

CLAIMS FOCUS

REAL ESTATE BULLETIN MAY 2017

Ogden discount rate change and The Enterprise Act

The Lord Chancellor announced on the 27 February 2017 that the Ogden discount rate will reduce (from 2.5% to -0.75%) with effect from 20 March 2017. The Ogden rate is used to calculate future losses for settlement of the more serious and complex injury claims. This discount rate is linked to low risk investments, because claimants are treated as risk averse investors given they are financially dependant on their settlement sum for long periods.



This dramatic reduction suggests that the government believe a claimant investing their damages settlement would see a negative return on their investment; insurers are now therefore required to top up the settlement sums awarded to supplement this.

A typical example as an illustration, a claim involving an injured child with a long life expectancy, which settled at £12 million at a 2.5% discount rate is now likely to cost approximately £17,280,000; thus an additional £5,280,000 per claim.

This change will primarily impact the liability markets such as motor, employers' liability (EL) and public liability (PL) the most.

The majority of our real estate clients will be less affected by this change given that their main risks relate to property, with property owners' liability and public liability being a much smaller portion of their risk.

Exactly what implications this change will have will vary between clients, depending on a number of factors including claims history and risk management.

We encourage our clients to ensure they have robust contracts in place with their managing agents to assist in any potential redirections of claims arising from managing agents' negligence.

If you would like to discuss any aspect of this reform and what it means to you please get in touch with your usual JLT contact.

[More on the change in Ogden Rates](#)

THE ENTERPRISE ACT – HOW WILL IT AFFECT THE PAYMENT OF CLAIMS?

The Enterprise Act 2016 came into effect on the 4 May 2017 (a year after the grant of Royal Assent) and will apply to all contracts entered into from that date.

The Enterprise Act inserts new provisions into the Insurance Act 2015 (sections 13A, 16A and 22(3A)) and will imply a term into all contracts of insurance that requires an insurer to pay sums due within a “reasonable time”.

The act will provide policyholders, for the first time, with a right to claim damages (over and above the original claim amount) in the event that there is an unreasonably delayed claim settlement.

Whilst it is clear that the objective of the act is to incentivise insurers to pay claims as promptly as possible by providing

policyholders with the right to claim further sums in the event their settlement is delayed, what is not clear is how it will be determined.

The Act refers to a “reasonable time” to pay a claim, but what constitutes “reasonable” will undoubtedly be debated in the courts in the coming years. What is certain is that the type of insurance and the size and complexity of the claim will all need to be taken into account when deciding what a reasonable time is for insurers to investigate and assess the claim. Put simply, the reasonableness test will need to be carried out on a case by case basis.

We welcome the changes brought in by the Enterprise Act as it provides policyholders with an opportunity to claim damages in the event that insurers’ delay in settling claims causes further loss.

The changes are likely to put pressure on insurers to ensure that their conduct is exemplary when settling claims and, in particular, in ensuring payments are not unreasonably delayed.

The Act does not affect the right for insurers to have sufficient time in which to investigate and make decisions around policy liability and indeed, encourages an open and transparent dialogue with insurers when a claim is submitted to ensure claims progress as quickly as possible.

A large proportion of claims are managed on behalf of insurers by loss adjusters, and we already have service level agreements in place to process claims payments within two working days of the settlement being agreed. We measure and monitor their performance on a continual basis to ensure adherence.

[More on the Enterprise Act.](#)



CLAIMS DEFENSIBILITY

What is it?

Put simply it's a comprehensive and robust set of procedures that, if adhered to, can assist in successfully defending a civil liability claim.

How does it work?

In the event a civil liability claim is intimated against your company, your insurers are required to investigate the circumstances of the claim in a very short space of time before making a decision on whether legal liability would

attach. It is therefore crucial that there are no delays in providing insurers and/or adjusters representing your company with full information regarding not only the circumstances leading up to and after the loss (such as an accident book entry/witness evidence) but also other important documentation that can demonstrate that your company's approach to risk management is sound and proactive. For example, training records, method statements and risk assessments.

Claims defensibility looks at the types of claims you could be exposed to and

how your company would respond to a claim. It identifies any weak links in your procedures and proposals are then made regarding changes that, if implemented, could help in defending a claim.

Prevention is better than cure and good risk management practices and procedures are key to creating the foundations for a rigorous health and safety regime. Claims defensibility takes things one step further and reviews your ability to defend civil liability claims by focusing on the five key areas shown in the chart below:



JLT Specialty Limited provides insurance broking, risk management and claims consulting services to large and international companies. Our success comes from focusing on sectors where we know we can make the greatest difference – using insight, intelligence and imagination to provide expert advice and robust – often unique – solutions. We build partner teams to work side-by-side with you, our network and the market to deliver responses which are carefully considered from all angles.

Our Real Estate division has a wealth of experience, recognised within both the insurance market and real estate sector. The team specialises in the placement and management of real estate focused solutions utilising market leading IT platforms that are web based and allow control of the programme and access to real time information anywhere in the world.

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What are the benefits?

The potential benefits of having improved claims defensibility include:

- Identification of weaknesses in your defensibility processes
- Defending/redirecting claims directly could reduce claims costs – and premiums
- Focus on defensibility processes can help lead to an enhanced health and safety culture
- Improved defensibility processes could reduce the risk of a health and safety prosecution
- Focus leads to greater integration of HR and risk management

CLAIMS DEFENSIBILITY TRAINING

We have organised a training session on claims defensibility. This session is intended to be informative and practical so we would encourage anyone who may become involved in a claim investigation to attend (this could also include your managing agents). If you would like to attend please contact Michelle Lucas (michelle_lucas@jltgroup.com) or your usual JLT contact to book your space now.

Details of the training session are shown below:

Date: Wednesday 20th September 2017

Time: 08.30 for coffee and breakfast, session starts at 09.00 finishing at 11.30

Location: The St Botolph Building, 138 Houndsditch, London, EC3A 7AW

This publication is for the benefit of clients and prospective clients of JLT Specialty Limited. It is not legal advice and is intended only to highlight general issues relating to its subject matter but does not necessarily deal with every aspect of the topic. If you intend to take any action or make any decision on the basis of the content of this bulletin, you should first seek specific professional advice.