that would have been undertaken
  - Contacting customers to advise them of the precise position to prevent rumour and speculation affecting the reputation of the insured business
  - The introduction of extended working hours and overtime payments to staff or contractors.
  - Use of air freight rather than sea for replacement raw materials

Overall it is essential that, having identified the possibility that a loss of profit exists, appropriate advice is obtained to protect the interests of the insurer and the policyholder.

It is equally important to be wary when a property loss occurs and you are informed that no loss of profit will result. In such cases, where Business Interruption cover is available, it is important to make clear and definite enquiries of the Policyholder to ensure that there really is no loss of profit. Failure to do so may result in a late claim being submitted for loss of profit, perhaps much of which could have been avoided had appropriate action been taken at an early stage.



#### Putting this into practice

Talk to more senior members of staff and find out the process that is employed to ensure loss of profit claims are identified. Find out what information is required to establish the extent of the loss. Keep abreast of updates on the CILA BI SIG web pages.

Further reading *The Basic Business Interruption Book* published by CILA and available to download from the CILA website.

Having studied this section, you will appreciate that Business Interruption Insurance is different from most other covers as there is usually a formula in the policy to calculate the loss. In very simple terms, a framework as follows could be used:

Expected Turnover (sales)	£100,000
Less actual turnover (sales) in period of interruption	(£20,000)
Reduction in turnover/Loss of sales	£80,000
Apply rate of gross profit say 10% to reduction in turnover (£80,000 x10% = £8,000)	
Loss of Gross Profit	£8,000
Add Increased Costs	£0
Deduct savings e.g. electricity	£2,000
Amount payable before application of any average	£6,000

This is not a definitive guide and you should review some Business Interruption policy wordings to see how this fits in.



## ALTERNATIVE ACCOMMODATION



# ALTERNATIVE ACCOMMODATION

## 4. ALTERNATIVE ACCOMMODATION

### Introduction

The need for Alternative Accommodation arises when a home is uninhabitable as the result of the operation of an insured peril. In such situations, Policyholders are typically very anxious and they will expect their Claims Handler or Loss Adjuster to provide appropriate support and guidance in dealing with their particular circumstances.

Alternative Accommodation can often turn into a contentious and expensive element of a claim and so it is important to manage this issue carefully.

This section outlines the parties who have an interest in Alternative Accommodation claims. It also discusses when a property is deemed to be uninhabitable and the most common Alternative Accommodation arrangements. Finally, this section provides some practical tips.

## 4.1 Stakeholders in Alternative Accommodation

There will be a number of possible stakeholders or interested parties when Alternative Accommodation is being considered. This means that any decisions or arrangements in relation to Alternative Accommodation can have the potential to impact on numerous relationships.

When considering Alternative Accommodation, each of the following parties/stakeholders will have an interest:

- The Policyholder
- Those residing with the Policyholder, including perhaps children and elderly or disabled relatives
- Friends and relatives of the Policyholder, who may have provided accommodation or support in the first instance
- The Insurer
- The Insurance Broker
- Estate Agents
- Hotel proprietors
- The restoration and repair companies engaged at the property.

This list is not exhaustive, but the point is that if Alternative Accommodation arrangements are seen to go wrong there can be wide implications and sometimes serious repercussions.

### Policy Wordings

A typical wording might be along the lines of:

“The reasonable cost of Alternative Accommodation up to 20% of the overall sum insured should your home be uninhabitable as a result of an insured event”.

You should review a number of wordings as they vary. Pay particular attention to cover for pets, other temporary/ additional costs and the financial limit.

There are three key considerations when handling an alternative accommodation claim:

1. Is the property uninhabitable?
2. What is suitable alternative accommodation?
3. What is a reasonable cost?



### Activity

*Discuss with relatives or friends instances when they have planned to have a kitchen or bathroom fitted and how the disruption to their life made them feel. Find out if any of the work took longer than expected and how that made them feel. Having understood the effect of PLANNED work, imagine how it feels when the work is as a result of a disaster.*

## 4.2 When is a Property Uninhabitable?

This can be a difficult decision because we know that it has the potential to be costly, either in terms of the cost of an Alternative Accommodation claim or as a result of a complaint when Alternative Accommodation was not agreed when perhaps it should.

Before deciding whether a property is uninhabitable, it is worth checking what the Policy says in relation to Alternative Accommodation cover. Generally the Policy will provide cover for reasonable and necessary costs of Alternative Accommodation as a result of the operation of an Insured Peril. The Policy will probably state that the property must be uninhabitable as a result of the Insured Peril.

Sometimes it is obvious that a home is uninhabitable. A fire or flood throughout a premises will usually render it uninhabitable, but what about those instances where there is limited damage and it might be possible to “live around” the damage?



### Activity

*Speak to your friends and family and find out what arrangements they made when undertaking planned works to their home. Did they adopt a different approach dependent on the room, for example refitting a kitchen or decorating a bedroom? What factors did they take into account when making their arrangements?*

There are some key measurements or indicators that can be used to decide whether a property is uninhabitable. These can be divided into two groups, with any of the factors in Group One rendering the property uninhabitable. If more than one factor within Group Two applies, the property is likely to be uninhabitable:

### Group One

- The building is structurally unsafe.
- There are serious health hazards such as effluent, asbestos etc.
- There is no possibility of restoring safe power (electricity or gas).
- The rebuilding works are such that the building is unsafe to anyone other than trained contractors, supervisors etc.
- There are no bathroom facilities.

### Group Two

- The normal sleeping accommodation is not available.
- There are no food preparation facilities.
- The normal daytime living accommodation is unavailable.

## 4.3 Other Factors

Other factors should be taken into account and these combined with any of the items listed in Group Two may render the property uninhabitable:

- The presence of children
- The presence of infirm or disabled persons
- The cost effectiveness of contractors having to work around a family still in residence.

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 Alternative Accommodation Arrangements – What is suitable and reasonable?

When alternative accommodation is required the policyholder and members of the household will suffer a significant impact on their day-to-day lives.

There is often an urgent need to find a solution to the accommodation needs of the occupants of the damaged property. This requires a lot of time and effort to progress the claim and to ensure the accommodation is suitable whilst ensuring the costs are reasonable.

The options available for alternative accommodation usually include the following:

- Making payments to cover the additional cost of eating away from the home if there are no food preparation facilities
  - This is a short term solution only
  - Evening meals are easily sourced but breakfast is not

- Residing with friends or relatives
  - Generally only acceptable for short periods and emergencies
  - Family and friends will often help out in the immediate aftermath but beware of putting strain on extended families for longer periods
- Hotel
  - Should be considered as a short term interim measure
  - Particularly difficult with the young and infirm
  - Where a family needs to be rehoused for a length of time in excess of about two weeks this becomes uneconomic. A standard hotel room will typically cost around £80 per night. For a family of four requiring three rooms that is £240 per night, plus an evening meal (£30). This gives a total of £270 per night. After just two weeks that equates to £3,780.00. In comparison, a minimum let of six months at £800 per month would equate to £4,800.00
  - Very careful consideration should be given to the approval of hotel expenditure beyond the initial emergency period
- Property Let
  - Take account of the economics as detailed above
  - Many are nervous about taking this step but calculation of the long term costs should support your decision
  - Remember that other costs may also be involved:
    - Moving costs
    - Deposits (these should always be the Policyholder's responsibility)
    - Additional travel costs
    - Installation of services, e.g. Broadband, TV facilities, telephone etc.
    - Storage costs for any contents that cannot be accommodated.

**Activity**

*Research accommodation options in your local area. What hotels are available and what is the average cost of a double room per night? Which estate agents offer rented properties and what is the average cost for a two bed, three bed and four bed property per month?*

#### 4.5 Further Considerations

You should always pay careful attention to the Policy cover when agreeing Alternative Accommodation costs. Generally the cover is just for the cost of Alternative Accommodation for the family normally residing at the premises. It does not typically include (unless specified) pets, guests, food, entertainment facilities, additional travel costs, bar bills etc.

#### 4.6 Practical Tips

1. Use a clear set of criteria to decide whether a property is uninhabitable.
2. Explain to the Policyholder at the outset the type of cover that is available for Alternative Accommodation and point out any restrictions.
3. Remember that Alternative Accommodation cover is often subject to a limit. Confirm the limit to the Policyholder so they understand the need for economical decisions.
4. Set clear guidelines on how Alternative Accommodation claims will be paid, for example who will pay the hotel bill and when, what receipts you expect the Insured to provide etc.
5. There is likely to be Alternative Accommodation cover on both Buildings and Contents policies and so the potential for a contribution from other Insurers must be considered. Establish whether another Insurer is involved and discuss Alternative Accommodation arrangements and costs as soon as possible.

6. Alternative Accommodation does give the opportunity to be flexible in agreeing solutions with the Policyholder, for instance a cheaper house might be available but it increases the cost of getting to work. There is no reason why such factors cannot be taken into account but any costs that are accepted must be justified.
7. When a property let is adopted, the Policyholder may have difficulty funding the deposit. While the deposit is not covered by the policy, a practical approach should be taken. Perhaps the deposit could be funded against a payment for other claim items? It is however essential that the property let is in the name of the Policyholder and the deposit is at their risk.
8. Be aware that the cost of relocating pets may not be covered. The position may be affected by the type of pet. For example, the Policy may cover kennels for dogs and catteries for cats, but it will probably not extend to stables for horses.
9. Alternative Accommodation costs are directly linked to the lifecycle of the claim and it is therefore essential that the progress of the claim is proactively managed and any unnecessary delays avoided.
10. Wherever possible, contractors should be given deadlines to complete the works. Any additional Alternative Accommodation costs incurred due to the overrunning of works should be catered for in the contract with the building contractor.

**Activity**

*Discuss Alternative Accommodation with a more senior colleague. Ask them what steps they take to protect indemnity spend and how they judge whether or not a property is uninhabitable. What problems have they encountered and what lessons have they learnt in relation to the handling of Alternative Accommodation claims?*

#### 4.7 Key Points to Remember

- The decisions or arrangements that you make in relation to Alternative Accommodation can impact a wide range of parties so act carefully.
- In order to decide whether a property is uninhabitable, you need to understand the nature of the damage and what rooms and facilities have been affected. You also need to think about the needs of all those who reside at the property and what impact repair works will have.
- Alternative Accommodation can be addressed by various solutions and to identify the best solution you need to consider the needs of the Policyholder, the nature of the claim and all the potential costs involved. It is important to think about the long-term position and not just immediate needs.
- There are often restrictions and limits in relation to Alternative Accommodation cover and so it is essential to check the Policy position.
- Alternative Accommodation costs can quickly escalate and so such claims need to be carefully and closely managed.



## CATASTROPHE HANDLING

# 5

# CATASTROPHE HANDLING

## 5. CATASTROPHE HANDLING

### Introduction

In the insurance industry, the term catastrophe is typically used to describe a sudden or widespread event that leads to a significant surge of claims. In the majority of instances, catastrophe events will be weather related, for example a storm or flood.

Such surges in the number of insurance claims put immense pressure on the insurance industry and those who work in it. However, it is also an opportunity to help and impress Policyholders and to demonstrate the value of insurance.

This section highlights some of the key factors that can influence success in the handling of claims during a catastrophe situation. While we will focus on the flooding of homes, the principles can be applied to any surge event.

This section will look at the following aspects of catastrophe situations:

- Surge plans
- Initial measures
- The use of mitigation contractors
- Alternative accommodation
- Reserving in surge events.



## 5.1 Surge Plans

Insurance claims handling is all about delivering the promise that the Insurer has sold. This section does not deal with what is and what is not covered, but concentrates on how loss adjusters and claims handlers can support insurance companies and what can be done to assist the Policyholder in surge conditions.

The statistics relating to surge conditions are staggering. The volume of work increases considerably so that the number of claims being notified in a day could be the equivalent to those expected in a week, fortnight, a month or more.

Insurers and Loss Adjusters pride themselves on being able to deal with such situations and advance planning is highly important. Issues that need to be considered include but are not restricted to:

- Identification that surge conditions are imminent or exist
- What resources are available to deal with the surge
- How the existing claims will be handled
- Ensuring that suppliers have the capability of dealing with the surge
- Communication.

It is highly likely, if not certain, that the organisation that you work for will have a surge plan. You should seek to ensure that you are fully informed of the parts that are relevant to you and your team.

Surge plans may well include options to change some working practices. These may include increasing authority limits for teams and providers, changing reporting procedures from Loss Adjusters, and altering service level agreements to emphasise the need to prioritise.



### Activity

*Find out where your surge plan is. Read it and understand the implications for you and the people in your team. Ensure that you have available the contact details of people you may need to contact in the event of an unexpected surge.*

## 5.2 Communication

Although communication is the subject of another section of the Certificate level qualification, it is worth considering the particular requirements in surge conditions.

In surge conditions, there is a high probability that the volume of incoming communications will mean that outgoing communication may be difficult. Surge plans will identify this and steps will normally be in place to deal with this.

Policyholders will have a considerable need for information concerning:

- What actions they can undertake
- Who will be helping them
- What will be done
- When it will be done
- What they should do in the event of difficulties.

## 5.3 Initial Measures

Initial measures are the very first actions that are taken to mitigate a loss or initiate the claims settlement process. While mitigation measures should be put in place as quickly as possible, the protection of life and health and safety are the primary concern and saving property should always be secondary to those considerations.

In a flood situation, sewage may be present in the property and/or the electrics damaged, both of which pose a health hazard to the occupants and those attending the property to progress the claim. You should also be mindful of elderly Policyholders who are often reluctant to leave a property despite them being particularly vulnerable to any health risks that might exist.



### Activity

*Refer to your company's health and safety policy and establish what procedures should be followed to protect staff who visit the properties of Policyholders.*

*Now consider a flood claim. What practical steps could you take to ensure that initial measures are put in place promptly while at the same time protecting the health and safety of your colleagues?*

Initial measures are often crucial to the overall outcome of a claim, both in terms of cost and the customer experience. However, in times of surge, resources are often over stretched making it difficult to get the preferred measures in place. It is therefore important to take time to consider what options are available and to assess the implications of each in terms of cost, time and customer service. The Policyholder may propose ideas such as the use of a local contractor and, while this might not be normal practice, it may be the best option in the circumstances.

While weighing up the options is clearly important, delays in taking action can be costly. Failure to mitigate the loss at the outset can have significant knock-on effects later on. By way of an example, significant benefits can be obtained by the immediate initiation of drying at a property which has been flooded. If you delay such activities, the property may take longer to dry which in turn may delay the reinstatement works. This in turn would result in the Policyholder and their family requiring alternative accommodation for a longer period.



### Activity

*Investigate the services of an emergency restoration company that you encounter in the handling of claims. Find out what measures they have in place to deal with a surge and what action you can take as a claims handler to help them respond more effectively in such circumstances.*

When an area has been flooded, water will seep into the fabric of the buildings and, in general, the longer the water remains in the property the greater the damage. Loss

Adjusters will usually be appointed to handle such losses, but even before their visit it is helpful to understand as far as possible the situation that exists. For example:

- Is there still flood water in the property?
- How deep is/was the flood water?
- How long did the flood water remain in the property?
- Is the property safe to access and is it secure?
- Is the property protected? (i.e. by a roof or temporary protection in case of storm)?

Not only will the answers to these questions assist the Loss Adjuster, but it may enable some initial measures to be put in place prior to their visit. Such information will also be useful to any contractors that are appointed.

Claims still need to be validated and all too often this is forgotten in the early stages of a surge situation. Policyholders frequently want to "do something" in response to a flood and often this means disposing of water-damaged contents as quickly as possible. While this task does need to be done and ultimately will help the drying process within the property, it prevents Loss Adjusters from being able to view and assess the extent of the damage at their visit.

If a Policyholder is keen to dispose of water-damaged items immediately, you should agree how they are going to later demonstrate or evidence their loss. The following approaches could be suggested:

1. Recording the loss by taking photographs
2. Taking video footage of the situation (perhaps on a mobile phone)
3. Retaining labels – manufacturers and models
4. Keeping samples – carpets, clothing etc.
5. Locating and keeping documentation such as instruction manuals, receipts and guarantees.

**Activity**

*Talk to a more senior colleague and ask them how they assess the extent of loss in a catastrophe situation. Find out what problems they have encountered in validating such claims and what you can do to avoid such problems.*

## 5.4 The use of Mitigation Contractors

Mitigation contractors can play a significant and valuable role in the response to any catastrophe. Often Insurers will appoint such contractors immediately after receiving notification of a claim and sometimes the contractors will be given delegated authority to proceed with mitigation works up to an agreed value.

It is important to understand the role of a mitigation contractor and the services that they are able to provide. The type of work that they will undertake will vary depending on the nature of the damage but, in relation to wet perils, can include:

- Removing undamaged property to safe and secure storage
- Removing water with the use of
  - Pumps
  - Vacuums
- Commencing drying out with the use of
  - Dehumidifiers
  - Air moving equipment
  - Good ventilation
- Disinfecting affected areas
- Removing materials that naturally soak up high volumes of moisture
- Stripping out of parts of the building.

**Activity**

*Refer to ABI WATER & FLOOD DAMAGE RESTORATION Guide ABI\_BRO3419\_MOISTURE\_MEASUREMENT\_GUIDE\_FINAL-lo.pdf (bdma.org.uk)*

It is important to understand that opinions and guidance vary considerably on the most effective ways of drying and reinstating a property. Claims Handlers should seek to ensure that the most appropriate methods are employed. The different methods are beyond the scope of this course and therefore guidance should be obtained.

Loss Adjusters and Claims Handlers are often appointed subsequently and so they need to liaise with the mitigation contractors to understand what work they have undertaken or plan to undertake and the associated costs. As with all parts of the claims process, it is important that Insurers' money is well spent and as a Claims Handler you may need to ask questions of the mitigation contractors to establish whether their costs are reasonable and whether the work they are undertaking will reduce the overall cost of the claim in the long run. While you may not be an expert in this area, there is no reason why mitigation contractors should not be asked to explain and justify their proposals.

Of course, if you are appointing the mitigation contractor, you can then provide guidance on the scope of work required and acceptable costs. In a surge situation, it is often useful to speak to the mitigation contractors in order to get an understanding of their capacity. This in turn enables you to manage the Policyholder's expectations or make alternative mitigation arrangements.

**Activity**

*Make a list of the type of measures that might be available to help dry out a property. Ask a more senior colleague to explain what measures they use in what circumstances and find out the typical costs for each. Check whether your company has set down any procedures in relation to drying works.*

## 5.5 Alternative Accommodation

In a catastrophe situation, properties are often damaged to such an extent that many Policyholders require alternative accommodation. Unfortunately, local hotels and rental accommodation may also have been damaged in the incident and so alternative premises can be in short supply.

Typically Policyholders do not recognise that securing alternative accommodation is a priority but rather tend to focus on what is happening at their own property. It will be your role to direct their attention to the matter of alternative accommodation, in particular a suitable solution for the longer term and not just their immediate needs.

Obviously the sooner they investigate options the more choice they will have. While Insurers, Loss Adjusters and Claims Handlers can assist Policyholders in securing alternative accommodation, Policyholders should be directly involved in the process. If the damage to their property is severe, they may be required to live in alternative accommodation for at least six months. Policyholders therefore need a solution that will allow them to lead as normal a life as possible.

Alternative accommodation options might include:

1. Staying with friends and relatives – usually only realistic from a cost and suitability point of view for short periods
2. Hotel accommodation – soon becomes uneconomic and will require a provision for the cost of eating out.
3. Short-term holiday lets - more economic than hotels but again can be uneconomic for more than short periods
4. Rented accommodation – economic if the family is to be rehoused for more than three to four weeks
5. Disturbance allowance – need to be satisfied that what is proposed is appropriate and not just a means to save money
6. Extended holidays abroad – subject to validating that the cost is economic.

Of course the policy cover for Alternative Accommodation always needs to be checked, but in general it is an area where creativity and good exploratory communication with the customer can be highly valuable.

**Activity**

*Put yourself in a situation where you require alternative living accommodation for say six months. Make a list of your needs and priorities. Think about the effect that being relocated for several months will have on you, your family and other relationships.*

*Consider the costs that you are likely to incur and review a Policy to consider how much of this is recoverable.*

## 5.6 Reserving in Surge Events

The reader will appreciate that, when a catastrophe hits, Insurance Companies and their suppliers are inundated with new claims. However, Insurers, Loss Adjusters and others involved in such events will have surge plans and often perform remarkably well in the circumstances.

In addition to planning how to deal with the practicalities of a catastrophe, Insurers also need to plan how the claims will be paid for. The cost of a surge event can be significant and Insurers need to be in a position where they can actually provide the necessary funds to pay for the claims. One of the most significant flood events in the UK was the floods in the summer of 2007, the ABI estimate that the cost of the claims was in the region of £3 billion.

It is worth noting that following the 2009 floods in Cumbria, the Insurance Companies and Loss Adjusters were praised by the Cumbrian Local Authorities for the work they undertook.

In a surge situation, Insurers rely on Loss Adjusters and Claims Handlers to provide them with accurate and regular updates on the potential cost of claims. Despite the day to day demands of claims handling in a surge, reserving must not be overlooked. Insurers need to receive a running total of costs incurred to date and estimated costs outstanding for each case to ensure that the necessary funds are available and to maintain the Insurance company's liquidity.

## 5.7 Management Information

In surge conditions, insurers have a need for bespoke management information. In surge events the insurance industry is under extreme pressure from policyholders, the media and the regulator to evidence that they are effectively managing a challenging situation.

The provision of bespoke management information should be included in a surge plan. In essence the information will provide insurers with up to date on the progress of claims received and identify areas that require investigation and/or additional resource.

Information that will be relevant includes but is not restricted to:

- The number of claims
- Geographical spread of losses
- Availability of suppliers
- The number of homes and persons requiring Alternative Accommodation
- The number of claimants who have been contacted
- The number of claimants who have been visited
- The number of claimants who have had drying works started.

As the works progress, it is important to monitor the number of properties that have not dried fully, where works have not started and where Policyholders remain in Alternative Accommodation. These key performance indicators should be continually monitored and the data updated.

## 5.8 Working in a Surge

At some point during your insurance career, you will undoubtedly experience a catastrophe situation. Your normal workload may double or indeed triple within a matter of days and you may be required to work overtime in the evenings or at weekends. A surge will therefore challenge your stamina and your ability to deal with pressure. However, there is much to be learnt from a catastrophe and in the end you will probably find yourself much better equipped to deal with claims in the future.

It is common in surges for people to forget the core principles of insurance and indeed standard claims handling practices, for example checking for underinsurance. Despite the demands of a large workload, you must still be mindful of the principles of insurance and adhere to the fundamentals of claims handling.

You are likely to be dealing with a high number of Policyholders, many of whom will be distressed and anxious. While you may also be stressed, it is important to keep focused on the customer and think about what they are experiencing. Policyholders rely on their insurance company and suppliers to guide and support them through the claims process. One of the most valuable steps in a surge is often the initial conversation with the Policyholder. Not only will it provide you with an insight into the claim, but it is also an opportunity for you to get to know the Policyholder and start the customer relationship.



### Activity

*Catastrophe claim events are getting more common and more expensive.*

*In July 2021 floods across Germany, Belgium, Luxembourg and the Netherlands created \$43 billion in damages and killed 200 people.*

*Hurricane Katrina - which struck the United States in August 2005 - remains the most expensive insured loss event incurring losses amounting to approximately \$90 billion.*

*Covid -19 Insured losses of \$44 billion.*

*In July 2021 floods across Germany, Belgium, Luxembourg and the Netherlands created \$43 billion in damages and killed 200 people.*

*September 2011 - 9/11 World Trade Centre terrorist attack \$40 billion.*

*(Figures correct as at 2022)*

*Research other catastrophe events in your region, ensure customers' needs were met.*

## 5.9 Key Points to Remember

- Health and safety is often an issue in a catastrophe situation. Remember it is not just the Policyholder who may be at risk but also all those who may be required to attend the property to progress the claim.
- Initial measures and mitigation actions are often critical factors in the handling of any catastrophe situation. Resources will be stretched and so creative thinking may be required.
- The availability and suitability of alternative accommodation can quickly become a problem in a surge situation. Act quickly and involve the Policyholder in decisions.
- All claims still have to be validated and so steps need to be taken early in the claim process to establish the details of the loss.
- The reserve position is vital for Insurers.



## BASIC BUILDING ELEMENTS

# 6

# BASIC BUILDING ELEMENTS

## 6. BASIC BUILDING ELEMENTS

### Introduction

There is a fundamental need to understand how buildings are constructed and how the various component parts are damaged as a result of specified perils or accidental damage covered by All Risks policies.

Whilst you a loss adjuster and claims handlers are not required to be experts in building construction it is important to have a knowledge and understanding of building components. This will enable you to interpret a contractor's specification of repair work and be effective when making enquiries with the various parties involved in a buildings claim.

This section provides the basic information necessary to appreciate domestic and commercial structures and provides reference to further reading where a fuller understanding can be obtained.



## 6.1 Construction Terms

It is important to be familiar with all components within a residential structure as well as a commercial property. A selection of suitable construction books are detailed in the activity box below. Reference can also be made to DIY books as they provide valuable information on basic building elements. The following list provides the principal elements, but further reading is required to gain a fuller understanding of each component:

### Foundations:

Strip and trench fill foundations and a basic understanding of retaining walls is required.

### Substructure:

An appreciation of substructure and ground bearing floors coupled with the requirement of insulation.

### Drainage:

Foul, storm and combined systems.

### Suspended ground floors:

Timber or concrete floors coupled with thermal and sound insulation.

An understanding of the location of damp-proof membranes and damp-proof courses in brick external walls and ground bearing slabs is required.

### Superstructures:

A knowledge of external masonry walls, timber frame structures, steel and concrete frames used in commercial properties, staircases, doors, windows and glazing, fireplaces, chimneys and flues.

A basic understanding of curtain walling and cladding systems for commercial properties is also required.

### Roofs:

Roofs feature commonly in insurance claims and a full understanding of pitched and flat roofs is required, including knowledge of warm and cold deck design for flat roofs. With regard to pitched roofs, knowledge of the roof components such as purlins and rafters is required coupled with the general description of pitched roofs including ridges, hips, valleys, verges etc.

### Services:

Including hot and cold water services, electric services, gas services, meters, space heating and plumbing installation for the soil and waste systems.

### Finishes:

A general appreciation is required of internal finishes for ceilings, walls and floors.

The building regulations dictate the minimum requirements for construction in domestic and commercial properties. As the requirements of building regulations have changed over the years, it is necessary to appreciate older forms of construction and how they may be affected by current building regulations. For example, a Victorian property would have a solid one brick external wall, as opposed to a modern property that may be made from a timber frame with brick cladding or a variety of brick/block cavity walls to provide the current thermal insulation requirements that would not be achieved in older construction.

It is recommended that you refer to "You Tube" "How to...." items to understand methods of building construction and building DIY handbooks.



### Activity

*Review with your colleagues at work other circumstances where the method of repair would include upgrading to comply with current building regulations.*

## 6.2 Common Damage

### Fire:

In a fire, buildings are damaged as a direct result of the flames, coupled with sooting to various components and water damage as a result of the firefighting activities. It is not uncommon for rainwater to enter a building following a fire and consideration should be given to mitigating further damage.

Fire losses invariably give rise to some of the largest claims handled by Loss Adjusters and can involve entire buildings or even several buildings. Materials that combust include timber, plastic and bituminous materials, and other elements such as roof tiles or slates can also be damaged in a fire as they are generally supported on combustible materials.

Consideration should be given to smoke logging in voids such as cavities and between floor voids. It is quite common that a partial demolition/strip out of damaged materials is required prior to surveyors being in a position to properly schedule the extent of repair works required.

### Wet Perils:

Escape of Water losses are probably one of the most common perils giving rise to property claims. Water leaks occur in buildings for various reasons. The actual cause of the failure is generally attributed to an accident or wear and tear. It is important to refer to the specific details of policy cover as the repair of the pipework or appliance that failed is generally not covered.

Subsequent damage by the escaping water falls to be considered and can include virtually all internal finishes within a property. These include plastered walls, timber floors, composite boards such as kitchen units, and decorations. The electrical installation is dangerous when wet and may be permanently damaged or suffer from corrosion as a result of ferrous items rusting. As with Fire damage it is important to identify voids in the building structure where the water may collect. These need to be accessed to ensure that all of the property is dried.

It is not uncommon for elements within the structure to fail, such as flat roofs or tanking in basements, giving rise to ingress of water. Affecting a repair to the cause of the ingress is a maintenance item, although where accidental damage cover is provided the subsequent damage would be considered. This again includes the various items listed above.

Following ingress of water, whether from an escape of water or a failed element of the structure, it is imperative that drying out takes place in an efficient manner to stop further deterioration. Damage mitigation specialists provide a full array of solutions for drying structures.

### Storm:

This text is not intended to provide a definition of storm, although the impact of storm events can give rise to significant structural damage to a building depending on the wind speed. On occasions, storm damage may result from exceptionally heavy rain causing parapet gutters and the like to back up and overflow. In exceptional circumstances, whole roof structures can be blown off in high winds and significant rainwater damage may occur as a result of inclement weather.

### Impact:

The impact of vehicles, animals, falling trees or masts colliding with properties can lead to significant structural damage. Sometimes damage from vehicles can cause elements of the structure to collapse, particularly if they are not adequately supported prior to the vehicle being removed. All elements within a structure can be affected including roofs, doors, windows, external walls, and steel or concrete frames. Cladding systems are equally affected by such impacts, although are sometimes more difficult to repair due to their age.

Where structural damage occurs to a property, professional advice is required to specify the correct repairs and it will be necessary to involve a building surveyor or structural engineer.

On occasions, decorative stonework or stone/marble cladding is affected and consideration needs to be given to a suitable match to blend in with the existing finish.



**Activity**

*Consider various elements of damage that would occur in a domestic and commercial property for each of the above scenarios.*

*Review damage mitigation services to see how such companies can provide assistance following an insured event operating.*

**Common Building Defects not caused by perils:**

The most common defect within a structure, often not caused by an insured peril, is that of wet and dry rot. When timber becomes damp, it is vulnerable to wet and dry rot. The source of water could be attributed to a failed damp-proof course, deteriorated external finishing such as render or pointing, or a worn and failed roof structure.

Damage attributed to normal wear and tear is inevitable and is not covered by an insurance policy. This could include an electric system that is old and dated or a roof covering that is beyond its natural life. Flat felt roofs traditionally have a shorter life span (10 to 20 years) before they are in need of replacement.

Failed pointing on brickwork walls and chimneys is a common problem and is sometimes ascribed to storm by Claimants, although in practice it is generally related to age and wear and tear.

The Claims Handler needs to consider how the damage occurred so that the policy exclusions can be applied correctly. Typical exclusions for All Risk cover include the following, although damage attributed to the following would not be covered under policy perils either:

- Faulty workmanship
- Defective design
- The use of faulty materials, collapse
- Inherent vice
- Latent defect
- Corrosion, rust, frost
- Change in temperature
- Rot
- Shrinkage
- Mechanical or electrical fault or breakdown
- Loss or damage to property as a result of its undergoing any process.

A further consideration is that of possible inherent dangers within buildings. Claims Handlers should be aware that some building materials may contain asbestos. These materials are often referred to as Asbestos Containing Materials (ACMs). Materials that could contain asbestos include, but are not limited to, textured wall coverings, vinyl floor tiles, insulation boards and floor coverings.

There are strict legal responsibilities for the handling and disposal of asbestos.

**Activity**

*Ascertain your company's process for the identification and claims handling of asbestos.*



## CONSTRUCTION (DESIGN AND MANAGEMENT) (CDM) REGULATIONS 2015

# 7

# CONSTRUCTION (DESIGN AND MANAGEMENT) (CDM) REGULATIONS 2015

## 7. CONSTRUCTION (DESIGN AND MANAGEMENT) (CDM) REGULATIONS 2015

### Introduction

CDM rules are important because they relate to health and safety, which should always be at the forefront of a Loss Adjuster's mind.

## 7. CONSTRUCTION (DESIGN AND MANAGEMENT) (CDM) REGULATIONS 2015

### 7.1 Why were CDM regulations introduced?

In the UK CDM regulations are enforced by the Health & Safety Executive (HSE).

The Construction (Design Management) (CDM) Regulations were first introduced in the UK in 1995. The object of the regulations is to reduce deaths and injuries on construction sites by changing design and management procedures. The UK construction sector recorded 45 fatal injuries during 2022/23, up from 29 the previous year (HSE) data shows, with a five-year average for fatal injuries in the construction sector at 37.

In the year Great Britain's construction sector recorded 45 fatal injuries during 2022/23, up from 29 the previous year, the latest Health and Safety Executive (HSE) data shows. The five-year average for fatal injuries in the construction sector is 37.

The CDM regulations also established clear requirements for the design and management of construction sites to focus on health and safety and to detail the role/s that are accountable for their implementation.

### 7.2 What is construction work?

First you need to understand what a construction project is so that you understand when the regulations apply.

There are two steps to determining whether an activity falls within the definition of construction work and therefore whether CDM 2015 applies.

**Step 1** – The project/activity must fall within one or more of the three categories set out in the definition, i.e., the carrying out of any building work, civil engineering or engineering construction work\*.

If the activity falls within any of these three categories, CDM 2015 does apply. If the activity does not fall into any of the three categories, CDM 2015 does not apply and Step 2 is not relevant.

\*Note: The Engineering Construction Industry Association (ECIA) defines engineering construction work as the design, construction and maintenance of process plant across the oil and gas, water, environmental, steel and metal, cement, glass, paper, brewing and distillation, food, power generation, nuclear waste reprocessing, pharmaceutical production, petrochemical and chemical sectors.

**Step 2** – If the activity falls into one of the three main categories, the list of specific construction activities in (a) to (e) below are relevant and provide the second stage to determining whether an activity is construction work.

When considering (a) to (e), note that the activities in each relate to specific actions in respect of a structure within the project and should not be considered as interchangeable.

There may be activities similar to those listed which may be considered, but they should be seen in the context of the functions and not just 'made to fit'.

- a. the construction, alteration, conversion, fitting out, commissioning, renovation, repair, upkeep, redecoration or other maintenance (including cleaning which involves the use of water or an abrasive at high pressure, or the use of corrosive or toxic substances), de-commissioning, demolition or dismantling of a structure;
- This relates to activities involved with the building, alteration, upkeep, decommissioning, demolition or dismantling of a structure.
- b. the preparation for an intended structure, including site clearance, exploration, investigation ... and excavation ... and the clearance or preparation of the site or structure for use or occupation at its conclusion;
- This relates to the preparation of a site for an intended structure and the preparation of the site or structure for its occupation or use at its conclusion.
- c. the assembly on site of prefabricated elements to form a structure or the disassembly on site of the prefabricated elements which, immediately before such disassembly, formed a structure;
- This relates to the assembly or disassembly of prefabricated elements on site to form or take apart a structure.
- d. the removal of a structure, or of any product or waste resulting from demolition or dismantling of a structure, or from disassembly of prefabricated elements which immediately before such disassembly formed such a structure;
- This relates to the removal of a structure or waste from demolition or dismantling of a structure.
- e. the installation, commissioning, maintenance, repair or removal of mechanical, electrical, gas, compressed air, hydraulic, telecommunications, computer or similar services which are normally fixed within or to a structure;
- This relates to the installation, commissioning, maintenance, repair or removal of a system of services (e.g. heating system, plumbing system) normally fixed to or within a structure rather than an individual component of any such system.
- Note: The definition specifies certain activities that are exempt from CDM 2015. These are:
- Site surveys, pre-construction archaeological investigations and the exploration for, or extraction of, mineral resources, or preparatory activities carried out at a place where such exploration or extraction is carried out.

### 7.3 Summary of the Key CDM duty holders

Below is a brief summary of the duties of each duty holder according to their role in the project.

CDM duty holder	Summary of role/main duties
<p><b>Clients</b> – Organisations or individuals for whom a construction project is carried out.</p>	<p>Make suitable arrangements for managing a project.</p> <p>This includes making sure:</p> <ul style="list-style-type: none"> <li>• Other duty holders are appointed in writing.</li> <li>• Sufficient time and resources are allocated.</li> <li>• Relevant information is prepared and provided to other duty holders.</li> <li>• The Principal Designer and Principal Contractor carry out their duties.</li> <li>• Welfare facilities are provided.</li> </ul>
<p><b>Domestic clients</b> – People who have construction work carried out on their own home, or the home of a family member that is not done as part of a business, whether or not for profit.</p>	<p>Duties are normally transferred to the contractor on a single contractor project; or to the Principal Contractor on a project involving more than one contractor.</p> <p>However, the domestic client can choose to have a written agreement with the Principal Designer to carry out the client duties.</p>
<p><b>Designers</b> – Who as part of a business, prepare or modify designs for a building, product or system relating to construction work.</p>	<ul style="list-style-type: none"> <li>• When preparing or modifying designs, to eliminate, reduce or control foreseeable risks that may arise during construction and the maintenance and use of a building once it is built.</li> <li>• Provide information to other members of the project team to help them fulfil their duties.</li> </ul>
<p><b>Principal Designers</b> – Appointed by the client in projects involving more than one contractor. They can be an organisation or an individual with sufficient knowledge and experience.</p>	<ul style="list-style-type: none"> <li>• Plan, manage, monitor and coordinate health and safety in the pre- construction phase of a project. This includes identifying, eliminating or controlling foreseeable risks and ensuring designers carry out their duties.</li> <li>• Prepare and provide relevant information to other duty holders.</li> <li>• Liaise with the Principal Contractor to help in the planning, management, monitoring and coordination of the construction phase.</li> </ul>

## 7.4 Domestic Clients

Non-commercial clients were excluded under CDM 2007 but are included under CDM 2015. The regulations will therefore apply to more of the smaller contractors who work with domestic clients.

Although the exemption for domestic clients has been removed, duties of domestic clients are normally transferred to the contractor (on a Single Contractor project) or to the Principal Contractor (on a project involving more than one contractor). The only responsibility placed upon a domestic client is to appoint the Principal Contractor and Principal Designer, where there is more than one contractor.

However, if this (as will be common practice) does not happen, the regulations automatically make the contractor in control the Principal Contractor and the designer in control the Principal Designer.

In recognising that some domestic clients may have already established a relationship with their designer or architect (the Principal Designer) before they go ahead with construction, the regulations allow the Principal Designer to take on the client duties where there is a written agreement between the client and Principal Designer to do so.

## 7.5 Commercial Clients

Recognising the importance and influence a client has over the way a project is procured and delivered and the standards to which these are done, the regulations strengthen and broaden their responsibilities. The regulations encourage clients to actively lead construction projects, whilst recognising that their experience and abilities will be diverse.

The client is responsible for making the arrangements by which the project will be managed and ensuring that those arrangements are maintained and reviewed throughout the life of the project.

Where there is or is likely to be more than one contractor working on a project, the client must appoint both a Principal Designer (PD) and a Principal Contractor (PC) at the earliest opportunity and before construction starts. The client is also responsible for taking 'reasonable steps' to ensure both the PD and PC comply with their duties,

for providing pre-construction information (PCI), ensuring the construction phase plan and the health and safety file are produced, and for ensuring the health and safety file is handed over to any new owner of the structure.

Where an Insurer directly appoints suppliers or contractors, they will become the client and assume the duties under the 2015 CDM regulations.

The Insurer may engage the services of a loss adjuster to act on their behalf in arranging designers, surveyors and/or contractors, but the Insurer will still remain the Client and continue to assume the duties under the 2015 CDM regulations.

### When must a construction project be notified to the HSE?

A construction project is notifiable to the Health and Safety Executive if the construction work is expected to:

- Last longer than 30 working days and have more than 20 workers working at the same time at any point on the project, or
- Exceed 500 person days.

Every day on which construction work is likely to be carried out should be counted, even if the work on that day is of a short duration. This includes holidays and weekends.

This is a brief summary of the CDM regulations. The CILA, together with the ABI, have produced guidance to Loss Adjusters and Insurers and this may be found on the CILA website.

At the time of creating this coursebook the CDM Regulations were due to be updated in 2020 but have since been pushed back due to Corona virus. This means that CDM Regulations 2015 still apply to all construction projects in the UK, no matter whether business or domestic.

### Activity

*Find your company risk assessment policy and using a simple example, such as changing a fuse, use the policy to identify potential risks and minimise/avoid the effects should the risks materialise. This activity should be limited to the planning of the exercise not carrying it out.*

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