COMMERCIAL GENERAL INSURANCE

CIP-04

V3

Technical updaters

Since it was first published, a number of technical contributors have updated, reviewed and verified specific and specialised sections of this textbook. Their work has been invaluable in producing such a comprehensive textbook and is much appreciated.

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Disclaimer

Version

Version 2 of CIP-04, published in August 2023 is current at the time of its publication. Any changes (legislative, regulatory, taxation, etc.) thereafter are not included in this textbook.

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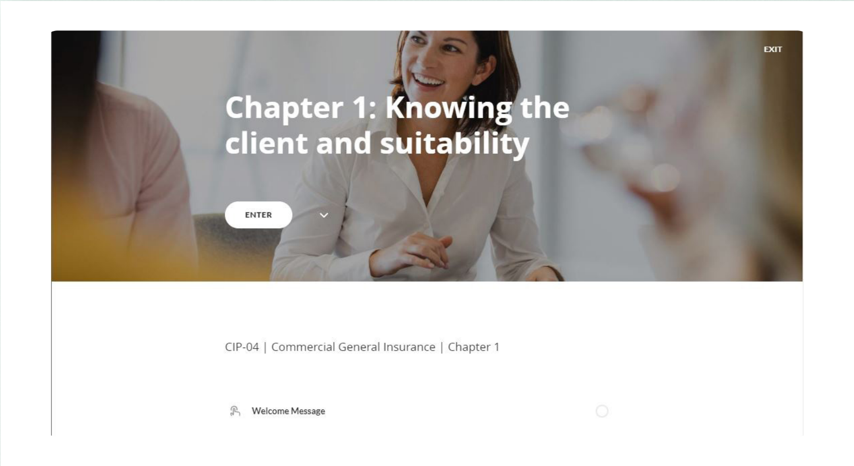
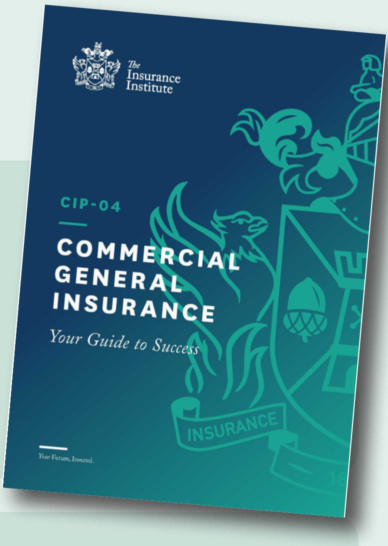
How to study this module

Before starting to study this module, you should log into the Member Area of www.iii.ie to access your online learning supports. Below is a snapshot of what you will see when you click into Your Learning Centre for CIP-04 under the 'My Examinations' tile in Connect.



This section welcomes you to the module, identifies how you learn best, provides you with your guide to success and gives you invaluable study skills tips.



Your guide to success

Your guide to success is essential to getting you started on this module as it shows you how to plan your study and cover all the material ahead of your exam. It will help you find the best way to approach your study, give you advice on how to manage your time and ensure you give yourself the best chance of exam success.

Online study supports

We have a range of study supports that can help you as you work through this module. As well as your guide to success, these supports include:

- an e-book
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- webinars
- chapter-by-chapter key points
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- access to the Quitch app which tests your knowledge chapter-by-chapter
- microlearning resources to help with challenging topics.

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Textbook

All of the questions that will be in your exam are based on this textbook. The learning supports are there to aid your study of the textbook, not replace it. There are some key features in this textbook designed to help you break down and remember the material as well as understand central concepts. These features work as follows:

Examples: These indicate how theories operate in simple day-to-day situations.

Just thinks: These offer you an opportunity to interact with the material by applying your learning.

Key terms: These appear in the page margins and at the end of the textbook, and explain the meaning and context of insurance terms you may not have come across before.

Quick questions: These appear throughout the textbook and are designed to test your knowledge as you go. You can check your answers at the end of each chapter.

End of chapter questions: These are a great opportunity to test your learning and understanding of the chapter's topics. The answers are also there for you to check.

Sample multiple-choice questions: These can be found at the end of each chapter and are examples of the type of questions that may appear on your exam paper. These questions and solutions are provided to help you to focus your study and prepare for your exam.

Microlearning resources: These could be in the form of an infographic, an eLearning activity, a video or a publication. They have been developed to help you with challenging areas/topics. To access these, just log into the Member Area of www.iii.ie, click on the Connect logo, go into Your Learning Centre and select the microlearning section of the relevant chapter.

Insurance policy extracts: Throughout this textbook you will see references to various insurance policies. The textbook summarises and abbreviates key information concerning policy wordings. They are not necessarily actual wordings nor should they be taken as applying universally across the market. There tend to be many variations of wording and ranges of exclusions. For this reason you are strongly advised to acquire a number of policy wordings yourself to see what is available in the market.

Client profiles: These are provided to assist you in your study of the various types of commercial general insurances (Chapters 2-6). The client profiles are designed to help you reflect on how and why each different class of insurance may (or may not) be suitable for a particular client. This allows you to relate the material in the chapter to situations which you, as an adviser, may face on a daily basis.

Websites: Throughout the textbook we refer to websites that can be used to provide additional context to the material you're studying and keep you up-to-date with current trends and developments. It is important to note, however, that you will only be examined on the information contained within this textbook.

Index: At the end of the textbook, there is an index of websites, legal cases, legislation, acronyms, key terms that provide a quick and easy reference to the material featured in the textbook.

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Chapter

1

Knowing the client and suitability

What to expect in this chapter

This chapter explores the early stages of the adviser-client relationship in commercial insurance. We begin by looking at the process of getting to know a client so that the insurance adviser or advising firm can fully understand their needs and the risks the client faces. We will also examine the process of recommending suitable products for a commercial client, including the important regulatory provisions that apply.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Building relationships**	Identify the benefits of establishing a positive relationship with a commercial client, explain the information-gathering process for commercial clients and identify the main elements of a commercial risk presentation to insurers.
B	**Gathering information**	
C	**Presenting information to insurers**	
D	**Considering insurers and insurance products**	Explain the criteria used to make recommendations to commercial clients with regard to both insurance products and providers.
E	**Presenting the recommendation to the client**	Outline the scope of a statement of suitability used to detail the reasons underlying any advice or information given to the consumer regarding a commercial insurance policy.

A Building relationships

As we will see in Section B, the process of getting to know a new commercial client involves gathering detailed information so that the **adviser** fully understands the **client's** business and their insurance needs. However, there is more to this process than simply asking and answering questions. The adviser must also take the time to develop a good relationship with the client.

This relationship is a key element of the professional service provided by advising firms such as insurance brokers. It is also an essential component of the customer experience at all stages of the insurance process.

adviser
individual (person) involved in the advising process; this may be an employee of an insurer or an intermediary

client
a person, firm or organisation that has appointed a regulated entity to act on their behalf for insurance purposes

Long-term relationships are particularly important in commercial insurance, even though insurance policies are normally renewable each year. For large or complex risks, this will involve face-to-face visits and discussions. For smaller clients, communication is more likely to be by phone and email. However, in both cases the time taken to build a positive relationship can bring important rewards.

Before we look at the benefits of long-term relationships, it is helpful at this stage to clarify some of the terms that are used in this textbook. The term 'adviser' refers to a person involved in the advising process. An adviser may be an employee of a firm, such as an insurer or intermediary. We use the term 'client' to refer to a person or **firm** that has asked a regulated entity (insurer or intermediary) to act on their behalf for insurance purposes, or who is simply seeking their advice and expertise about insurance. In commercial insurances, the term 'client' is frequently used to encompass both consumers and larger commercial **customers**.

firm
a regulated entity (as used throughout this textbook to refer to insurers and/or intermediaries)

customer
person, firm or organisation to whom a regulated entity provides, or offers to provide, an insurance product or service (for an intermediary, the terms 'client' and 'customer' being interchangeable) and any person who requests such a product or service

For the client, the benefits of long-term relationships include:

- Convenience – When a good relationship has been established and developed, the client can easily contact the adviser when they need help or guidance. They don't need to waste valuable time researching insurance products and services, as the adviser will do this for them.
- Confidence – Most small-to-medium sized enterprises (SMEs) do not employ risk management professionals and their owners rely heavily on the guidance provided by the insurance adviser. Effective long-term relationships are based on trust and when this trust is established, the client can be confident that they have the appropriate level of insurance protection.

- Bespoke/tailored professional advice – This is important for both large and small commercial clients. An insurance adviser can give valuable advice at all stages of the insurance process. This may include, for example, guidance on the insurance implications of an expansion of the client's business or help with the process of making a claim under an insurance policy. In a long-term adviser-client relationship, this advice is based on a detailed understanding of the client's needs and circumstances.
- Ensuring value for money – Where the adviser has an in-depth knowledge of a client's business and of their attitudes/preferences, they can tailor the insurance solutions to ensure that there is no overlap between policies and that the client is not paying for unnecessary protection. For example, as we will see in Section B2, some clients may prefer a lower level of cover in return for a premium discount. Usually, the adviser will highlight any gaps in cover to the client. This allows them to make an informed decision on their cover. Whatever the client's preferences, a good adviser-client relationship aims to ensure that the client has the cover they require, at a price they consider reasonable. This attention to detail is part of the 'added value' that a professional adviser brings to the client relationship.

Long-term relationships also bring important benefits to the adviser, including:

- Extra business opportunities – For intermediaries in particular, a satisfied client may bring more insurance business, as well as referring new customers.
- Better retention rates – The better and longer the business relationship, the more likely it is to continue.
- Fast and efficient problem-solving – Long-term clients are more likely to report difficulties earlier. Issues can therefore be resolved more quickly, before they escalate or become the subject of a complaint.
- Client industry insight – Gaining valuable knowledge of the client's industry, e.g. trends, needs and requirements, can lead to increased business opportunities.

Strong relationships between, for example, key individuals of the adviser firm and the client firm tend to produce meaningful, long-term arrangements that benefit both adviser and client. If the adviser's key contact moves to another firm this may open up additional business opportunities for the adviser. This is particularly evident when a financial controller moves to another firm and has had a good experience dealing with an adviser in a previous role. However, a disadvantage of relying on one key individual (i.e. the 'single contact' approach) is that, if the contact moves elsewhere, the adviser's relationship with the existing client firm may be jeopardised. It is therefore unwise for the adviser to rely solely on one contact.

service level agreement (SLA)

a formalising between parties of the obligations and measurement tools for the agreed standard of service being provided primarily by an adviser, though some responsibilities will be placed on the client

In cases of large or complex businesses that require particular or specialist services, there may be a **service level agreement** (SLA) between the adviser and the client which outlines the extent and nature of the services provided by the adviser.

Chapter 1

B Gathering information

In the Compliance and Advice module, we explored some **Consumer Protection Code** (CPC) requirements for getting to know a customer (client). The CPC requires a regulated entity or firm to 'seek from its customers information relevant to the product or service requested'. This is a general principle that applies to all dealings with customers and clients.

There is a further requirement that applies to a **regulated entity's** dealings with **consumers**. Before recommending, arranging or providing an insurance product or service, a regulated entity must gather and record sufficient information from a consumer. The level of information needed will depend on the nature and complexity of the product or service.

Reminder Consumer Insurance Contracts Act 2019 – gathering information - consumers v non-consumers

With regards the gathering of information from consumers, the Consumer Insurance Contracts Act 2019 (CICA) replaces the traditional duty of utmost good faith with a consumer's duty of disclosure.

While this textbook presumes that the commercial insureds being referred to throughout do not fall within the Act's definition of consumer, if a commercial client falls within CICA's definition of a 'consumer', then the following applies when gathering information:

- CICA places a statutory duty on the consumer to answer all questions asked by the insurer 'honestly and with reasonable care' both at proposal and renewal. Therefore, there is no obligation on the consumer to disclose any information not specifically requested by the insurer. In fact, where an insurer fails to investigate a consumer's absent or obviously incomplete answer to a question, it (the insurer) is deemed to have waived any further duty of disclosure of the consumer.
- The questions posed by the insurer must be specific and in plain and intelligible language. Any ambiguity about the meaning of a question will be interpreted in favour of the consumer.
- Insurers must provide consumers with information, on paper or another durable medium before taking out or renewing an insurance policy.[1]

In reality, advisers will not make a practical distinction between 'consumers' and other customers when gathering information. It makes good business sense to get to know every client and to fully understand the risks that they face.

In this section, we will explore the process of gathering information and the key elements of this process.

Consumer Protection Code
code issued by the Central Bank of Ireland setting out requirements that regulated firms must comply with in order to ensure a minimum level of protection for consumers

regulated entity
a financial service provider authorised, registered or licensed by the Central Bank or other EU or EEA member state, that is providing regulated activities in the State

consumer (potential consumer)
any of the following:

a. a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts)

b. incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided not part of a group with a combined turnover of more than €3 million)

... and includes a potential consumer

1 This relates to Sections 8.2, 8.3, 8.5(a & b), 8.7(a), 8.9 & 8.10(a) of the **Consumer Insurance Contracts Act 2019**.

Gathering information enables the adviser to:

- act in the best interest of the client
- identify and understand the risks the client has to manage
- describe the risk fully and accurately to current and potential insurers
- provide product options that meet the client's wants and needs
- help the client with the risk management process, if competent to do so.

In gathering information from the client, the adviser will wish to:

- comply with the requirements of the CPC
- comply with anti-money laundering and data protection requirements
- note and record the key individual in the company's contact information
- understand the client's business (e.g. the nature, history, scope and future direction of the business and whether it's different from a 'typical' business in the sector)
- establish if the client has other business interests (e.g. property ownership)
- obtain specific data relating to the company (e.g. sums insured, wages, turnover)
- confirm the client's insurance and claims history
- discuss the client's expectations of the business relationship with the adviser.

risk management

the identification, analysis and economic control of those risks that can threaten the operations, assets and other responsibilities of an organisation

B1 Considering the client's wants and needs

The client will bring certain 'wants' to the adviser. These may come up through a structured **risk management** process, as discussed in The Nature of Insurance module or through a less formal approach. The client may have had difficulties with a previous adviser or insurer, or they may simply want to reduce their overall insurance spend. Analysing the client's wants is not always straightforward; it is important that the adviser looks beneath the surface to identify their exact nature. Only then can the adviser make an informed assessment as to whether the client's wants are achievable. Example 1.1 is a possible scenario.

broker

an insurance intermediary that provides their principal regulated activities on the basis of a fair and personal analysis of the market

Example 1.1

James is employed as an adviser by ABC Insurance Brokers. The **broker** recently placed an advertisement in a newspaper promoting its services for small businesses. As a result of this advertisement, James received a call from Paul, the owner of a local printing company. James has made an appointment to meet Paul to discuss his insurance arrangements.

Paul does not currently have a relationship with ABC Insurance Brokers. James has spoken very briefly with Paul and has very few details about the current insurance arrangements, or about Paul's motivation for requesting a meeting. Paul may simply be curious as to what is available on the basis that 'nothing is lost' by comparing their current insurance arrangements with other options. In this case, James will need to ask Paul a lot of questions to establish the company's wants and needs and explore them in more detail.

The wants that a client describes represent the client's ideal perspective. However, there can be a big difference between a client's wants and 'needs'. The client's needs exist, whether the client is aware of them or not and these relate to their potential exposures (risks) and insurance requirements. The adviser's role is to identify the client's needs and blend these with their wants so that they can recommend the most suitable solution.

B2 Considering the client's attitude to risk

Each client has a particular **risk appetite**, ranging somewhere between the two extremes of '**risk averse**' and '**risk seeking**'. Extract 1.1 outlines the Central Bank requirement on assessing risk appetite.

1.1 Extract Regulatory imperative – CPC 5.16d (abbreviated)

When assessing the suitability of a product or service the adviser must, at a minimum, consider and document whether the product or service is consistent with the consumer's attitude to risk.

The client's appetite for risk will influence how they view their insurance needs and how much importance they give to them. It will also determine how comfortable they are with carrying and managing the risks they are exposed to. No individual or business will be comfortable with carrying every risk themselves. This is because:

- unknown future costs are not always easy to meet from available resources (severity)
- there is no way of knowing how often the risk will become a real event (frequency)
- the apparent likelihood of risk may be completely different to the mathematical likelihood (frequency)
- ultimately some risks, no matter how unlikely they seem to be, are potentially too costly to meet from available resources (severity).

When considering an appropriate product and insurer for a client, the adviser must therefore understand that client's attitude to risk. This can be achieved by outlining options or scenarios to the client in order to generate discussion. Table 1.1 lists the differing attitudes to risk and the corresponding likely insurance preferences.

Table 1.1 Insurance preferences of different risk attitudes

Risk averse	Risk neutral	Risk seeking
• Desire to transfer as much insurable risk as possible • Wide policy cover • Minimal levels of **excess**	• Willingness to accept some cover restrictions • Standard policy cover • Moderate levels of excess	• Willingness to accept other forms of risk retention, e.g. **first loss cover** • Basic/minimum policy cover • Higher voluntary levels of excess • A self-insurance program with an aggregate to cover catastrophic losses

risk appetite
measure of a proposer's willingness to accept risk

risk averse
a desire on the part of an individual or company to minimise the risks to which they are exposed, either through risk management or insurance

risk seeking
a willingness on the part of an individual or company to accept risk

excess
the amount of a claim that must be paid by the insured

first loss cover
a means of insuring less than the full value of property (usually for theft cover where there is a high sum insured) with the insurer's agreement

Quick question 1

A commercial property policy offers a choice of excess levels. The standard policy excess is €350, but an attractive premium discount is offered if a client opts for a €1,000 excess.

As an adviser would you recommend the higher excess option to a client you have identified as:

a. risk averse?

b. risk seeking?

The answer is at the end of this chapter.

For example, if the client prefers to retain their own-damage risk for their motor vehicles, this may steer the adviser away from markets that favour comprehensive cover as they may not provide competitive quotes for lower levels of cover.

Advisers employed by insurers are also required to establish the client's attitude to risk for product comparison purposes, where the insurer offers more than one product.

Just think

Why can't we simply ask the client whether they consider themselves risk averse or risk seeking?

Different people may have a different understanding of the terms 'risk averse' and 'risk seeking'. Therefore, a specific question (e.g. how large an excess are you willing to bear?) is easier to understand and can help to establish a more accurate assessment of the client's appetite for risk.

B3 What information do we need from the client?

The adviser needs to gather information about the client and their business. This includes the general information needed for all commercial insurances, as well as the specific details required for particular types of policy.

Business description

It is very important that the adviser gains a comprehensive understanding of the client's business description. When making a commercial risk presentation or submission to the insurance market, the adviser needs to ensure the business description is as clear as possible so there will be no ambiguity at quotation stage.

The adviser should also ensure that their client is reminded at each renewal of their continuing obligation to inform them of any material change to the business description.

An inadequate business description may also cause issues for a policyholder at the time of a claim.

Table 1.2 shows the type of information that will be gathered from all commercial clients. The specific information needed for particular types of policy will be considered in the later product-related chapters.

Table 1.2 General information

Required information	Main reason(s) for inclusion
Client (including current and any previous trading names)	The full legal title and legal structure of the client/business is required. For example, if the company is called "John Smith Ltd", it is important to distinguish that business as the insured rather than "John Smith" as the business will be a separate legal entity.
Address of business (including all trading locations and Eircodes)	The full postal address (including Eircode) is needed for written communications. Locations are vital to the pricing and underwriting of many different classes, e.g. property (including flood/**subsidence** checks).
Business description (including all trading activities and property ownership where applicable)	The business description must be comprehensive and accurate. It must include all aspects of the client's activities and the territories they operate in. As we will see in later chapters, it is vital that the business description is worded correctly. It acts as a serious restriction to the policy and cover will not extend to any activity beyond that stated on the schedule. This is particularly important for liability and business interruption risks.
Trading history (including date of establishment)	This is to establish whether activities practised or categories of goods sold in a previous period are relevant to the present insurances, e.g. chemical products that are now banned because of safety concerns.
Claims experience	A confirmed **claims experience (history)** across all classes of insurance will benefit both the adviser and the **underwriter**. In particular, the underwriter will want to know the full experience of notifications, payments, outstanding estimates, open and closed claims, dates of each claim and the class of insurance it falls under. A 5-year claims history is a general requirement for most insurers. For example, a 3-year claims history may not show sufficient trends in the business. Liability claims can take several years to develop and a reserve for a liability claim notified 3 years ago may not be accurate. Additionally, reviewing claims for all lines of business may show whether the client/business has a culture of good housekeeping, safety training, safety standards etc. which can have an influence across several lines of business.

subsidence

the gradual caving in or sinking of land

claims experience (history)

a detailed breakdown of past losses, giving details of paid and outstanding claims normally covering five years (ideally confirmed by the holding insurer)

underwriter

a person or firm who assesses a risk proposed for insurance, decides whether to accept it and, if so, sets the level of premium required and the terms and conditions to be applied

Table 1.2 General information (contd)

Required information	Main reason(s) for inclusion
Cover required	Establish cover required and relevant underwriting information and material facts (see Chapters 2-6).
Forward plans	New activities, a new or changed location, or a planned expansion or shrinkage will all be relevant to different classes of insurance to a greater or lesser degree. Some insurers will not allow any refund of premium following a reduction in turnover/business activity from that anticipated when cover is arranged. The adviser should be aware of this when recommending a suitable product/insurer.
Date of visit/contact	Recording the time and date for receipt of all information/instructions will demonstrate that the firm sticks to both its own internal requirements for client servicing and any regulatory requirements that may apply.
Reason for visit	If it is a referral this should be stated. If the client has had a poor experience with an existing insurer or adviser, this should also be noted.
Person(s) seen/ position/contact information	The adviser should record details of the person they saw or spoke with. Ideally, this should be the person who makes the decisions about insurance in the client business.
Inception/renewal date	This will provide the basis to draw up a timetable.
Current insurer and premium details	Insurers and intermediaries commonly request this, as it provides a basis for discussing why the client requires the adviser's services.

Quick question 2

When gathering information, why is it important to find out as much as possible about the client's future plans?

This information will help the adviser to submit full and accurate information to insurers. We will consider this in Section C.

C Presenting information to insurers

Once the adviser has gathered the risk information from their client, they can begin the process of seeking quotations from insurers and preparing a **submission** for presentation. It will include the information outlined in Table 1.2, as well as additional information needed for particular classes of insurance. In later chapters, we will consider the detailed information that insurers need for the different commercial insurance products.

submission/risk presentation
a thorough and accurate outline of a risk for presenting to insurers in order to obtain a quotation

A thorough and well-presented submission enables the underwriter to properly assess the nature and extent of the proposed risk. Insurers are more likely to respond positively when they can see that the adviser has developed an in-depth understanding of the client's business.

When presenting the risk to insurers, the adviser should pay special attention to the following:

- Comprehensive business description – This is especially relevant to business interruption and liability covers. The adviser should also look out for any planned changes to the client's business activities. We will consider this further in Chapters 5 and 6.
- Details and analysis of claims experience (history) – It is not enough to simply list each claim; the adviser should also give explanations of significant losses and details of any steps taken to stop the loss from happening again. Other relevant information should be included, e.g. the sale of one of the firm's locations or a change in work practices, especially in areas where a disproportionate number of claims occurred in the past.
- Risk management and **safety statements** – Insurers need to know how businesses assess and manage their risks. They may wish to see the firm's safety statement, as required under safety, health and welfare at work legislation.[2] An underwriter is more likely to respond favourably to a submission that shows a strong safety and risk management culture. For example, insurers will only consider some high-hazard risks if all aspects of **housekeeping** and maintenance are of the highest standard while some insurers will apply a subject risk assessment discount based on the quality of this information.

safety statement
a legally required document that describes the management of health, safety and welfare responsibilities within the organisation

housekeeping
an aspect of commercial moral and physical hazard that relates to management standards, contingency planning, tidiness and attitude to safety

[2] The Health and Safety Authority (HSA) provides useful information on how to prepare a safety statement, www.hsa.ie.

tied insurance intermediary

any person who:

a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurance or reinsurance undertakings or other intermediaries, in the case of insurance products that are not in competition

b. acts under the responsibility of those insurance or reinsurance undertakings or other intermediaries, and

c. is subject to oversight of compliance with conditions for registration by the insurance or reinsurance undertaking or other intermediary on whose behalf it is acting.

fair and personal analysis of the market

advice based on an analysis of a sufficiently large number of insurance contracts available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs

limited analysis of the market

analysis of a limited number of contracts and product producers available on the market (Consumer Protection Code, Definitions)

D Considering insurers and insurance products

Having gathered the necessary information from a client and requested quotations from insurers, the adviser must then decide which product(s) will best meet the client's needs. The Consumer Protection Code (CPC) requires the adviser to offer the most suitable product to meet the consumer's (client's) needs. To comply with this, the adviser must:

- fully understand the client's wants and needs (see Section B1)
- understand the client's attitude to risk (see Section B2)
- have an up-to-date knowledge of the products available in the market (see Section D3).

If the adviser is a **tied insurance intermediary** to a single insurer or is working for an insurer, this is fairly straightforward. However, for advisers working in intermediary firms, the process is more complex, as they must give advice based on either a **fair and personal analysis of the market** or a **limited analysis of the market**. Example 1.2 gives a typical scenario.

Example 1.2

Deirdre is an adviser employed by a tied insurance intermediary, ABC Agent. Her client, James, asks whether the quotation she has just provided for him is the best available in the market. She is confident that it will compare favourably with other quotations. However, she must not offer James this opinion as this would be advising him on products from insurers with whom ABC Agent does not hold an agency appointment. Instead, she must explain that she is only able to provide advice on the one insurer's products.

Unlike Deirdre (a tied insurance intermediary), an adviser working in an intermediary firm could carry out a fair and personal analysis of the market which might result in a number of suitable products being offered to James to choose from.

D1 Price

Price is often the most obvious factor for deciding between products. It may also be the client's primary concern, particularly if they have asked the adviser to find the 'best deal' for their commercial insurance. However, while price is very important, it is only one factor. The adviser must ensure that the client considers all the relevant factors before making a decision. These are outlined in Sections D2-D6.

D2 Levels of service (including claims service)

When considering insurers to place their clients' business with, ideally the adviser will look for:

- a dedicated relationship manager/executive to build a strong partnership with
- fast and efficient quotations and accurate documentation
- easy access to underwriters/decision-makers
- competent survey system that is speedy and efficient
- efficient claims handling and prompt payment of claims
- fair and quick approaches to complaint resolution
- a quick and thorough response to requests for changes or information (e.g. claims experience)
- the availability of credit facilities or flexible payment options
- access to risk management specialists, where required.
- strong web - and email-based customer service.

D3 Breadth of cover

The adviser will normally seek the widest possible cover (unless the client cannot afford or does not require it). It is therefore important to understand the variations between different insurers' policy wordings, so that accurate comparisons can be made. For this reason, intermediary firms often prepare **cover comparison charts**, which are very helpful for individual advisers to identify the product that best meets their client's needs.

Example 1.3 provides an extract of cover comparison for commercial property insurance. It lists some of the key elements to consider when making a comparison between property owners' package policies and the breadth of cover. The example should not be taken as fact; it is merely to illustrate how the information might be displayed in a cover comparison chart.

cover comparison chart

a means of visually displaying the key differences between the characteristics of different insurers' policies

'all risks' policy

a general term used to describe the widest form of insurance cover subject to a list of exclusions

heave/ground heave

a displacement of land

insurer's capacity

the insurers ability to accept risk or meet future request for increases in cover

Example 1.3

Cover	Insurer A	Insurer B	Insurer C
Is subsidence automatically covered within '**all risks**' wording?	Yes	Yes	No
Fire brigade charges?	Automatic cover for limit of €6,500	Automatic cover for limit of €10,000	Rated separately on request
Trace and access extension?	Limit €2,500	Limit €5,000	Limit €2,500
Employers liability cover included as standard for property repairs?	Yes	No – can be added on request	Yes
Alternative accommodation?	20% of buildings sum insured	20% of buildings sum insured	20% of buildings sum insured
Minimum premium?	€1,200 plus government levy	€1,500 plus government levy	No minimum premium
Policy excess (property damage excluding subsidence and **heave**)?	€315	€750	€150

When using this kind of comparison chart, it is essential to have a method in place to monitor changes to insurers' wordings so the information is kept up to date.

D4 Insurer's capacity

Every insurer has limits to the maximum size, e.g. sum insured or limit of indemnity, of the risks they can accept. This may not be significant for most risks in the Central Bank's 'consumer' category. However, for very large risks the adviser will wish to know if the insurer may be 'stretched' in terms of its **capacity**, and may therefore find it difficult to meet future requests for increases in cover, e.g. changes in business activities, location or volume of business transacted.

D5 Insurer's experience

Certain insurers will gain a reputation in the market for their expertise in relation to particular types of risk (e.g. taxis, construction, liability and hotels). When an insurer possesses this niche expertise, the client will have access to valuable industry experience which is hugely beneficial, especially in the areas of speciality policy wordings and the settlement of claims.

D6 Continuity

The adviser could recommend continuity with a client's existing insurer where this seems the most appropriate way forward. For example, if a client has poor claims experience, and their existing insurer has increased their premium at renewal to reflect this, the client should still be encouraged to consider whether an alternative insurer could provide them with the same level of performance when settling claims. This will also ensure the adviser fulfils their requirement under the CPC which places a responsibility on all regulated firms to operate in the best interests of their customers and the integrity (honesty) of the market.

D7 Adviser's experience and judgement

An adviser's ability to exercise sound judgement relies on a number of factors: their knowledge of the market and the products available, their familiarity with different insurers' approaches to types of risk, and an assessment of insurers' experience. These factors must be weighed alongside the obvious key areas of price and scope of cover in order to make appropriate recommendations. In different situations, individual factors may be of greater or lesser importance.

It is essential that advisers take a disciplined and proactive approach to updating their market knowledge rather than relying on media reports. The adviser should, at all times, be up to date with any new developments or industry trends, many of which do not make the national media. Continuing Professional Development (CPD) activities for example are vital for maintaining existing qualifications, updating knowledge, and networking with colleagues.

statement of suitability

written statement setting out the reasons why a product or service (or options if listed) offered to a consumer is considered to be (most) suitable for that consumer (also known as a 'reasons why' letter)

durable medium

any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference, for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored

E Presenting the recommendation to the client

The CPC requires that, before providing a product or service to a consumer, a regulated entity must prepare a written statement (the **statement of suitability**) setting out the reasons why:

- a product or service offered to a consumer is considered to be suitable to that consumer
- each of a selection of product options offered to a consumer are considered to be the most suitable to that consumer
- a recommended product is considered to be the most suitable product for that consumer.[3]

The adviser/regulated entity must sign the statement and provide a copy – on paper or other **durable medium** – to the consumer and retain a copy.

The principles governing this statement of suitability are as follows:

1. The adviser must offer the most suitable option from those available. For intermediaries, this will be based on either a fair and personal analysis of the market or a limited analysis of the market. Advisers who are tied insurance intermediaries or employed by insurers must offer the most appropriate option from their own range (where more than one policy is available).
2. The adviser must offer a product that meets more of the client's needs than any other product. The adviser can offer their professional opinion regarding the product and, if relevant, why it would not be the adviser's preference. This will allow the consumer to make an informed decision.
3. If there are genuine reasons for offering options rather than recommending a single product, the adviser must highlight all relevant differences in cover levels, terms and conditions to allow the client to make an informed decision. There will be occasions when the adviser simply does not know which would be the client's favoured option. The adviser must then provide a full comparison of the competing available options as shown in Example 1.4.

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

[3] Provision 5.19, CPC.

Example 1.4

Jane is employed by SGE Brokers. She has obtained quotations from insurers for a client's property insurance. There are two suitable options available with a difference of €300 in the premium price. The policy with the lower premium has an excess of €500, as opposed to a €250 excess for the policy with the higher premium.

Both policies offer similar cover and meet the client's needs. Jane does not know which option her client will prefer. She must therefore present both options and explain their differences.

Just think

Why is it necessary to sign the statement of suitability document?

The adviser should sign the statement of suitability document in order to comply with the CPC requirement that a signed copy must be given to the consumer. If any questions or queries come up later, it is also helpful to be able to identify the individual adviser who prepared the recommendation(s).

E1 The form of the statement of suitability

The statement of suitability can be set out in a number of ways. However, in all cases the following notice must appear at the beginning:

Important notice – statement of suitability

This is an important document which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.[4]

The statement of suitability may be in a standard format for insurances for **personal consumers** (e.g. travel, motor and home insurance).[5] However, for commercial enterprises of any size, there is no standard template; each statement of suitability must be client-specific.

The most straightforward way of presenting this information is to record both the client's wants and needs and show how the recommended product(s) meets them. If the recommended product(s) does not fully achieve this, the statement should outline to what extent the client's wants and needs have been met.

personal consumer

a consumer who is a natural person acting in their private capacity outside their business, trade or profession

[4] Provision 5.20, CPC.

[5] Provision 5.22, CPC.

Example 1.5 shows an extract from a statement of suitability for property damage insurance. The client has requested 'all risks' cover with an overall excess level of €1,000. The example shows the recommended product and the reasoning behind the particular recommendation.

Example 1.5

Important notice – statement of suitability

This is an important document which sets out the reasons why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

Dear Client,

...In selecting the insurances set out in the recommendation section below we have considered a representative range of insurers' products prior to recommending the most appropriate. Based on the information provided at our pre-renewal meeting we are making a recommendation personal to you of the policies that are the most suitable for the reasons stated.

We recommend renewal with your existing insurer at the premium of €1,260 inclusive of government levy. Although it would have been possible to reduce the material damage premium slightly with another insurer (a saving of €150), this would have been at the expense of a significant increase in the level of excess (€2,500) and you had made it clear that the €1,000 level was important to you.

Renewal with your existing insurer will also provide continuity with the same underwriter. Your current insurer is a well-established provider in the local market with an excellent reputation for speedy and efficient claim settlements.

When preparing a statement of suitability, the adviser must take account of the client's background and their understanding of insurance terms. The wording in Example 1.5 assumes that the client has a good understanding of insurance terms, e.g. 'excess' or '**material damage**'. This is often the case with large commercial clients, particularly where a risk manager arranges the insurances.

material damage

the physical loss or damage to property

However, for smaller firms, the client's understanding of insurance is likely to be similar to that of a personal consumer. Many insurance terms may be unfamiliar to them. In this situation, the adviser must explain any unfamiliar terms in straightforward language, in order to help the client understand exactly what is involved.

F Summary

In this chapter we considered some of the important elements in the early stages of the adviser-client relationship in the context of commercial clients. We then looked at the benefits of advisers initiating and continuing a professional relationship with their clients. This chapter also explained the information gathering process in setting up a client risk profile and looked at the main factors that influence the choice of insurer and insurance product recommendations for a commercial client. We then covered the main elements involved in forwarding a risk presentation to insurers and then providing a statement of suitability to the client.

These elements are summarised in Figure 1.1.

F1 What's next?

In the following chapters, we will examine specific classes of commercial insurance. We will explore the cover provided by each type of policy and look at the important factors that advisers must consider when recommending and arranging these policies.

F2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

F3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 1.

1. List the main benefits for an adviser of long-term relationships with their commercial client.

2. List four things that information gathering enables an adviser to do.

3. Distinguish between a client's 'wants' and a client's 'needs'.

4. Identify the regulatory requirement regarding a client's attitude to risk.

5. Briefly explain the purpose of a risk presentation/insurance market submission.

6. List the points an adviser should consider when examining the levels of service offered by insurers.

7. State the key purpose of cover comparison charts.

8. If a cover comparison chart is created for a particular policy type, identify the key ongoing requirement for it to continue to be effective.

9. In terms of their suitability, outline the three key principles that advisers must follow when deciding which products are offered.

10. State which important notice must appear on a statement of suitability.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. Long-term relationships can deliver the following benefits:
   - Extra business opportunities – For intermediaries in particular, a satisfied client may bring more insurance business, as well as referring new customers.
   - Better retention rates – The better and longer the business relationship, the more likely it is to continue.
   - Fast and efficient problem-solving – Long-term clients are more likely to report difficulties earlier. Disputes and issues can therefore be resolved more quickly, before they escalate or become the subject of a complaint.
   - Client industry insight – Gaining valuable insights into the client's industry, e.g. trends, needs and requirements, can lead to increased business opportunities.

2. The gathering of information allows the insurance adviser to (any four of the following):
   - act in the best interest of the client
   - identify the risks faced by clients
   - describe the risk accurately and comprehensively to current and prospective insurers
   - provide product choices that meet the client's wants and needs
   - help the client with the risk management process, if competent to do so.

3. 'Wants' are the client's requests/ideals (either absolute or as a preference), while 'needs' are the client's exposures/requirements for insurance cover; the adviser may need to draw these 'needs' to the client's attention.

4. When assessing the suitability of a product or service the adviser must, at a minimum, consider and document whether the product or service is consistent with the consumer's attitude to risk.

5. The adviser will send a market submission to insurers when seeking a quotation for a commercial risk. A submission contains information about the client's business, the nature and extent of the risks they face and their insurance requirements. A thorough and well-presented submission allows the underwriter to properly assess the nature and extent of the proposed risk.

6. When considering an insurer's level of service, the adviser will ideally look for:
   - a dedicated relationship manager/executive to build a strong partnership with
   - fast and efficient quotations and accurate documentation
   - easy access to underwriters/decision-makers
   - competent survey system (speedy and efficient)
   - efficient claims handling and prompt payment of claims
   - fair and quick approaches to complaint resolution
   - a quick and thorough response to requests for changes or information (e.g. claims experience)
   - the availability of credit facilities or flexible payment options.

7. Cover comparison charts are designed to highlight material differences in insurers' terms and conditions so that cover can be measured against a client's needs.

8. It is essential to ensure that a method is found to monitor changes to insurers' wordings so that the information in the comparison chart is kept up to date.

9. The three principles are:
   - The adviser must offer the most suitable option from those available.
   - The adviser must offer a product that meets more of the client's needs than any other product. The adviser can offer their professional opinion to the consumer regarding the product and, if relevant, why it would not be the adviser's preference. This will allow the consumer to make an informed decision.
   - If there are genuine reasons for offering options rather than recommending a single product, the adviser must highlight all relevant differences in cover levels, terms and conditions to allow the client to make an informed decision.

10. The important notice must state: 'This is an important document which sets out the reason why the product(s) or service(s) offered or recommended is/are considered suitable, or the most suitable, for your particular needs, objectives and circumstances.

Answers to quick questions

1. a. The higher excess is unlikely to be suitable for a risk-averse client. This client is more likely to prefer a policy with a lower excess, i.e. a higher level of cover.

   b. The higher excess may be suitable for a risk-seeking client. This client is likely to accept higher levels of risk retention than a risk-averse client.

2. When gathering information from a client, it is important to be aware of that commercial client's future plans for a number of reasons:
   - A future change to the business description may pose a problem for an insurer, who would provide cover for the present business description. It is better to anticipate this in advance.
   - A proposed move of premises to a new location may have a positive or negative effect on the client's risk. For example, it may increase or decrease a theft/malicious damage risk or flood damage risk.
   - Substantial increases in insured values mid-term may pose difficulties in policies designed specifically for small-to-medium enterprise (SME) businesses.
   - Some insurers will not allow any refund of premium following a reduction in turnover/business activity from that anticipated when cover is arranged. The adviser should be aware of this when recommending a suitable product/insurer.

Sample multiple-choice questions

Note: In your exam you will be awarded +3 marks for every question answered correctly, -1 mark for every question answered incorrectly, and 0 marks for every question you choose not to attempt. On the answer form you complete in the exam, you will be required to choose from Options A, B, C, D or E. Options A-D correspond with a possible answer to the question, while selecting Option E confirms that you are choosing not to attempt the question. When you attempt the mini-mock and full mock exam papers available on Connect, this marking system is applied to allow you to prepare for your exam.

1. Which of the following is a benefit of an adviser establishing a long-term relationship with a commercial client?

   A. Higher commission rates.
   B. Better retention rates.
   C. Improved regulatory adherence.
   D. No requirement to continually monitor the risk.

   Your answer:

2. STP Brokers has asked a new client the relevant questions and established that the client is 'risk averse'. This means the client would have:

   A. an unwillingness to accept risk
   B. a reckless attitude towards risk
   C. a preference to retain their own risk
   D. a relaxed attitude towards risk.

   Your answer:

3. When an adviser is considering factors in order to recommend a particular insurer to a client, what is meant by an insurer's 'capacity'?

   A. The length of time the insurer has operated in the jurisdiction.
   B. The breadth of cover and benefits offered by the insurer's products.
   C. The level of experience the insurer has in underwriting a particular class of insurance.
   D. The insurer's ability to accept risks or meet future requests for increases in cover.

   Your answer:

Answers to sample multiple-choice questions

Question 1

Chapter reference: Chapter 1A

Question type: K

Correct response: B

Learning outcome: Identify the benefits of establishing a positive relationship with a commercial client, explain the information-gathering process for commercial clients and identify the main elements of a commercial risk presentation to insurers.

Question 2

Chapter reference: Chapter 1B2

Question type: U

Correct response: A

Learning outcome: Identify the benefits of establishing a positive relationship with a commercial client, explain the information-gathering process for commercial clients and identify the main elements of a commercial risk presentation to insurers.

Question 3

Chapter reference: Chapter 1D4

Question type: K

Correct response: D

Learning outcome: Explain the criteria used to make recommendations to commercial clients with regard to both insurance products and providers.


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Chapter 2

Chapter

2

Commercial motor insurances

What to expect in this chapter

Chapter 2 begins our study of some of the commercial insurance products.

This chapter looks at the different types of commercial motor insurance and how the adviser can develop effective solutions for commercial clients. We will also identify the main similarities and differences in commercial and personal motor insurances.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**The compulsory nature of motor insurances**	Demonstrate the key elements of commercial motor policy cover, determine the appropriate underwriting information applicable to different commercial vehicle insurances and identify the main differences between commercial and private motor insurance.
B	**The scope of cover**	
C	**Considerations for different types of commercial vehicle**	Demonstrate situations where specific forms of commercial motor insurance may be required for different types of commercial vehicle, and state the main features of these insurances.
D	**Motor trade insurances**	
E	**Motor fleet insurance**	Outline the circumstances in which motor insurances may be fleet-rated, and the different options available in the market.
F	**Light commercial vehicles**	Identify the underwriting considerations relating to light commercial vehicle cover.
G	**Questions to ask the client**	Identify the main questions that an adviser should ask a client when advising about or arranging commercial motor insurance.

Before we examine the nature of commercial motor insurance, the chapter begins with some sample profiles of the kind of businesses that may need this type of cover.

Commercial motor insurances sample client profiles

Client 1

Builders Inc. is a large builders' supply company. The company distributes its products to many builders' providers throughout the country. It has a fleet of vehicles including 40 lorries, 10 vans, 15 company private cars and 10 forklift trucks. The forklift trucks are used in the company's yard and warehouse area.

Commercial motor insurance is available for all these vehicle types. Although they are categorised differently, all may be covered under a single motor fleet policy. However, the adviser will also consider engineering cover for the forklift truck (see Chapter 5D) as it performs a lifting function.

Client 2

ABC Motors is a large, well-established motor garage. It has a modern showroom, a repair bodyshop and a servicing area. The bodyshop has a recovery truck that it uses to pick up damaged or broken-down vehicles. Employees collect and deliver both company and customer vehicles and often take cars for a test run after a service or repairs.

This client needs insurance to cover all these activities, as well as the risks associated with allowing potential customers to test drive the showroom vehicles. Motor trade policies (see Section D) are particularly suitable for this client.

Client 3

Jack, Pauline and William are partners in JPW Architects. They each have a company car, a BMW 3 series. Eight of their employees also have company cars. All are used for both business and personal purposes and have no special modifications. Cover for these vehicles can be arranged under a motor fleet policy (see Section E).

Client 4

Michael is a self-employed electrician who has a small van for personal use but also uses it in connection with his business (including carrying his work tools). Michael's twenty-year-old son Ciarán works for him as a trainee electrician. Ciarán has a learner permit (which means that he must be accompanied by a fully licensed driver), limited driving experience, but also drives the van.

A The compulsory nature of motor insurances

Motor insurance is the only complete class of insurance business that is compulsory by law in Ireland.

The six **Motor Insurance Directives 1972-2009** provide a legal framework to harmonise motor insurance law in EU member states. Irish motor insurance legislation is derived from these Directives and is contained in a series of acts and regulations beginning with the **Road Traffic Act 1961**.

public place

under the Road Traffic Act this is 'any place where the public have access with vehicles'

It is illegal to drive, or be in charge of a mechanically-propelled vehicle, in a **public place** unless there is an insurance policy in place that covers either the minimum required under Irish law (RTA cover – see Section B1) or the law of the member state being visited, whichever is greater.

The **Road Traffic (Compulsory Insurance) (Amendment) Regulations 1992** extended the definition of mechanically propelled vehicles to include trailers. This means that trailers (both attached and unattached) are subject to all compulsory insurance requirements.

B The scope of cover

Commercial motor insurance policies contain two main areas of cover. The first element (which is compulsory) is a liability cover, i.e. for injury, loss or damage caused to third parties or their property. The second (non-compulsory) element is a type of property cover, dealing with accidental loss or damage to the insured vehicle and some additional policy benefits.

Policies are subject to **limits of indemnity** for damage to third party property; these are specified in the policy schedule. No limits apply to third party injuries, as this cover must be unlimited. The limits of indemnity are usually standard market limits. The standard property damage limit of indemnity for a private car is €30 million (while covered either under a private car policy or a motor fleet policy) and €1.3 million for a commercial vehicle. Insurers will generally facilitate a request for an increase of the limit of indemnity for commercial vehicles if required by the client and, in some cases, subject to the payment of an additional premium.

In the event of a total loss, cover for damage to the insured vehicle is generally based on its **market value** or the declared value whichever is the less at the time of the loss. However, most claims are for partial loss (normally repairs), so insurers may impose a maximum value per vehicle based on the values submitted by the policyholder on the proposal form or at renewal date. **Average** is not applied to motor claim settlements unlike other lines of business, particularly property.

limit of indemnity

financial limit imposed by an insurer, representing the maximum amount it will pay in any particular claim/ circumstance

market value

the value achievable for an item on the open market at the time in question

average (clause)

a clause in an insurance policy stating that, where a sum insured is inadequate, a claim settlement is reduced in proportion to the percentage of underinsurance

exposure measure

an actual or proxy measure of risk as appropriate to the type of insurance

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

Premiums are based on several **exposure measures**, including:

- vehicle (make, model, year of manufacture, carrying capacity and value)
- business description
- driver details (age, occupation, licence type and details of any previous accidents/ claims/convictions/penalty points/health issues that may affect driving)
- location of use
- where the vehicles are kept
- cover required
- use of the vehicle(s) (e.g. specific use only, such as agricultural vehicles, or business use, such as taxis, couriers and delivery vehicles)
- past claims experience.

Chapter 2

fleet-rated risk

an insurance risk that applies to collections of vehicles owned by the same business

tool of trade risk (third party working risk)

a risk capable of being covered under a motor or liability policy for a vehicle of special construction while working as a tool of trade

Each of these separate aspects combine to create the premium for single-vehicle policies.

In the case of large motor **fleet-rated risks**, the most significant factor when rating a risk is past claims experience. However, alongside this and the exposure measures just listed, insurers will consider other factors such as the profile of vehicles (types of vehicles) and driver profile, e.g. age and driving experience.

Due to its compulsory nature, the client is obliged to purchase motor insurance, so their focus may well be on keeping the cost down. However, the adviser's role is to make professional comparisons of insurers' quotations, taking account of cover variations (and flexibility where needed) to meet the client's needs.

In common with private motor insurance, four levels of cover are available for commercial vehicles:

- Road Traffic Act cover - the minimum level of cover required by law (only used in exceptional circumstances)
- third party only
- third party fire and theft
- comprehensive.

We will discuss the specific covers and exclusions that apply to these four levels of cover in the following sections. However, you should note that the following list of exclusions typically apply across all levels of cover:

- bodily injury to the driver
- racing, pacemaking and/or speed testing
- employers liability risk – except to meet RTA requirements
- **tool of trade risk** (although this may be added for an additional premium – see Section B6)
- crop spraying (see Section C5b)
- liability for death, injury or illness caused by goods supplied from the vehicle. These risks can arise with mobile shops or hot food vans (e.g. food poisoning) and should be covered under a products liability policy (see Chapter 6D).

B1 Road Traffic Act cover

This is the minimum level of cover required by law (see Section A). This cover is rare in practice, and an adviser is unlikely to recommend it. It is usually only provided in cases where the claims experience is very poor or the driver has previous driving convictions.

Road Traffic Act (RTA) cover applies in Ireland and throughout the EU and must provide indemnity for:

- bodily injury or death, caused to third parties, including passengers (unlimited in amount)
- loss of, or damage to, property belonging to third parties, subject to a minimum of €1.22 million per claim
- third party claimants' costs and other expenses of handling a claim
- all treatment for third party injuries caused by, or arising out of, RTA liability
- liability arising from trailers attached to, or becoming detached from, the vehicle insured under the policy.

Cover is restricted to the use of the vehicle 'in a public place'. The current definition of a public place under the **Road Traffic Act** is 'any place where the public have access with vehicles'. This would include a car park or a private field (e.g. if it was being used for an event to which people had access with their vehicles, such as a music festival) but not in a private driveway.

Case law 2.1

Vnuk Ruling

An important case to consider in relation to RTA cover in a 'public place' is the European Courts of Justice (ECJ) ruling in the case of Damjian Vnuk v Zavarovalnica Triglav (the 'Vnuk' case).

Damjian Vnuk was injured after being knocked off a ladder by a reversing tractor in a farmyard in Slovenia. He brought a personal injury case against the insurers of the tractor. They did not deal with the claim on the basis that the tractor was not being used in a public place or on a public road and was, therefore, excluded under the motor insurance policy. That decision was appealed in Slovenia and was brought before the ECJ in September 2014.

The ECJ ruled that given that the incident occurred while the vehicle was in use and that use was consistent with the normal function of the vehicle, then it must be dealt with as a motor claim. This ruling is a precedent which must be considered by all lesser courts. This expansion of the understanding of a 'public place' may have a significant impact on how motor claims are dealt with and may necessitate fundamental changes to motor insurance policies and road traffic acts.

At the time of writing, no case on this matter (requiring application of the ECJ precedent) has been before an Irish court.

B2 Third party only cover

In addition to the cover provided under RTA cover, third party only (TPO) cover includes indemnity to:

- anyone driving or 'using' the vehicle with permission (if allowed on the Certificate of Motor Insurance)
- the insured's employer or partner (if their use of the vehicle is covered by the policy)
- persons getting into or out of the vehicle
- the owner of the vehicle
- the person in charge of the vehicle
- the hirer of the vehicle (for negligence by the policyholder)
- or their personal representatives (if the person is deceased).

In this context, the term 'indemnity' means the protection provided by the policy. In other words, the policy can protect the people listed here in the same way that it protects the insured.

TPO also covers:

- third party emergency treatment where required by law
- liability arising from loading and unloading the vehicle (for the driver and attendant)
- increased limit of indemnity for third party property damage – typically €1.3 million for any one accident. Most insurers will increase limits to €6.5 million (an additional premium) if requested.
- legal representation at any inquest or fatal injury inquiry, or to defend a charge, e.g. of manslaughter
- use by unlicensed drivers where a licence is not required by law and the person is old enough to drive the vehicle.

In addition to the typical exclusions applying to all covers (see Section B), TPO cover typically **excludes**:

- any loss or damage to the insured vehicle or the insured's property
- use other than for business activities of the policyholder
- driving of other vehicles.

B3 Third party fire and theft cover

In addition to the cover provided under third party only cover, third party fire and theft (TPF&T) cover also includes damage or loss to the insured vehicle:

- by fire (including self-ignition), lightning or explosion
- during an attempted theft or while it is stolen
- if stolen but not recovered.

Occasionally TPF&T cover may be subject to an excess (e.g. for theft cover for high value vehicles) and includes damage or loss of spare parts and accessories kept in, or on, the vehicle or kept in the policyholder's private garage.

In addition to the typical exclusions applying to all covers (see Section B), TPF&T cover typically **excludes**:

- driving of other vehicles
- breakage of glass in windscreens and windows (may vary by insurer).

B4 Comprehensive cover

As well as the cover provided under TPF&T, comprehensive (COMP) cover includes accidental loss of, or damage to, the insured's own vehicle, other than as a result of fire or theft. COMP cover is usually subject to an excess and includes damage to:

- spare parts and accessories kept in, or on, the vehicle or in the policyholder's private garage
- breakage of glass in windscreens or windows (not sunroofs or panoramic roof glass). This cover may be subject to a limit and possibly an excess, but it does not affect the **no claims discount** (if one applies)
- **indemnity to principals** where required e.g. the insured works as a contractor on behalf of a construction company (the principal) and causes a traffic accident. The construction company is sued rather than the insured. Indemnity to principal allows the payment to be made to the construction company rather than the insured.

no claims discount

a reduction of premium for successive claim-free years, which increases to a maximum over a period of (usually) 5 years, and held in the client's own name

indemnity to principal

an extension to a liability policy that provides cover for a policyholder's principal in circumstances where the policyholder would have been liable

In addition to the typical exclusions applying to all covers (see Section B), COMP cover typically **excludes**:

- depreciation, wear and tear
- mechanical/electrical fault or breakdown/derangement
- isolated damage to tyres, e.g. from punctures or blow-outs
- theft/attempted theft, where the vehicle is unlocked or if the keys are left in or on the vehicle
- loss of use, e.g. the cost of hiring a replacement vehicle
- import costs from outside EU
- damage caused by solidifying of substances, e.g. concrete becoming hard in mixers/drums/hoses. These vehicles must be regularly maintained and working practices must be enforced to prevent solidification of the contents. If solidification occurs, there is a serious risk of toppling and of irreparable damage to the vehicle itself. There are specialist markets for risks of this nature.

B5 Territorial limits

Territorial limits for full policy cover apply, and these are within the Republic of Ireland, Northern Ireland, Great Britain, the Isle of Man and the Channel Islands or travelling between these territories.

Policies automatically provide the minimum required by law for territories within the European Economic Area (EEA). Some commercial insurers may be willing to provide full policy cover in certain circumstances but usually at an additional cost.

Green Cards (required post-Brexit in the EU) are no longer required for UK or Northern Ireland drivers within the Republic or EU under an agreement between the Motor Insurers' Bureau of Ireland (MIBI) and the EU Commission.

Green cards

internationally recognised insurance document which provides proof of insurance cover and compliance with minimum compulsory insurance cover requirements

B6 Optional benefits

Optional benefits available under commercial motor policies include:

- Trailers – Although policies automatically provide third party cover for trailers, cover may extend to cover damage to specified/unspecified or attached/unattached trailers (see Section C1a).
- Third-party working risk (tool of trade) – This extends cover to situations where a vehicle is being used off-road as a tool of trade (e.g. a crane or 'cherry picker'). Such liability may already be covered under a public liability policy, so the adviser should make sure that cover applies to only one of these policies, not both. (See Chapter 6C2a for more detail on tool of trade risk).
- Fatal accident benefit – This provides death benefit for the driver only.
- No claims discount protection or step-back option – This prevents the policyholder from losing the whole no claims discount as a result of a single claim. While not available on all commercial policies, some light commercial vehicle insurers do offer this protection. It is Important to note that insurers may apply a claims loading in the event of a large claim and while the no claims discount was protected or stepped back, the policyholder's premium may increase at renewal time.
- Cover for incorrect fuel type or lubricant. In some cases, the damage caused to the engine is not covered, but the cost of draining the engine is covered.

Chapter 2

B7 Policy conditions and exclusions

There are a number of general policy conditions and exclusions applicable to commercial motor insurance.

B7a General policy conditions

The general conditions set out the obligations and rights of both the policyholder and insurer under the policy. The main general conditions are as follows:

- The policyholder has a continuing obligation to disclose all material facts to the insurer. They must tell the insurer of any changes to the risk during the period of insurance, e.g. change of the policyholder's occupation/address, any medical conditions that have been contracted (which could affect driving ability), penalty points or convictions.[6]
- The policyholder must maintain the vehicle(s) in a roadworthy condition.
- Insurers are entitled to seek recovery from the policyholder of sums they are required to pay under RTA legislation, e.g. where an insurer has a right to void a policy or turn down a claim, but must still pay compensation to a third party due to RTA provisions.
- An insurer is entitled to cancel a motor insurance policy by giving notice in writing to the policyholder. While the Road Traffic Act specifies that the insurer must give the policyholder a minimum of 7 days' notice, general insurance market practice is that the insurer gives the policyholder 10 days' written notice by registered post.
- Any dispute over policy cover must be referred to the **Financial Services and Pension Ombudsman** (FSPO). **Mediation** is encouraged in disagreements involving policy cover but if this is not successful, the dispute can be referred to **arbitration**.
- Fraud or deception. Most insurers will include a condition of fraud or deception that outlines that they may void or cancel a policy in the event of underwriting (misrepresentation or non-disclosure of a material fact) or claims fraud. In addition, in the event of claims fraud, an own damage claim will be declined.
- As with other forms of insurance, **contribution** and **subrogation** conditions apply. We covered these terms in more detail in The Nature of Insurance module.

Policies also have claims conditions that specify what the policyholder must do in the event of an incident that may give rise to a claim. We looked at claims conditions in The Nature of Insurance module.

Reminder: Consumer Insurance Contracts Act 2019

For consumers falling within the definition of this Act, the following applies in relation to disclosure:

The principle of 'utmost good faith' has been replaced by a statutory obligation on the consumer to answer all specific questions asked by the insurer (either at proposal or renewal stage) 'honestly and with reasonable care.' Under this Act, there is no obligation on the consumer to disclose any information not specifically requested by the insurer.

Financial Services and Pension Ombudsman

statutory body that acts as an independent mediation service to resolve complaints from customers about the conduct of a regulated financial service provider that cannot be resolved internally

Mediation

the process of settling a dispute arising from certain types of insurance claims. The dispute will be between the insured and the insurer.

arbitration

a less formal but still legally binding process whereby cases are heard by an arbitrator rather than a judge in court

contribution

the right of an insurer to share the cost of an indemnity payment among similarly (but not necessarily equally) liable parties

subrogation

the right of an insurer, after payment of a claim, to stand in the place of the policyholder and pursue any possible recovery rights from a third party responsible for the loss

6 This textbook presumes that the commercial insureds being referred to do not fall within the **Consumer Insurance Contract Act 2019**'s definition of consumer.

B7b General policy exclusions

The general exclusions set out the situations where cover is not provided (i.e. excluded) under all sections of the policy. The main general exclusions in a commercial motor policy are claims arising from:

- persons not permitted to use the vehicle
- **contractual liability**
- radioactive contamination
- war and related risks
- use of vehicle for racing, trials or pacemaking
- terrorism
- earthquake
- riot or civil commotion
- airside use of vehicle at an airport/airfield. This is not an issue for most commercial clients, but it will be an important consideration if the client is involved in the aviation industry and makes deliveries to an airport runway for example. Specialist cover can be difficult to obtain due to the exposure involved.
- pollution/contamination
- **sonic bangs**.

contractual liability

non-statutory liability that arises by terms of a contract voluntarily entered into, and that would not have arisen in the absence of that contract; typically an exclusion under most policies but can be arranged by agreement with the insurer

sonic bangs

a shockwave from an aircraft or other item travelling faster than the speed of sound

B8 Comparisons with private motor insurance

Although there are many similarities between commercial motor and private motor policies, there are also some key differences. Generally speaking, commercial motor policies offer fewer extensions of cover than private motor policies. Examples of differences in cover:

- Driving of other vehicles – This extension of cover is normally available on a private car policy. However, as the range of commercial vehicles is so large, most insurers do not typically permit the policyholder to allow their drivers to drive other vehicles, though it may be offered by some insurers.
- Provision of a new replacement vehicle – A private car policy may provide a new replacement vehicle if the insured vehicle is lost or suffers extensive damage (costing more than 60% of its current list price) within a year of purchase and registration. However, the likely annual mileage and the potential cost of commercial vehicles are such that this benefit is not normally a feature of commercial motor policies.

- Personal accident benefits – In general commercial motor policies do not cover personal accident benefits, medical expenses and personal possessions, although a fatal accident death benefit may be offered for drivers of commercial vehicles. However, some light commercial vehicle (LCV) policies can be similar to private motor insurance and offer some medical expenses or personal accident benefits. The following are some examples:
- Medical expenses: cover is provided for medical expenses up to a certain amount. Typically €200-€500 is given for each occupant following injury caused by violent, accidental, external, and visible means in direct connection with the vehicle.
- Personal accident benefits similar cover for the driver to that provided by a private motor policy:
  - death benefit (amount may vary from €6,500 to €30,000 depending on the insurer)
  - loss of sight (can be up to €15,000)
  - loss of limbs (can be up to €15,000)
  - temporary total disablement (approximately €250 per month)
  - hospital expenses up to €350 a week or €3,000 in total
  - medical and physiotherapy expenses up to €1,000

  While such benefits are sometimes provided by LCV insurers, similar benefits are not typically provided by larger commercial motor policies.
- Lower levels of cover for third party property damage (TPPD) – Commercial motor policies mostly have standard limits of €1.3 million (increasing to €6.5 million if required), compared to €30 million for private car policies. This is because of the wide range of commercial vehicles and the potential damage that larger vehicles might cause. However, for private cars insured under a commercial vehicle or a fleet policy, the limit of €30 million applies.
- Foreign travel – Private motor insurers usually provide full policy cover for driving within the European Economic Area (EEA) at no additional charge. However, this cover is not normally provided automatically (beyond the UK, Northern Ireland, Channel Islands and Isle of Man) for commercial vehicles. Insurers take the view that it is normal and acceptable to use a private car to travel to the EEA for holiday or business purposes, but that this needs special consideration for commercial vehicles, and cover must therefore be arranged separately. This view may change in future years.

Quick question 1

Why do insurers provide a narrower range of cover under their comprehensive policies for commercial motor policyholders compared to personal motor policyholders?

The answer is at the end of this chapter.

Just think

Look again at the different vehicles listed in the sample client profiles at the beginning of this chapter.

Which vehicles might be eligible for some of the covers (e.g. personal accident benefits, higher limit of indemnity for third party property damage) that are normally only available in private car policies?

Insurers may provide these extra covers for the company cars owned by Builders Inc. and JPW Architects.

C Considerations for different types of commercial vehicle

Commercial motor insurance covers several vehicle types:

- private cars owned by/used for commercial enterprises
- goods-carrying, passenger-carrying
- special types of vehicle, e.g. contractors' vehicles, mobile retailers, cement mixers, forklift trucks
- construction equipment
- agricultural vehicles.

Cover for commercial vehicles is the usual third party, third party fire and theft or comprehensive basis. We will now examine some of the special considerations for the main types of commercial vehicle.

C1 Goods-carrying vehicles

Goods-carrying vehicles form the largest group of commercial vehicles. They vary from small vans through to articulated vehicles, tankers and refrigeration vehicles. A typical commercial motor policy wording defines a goods-carrying vehicle as 'any motor vehicle primarily manufactured and used for the carriage of goods, which is not an agricultural vehicle'.

The limit of indemnity for damage to third party property varies from insurer to insurer. A typical limit of indemnity is €1.3 million for smaller vehicles, rising to €2.6 million for heavy goods vehicles. It can usually be increased further upon payment of an additional premium. As we saw in Section B8, this is a much lower limit than in a private motor policy.

Just think

Why is the limit of indemnity for third party property damage lower in a commercial vehicle policy than in a private motor policy?

The reason for the lower limit is that a large commercial vehicle could cause a much greater amount of property damage than a private car. While a higher limit may be available on request, insurers prefer not to give this automatically.

For many larger commercial vehicles, their value as given by the policyholder is both a rating factor (exposure measure) and a policy limit in the event of a total loss. The adviser must therefore ensure that their client's valuation is accurate. There is no advantage in overestimating the value of the vehicle and too low a value will lead to an inadequate limit at the time of a claim.

Additional excesses and other restrictions may be applied to young, inexperienced drivers or those holding learner permits. This would be a fact for Michael (client profile at the beginning of this chapter) to consider in relation to insuring his son Ciarán – as a trainee electrician – on his small van. These restrictions cannot apply to RTA claims (**Second Motor Insurance Directive 1984** now consolidated in the **Sixth Motor Insurance Directive 2009**). However, under policy conditions, the insurer retains the right of recovery of their cost for a claim if a driver is outside the defined restrictions.

C1a Trailers

We noted in Section A that trailers (attached or unattached) are subject to the compulsory **Road Traffic Act (RTA)** insurance requirements while they are on a road or in a public place. However, for businesses that store and transport goods, trailers are a significant business asset and the question of insuring them is not solely based on the minimum legal requirements.

The cover available for trailers can be summarised as follows:

- Third party attached trailer cover – Standard cover is for third party liability while drawing trailers that are directly attached to the insured vehicle. This covers third party injury or damage caused by the trailer, but not damage to the trailer itself.
- Third party unattached trailer cover –. Policyholders can also opt for a detached cover extension which will cover the liability associated with detached trailers. If the trailer(s) are specified (individually listed) on the policy schedule, each must carry an identification number. Some insurers may offer cover for unspecified trailers, i.e. any trailer owned or hired by the insured.
- Specified trailer attached/unattached full policy cover – This extends the full policy cover (fire, theft or comprehensive) to all trailers that are individually listed on the schedule. Full details of the trailers, including their values and identification numbers must be provided to insurers. An additional premium is usually charged to provide this policy cover.
- Exceptions to trailer cover would be liability arising where the insured was pulling a greater number of trailers than is allowed by law, or loss of or damage to any goods, contents or load being carried in or on the trailer.

C2 Passenger-carrying vehicles

Passenger-carrying vehicles can be divided into two broad categories:

- public service vehicles
- self-drive hire and funeral vehicles.

C2a Public service vehicles

A public service vehicle (PSV) is defined in Section 3 of the **RTA 1961** as a mechanically-propelled vehicle used for the carriage of persons for reward. PSVs are divided into:

- Large PSVs – These have seating accommodation for 9 or more passengers in addition to the driver, and typically refer to buses, coaches and minibuses.

- Small PSVs – These have seating accommodation up to 8 passengers in addition to the driver. These include:
  - Public hire vehicles – these have a taxi meter and roof sign and are for hire at an appointed taxi stand, by driving around awaiting hire by radio contact or in a designated taxi-meter area.
  - Private hire vehicles – these are hackney or limousines cars that are used for hire or reward by prior arrangement only.

The high level of use of PSVs represents a significantly increased risk of accident and claims frequency, while the fact they are passenger-carrying vehicles means that a claim can also potentially be very costly (severity).

For large PSVs and limousines, own-damage cover can carry very high excesses (such as a percentage of the vehicle value subject to a minimum excess level) due to the very high vehicle values, e.g. up to €200,000 for a new coach or bus. Some insurers carry limitations on the amount of windscreen/window cover under the own-damage section due to the high replacement costs for some models.

C2b Self-drive hire and funeral vehicles

Self-drive hire includes cars, small vans and camper vans that are hired out to the public. Policies are arranged on a fleet basis (see Section E) and cover the individual hiring, typically ranging from one day to several weeks.

Quick question 2

What are the two main categories of public service vehicle?

The hirer (and any other requested driver) usually completes an application for insurance and there may be limits to acceptance depending on occupation, driving record and length of time the hirer has held a full driving licence. The typical permitted use is for social, domestic and pleasure (SDP) and business purposes by any person to whom the policyholder has hired the vehicle out to. Policies exclude use for the carriage of passengers for hire or reward unless specially arranged.

In general, funeral vehicles are considered by insurers to be a significantly lower risk as they operate within a local radius, mostly at low speed, and have very low mileage. A hearse/funeral car has a much longer lifespan and it is common to find 20-year-old vehicles in regular service. However, accident repair costs can be high as with any specially-built vehicle, therefore higher excesses may be used, taking the form of a monetary amount or a percentage of the value.

C3 Special-type vehicles

This category covers the widest range of vehicle types. As the name suggests, special-type vehicles have been manufactured for a specific purpose. Table 2.1 summarises the most common vehicle types and their particular insurance requirements. We will consider construction vehicles separately in Section C4.

Table 2.1 Special-type vehicles

Vehicle type	Insurance implications
Forklift trucks	• A comprehensive package policy is available providing comprehensive motor cover and statutory inspection cover. • Premiums are usually charged at a flat (or standard) rate. • Alternatively, motor cover (third party or comprehensive) can be arranged on a fleet policy and separate engineering cover arranged in respect of the statutory inspection (see Chapter 5D). • If forklift trucks are only used inside a policyholder's business premises and not in a public place, businesses should still arrange appropriate cover (see Case law 2.1).
Ambulances	• Most ambulances are under the control of local or regional health authorities who usually make their own insurance arrangements. However, cover for privately-owned ambulances is available on the usual third party, third party fire and theft or comprehensive basis. • Premiums are usually charged at a flat (or standard) rate.
Mobile retailers and businesses	• Due to the large variety of mobile businesses (e.g. shops, fast food outlets, libraries, ice-cream vans), insurers need precise details of the vehicle, the nature of its business and fixtures and fittings. • The motor policy is normally extended to include fixtures and fittings, but not stock. • The adviser must consider other policies needed for the business undertaken, e.g. stock or liability cover (arising from food sold or injury to employees). • Rating is based on the district of use, scope of cover and the value of the vehicle.
Cement mixers	• These present particular risks because of the nature of their operation. • Policyholders must keep the vehicle regularly maintained and enforce work practices designed to prevent solidification (of cement, for example) and the associated risk of the vehicle toppling. • Policies normally exclude damage to the vehicle from solidification.

C4 Construction equipment

For construction equipment, there is a significant fire, theft and malicious damage risk. Theft is particularly a problem due to the high value of the vehicles and being left in building sites overnight and at weekends. Therefore, some insurers may exclude this cover altogether while others may insist on security measures such as keeping the vehicles in a locked compound, anti-theft devices or immobilisers.

The main categories of construction vehicle, and a summary of their main insurance considerations, are as follows:

- Cranes – For all cranes (mobile and non-mobile), engineering cover must be arranged (see Chapter 5D), and statutory periodic inspections and certification are required. For 'mobile' cranes, RTA cover is also a necessity and comprehensive cover is recommended due to the high replacement cost.
- Dumpers – The key rating factors are the vehicle's use and carrying capacity, so it is important to establish exactly what the vehicle is being used for. Also, the adviser needs to determine the area in which the vehicle operates, e.g. exclusively on the policyholder's premises or in a public place.
- Mechanical navvies and other mobile plant equipment – Other than mechanical navvies, this category also includes shovels, grabs and excavators. In addition to hire cover, policies also cover the damage to the vehicle while in use as a tool of trade.
- Other 'special types' – This category includes road rollers, site-clearing and levelling equipment, sludge gulpers, tippers and trolleys, none of which are constructed for general transport on roads. These specialist vehicles present the same major issues for the adviser: hiring, third party working risk, possible engineering cover and inspection contracts for lifting and other machinery.

C5 Agricultural vehicles

Agricultural vehicles include tractors, harvesters and other motor vehicles used for agricultural purposes, as well as implements and trailers used with them. Although cover choices and policy features are broadly similar to other commercial vehicle policies, there are some differences that reflect the particular nature of agricultural use and the common practices within the farming industry. We will consider these differences in the following sections.

C5a Suspension of cover

Farmers use some of their agricultural motor vehicles all year round. However, many items, such as combine harvesters, are in use for a comparatively short period of the year. For this reason, the premium automatically takes into account the seasonal use of some agricultural vehicles. Motor insurers do not therefore give a premium refund for suspension of cover, as they already allow for this during the rating process.

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crop spraying

a way of covering crops with chemicals in order to kill harmful insects and diseases

C5b Crop spraying

Policies for agricultural vehicles may have an additional exclusion in respect of liability arising from **crop spraying**. Insurance policy extract 2.1 shows a typical wording for this exclusion.

Insurance policy extract 2.1

Typical policy wording for crop spraying liability

Cover excludes…accidental injury, loss or damage caused by, or attributable to, any material applied or intended for application to land or anything growing on the land, except in so far as is necessary to meet the requirements of the Road Traffic Acts.

In practice, this exclusion is generally only applied in cases where the policyholder is involved in large scale agricultural contracting. It is intended to exclude claims that involve injury or disease caused by substances being sprayed on the land. It does not, for example, exclude claims arising from a collision during the spraying process.

C5c Hiring practices

Farmers frequently help each other and hire equipment to and from each other at different times of the year. If this is the client's practice, the adviser should make the insurer aware of this and provide full information regarding this use. Insurers normally provide indemnity under the agricultural motor vehicle policy to anyone who has hired a vehicle, and also to the driver.

Insurers may also be asked to extend cover while a vehicle is hired or let to public authorities, e.g. hedge cutting or snow clearance. This is common practice, as agricultural vehicles (typically tractors) are often suitable for these purposes and may be idle during certain months. It should be noted that this often includes the hire of the driver (who will be experienced in the use of the vehicle in question) and an additional premium is usually charged for the increased use. Contingent cover may also be provided here with an onus on the hirer to arrange their own insurance cover for the vehicle if they are hiring it.

Indemnity to hirer is subject to the usual provisos – no other policy can provide indemnity, and the policy terms are complied with as far as they apply.

C5d Use warranty

The 'use warranty' appears in the policy schedule and will reflect the agreed use when the policy was arranged. It may be limited to the farmer's own land and to neighbouring farms, or it may be unlimited, e.g. 'warranted vehicle use for agricultural and forestry purposes'.

While this textbook presumes that the insureds being referred to do not fall within the **Consumer Insurance Contracts Act 2019** definition of 'consumer', it is important to remember how warranties impact on consumers.

Reminder Consumer Insurance Contracts Act 2019

Prior to the introduction of the **Consumer Insurance Contracts Act 2019**, if the insured failed to strictly adhere to any policy warranty, the insurer had the right to avoid the policy from the date of the breach, regardless of its relevance to the loss or damage.

However, under CICA, any term within the contract that imposes a continuing restrictive condition on a consumer during the term of the contract is now treated as a 'suspensive condition'. This means that for the duration of a condition's breach, the insurer's liability will be suspended but if the breach is remedied at the time of the occurrence of a loss, then the insurer will be liable to pay the claim.

C5e Road-worthiness testing for 'fast tractors'

In Ireland, agricultural vehicles are not subject to road-worthiness testing. However, since 2018 the **EU Directive 2014 on periodic roadworthiness tests for motor vehicles and their trailers** requires the compulsory testing of tractors used for commercial road haulage purposes with a maximum designed speed exceeding 40 km/hr ('fast tractors'). Under this Directive, these fast tractors must be tested periodically and must display certificates of roadworthiness (CRWs). More information on the fast tractor test requirements is available at www.cvrt.ie.

road risks

generic term for motor trade insurances designed to cover motor risk 'away from the premises'

named driver basis

basis of cover for motor trade road risks insurances, in which cover is restricted to the drivers named on the certificate of insurance

open drive basis

a means of rating and basis of cover for motor trade and motor fleet insurances, in which drivers are not named individually, but may be subject to certain restrictions (e.g. a certain age band, or employees only)

trade plate basis

a means of rating and very restricted basis of cover for motor trade road risks based on the number of trade plates held by the policyholder

trade plate

a special type of number plate issued to motor traders, which allows them to use untaxed/unregistered vehicles on the road in limited circumstances

D Motor trade insurances

Motor trade policies provide protection from some of the unique risks faced by clients in the motor industry. These risks arise from the nature of a motor trader's activities, which typically include:

- working on customers' vehicles
- driving and road testing customers' vehicles
- driving uninsured and/or untaxed vehicles under trade plates
- potential customers test driving vehicles that are for sale.

Examples of businesses requiring motor trade cover include:

- buyers and sellers of agricultural or commercial vehicles and private cars
- mechanical repair and service businesses
- body repair shops
- valet parking services
- vehicle recovery/breakdown services
- cleaning/valet services
- windscreen/battery/tyre/exhaust fitters
- vehicle dismantlers and vehicle storage services
- Plant & tool hire businesses.

Some of these businesses may also operate a garage forecourt with petrol/diesel/shop services which also require cover under the motor trade policy.

D1 Road risks cover

Generally, this refers to motor cover for all **road risks** and policies must meet the minimum legal requirements.

The adviser must be careful when dealing with this class of cover as the wordings vary considerably between insurers. Some policies provide cover 'on the road and while in the course of a journey', while others state 'anywhere other than the policyholder's premises'. It is essential that the adviser brings all cover restrictions to the client's attention.

Certificates of Motor Insurance are needed for motor trade road risks policies. Their wording will follow the basis of the cover, which may be restricted to a **named driver basis** only, or an **open drive basis**, in which driving is usually restricted to employees (but may be extended to others, e.g. family members for social or domestic use). Where cover is on the more restricted **trade plate basis**, only vehicles with **trade plates** attached are covered and usually only employees are allowed to drive them. Trade plate basis is dependent on the insurer, however some motor trader providers do rate on the number of drivers noted and their details i.e. age, licence held, bonus held, details of accidents, claims and convictions, and area of use. The internal risk would be rated on mechanics or fitters wages.

Clients have a choice of third party only, third party fire and theft or comprehensive covers. Extensions are available to allow private use (usually by named persons or directors and partners), demonstration and tuition (used to allow customers to test drive a vehicle), loan or hire of vehicles to customers, and foreign use.

D2 Internal risks policies

As road risks policies **exclude** cover 'at the premises', the internal risks policy fills that gap. Any motor accidents at the premises involving the client's own vehicles or vehicles in their custody or control will be picked up under this section.

Internal risks policies cover includes the insured's liability for:

- accidental injury or death to third parties (other than employees)
- accidental damage to a third party's property
- injury and damage arising from the sale of new and used vehicles, as well as parts and accessories. This is a form of products liability cover (see Chapter 6D)
- injury or damage caused by defective workmanship on a vehicle. This may arise, for example, if a mechanic does not tighten a wheel-nut properly and the wheel later falls off and causes an accident. (This cover is technically an extension to the standard cover but is usually a requirement of these businesses.)

internal risks

motor trade liability cover specifically designed for premises risk (including servicing and maintenance)

D3 Combined road and garage policy

This is usually referred to simply as a '**combined policy**'. In addition to the motor (road risks) cover and internal risks cover outlined in Sections D1 and D2, a combined policy will also include property damage, business interruption, employers liability, public liability and products liability cover.

combined policy

type of policy that groups together a number of separately underwritten covers in one contract

There are many variations in motor trade covers and clients may incorrectly presume that 'everything' is covered. The adviser needs to be extremely careful, as wordings differ greatly between insurers. For example, comprehensive motor cover will not provide theft cover at the premises. Separate property cover, where vehicles are treated as stock, is required for this risk. There may also be exclusions relating to theft cover away from the premises. The adviser must ensure that all covers comfortably fit the client's needs. They must also highlight all exclusions to the client in advance of finalising cover.

Because of the road risks cover contained within the policy, a **Certificate of Motor Insurance** is needed in order to meet minimum legal requirements.

Certificate of Motor Insurance

document required by law, which is issued by an insurer to a policyholder and proves that an acceptable minimum level of cover is provided by a motor insurance policy

Just think

Consider ABC Motors in the sample client profiles at the beginning of this chapter.

Which type of motor trade insurance might an adviser recommend for ABC Motors?

Given the size of ABC Motors' risk and the range of activities taking place inside and outside the client's premises, the adviser will most likely recommend a combined policy.

E Motor fleet insurance

Fleet risks are collections of vehicles owned by the same client. In the past, insurers insisted on a minimum number of vehicles to qualify for fleet rating (often varying from 8 to 10 vehicles). However, this is no longer the case and fleet cover can be arranged for as few as 2 vehicles.

Motor fleet policies differ from standard policies in the following ways:

- The policyholder has more flexibility when changing vehicles and/or drivers.
- Premiums for larger fleet-rated risks (such as Builders Inc. in the client profiles at the beginning of this chapter) are based on the risk details and claims experience of the fleet as a whole, rather than on the normal rating system applied by insurers to private motor.
- Certain optional covers may be added (see Section E2) for an extra premium.
- For smaller fleets (such as JPW Architects in the client profiles at the beginning of this chapter), the no claims discount for each individual vehicle is replaced by a fleet discount. This discount is applied to the insurer's normal commercial vehicle rates.

E1 Cover arrangements

The usual cover options – third party, third party fire and theft or comprehensive – apply, with the standard differences in cover for commercial vehicles compared to private cars. Cover for damage to third party property is mostly restricted to €30 million for cars under the fleet, and to €1.3 million (or up to €6.5 million) for commercial vehicles.

Motor fleet insurance is normally arranged on a declaration basis (e.g. annual, six monthly or pro rata.) which means that vehicle additions or deletions only need to be notified to the insurer in line with the agreed declaration period. This method of arranging cover is often referred to as 'automatic cover'.

Cover is usually arranged on an open drive basis and driving is restricted to a particular age range. However, practice varies between insurers and the role of the adviser is to identify the most appropriate arrangement for their client's needs.

Insurers may apply cover restrictions for young/inexperienced drivers, for example the normal own-damage excess may be increased for young drivers or those holding learner permits, where permitted. Young drivers may also be restricted to one vehicle. In most cases, the lower the driver's age, the higher the excess. Insurers may even exclude own-damage cover entirely for drivers under their age restriction or for any driver holding a learner permit (although practice varies).

Just think

You are the manager of a large fleet of motor vehicles. How do you deal with the many and frequent changes to the motor fleet as vehicles are added and deleted?

This potential problem can be managed by an **annually-adjusted policy**. Mid-year alterations, e.g. temporary or permanent changes to vehicles or drivers, are automatically catered for. The Certificate of Motor Insurance wording would cater for these changes; for example, that annual adjustments would apply to 'all vehicles owned, hired, leased or borrowed by the policyholder'.

The primary focus of the submission for an annually-adjusted policy is a 5-year claims experience history confirmed by the previous insurer.

E2 Extensions of cover

When making a recommendation to a client, the adviser should be aware of the following extensions of cover:

- **contingent third party (employees' vehicles)**
- **occasional business use**
- **driving by unlicensed drivers**
- breakdown assistance
- increased third party property damage limit of indemnity.

E2a Contingent third party cover (employees' vehicles)

In many businesses, employees use their own cars for some work activities. For example, an insurance adviser who does not have a company car might use their own car to visit clients or for meetings with insurers. In these situations, the employee needs to make sure that their private motor policy includes cover for business use. This means that the private car policy should deal with any claims arising from use of the vehicle for the employer's business.

This is a common arrangement, which normally does not cause any problems. However, difficulties may arise for a commercial client if their employee's insurance is defective in some way. For example:

- The employee may accidentally fail to renew the policy.
- The employee's policy may not cover the particular use (e.g. use of the vehicle for business purposes).
- The employee may have failed to disclose material information when proposing for insurance.

Contingent third party cover provides some protection to a commercial client in these situations. If, for any reason, the employee's policy is defective, and a claim is subsequently made against the employer by a third party, this extension will protect the employer's interest. However, this extension provides no protection to the employee or their vehicle. This cover is also available as an extension of a public liability policy (see Chapter 6C3e).

A Certificate of Motor Insurance is not required for this type of cover.

annually-adjusted policy

a policy arrangement where the insured notifies changes to the insurer at the end of each period of insurance, and the premium is adjusted if necessary

contingent third party cover

extension on a motor fleet policy to protect a policyholder when their employee is using their own vehicle for business purposes

occasional business use

cover that indemnifies employers when their employees sometimes use their own vehicles on company business

driving by unlicensed drivers

an extension to cover a policyholder when no licence is required for the driver by law or where the driver's licence status is unknown

Chapter 2

Quick question 3

Why are insurers more prepared to consider extensions such as 'occasional business use' under a motor fleet arrangement than under a motor policy that covers a single commercial vehicle?

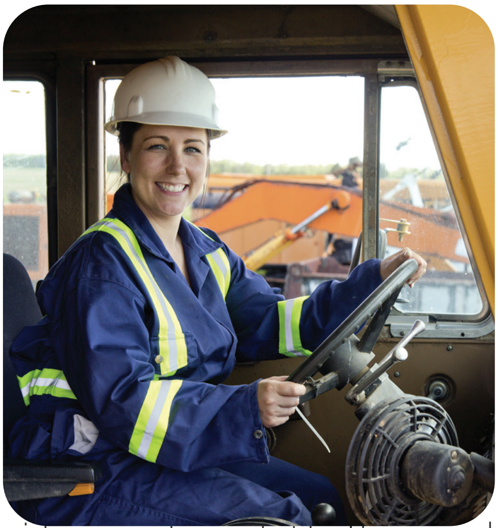
E2b Occasional business use

The motor 'occasional business use' extension also indemnifies a commercial client whose employees sometimes use their own cars on their employer's business. However, it is not a contingent cover and it protects both the client and employee. The cover may specify a set number of business trips per month/year, or an estimated mileage, or that the loss must arise only while the employee is on an authorised business trip.

The cover may be comprehensive, third party fire and theft, or third party only. As this is primary cover and not dependent (contingent) on the existence of another policy, a Certificate of Motor Insurance is required.

E2c Driving by unlicensed drivers

The 'driving by unlicensed drivers' extension applies mainly to situations where there is no legal requirement for a licence, e.g. driving a forklift truck within the boundary of a warehouse (not a 'public place' or where the public have access) and in situations where the policyholder did not know that the driver was unlicensed. Insurers will protect the policyholder provided that all other Certificate of Motor Insurance requirements are met.



E2d Breakdown assistance

This relates to a service providing roadside assistance or a home-start facility arranged by the insurer. Cover provided can vary between providers and is often a key selling point.

E2e Increased third party property damage limit of indemnity

The client may require this extension to fulfil certain contract conditions. As in commercial vehicle policies, this cover can be arranged for an additional premium.

Just think

Which of these extensions of cover may be suitable for JPW Architects?

If there are additional employees within the company who use their own vehicles for business purposes, either a contingent third party cover (employees' vehicles) or occasional business use extension should be considered. To establish which extension is most suitable, the adviser will need to know the company procedure for vehicle use. If employees are required to extend their own private motor policies to include business use, JPW Architects may wish to consider contingent third party cover to protect themselves if, for some reason, the employees' policy does not operate. On the other hand, if the use is very occasional, the company may not wish to put the employees to the expense of extending their own personal covers on an annual basis and may take out an occasional business use extension to provide the motor cover required. Driving by unlicensed drivers will probably not be required and it is unlikely that an increased third party property damage limit of indemnity will be required. Breakdown assistance is always of value where available on a fleet policy.

E3 National Fleet Database

From 2023, motor fleet and motor trade policyholders must upload the details of their insured vehicles to the National Fleet Database (NFD). These details include vehicle registration numbers, the names, licence details and dates of birth for all named drivers and the Trade Plate numbers. This information must be submitted within calendar 14 days from the date of a vehicle acquisition/disposal, or the addition/removal of a named driver covered under the policy.

The NFD is managed by the MIBI and will be used by An Garda Síochána to enforce the legal requirement for motor insurance.

Any fleet owners or motor traders that do not provide the required information will be committing an offence and will be liable to a Class C fine of up to €2,500 on summary conviction in the District Court. In addition, a policyholder may have their vehicle seized by An Garda Síochána, if the vehicle is believed to be uninsured.

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

F Light commercial vehicles

This section looks briefly at how insurers underwrite and provide cover for vans commonly referred to as LCVs, which are mainly used for the carriage of own goods.

There has been a rise in recent years of the manufacture of 'car vans', i.e. commercial vehicles that look and have other very similar aspects to private cars, and their similarity to private cars has influenced some insurers to underwrite such vehicles in their personal lines departments. These are typically 2-door vans with storage area in the back, no rear passenger seats and no rear side windows. Insurers calculate premiums and provide policy cover for these LCVs in a similar way to private motor vehicles – another reason why most insurers underwrite LCVs in their personal lines department rather than in the commercial lines department.

Advisers should be aware of how insurers provide cover for LCVs for commercial use (carriage of own goods or carriage for hire and reward), as they need to understand the broader considerations, including the issue of liability and commercial policy cover versus private motor policy cover.

In considering the scope of cover for LCVs, we will make comparisons between larger trucks (commonly known as heavy goods vehicles (HGVs)) and private motor vehicles. You may already be familiar with these definitions which differentiate between the various types of vehicle.

What is a private motor vehicle?

A private motor vehicle is a vehicle designed and constructed for the carriage of passengers and consists of no more than eight seats in addition to the driver.

What is a light commercial motor vehicle?

A LCV is a vehicle designed and constructed for the carriage of goods and having a gross vehicle weight (GVW) not exceeding 3,500 kgs. The GVW includes the vehicle's chassis, body, engine, engine fluids, fuel, accessories, driver, passengers and cargo but does not include any trailers.

What is a heavy goods vehicle?

A HGV is a vehicle designed and constructed for the carriage of goods and having a GVW in excess of 3,500 kgs. Many of the vehicle types outlined in Sections C1-C5 could be categorised as a HGV.

Just think

Consider Michael in the sample client profile at the beginning of this chapter. Identify the category in which his small van would fit and the insurer's main underwriting considerations when deciding how to rate that risk.

Michael would require LCV cover for his small van. His insurer would note that in his capacity as a self-employed electrician, Michael will travel to various locations to carry out his work but would carry his own tools and materials only. They would also consider Ciarán's limited driving experience and may apply a higher excess when Ciarán drives.

F1 LCV underwriting considerations

Insurers will vary in their acceptance criteria and this should be checked on a case-by-case basis.

In underwriting LCVs, the key considerations, similar to a private motor policy, will include the make, model, engine size, year and value of the vehicle together with driver details, areas of use and no claims discount history.

In addition to these underwriting considerations, one of the most important factors in deciding how a commercial vehicle is rated is the business description of the policyholder, as this will determine the use that the vehicle will be put to. For example, in the case of a proposal from a butcher with a standard LCV, it is most likely that the LCV has been modified to include a refrigerated insulated unit. Refrigerated units may increase the overall value of a vehicle and this needs to be factored in by underwriters.

Private motor insurance has Classes 1(a), 1(b), 2 and 3, while commercial vehicles (HGV and LCV) have two different main classes of use:

- use to carry the insured's own goods
- use including the carrying of goods for hire and reward (known as haulage).

'Carriage of own goods' would include cover for social, domestic and pleasure purposes. Most tradesmen (e.g. plumbers, electricians, welders) also use their vehicles to drive to and from a place of work and to carry their tools or supplies. Like Michael in our sample client profile, this motorist could be underwritten in the personal lines department. In many cases, they are one-person operations and the policy cover provided will be broadly similar to that for private motor vehicles.

On the other hand, 'carrying goods for hire' is a greater risk for insurers (these motorists are being paid to transport goods and this impacts on the liability exposure and mileage). Many insurers prefer to see this type of risk (e.g. haulage contractors and couriers) handled in their commercial department, even when it involves an LCV. Given the increased risk, they do not view this risk as falling into the normal category of LCV.

It must be noted that the goods themselves are not covered under the motor policy, only the vehicle. For example, if an LCV is stolen and recovered, the policy will pay for the repairs to the vehicle but any damage to or loss of the goods in the LCV will not be covered by the motor policy. The goods can be separately insured under a goods-in-transit insurance policy (see Chapter 4E).

The policyholders/risks that insurers tend to cater for in their personal lines departments have a number of common elements. They are broadly similar in nature, are sufficiently numerous to make rating reasonably accurate, and do not have specific underwriting requirements (e.g. the cover provided can, in most cases, be the standard cover). LCVs fall into this category, which is often referred to as commodity type business.

If the underwriting requirements/rating are non-standard, the insurance is usually handled in the commercial lines department. The reason for this is that the underwriting of non-standard risks would require an awareness and knowledge of non-standard features that underwriters in the commercial lines department would be more familiar with.

Non-standard features of an LCV risk may arise from the use, occupation, nature of goods carried or increased potential exposure from the following sources:

- potential pollution risks due to types of goods carried and nature of work, e.g. waste removal contractor
- access requirements to high-risk/hazardous locations, e.g. airports, airfield or aerodrome (where 'airside' cover may be required)
- indemnity to principal
- third party property damage limits
- loading/unloading, e.g. for a carpet-fitting company or a glazier
- use of trailers – increased frequency of use, the size of the trailer, its actual use (potential increased risk depending on loads) and liability to third parties cover relating to trailers (subject to compliance with RTAs)
- different risks relating to the liability to passengers e.g. a large bus.

G Questions to ask the client

The adviser should develop a questionnaire and use it consistently for each client. Specific questions are required that relate to particular sections of the insurance policy cover. For example, questions regarding the drivers, their licences and driving experience will be required when defining any limitations, restrictions or additional excesses that will apply. Details regarding the use of the vehicle will be required to understand the full extent of liability the insurer will be insuring. While the complexity of the risk will vary from one client to another, Example 2.1 outlines a template suitable for a motor fleet. It could also be used as a basis for other, smaller risks.

Example 2.1

Questionnaire template

Client

- Is there more than one named policyholder?
- If there is more than one policyholder, is there a need for joint indemnity/cross liabilities (see Chapter 6C3c)?
- When was the business established?
- What risk management procedures are in place?

Claims experience

- Is there proof of up-to-date claims experience provided by current/previous insurer(s)? For most risks, 5 years will be required.

Vehicles and trailers

- Is the schedule of vehicles current and accurate (make, model, year, carrying capacity and current value)?
- Is a declaration basis required?
- Are trailers to be insured (attached/unattached) and what is the cover level?
- What is the profile of vehicle numbers over the 5-year period?
- Are forklift trucks to be covered or are they covered elsewhere, e.g. in an engineering policy?
- Technology in use e.g. cameras, tracking of driving patterns (via 'black box' technology), vehicle automation and telematics.

Use

- Any carriage of own goods?
- Any carriage of goods for others?
- Any general haulage?
- Any commercial travelling?
- Any carriage of hazardous goods?
- Any use of vehicle abroad?

Example 2.1 (contd)

Drivers

- Are all drivers within the age restriction levels?
- Do all drivers hold full and appropriate licences?
- Have licences been checked?
- Do any drivers have any health issues or disabilities that may affect their ability to drive?
- Has any driver been involved in an accident in the past 5 years? Has any claim been made against the driver?
- Does the driver have any motor convictions, pending motor convictions or penalty points? Note: Insurers must observe the requirements of the **Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016.**

Cover basis

- Comprehensive/third party fire and theft/third party only?
- What third party property damage limit of indemnity is required?

The answers to these questions will allow the adviser to prepare a comprehensive submission for the insurer, which will enable them to see both the factual risk information and underlying trends clearly.

H Summary

In this chapter we have considered the compulsory nature of motor insurance and its legal background. We examined the various levels of cover available under commercial motor policies and the particular features of the different types of commercial motor insurance, including how insurers provide cover for LCVs for commercial use. We also focused on the role of the adviser in commercial motor insurance, concluding with an outline of the typical questions that the adviser should ask a commercial client about their motor insurance requirements.

H1 What's next?

Chapter 3 continues our study of commercial insurance products and considers some of the important aspects of arranging property insurances for a commercial client.

H2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

H3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 2.

1. Outline the main compulsory insurance requirements for commercial vehicles.

2. List the extra cover typically provided by the addition of 'fire and theft' to a third party only motor policy.

3. List the key elements of cover provided as standard under private car policies but not usually available under commercial vehicle policies.

4. Explain why insurers apply a special exclusion in respect of cement mixers and give details of this exclusion.

5. List the options available for insuring trailers.

6. Outline why there is no 'suspension of cover' facility under motor policies for agricultural vehicles.

7. Identify the three main types of motor trade insurance policy.

8. List three extensions of cover available under motor fleet arrangements.

9. Other than the vehicle and driver details, identify three underwriting considerations for an LCV.

10. List the questions an adviser should ask a client regarding the use of their commercial vehicle.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. It is illegal to drive, or be in charge of a vehicle, in a public place unless there is an insurance policy in force that provides indemnity for:
   - bodily injury or death caused to third parties, including passengers – unlimited
   - loss of, or damage to, property belonging to third parties – minimum €1.22 million
   - third party claimants' costs and expenses in connection with the claim.

   Such cover must apply throughout the EU and provide either the minimum required under Irish law or the law of the member state being visited, whichever is greater.

2. The extra cover provided by the addition of 'fire and theft' to a third party only motor policy is cover for damage or loss to the insured vehicle:
   - by fire, including self-ignition, lightning or explosion
   - during an attempted theft or while it is stolen
   - if stolen but not recovered.

   It may be subject to an excess but includes spare parts and accessories kept in, or on, the vehicle.

3. The key elements of cover provided as standard under private car policies, but not usually available under commercial vehicle policies are:
   - Driving of other vehicles
   - Provision of a new replacement vehicle
   - Personal benefits such as personal accident benefits, medical expenses and cover for personal possessions.

4. Insurers single out cement mixers for a special exclusion because the design of the vehicle requires that they are regularly maintained and working practices must be enforced to prevent solidification of the contents. If solidification occurs, there is a risk of toppling. Standard cover excludes the damage risk to the vehicle itself from solidification.

5. The options are:
   - Third party attached trailer cover
   - Third party unattached trailer cover
   - Specified trailer attached/unattached full policy cover.

6. There is no 'suspension of cover' facility under motor policies for agricultural vehicles because insurers take account of factors such as seasonal use in their rating and therefore do not permit further returns of premium for 'laying up' vehicles and implements.

7. The three main types of motor trade policy are:
   - road risks
   - internal risks
   - combined road and garage.

8. The most common extensions available under motor fleet arrangements are (any three of the following):
   - contingent third party cover for employees' vehicles
   - occasional business use cover (for employees' vehicles)
   - driving by unlicensed drivers
   - increased third party property damage limit of indemnity
   - breakdown assistance.

9. Other than the vehicle and driver details, the underwriting considerations for an LCV are:
   - areas of use
   - no claims discount
   - vehicle use and business description.

10. The main questions to ask about the use of their vehicle are:
    - Any carriage of own goods?
    - Any carriage for others?
    - Any general haulage?
    - Any commercial travelling?
    - Any carriage of hazardous goods?
    - Any use of the vehicle abroad?

Answers to quick questions

1. Insurers provide a narrower range of cover for commercial policyholders compared to personal policyholders for various reasons – each related to the cover itself. Examples include:
   - As commercial driving is usually restricted to employees, and a wide range of vehicles are insured, the third party property damage is limited; it is therefore difficult to operate an extension for the driving of other cars without providing cover to a wide group of people.
   - The personal benefits are inappropriate to a company.
   - Insurers will not normally replace vehicles less than 12 months old with brand new vehicles if damaged beyond economical repair (as they would for personal policyholders) because of the higher mileage and heavier use of commercial vehicles.

2. Public service vehicles (PSVs) are divided into:
   - Large PSVs – These have seating accommodation for 9 or more passengers in addition to the driver, and typically refer to buses, coaches and minibuses.
   - Small PSVs – These have seating accommodation up to 8 passengers in addition to the driver.

3. Insurers are more prepared to consider such extensions under a motor fleet arrangement due to a combination of factors. These include:
   - The motor fleet will, by its nature, attract a significant premium for the underlying risk and insurers are therefore more willing to extend cover to apply to what would otherwise be an unattractive insurance proposition in isolation.
   - The pricing of these covers is very difficult. They are not very common so most insurers have little reliable data; pricing the extra cover as part of the total risk is more appealing to insurers.
   - Insurers wish to be confident about the control exercised within the firm and will have a better idea of this if they know how the motor fleet is managed.

Sample multiple-choice questions

1. Brian is an electrician and has a comprehensive commercial motor policy with XYZ Insurance. The policy is subject to a €750 excess. His vehicle has been damaged beyond repair. The current market value of his vehicle is €18,000 but Brian paid €19,500 for the vehicle only six months previously. Assuming his claim is valid, how much will Brian receive from XYZ Insurance?

   A. €17,250

   B. €18,000

   C. €18,750

   D. €19,500

   Your answer:

2. Eddie owns a minibus with seating for 12 passengers. When seeking motor insurance, what category of vehicle would Eddie's minibus be classed as?

   A. Special type vehicle.

   B. Large public service vehicle.

   C. Public hire vehicle.

   D. Large private hire vehicle.

   Your answer:

3. Which of the following is an example of a restriction that motor fleet insurers may apply to young or inexperienced drivers?

   A. Reducing the third party property damage cover.

   B. Reducing the third party injury cover.

   C. Increasing the normal own damage excess.

   D. Increasing the normal own damage cover.

   Your answer:

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 2B

Question type: A

Correct response: A

Learning outcome: Demonstrate the key elements of commercial motor policy cover, determine the appropriate underwriting information applicable to different commercial vehicle insurances, and identify the main differences between commercial and private motor insurance.

2.

Chapter reference: Chapter 2C2a

Question type: U

Correct response: B

Learning outcome: Demonstrate situations where specific forms of commercial motor insurance may be required for different types of commercial vehicle, and state the main features of these insurances.

3.

Chapter reference: Chapter 2E1

Question type: K

Correct response: C

Learning outcome: Outline the circumstances in which motor insurances may be fleet-rated, and the different options available in the market.

Chapter

3

Commercial property insurances – insurable values and presentation of information

Chapter 3

What to expect in this chapter

Chapter 3 looks at some of the specific issues an adviser must consider when arranging commercial property insurances. We will identify the important information an adviser must obtain from a client, with particular emphasis on the information needed to set an appropriate sum insured. We will also consider how a commercial property risk is presented to insurers.

Chapter 3

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Arranging commercial property insurances**	Identify the main types of policy that provide property damage covers and demonstrate the means of establishing accurate sums insured under property policies.
B	**Establishing the sum insured**	
C	**Questions to ask the client**	Identify questions that encourage disclosure of the necessary material information to provide consumers with the most suitable commercial property insurance products and the main elements of a commercial property submission.
D	**Submitting a new commercial property risk to insurers**	

In Chapter 1, we examined the process of advising a commercial client about their insurance needs. We identified the importance of forming a relationship with a client and gathering sufficient information about the risks that they face. Without this information, the adviser cannot begin the task of recommending a suitable insurance product or service.

We will now look at some key issues an adviser must consider when arranging commercial property insurances.

It is useful at this point to think about a typical commercial client and their potential property insurance requirements. The sample client profile illustrates some of the important issues and introduces you to the products we will study in this chapter and Chapter 4.

Commercial property insurance sample client profile

Desks and More Ltd imports and distributes office equipment. They own their own premises, which they occupy as offices and a warehouse. There is also a trade counter that is open to the public.

Killian is the Managing Director of Desks and More Ltd. He is carrying out a review of the company's insurance arrangements and he has asked Michael, a local insurance broker, for advice about property insurance. The current policies have been in force for many years and Killian wants to make sure that they have all the covers they need.

Michael meets Killian to learn more about the business and its insurance needs. Michael notes the following:

- Property damage cover is required to cover the buildings, fixtures/fittings, general contents and stock.
- As the premises are of quite modern construction, there is a significant amount of glass. There is also a large shop front at the trade counter. This will need to be considered when arranging the cover.
- Desks and More Ltd will need money cover as cash passes through the business. Money will be on the premises during business hours and also kept in a safe in the premises overnight. The client also has to make arrangements to transport the money to the bank.
- As with most businesses, there is a heavy reliance on computer systems, especially in purchasing, sales and accounts. If the system is 'down' temporarily, the entire business is affected. The sales reps also have laptops. The firm does not currently have any specific insurance for the computer equipment, but they are interested in considering this for the future.
- There is a small forklift truck and a passenger lift in the warehouse. Both must be inspected under current legislation for lifting equipment. Engineering insurance with an inspection contract is therefore needed.
- All the stock is imported from Europe. Approximately 80% of the stock sold is then delivered to customers. Desks and More Ltd will therefore need goods in transit insurance.

As you will no doubt have identified, 'Desks and More Ltd' needs a number of different types of property insurance. They will also need motor insurance (Chapter 2), business interruption insurance (Chapter 5) and liability insurance (Chapter 6). These cover requirements are common to many small-to-medium sized enterprises (SMEs), regardless of their exact business description. Many of their insurance needs may be met in a combined or package policy (see Section A).

Chapter 3

A Arranging commercial property insurances

Although each commercial client has different needs and circumstances, most require a broadly similar range of covers. Typical insurance covers required by almost all businesses include property damage, money, glass, business interruption and liability. However, some commercial clients may only require liability cover, e.g. builders, consultants. We will study these covers in Chapters 4, 5, and 6. In this chapter, we will look at some of the main considerations for advisers regarding commercial property insurances. However, the adviser is unlikely to consider the client's property insurance requirements without also looking at their other insurance needs. The policy they ultimately recommend to the client might be one of the following:

- a stand-alone commercial property insurance policy (however, as noted earlier, this is not very likely)
- a combined policy
- a package policy.

A stand-alone commercial property policy covers the consequences of loss of, or damage to, the policyholder's property. Although it may offer some standard additional benefits (e.g. loss of rent), the contract does not include any other classes of insurance.

proposer

a person, firm or organisation applying for insurance cover

package policy

single policy containing different types of cover, underwritten and rated on an inclusive basis

For a commercial combined policy, the **proposer** completes one proposal form, on which they indicate the covers required (which might include a combination of property damage, business interruption and liability insurances). Each cover is rated separately and the final premium is a total of the individual premiums for each section. Insurers normally allow a discount on their usual rates for each class of business, to reflect the savings in administration costs.

For a commercial **package policy**, covers are not rated individually and the policy typically offers pre-determined sums insured and limits of liability (although some flexibility may be offered). Policies typically include property, business interruption and liability covers, as well as additional benefits such as helplines.

Package policies are typically marketed to SMEs in a particular sector, e.g. shops, offices or charities. They are constructed in a way that meets the common needs of the targeted sector. For many businesses, package policies offer a cost-effective means of accessing a range of covers through a policy that is written with their industry's needs in mind. However, the adviser must take care to ensure that the pre-determined covers and restrictions to cover are appropriate to the particular client's needs.

Just think

What type of business might need a combined, rather than a package policy?

Package policies are most suited to small businesses that do not display any unusual risk features. For larger businesses, or those requiring special risk covers, e.g. higher limits of indemnity for liability insurance, a combined policy may offer greater flexibility.

We will now look at some of the important considerations for advisers when arranging commercial property insurance. These apply whether cover is arranged through a stand-alone policy, or as part of a combined or package policy.

B Establishing the sum insured

When advising on commercial property insurance, one of the key elements is to establish the correct sum(s) to be insured. The insured amount has two important functions. Students will recall from The Nature of Insurance module that the sum insured acts as an exposure measure in property insurance. More importantly, from the client's point of view, the sum insured represents the maximum amount the insurer will pay if the property is totally destroyed or damaged beyond repair.

It is vital that the sum insured is set at an appropriate level. There is no advantage in over-insuring, as a policyholder will pay a higher premium and cannot make a financial profit from a claim. However, there is a serious disadvantage in underinsuring, as the insurer may not pay the full extent of a policyholder's loss if the sums insured are not adequate. In this case, the average clause will apply.

The client will need separate sums insured for the buildings and for their stock and contents. These are discussed in Sections B1 and B2.

In all cases, the definitions used in the policy will determine how the values/sums insured should be calculated to ensure that cover is adequate.

B1 Buildings

The term 'buildings' includes:

- landlords' fixtures and fittings
- outbuildings, walls, gates and fences, yards, car parks, roads and pavements
- piping, ducting and cables (where they are the policyholder's responsibility)
- landscaping.

Other items such as swimming pools, tennis courts or septic tanks may also be included in some insurers' definitions of the term 'buildings'. Specialist package policies may include extra items appropriate to their particular market sector. For example, a policy written specially for churches will also mention graveyards/cemeteries and grottos.

B1a Setting a sum insured for buildings

The basis for setting sums insured is normally 'reinstatement'. This means establishing the cost of rebuilding or replacing property lost, destroyed, or damaged, to a condition equal to, or mostly the same as (but not better or more extensive than), its condition when new. The client needs to remember that the sum insured for buildings should represent the rebuilding cost of the premises (including the additional costs outlined in Section B1b), and not the market value. It is critical to ensure that the correct figure is used, to avoid potential under-insurance.

Given the fluctuations in property prices and building costs in recent years, a client may be unsure of the reinstatement value of their building. Since an adviser is not a property expert, the client is best advised to engage a professional property valuer to assess the correct value for insurance purposes. The adviser may recommend that a professional valuation be carried out at appropriate intervals, e.g. every 5 to 7 years or less if building price inflation has been high. In the intervening period the sum insured should be adjusted to take account of building price inflation, alterations/extensions, or any other factors that may influence the rebuilding cost. This cost will often be given as a cost per square foot or square metre and the buildings sum insured will be calculated by applying this value to the total area of the building.

There are a number of ways that policy wordings can help clients set and maintain adequate sums insured. They essentially act as a form of protection from the effects inflation may have over the period of the policy. Three clauses that commonly apply to buildings sums insured are:

- **Reinstatement memorandum** – In the event of a partial loss, the reinstatement memorandum requires that insurers do not make a deduction for underinsurance as long as the sum insured represents at least 85% of the reinstatement cost at the time of reinstatement.
- **Day one reinstatement** – The reinstatement cost of the building is established on the first day of insurance, hence 'day one reinstatement'. A percentage uplift is agreed (between 15%-30%), which allows for any increase in the rebuilding cost during the period of insurance due to inflation costs only. It should be emphasised to a client that this will not protect them against undervaluation of the buildings at the inception of cover.
- **Index linking** – The sum insured is increased at renewal date each year in line with certain indices as decided by the insurer (e.g. Society of Chartered Surveyors of Ireland Property Index or Consumer Price Index (CPI)). Effectively, this means that if the sum insured is correct at the inception of cover, the sum insured remains adequate throughout the currency (length) of the policy.

The level of inflation may be the deciding factor for which of these three bases of cover will be the most suitable.

Just think

In what circumstances might an adviser recommend a day one reinstatement arrangement for buildings rather than the reinstatement memorandum?

Generally, the day one basis is appropriate only in times of reasonably high inflation. An exception to this may be where the client is so risk averse that they prefer the certainty of the day one arrangement rather than relying on the 15% 'safety net' of the reinstatement memorandum.

reinstatement memorandum
commercial property policy provision, whereby the sum insured must represent the full value at the time of reinstatement but providing a 15% margin of error in respect of partial losses

day one reinstatement
a means of countering the effects of high inflation by providing an automatic increase in the sum insured based on an accurate reinstatement sum insured on the first day of the cover

index linking
a method of calculating the sum insured on buildings and contents that is adjusted monthly in line with appropriate indices, but in times of very low inflation may be set at 'nil'

B1b Additional costs

When setting a reinstatement sum insured, the client needs to consider their 'worst case scenario'. If, for example, a building is destroyed by a fire or explosion, a lot of work must be done before the rebuilding can commence. The following additional costs need to be included when establishing a buildings' sum insured:

- Professional fees – These are architect, surveyor and consultant fees incurred in rebuilding. When calculating the buildings sum insured, a suitable percentage uplift (normally 15%) should be added and the policy will normally include a professional fees clause confirming that these are covered. Some insurers will provide an automatic uplift to include these fees, while others work on the basis that a provision has been made within the sum insured.
- Debris removal costs – If a building is substantially damaged, for example by a fire or an explosion, rubble will need to be removed from the site before the rebuilding or repair work can start. A policy clause will normally confirm that the buildings sum insured is inclusive of debris removal costs. These costs must therefore be included in the calculations.

- Public authorities clause – This clause is part of the standard policy wording and it provides for any additional costs incurred when rebuilding/reinstating the premises in order to comply with statutory requirements introduced since the premises was originally built (i.e. not statutory requirements that the insured was bound to implement but never did prior to the loss). For example, the new building may require improved fire escapes, drains or electrical installations to meet recent statutory building codes or requirements. The sum insured should include an allowance for these costs.

Quick question 1

In what circumstances might it be a good idea to recommend a separate figure for either professional fees or debris removal?

The answer is at the end of this chapter.

B2 Contents and stock

It is equally important to set correct sums insured for the other items covered under a commercial property policy. Separate sums insured are normally needed for contents and stock individually. Before we consider the process of setting adequate sums insured, it is useful to understand what each of these terms mean.

The term 'contents (other than stock)' includes:

- machinery, plant, fixtures, fittings and all other contents
- tenants' improvements, alterations and decorations
- contents of outbuildings
- contents in the open, e.g. in a yard
- personal effects – excluding motor vehicles – belonging to employees, directors, and visitors, if not otherwise insured

- money, documents, manuscripts and computer system records, up to a limited amount.

The term 'stock' includes both stock in trade and goods held in trust or on commission that the policyholder is responsible for. It includes raw materials, work in progress and finished goods.

Just think

Consider the client profile at the beginning of this chapter. What types of property might be included in a sum insured for Desks and More Ltd's (a) contents and (b) stock?

The contents sum insured for Desks and More Ltd will include their own office equipment and furniture, books and stationery, electrical and computer equipment (unless insured under a specific computer policy), racking/shelving and other fittings in the warehouse, items normally kept in outbuildings or in yards and an allowance for staff and visitors' personal effects.

Stock will include all items that will eventually be sold or delivered to customers (the office equipment), as well as any samples on loan from suppliers (i.e. held in trust).

B2a Setting a sum insured for contents

For most policies, the sum insured for contents is set on a reinstatement basis. The same options exist as for buildings (reinstatement memorandum, day one reinstatement and index linking – see Section B1a).

The overall sum insured for contents is typically expressed as a single figure. This is to the policyholder's advantage as it reduces the possibility of average applying in the event of a claim (as would happen if the client understates one area of contents cover, regardless of the overall value being adequate). However, it is sometimes advisable to separate specific elements such as 'office contents'. This might be preferred if the office building is a separate fire risk carrying a much lower rate than, for example, a warehouse or factory unit.

For manufacturing risks, a key element is the replacement of any specialist machinery used in the manufacturing process. In the event of irreparable damage there may be a waiting time for the replacement machinery to be sourced, installed and commissioned. The time delay might add to the overall cost (due to inflation) and in such a situation 'day one' cover might be appropriate. There is a consequential loss element to this exposure as the client's business interruption cover will need to account for machinery which may be hard to source or install.

In addition to establishing the overall contents sum insured, the adviser will also want to clarify with the policyholder the **inner limits** for certain specified items within the overall figure. Examples include:

- money and stamps
- computer systems records (only the cost of materials and labour in replacing these, not the loss of information)
- any one pattern, model, mould, plan or design (or set)
- personal effects of employees, directors and visitors (per person).

inner limits

specific maximum limits for defined items within an overall sum insured (generally relating to contents)

Chapter 3

These limits are often standard under a contents section of a policy but additional arrangements can be made by extending the standard cover or taking out a separate policy if required.

B2b Setting a sum insured for stock

As we saw in Section B2, the term 'stock' includes raw materials, work in progress and finished goods. The stock sum insured should be based on the cost price to the policyholder, rather than the sale price. It should also include delivery charges, packing materials and the cost of any work carried out by the insured, if relevant.

In the event of a loss, the insured is indemnified, i.e. placed in the same financial position they were in before the loss.

Refer back to the client profile at the beginning of this chapter. The stock sum insured for Desks and More Ltd will be based on the amount the firm paid for the items they will sell to their customers, plus the cost of packing and any alterations. For example, Desks and More Ltd might buy very basic desks from its suppliers. They could then add some additional features that increase the price they can charge their customers. The sum insured for these items is based on the initial purchase price paid by Desks and More Ltd (including delivery charges), plus the cost of adding these additional features. It does not include an allowance for the profit that they will make when they sell the desks to their customers.

target stock

stock that is particularly attractive to thieves, usually due to its portability and value

For theft insurance, insurers divide stock into categories according to its attractiveness to thieves. When assessing the value of stock, insurers will require details of what they consider to be '**target stock**'.

Goods that tend to be classified as target stock are those:

- of high value and small in size, therefore easy to transport
- with a ready second-hand (or illegal) market
- from an easily disguised source or supplier.

Insurers' lists of such items may vary, but they will all include the following:

- computer parts, electronics and hand-held electrical equipment
- pharmaceuticals
- tobacco/cigarettes
- wines and spirits
- jewellery and precious metals.

The adviser must inform the client of the correct basis for calculation and sub-division relevant to theft insurance, particularly bearing in mind that these are separate sums insured and not simply 'inner limits'. In the event of underinsurance, insurers may apply average when settling claims.

Example 3.1 illustrates how the stock sum insured will be calculated.

Example 3.1

ABC is a manufacturer of HD smart TVs. ABC holds a stock of metals, screens and plastics and bought-in components used in the manufacturing process. For fire and perils cover, the insurer has correctly calculated the stock figure for each of the three components as follows:

Raw materials €400,000

(based on current replacement value, plus transport costs, if any)

Work in progress €200,000

(based on raw materials, plus labour and other identified costs)

Finished goods €300,000

(based on the same as work in progress, i.e. raw material, plus labour and other identified costs and making sure the figure is below market value, i.e. not including the cost of getting the product to market)

The fire and perils policy will show an overall stock figure of €900,000, as all processes take place within the same building (a single fire risk).

However, the divisions for theft insurance will differ slightly because an insurer will be particularly interested in the finished goods (i.e. the TVs) as they are attractive to thieves. The theft sum insured will therefore be shown as:

HD smart TVs €300,000

All other stock €600,000

If stock values vary significantly during the period of insurance, e.g. where a business is seasonal, a **stock declaration basis** should be considered. In this arrangement, the sum insured is set at the expected maximum (not the average) figure for the coming period of insurance. The policyholder pays an initial premium based on 75% of this sum insured. The premium is adjusted at the end of the period of insurance based on the average value at risk during the 12 months.

stock declaration basis
a method of allowing a policyholder to establish a stock sum insured to allow for seasonal fluctuation

For some clients, it may be necessary to include specific provision for **stock debris removal**. This cover is recommended where the client's stock is 'high risk'. If damaged, such stock often requires very expensive specialist removal and disposal. Examples of such stock include cement, chemicals, pharmaceuticals, rubber and plastics. If this cover is needed, it will be shown as a separate item and sum insured on the policy schedule.

stock debris removal
the process of clearing, removing and disposing of damaged stock from a business premises

B2c Floating arrangements

If the insured operates their business from a number of different locations (e.g. an online retailer with warehouses in different parts of the country), cover for contents or stock may be provided on a **floating basis**. The insurer may agree to allow one overall contents or stock sum insured, which 'floats' between all locations specifically listed on the policy schedule. This is beneficial to the policyholder as they do not have to notify the insurer whenever contents values change at the different locations, as long as the overall value remains adequate. This protects the policyholder from the possibility of being seriously underinsured in the event of a claim at any one location.

floating basis
a means of insuring (usually) stock or machinery that is located across a number of risk locations

At the inception/start of cover the insurers will ask for a breakdown of the contents values at each location. They will then calculate an average rate, which applies to the overall contents sum insured. At renewal, the insurers will ask for an update of the values at risk at each location so that they can recalculate the average rate. Floating cover is more commonly used for stock, rather than contents.

Just think

Why do you think floating arrangements are more common for stock than for contents cover?

Stock, by its nature, is more likely to be moved between different locations (whereas contents tend to remain fixed to one location). For example, work might be carried out at one or more of the locations on the schedule. The finished goods might then be moved to another location before they are delivered to customers. It can be difficult to predict in advance how much stock will be in each location throughout the period of insurance.

B2d First loss cover

While insurance for fire and perils is typically arranged on a 'full value' basis, a first loss cover may be more suitable for theft. As with floating arrangements, this is more common for stock than for contents.

For example, the cost to replace a policyholder's entire stock value may be €1 million but the policyholder may consider the maximum value of stock that could be stolen at any one time is €100,000 (e.g. the theft of a car at a motor dealership). This might be because the stock is large and heavy and could only be moved by specialist equipment. For this reason, they might consider insuring their stock on a 'first loss' basis with a 'first loss sum insured' of €100,000. They must still declare the full value of the stock to the insurer.

estimated maximum loss

the maximum loss the insurer is likely to sustain as a result of a single incident (within probability)

When requesting this type of cover, a client may expect a much lower premium than for a policy based on the full value at risk. However, this is not always the case. Insurers will consider the **estimated maximum loss** (i.e. 'worst case scenario') when setting a premium for all types of commercial property insurance. In first loss cover, if there is very little practical reduction in the insurer's likely exposure, the premium will take this into account. However, there will usually be a lower premium for first loss cover than for full cover.

As the insurer is aware that the total value at risk is €1 million, 'average' does not apply to a claim settlement when cover is on a 'first loss' basis. However, it should be made clear to the policyholder that in the event of a claim, the maximum amount an insurer will pay is €100,000 and therefore careful consideration should be given to choosing the amount of the 'first loss sum insured'.

Quick question 2

How would you explain to your client that the insurer may refuse to offer a large discount for altering the basis of theft insurance from €1 million sum insured (full value) to €100,000 sum insured (first loss)?

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

C Questions to ask the client

In Chapter 4 we will consider in depth the specific **underwriting** product information applying to different classes of commercial property policy covers. But first, we will take a broad look at the topics an adviser needs to address in order to accurately establish the client's wants and needs. It is helpful for the adviser to create a questionnaire template and to use it consistently for each client. The questionnaire template in Example 3.2, used together with the product information in Chapter 4, will form the basis of the adviser's submission to the market and will enable the adviser to recommend appropriate and suitable products to the client.

underwriting

process of risk pooling, risk selection (choosing who and what to insure) and assessment of individual risks that meet the insurer's risk criteria

The reasons for these questions will become apparent in Section D, which looks at the information to be included in a commercial property submission to insurers.

Example 3.2

Business description

Full and accurate description of the business activities.

Buildings (risk address)

- Location/address/Eircode
- What is the sum insured/declared value?
- How old is the property?
- How is the property constructed (i.e. floors, walls, roof etc.)? Give details, including number of storeys and the construction materials.
- Details of composition of property e.g. type of insulation panels
- Are there basements or cold rooms in the property?
- What trade processes are carried out on the premises?
- Does the client have sole occupancy or do other tenants share the premises?
- Is this a purpose-built property?
- What are the current fire prevention and security arrangements?
- How far is the property from the nearest fire station?
- Is there a history of flooding in the area?

Example 3.2 (contd)

Contents

- What is the sum insured/declared value?
- Give full details of machinery and specialist equipment.

Stock

- What is the sum insured and the basis of cover (e.g. declaration basis, floating arrangement)?
- What is the precise nature of stock? Give details.
- What is the stock location? Give precise details, e.g. if any stock is out in the open.
- Give details of stock categories, including details of target stock.

Miscellaneous

- Give details of any other specific cover, e.g. sums insured, serial numbers and a brief description of items such as computers, tablets, laptops, forklift trucks, artwork.

Housekeeping

- What fire protections are in place, i.e. alarms, extinguishers, sprinklers, evacuation procedures?
- What are the business opening hours? Give details of any periods when the premises or content are unattended.
- What arrangements are in place for storage of hazardous goods, e.g. flammables?
- What waste removal arrangements are in place?
- What are the heating arrangements?
- Give details and proof of training, risk assessments and safety statements
- Is there sufficient separation of stock with a high fire hazard from the main premises?

Claims experience

- Give details of previous claims/incidents/accidents for the past five years (especially important for new clients).

D Submitting a new commercial property risk to insurers

In Chapter 1C, we introduced the main considerations that apply when submitting new commercial risks to insurers. Now that we have gathered the necessary information from the client, we will submit the risk to insurers for consideration. In complex commercial insurances, this may require a 'submission'. In this section, we will focus on the role of the adviser and the specific information they must gather before making a commercial property submission. An insurance market submission for commercial property insurance will include the points outlined in the following sections. Students will notice that these relate to the information in the questionnaire template (see Section C).

D1 Occupation/business description

It is vital that the adviser describes fully and accurately the occupation/business activities to the insurer. The business description is the first element the underwriter will consider and the enquiry will progress only if this is acceptable. The business description is also the starting point for developing the basis of rating.

Just think

Why do you think an underwriter is interested in the client's business description when considering a submission for commercial property insurance?

The business description gives the underwriter an initial view of the type of activities taking place on the premises. This might include hazardous activities, e.g. welding, that increase the risk of fire starting (inception risk), or storage of flammable materials that will feed a fire (spread risk). From a theft point of view, the business description (e.g. 'jewellery wholesaler') might alert the underwriter to target stock and the need for strong security measures.

In the event of a claim, the insurer will closely look at the business description. If the policyholder fails to disclose an element of the business, and the policy therefore does not include it, any claims or losses resulting from this part of the business will not be covered. Sometimes the standard business description itself may be sufficient for straightforward risks, e.g. retailers. However, if the business practises a number of different activities, e.g. a haulage contractor who is also a plant hire contractor, these should be clearly stated in the business description.

Chapter 3

D2 Details of the property and the key risk considerations

While no two risks are identical, the following points are always included in a risk submission for commercial property insurance:

- Location; full address of the premises including Eircode
- Sum insured for buildings, contents, stock and other items
- Construction, age and occupation of the premises
- Current fire protections, e.g. extinguishers, hoses, fire alarm and sprinklers, and whether these are properly maintained
- Storage arrangements for flammable liquids (their quantities, how and at what temperature they are stored and secured, and their waste removal procedures)
- Heating arrangements, including use of portable appliances
- Flood control measures, where appropriate
- The adviser's assessment of the current standard of, and attitude to, housekeeping, e.g. management control, tidiness, waste removal, control of unattended machinery and compliance with safety regulations
- Arrangements for control of visitors, and whether these are properly enforced, e.g. permit systems in operation
- Distance to nearest fire station (and whether full or part time) or fire hydrant.
- Current security measures, e.g. intruder alarm system, method of signalling, mobile security patrols, hours in which security guards are present, guard dogs (important for possible malicious damage and arson claims, as well as the theft risk)
- Employee practices while onsite i.e. designated smoking areas.

Just think

Which of the bullet points in this section might influence an underwriter to allow a discount on the 'standard' premium?

While all the points are important, insurers are particularly looking for favourable answers to the questions on fire protection and security measures. Insurers will offer discounts if, in addition to standard fire protection requirements, certain fire extinguishing appliances are present on the property, and likewise for superior security standards.

D3 Claims experience

As discussed in Chapter 1C, the submission should also include an up-to-date claims experience with full details of previous claims and losses. The adviser should provide appropriate explanations, especially in relation to mitigating factors, i.e. factors that insurers might look on more favourably.

Just think

Can you think of examples of mitigating factors that the adviser should explain when commenting on a client's claims experience?

The following are examples of mitigating factors in a client's commercial property claims experience:

- The client may have sold a building that had poor security measures (and previous claims for theft or vandalism)
- The client may have engaged a risk management or safety consultant to help improve fire protection measures at their premises
- The client may have discontinued using a hazardous process (e.g. storing flammable liquids)
- The client may have installed a fire alarm or sprinkler system.

These factors might allow an underwriter to take a more favourable view of a client's claims history.

Chapter 3

E Summary

We began this chapter by looking at the different types of policy available and how the sums insured for commercial clients' buildings, contents and stock are calculated. We also examined the information the adviser needs to collect from a commercial client and how they should present this information to insurers.

E1 What's next?

In the next chapter, we will identify the different contingencies (incidents) that can be insured by commercial property insurance policies, as well as their typical perils, conditions and exclusions.

E2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

E3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 3.

1. Briefly explain the difference between a commercial combined policy and a commercial package policy.

2. In the context of commercial property insurance, list what is normally included in the term 'buildings'.

3. List the additional costs that should be considered when establishing a buildings sum insured.

4. In the context of commercial property insurance, state what is normally included in the term 'contents (other than stock)'.

5. State the main characteristics of 'target stock' for theft insurance.

6. Outline how cover for contents is rated on a 'floating basis'.

7. Explain how the 'day one reinstatement' clause works.

8. List some items that may be subject to inner limits within a contents sum insured under commercial property insurance.

9. Outline a situation where it would be suitable to arrange cover for stock on a stock declaration basis.

10. Explain why the accuracy of the business description is so important when presenting information to insurers.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. Both types of policy provide a number of different covers in a single insurance contract. The main difference is how they are underwritten and rated. Each section of a combined policy is underwritten and rated separately. A package policy is rated and underwritten on an inclusive basis.

2. The term 'buildings' includes:
    - landlords' fixtures and fittings
    - outbuildings, walls, gates and fences, yards, car parks, roads and pavements
    - piping, ducting and cables (where they are the policyholder's responsibility)
    - landscaping.

3. The additional costs that need to be considered when establishing a buildings sums insured are:
    - professional fees
    - debris removal costs
    - a public authorities clause.

4. The term 'contents (other than stock)' includes:
    - machinery, plant, fixtures, fittings and all other contents
    - tenants' improvements, alterations and decorations
    - contents of outbuildings
    - contents in the open, e.g. yards
    - personal effects (excluding motor vehicles) of employees, directors, and visitors (if not otherwise insured)
    - money, documents, manuscripts and computer system records up to a limited amount.

5. Target stock is characterised by its attractiveness to thieves, including:
    - a high intrinsic value and relatively small size (therefore easy to transport)
    - a ready second-hand (illegal) market
    - an easily disguised source or supplier.

6. A rate is applied to each separate risk location and an 'average' rate calculated (updated at renewal).

7. The reinstatement sum insured is established on the first day ('day one') of cover. An agreed percentage uplift is allowed, to protect the policyholder against any subsequent increase in reinstatement cost due to high inflation.

8. Such items include: money, stamps, computer records, moulds, plans, designs, personal effects of employees/customers.

9. It would be suitable to arrange stock cover on a stock declaration basis where there are significant fluctuations in stock values during the period of insurance, e.g. seasonal businesses. The premium is adjustable at the end of each period of insurance.

10. The business description forms the basis of the underwriter's decision on whether they will accept the risk, and what rate will apply. Any business activity falling outside the business description will not be covered.

Answers to quick questions

1. It would only be appropriate to recommend a separate figure for either professional fees or debris removal in situations where the standard policy limit may not be sufficient. For example, if the building has a complex structure, which would need additional professional fees to rebuild it following a loss; or if the building is in a location that is restricted or difficult to get to (e.g. an island), which would increase the debris removal costs.

2. The client needs to be made aware that, although there is a reduction in the insurer's exposure, there may be little practical reduction as the estimated maximum loss may not have changed. The insurer's rate for cover on this basis has been adjusted to take this into account and there may not be a large difference between the premium for full cover and first loss cover. It should also be made clear to the client that the maximum amount that the insurer will pay is €100,000.

Sample multiple-choice questions

1. What types of business are most suited to effecting commercial package property policies?

   A. Small businesses that do not display any unusual risk features.

   B. Large businesses requiring special risk covers.

   C. Small businesses with unique or unusual risk features.

   D. Large businesses requiring higher limits of indemnity.

   Your answer:

2. A company holds stock with a declared value of €300,000 and arranges cover on a 'first loss' basis for €60,000. If a loss of €80,000 is incurred, what **maximum** settlement would be paid out under this policy, ignoring any potential excess and assuming that average does not apply?

   A. €20,000

   B. €40,000

   C. €60,000

   D. €80,000

   Your answer:

3. ABC Manufacturing omits to disclose an element of its business operation on the company's commercial insurance proposal form. In the event of a claim for this part of the business, what is the most likely way the claim will be dealt with?

   A. The claim will be fully covered.

   B. The claim will be partially covered.

   C. The claim will be declined.

   D. The claim will be covered but with a deduction for wear and tear.

   Your answer:

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 3A

Question type: K

Correct response: A

Learning outcome: Identify the main types of policy that provide property damage covers and demonstrate the means of establishing accurate sums insured under property policies.

2.

Chapter reference: Chapter 3B2d

Question type: A

Correct response: C

Learning outcome: Identify the main types of policy that provide property damage covers and demonstrate the means of establishing accurate sums insured under property policies.

3.

Chapter reference: Chapter 3D1

Question type: U

Correct response: C

Learning outcome: Identify questions that encourage disclosure of the necessary material information to provide consumers with the most suitable commercial property insurance products and the main elements of a commercial property submission.

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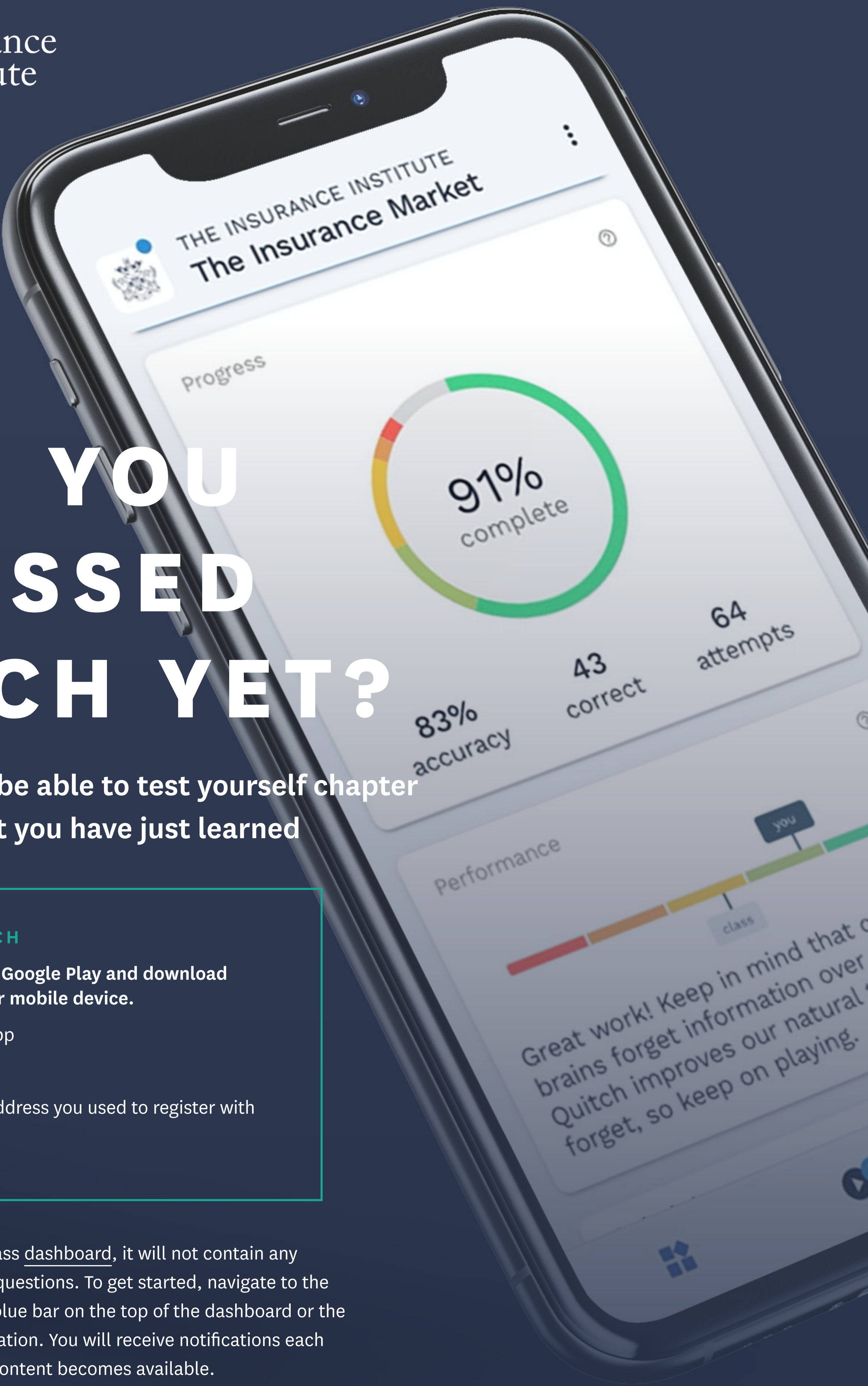

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Chapter

4

Commercial property insurances – policy cover

What to expect in this chapter

This chapter focuses on the cover provided by commercial property insurance policies. We will identify and explain the scope of cover and the particular issues that arise in connection with individual perils, extensions and exclusions.

In Chapter 3A, we identified the role of commercial combined and packaged policies. These policies typically include many of the covers that we will now consider.

As you study this chapter, it will be helpful to refer back to the sample client profile at the beginning of Chapter 3. When you consider each area of cover, think about:

- Does Desks and More Ltd need this cover?
- Which aspects of policy cover are most relevant to their needs?

Chapter 4

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Property insurance**	Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to commercial property, glass, money, computer, goods in transit, marine cargo, farm, and contractors 'all risks' and aircraft insurances.
B	**Glass insurance**	
C	**Money insurance**	
D	**Computer insurance**	
E	**Goods in transit insurance**	
F	**Marine cargo insurance**	
G	**Farm insurance**	
H	**Contractors 'all risks' insurance**	
I	**Aircraft insurance**	

A Property insurance

Although there is no standard wording for commercial property insurance, the insurance policies offered by different insurers are often very similar. The main differences relate to the definitions used within the policy, or the extensions in cover provided. (We suggest you obtain two or three policy documents and identify their similarities and differences yourself.) The wordings set out in Sections A1-4 are typical of those generally found in the market. Where appropriate, any special considerations or restrictions to cover have been highlighted.

A1 Fire and perils cover

Traditionally, insurers have arranged property damage cover on a 'fire and perils' basis. These policies cover damage as a result of the perils listed in the following sections.

A1a Fire

There is no actual definition of fire in an insurance policy. However, it is generally accepted that a fire involves:

- actual ignition – the term ignition normally means 'to catch fire'
- something on fire that should not be on fire
- an event that is accidental and unexpected as far as the insured is concerned. This means that a policy will cover damage caused by a fire that was started by an insured's carelessness, but it will not pay a claim where the insured deliberately started the fire.

For the purposes of insurance cover, the term 'fire' is defined more by its exclusions than by its cause. Fire cover **excludes** some specific events such as:

- explosion resulting from fire – this is a separate peril
- earthquake or subterranean fire – separate perils
- **spontaneous fermentation/combustion** – policies exclude damage caused by a fire resulting from an internal build up of heat rather than external ignition. The build up of heat is caused by chemical or bacterial processes, which can happen when large amounts of hay, coal, compost and some other materials are stored. As we will see in Section F, this exclusion may not apply in farm policies.
- damage to property while it is undergoing any process involving the application of heat (such as welding). However, if the fire spreads to other insured property, this damage will be covered by the policy. The exclusion only applies to the property that is actually being worked on.

spontaneous combustion

a fire that is caused by a process of self-heating rather than an outside ignition source

Chapter 4

Just think

Does a standard fire policy cover damage caused by smoke or by scorching?

A standard fire policy will only cover smoke or scorching damage if it is caused by an actual fire, i.e. if there was ignition. For example, gradual damage caused by smoke or heat from a chimney or a boiler is not covered.

A1b Lightning

This is straightforward and covers all damage or destruction caused by lightning. There are no special considerations.

A1c Explosion

The standard cover applies in respect of damage resulting from the explosion of boilers and gas appliances used for domestic purposes only (e.g. for heating the premises). It does not cover damage resulting from the explosion of boilers or steam pressure vessels used for commercial purposes. If this cover is needed, a separate engineering inspection policy should be arranged and ensures that periodic inspections are undertaken by a qualified engineer.

A1d Aircraft

This covers damage to property caused by an aircraft and by articles dropped from an aircraft. Although this happens very rarely, the cover provides an important protection, especially for properties in the vicinity of airports or under flight paths.

A1e Earthquake and underground fire

Earthquakes in Ireland are very unusual but there have been some instances. For example in January 2012, an earthquake measuring 2.2 on the Richter scale was recorded in Donegal. As their probability is very low and earthquakes have not caused significant damage in the past, insurers normally include this cover automatically and at a minimal cost.

Underground fires (also called subterranean fires) are not an issue in Ireland. As with earthquake, insurers include this cover in property policies with no particular restrictions.

A1f Riot, civil commotion, and malicious damage

This cover is available under most commercial policies, but special terms may apply, e.g. if the client's business is in a high-risk locality. These terms are defined as follows:

- Riot – this means a public act of violence by an unruly mob.
- Civil commotion – this means an uprising of a large number of people, usually resulting in damage to property.
- Malicious damage – this means deliberate damage to, or destruction of, property by the wrongful act of any person.

Note that it can sometimes be difficult to distinguish between malicious damage and attempted theft, e.g. where there is damage to a building but nothing stolen.

A1g Storm and flood

Climate change in recent years has led to an increase in flooding incidents, and the annual cost of flood-related claims has risen substantially. This is likely to become an even bigger problem in the future and many insurers are now refusing to provide flood cover in certain areas.

A standard exclusion in respect of this peril is damage to movable property in the open, and to fences and gates. Also excluded are losses caused by frost, ground heave or **landslip**, subsidence and changes in the water table level.

landslip
landslide or movement of land

A1h Escape of water

This refers to damage caused by the escape of water from any tank, apparatus or pipe. Cover is not provided for damage to unoccupied buildings. This is because the building will not be heated if it is unoccupied and so the risk of burst pipes will increase in cold weather. Also, any damage from an escape of water may not be discovered for a long time in an unoccupied building.

A1i Impact

This peril covers damage to the insured property as a result of impact by road vehicles or animals. Cover is generally provided for damage caused by the insured's vehicles/ animals and also by those belonging to third parties. This is particularly important for businesses where there is a high volume of traffic, e.g. filling stations, depots and warehouses.

A1j Sprinkler leakage

If a sprinkler system is in place, the adviser should ensure there is cover in place for sprinkler leakage, as this could cause considerable damage to stock. During winter months, special precautions (for example, keeping the building temperature at a certain level and ensuring sufficient lagging is present on pipes) must be taken to eliminate or reduce the risk of water freezing and pipes bursting.

A1k Terrorism

Standard policies exclude all forms of terrorism. However, it is possible to purchase stand-alone/separate terrorism cover. This does not apply to Northern Ireland, as it comes under the UK terrorism compensation fund, Pool Re.

A1l Subsidence, ground heave or landslip

Cover for subsidence, ground heave or landslip is often included within a material damage 'all risks' wording, but sometimes needs to be requested separately.

For risks situated in locations known to be prone to subsidence, insurers often have a separate questionnaire specific to this peril. The questionnaire requests information on whether the premises are built on reclaimed land or an infill site, or if there are any visible cracks in the walls. The peril of subsidence often carries an increased excess.

A1m Theft

Theft (or attempted theft) cover in a commercial policy is conditional on forcible and violent entry to, or exit from, the building. Insurers will normally insist on minimum standards of physical protection of the property. This may include a particular standard of locks on doors and windows. Insurers may also require alarm protection, especially if target stock is present and/or the location is high-risk. If the underwriter requires an alarm to be installed, the policy will generally contain an alarm warranty, and cover will not operate unless the alarm is set when the premises is unoccupied.

The adviser should make sure that theft cover extends to include the actual building(s). This is because a building can often be damaged in the course of a theft or attempted theft. Also, the building itself can be the target of theft; for example, theft of copper piping, tanks and lead flashings from the roofs of buildings can occur, in particular from unoccupied buildings.

Theft cover usually excludes the theft of any property in the open or any outbuilding, as well as theft of property in transit – this is more specifically insured under goods-in-transit cover.

A1n Accidental damage

Accidental damage is an optional additional peril in many fire and perils policies. As the name suggests, this covers further ‘accidental damage’ beyond the cover provided by the various specified perils, such as accidentally dropping an item or knocking against a flimsy partition wall.

A2 ‘All risks’ cover

As insurance covers evolved, insurers developed products that are underwritten on an ‘all risks’ basis. Rather than listing the contingencies (events) that are covered, an ‘all risks’ policy covers damage resulting from ‘any accidental cause’, with a number of exclusions.

For cover to operate on the ‘fire and perils’ basis, the cause of the damage (the peril) must be specifically stated in the policy. Under an ‘all risks’ policy, any damage is covered, as long as it is not resulting from an excluded cause. Unlike a fire and perils policy, which has a list of the contingencies/perils that are covered by the policy, an ‘all risks’ policy has a list of what is **excluded**.

Insurance policy extract 4.1 is an abbreviated version of the extent of cover provided by a material damage ‘all risks’ policy. We suggest you study a selection of policy wordings to gain a further understanding of the cover provided and the exclusions that apply.

Insurance policy extract 4.1

'All risks' policy cover wording

All damage except:

- gradually operating causes – e.g. wear and tear, gradual deterioration, latent defect, corrosion, rust, wet or dry rot, shrinkage, evaporation, loss of weight, dampness, dryness, denting, scratching, vermin or insects, change in temperature, colour, flavour, texture or finish
- work process – process of production, packing, service or repair, heat processes
- poor workmanship – faulty or defective design or workmanship by the policyholder
- engineering risks – boiler explosion, collapse or overheating of boilers and pressure vessels and mechanical or electrical breakdown (unless the breakdown is caused by a peril or contingency not otherwise excluded).

Overall, the effect of cover for fire and full perils including accidental damage is broadly similar to 'all risks' cover.

Material damage 'all risks' (including theft) cover has now become the more common basis of arranging property insurance, due largely to the wider level of cover provided for a relatively small increase in premium. With the exception of situations where cost is a major issue, or where underwriters are not prepared to provide the cover – e.g. for unoccupied premises, older buildings or buildings with non-standard construction – the adviser should normally recommend this cover to the client as 'best advice'.

A3 Rent

Commercial property policies also include cover for loss of rent. This is the only cover under a material damage policy that relates to any kind of business interruption loss. There is, however, an important difference between the two covers, outlined as follows.

Under a material damage policy, loss of rent will be paid only if the insured buildings – or part of them – are unfit for occupation following insured damage. Cover only applies until the building is repaired/reinstated following a loss and is fit for occupation.

Business interruption policies also cover a policyholder's loss of rent receivable. This cover extends until the building has actually been reoccupied. It will therefore include the time required to obtain a suitable tenant (subject to the limitations of the maximum indemnity period). We will look at business interruption insurance in Chapter 5.

A4 Extensions to cover

Some insurers provide 'extensions' as standard and others require a specific request to include them on the policy. A list of those extensions most frequently requested appear in Sections A4a–c.

A checklist of these extensions could be used for discussion with the client. Some will clearly be relevant only in specific circumstances, e.g. cover for landscaping damage is only needed where the premises include surrounding land. Some of those listed for buildings may also apply to contents and should therefore be considered together.

A4a Buildings

- Services – full accidental damage cover for cables, pipes and drains, and also expenses for clearing drains and gutters after a loss
- Trace and access – covering the cost of finding the source of damage, e.g. a water leak where the source may not be obvious. This cover is subject to a limit, e.g. €15,000
- Fire brigade charges – cover under the policy is subject to either an automatic limit, e.g. €6,500 or €10,000, or noted as a separate sum insured
- Damage by emergency services – damage to lawns, paths and gardens by the movement of emergency service vehicles
- Landscaping damage – damage to grounds, e.g. lawns and trees, arising from insured events within the site
- Replacement of locks – where necessary following the theft of keys to the building, safe, or strong-room. This cover is subject to a limit, e.g. €2,000
- Workmen – most commercial properties need maintenance or repair work from time to time. If builders are carrying out work in an insured's premises, this theoretically means there is an increase in risk that should be disclosed to the insurer. However, the workmen clause allows for minor work to be carried out on the insured property without affecting the insurance cover.
- Tenancy – a tenant in a commercial property may do something that increases the risk of loss or damage (e.g. storing flammable liquids) and this should therefore be notified to the insurer. The tenancy clause allows for the fact that the property owner (policyholder) might not immediately realise this change in risk. The cover remains in force as long as the policyholder tells the insurer as soon as they become aware of the issue and pays any extra premium due.
- Subrogation waiver (clause) – the insurer waives their subrogation rights against the policyholder's parent/subsidiary company or anyone authorised to use the property provided they keep to the policy terms. For example, an insurer of a commercial building that is let to a tenant will not seek to recover its loss directly from the tenant, provided the tenant has conducted themselves within the policy terms.

Just think

Consider the client profile at the beginning of Chapter 3. Which extensions might be most relevant to Desks and More Ltd?

Services, trace and access, fire brigade charges and damage by emergency services should be considered for all clients who require property insurance and are therefore relevant to Desks and More Ltd. Landscaping damage may not be required for this client – the adviser should enquire about this when gathering information. Replacement of locks and the workmen clause will also be required by any client who occupies a premises and so should be included for Desks and More Ltd. No part of the property is sublet so the tenancy clause will not be required. It is also unlikely that Desks and More Ltd will need a subrogation waiver clause as the company is a small-to-medium enterprise.

A4b Contents

- Temporary removal – the policy provides limited cover for contents that are away from the insured premises for cleaning and repair. This cover applies within the geographic limits of the policy and is subject to a limit, e.g. €10,000, or 15% of the sum insured.
- Motor vehicles – for some risks, motor vehicles may be stored in the insured buildings. A very limited form of cover may be provided for damage to these vehicles while they are in the building, e.g. as a result of a fire in the building.

A4c Stock

A **seasonal increase** – an uplift of approximately 25% of the sum insured – is applied for 3 to 4 months during the policyholder's peak trading time per year, often at no additional cost. This usually applies within shop package policies. The amounts vary, and the stock declaration basis may be more appropriate for larger risks.

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

seasonal increase

specific percentage uplifts to sums insured on stock automatically provided by insurers for defined periods (e.g. Christmas and Easter)

Quick question 1

Your client is temporarily moving some machinery (valued at €7,500) to an associated company's premises. The associated company wants to test the machinery's effectiveness as they are considering buying something similar.

Does an insurer need to know this or is cover provided automatically?

The answer is at the end of this chapter.

B Glass insurance

Glass cover is usually an optional extension in a commercial property policy, or an automatic cover in a commercial package policy. The term 'glass' includes:

- fixed glass in windows and doors
- sanitary fittings such as basins and toilets
- fixed signs.

Cover is provided on an 'all risks' basis, including the cost of boarding up. If the glass includes any special feature, e.g. lettering or embossing, this should be notified to the insurer when arranging cover and will be covered as a separate item under the glass section, with a full description and a sum insured. Additional cover for damage to frames and goods in the shopfront can be provided. Glass claims are normally subject to a lower excess than other types of property claim.

Some policy wordings will apply a limit, whereas others will pay the 'reasonable cost' of replacing the glass without any specified limit.

Typical **exclusions** include:

- damage to glass in empty or disused premises
- scratching, gradual deterioration, wear and tear, change in colour or finish
- damage to glass in light fittings.

C Money insurance

Insurers provide money cover as part of most package policies or, if the risk is large enough, they will issue a separate stand-alone policy. They will, however, look to limit their exposure by applying policy limits, conditions and warranties. The definition of money is very wide in order to include most items that have a transferable cash value. Insurance policy extract 4.2 illustrates a typical definition used in the market.

Insurance policy extract 4.2

Policy definition of money

Cash, bank notes, currency notes, credit card sales vouchers, cheques, banker's drafts, postal orders, money orders, travellers cheques, current postage stamps, VAT invoices, pension and insurance stamps, national savings stamps or certificates, holiday with pay stamps, gift tokens, unused credit in postal franking machines, luncheon and other negotiable trade vouchers, consumer redemption vouchers, bus tickets, phone cards belonging to the Policyholder or for which the Policyholder is legally responsible and pertaining to the Business.

C1 Policy limits

The money policy has a number of different limits, each of which will need to be discussed with the client/policyholder. Different limits apply in respect of cash and non-negotiable money – i.e. money that should be easily recovered in the event of a claim, such as credit card sales vouchers and cheques. A policyholder will normally select the cash limit required and the non-negotiable money will have an 'any one loss' limit within the policy wording, e.g. €325,000.

Specific limits will apply to:

Money on the premises during business hours, in transit or in a bank night safe – This is a particularly important aspect of money cover, as these are the circumstances that normally give rise to a client's largest exposure. Insurers will impose strict conditions regarding the transit of money. They will want to know if varied routes, varied timing, different vehicles and trustworthy personnel are used in the transit of money. Insurers may also specify how many people ('custodians') are to be involved in the transit of money. The number of custodians depends on the amount of money in transit. While these requirements are commonly referred to as a 'custodian clause', it should be noted that this is very often a **warranty**[7]. Therefore the adviser must make sure the client is aware of the full implications. A sample of a **custodian clause** wording is shown in Example 4.1.

warranty
term (in an insurance contract) that, if broken, automatically voids the contract as a whole from the date of breach

custodian warranty
a requirement by insurers that a certain number of able-bodied adults accompany money in transit (under a money insurance policy)

[7] Note: The **Consumer Insurance Contracts Act 2019** deals with the use of warranties in consumer insurance contracts. However, this textbook presumes that the insureds being referred to do not fall within the Act's definition of consumer.

Quick question 2

What action is the insurer able to take if there is a breach of a custodian warranty?

Example 4.1

Amounts of 'money' up to but not exceeding €4,000 – one custodian

Amounts exceeding €4,000 but not exceeding €10,000 – two custodians

Amounts exceeding €10,000 but not exceeding €16,000 – three custodians

Amounts exceeding €16,000 – approved security company

Journeys in excess of 1 kilometre must be taken in a motor vehicle with the 'money' stored in a locked boot.

A custodian is a fully responsible adult of at least 18 years.

Money in a locked safe – Insurers normally cover cash in safes up to the safe manufacturer's recommended limit for the particular safe. As the locked safe limit will also apply outside business hours, there is a condition on the policy that keys or combination codes must not be kept at the premises.

Money in ATMs – Many retailers now have ATMs in their stores. Insurers do not view an ATM as being as secure as a safe and will not wish to provide large limits for cash in these machines outside business hours. There may also be a number of strict requirements and warranties regarding the loading of these machines. Some insurers request that an ATM is located away from the front of a store as this can decrease the footfall outside of opening hours.

Money out of safe overnight or at employees' homes – A nominal limit of approximately €500 normally applies.

Cover is on an 'all risks' basis and the policy does not specify forcible and violent entry to/exit from the premises.

Although money policies traditionally exclude loss of money due to dishonesty of staff or directors, most policies provide some cover for losses that are discovered within 7 days of the event. Losses that occur after the 7-day period are covered under a fidelity guarantee policy (see Chapter 5B).

D Computer insurance

Cover for computers and associated equipment may be provided as part of a combined or package policy. It can also be purchased as a stand-alone engineering policy. We will look at engineering insurance in Chapter 5D.

The equipment covered typically includes:

- Desktop computers (PCs) and laptops
- Printers, scanners and associated equipment
- Tablets, smart phones, digital cameras and other hand-held devices
- Removable vehicle satellite navigation systems
- Audio and visual equipment, such as data projectors and other electronic media presentation equipment
- Electronic cash registers and credit card devices, telephone systems and electronic access systems.

A computer insurance policy protects the physical risks that such hardware is exposed to. Nowadays, many businesses require a cyber-insurance policy to cover loss from risks such as viruses, computer fraud, security breaches and cyber liability (see Chapter 5E).

Regardless of whether the computer insurance policy is part of a combined or package policy or whether it is stand-alone, cover is generally on an 'all risks' basis. If the computer equipment is the subject of a maintenance contract, the cover can be extended to include loss or damage resulting from breakdown.

Cover for portable equipment, e.g. laptops and tablets, is usually provided on a worldwide basis. However, due to the reducing costs of portable computer equipment, and the effect of a policy excess, cover for these items is not as popular as it was previously. There will always be a warranty that this equipment is kept in a locked boot when in an unattended vehicle.

Cover also includes a provision for '**increased cost of working**' (standard limit of €50,000) and '**reinstatement of data**' (standard limit of €25,000) following a property damage loss. Technology is advancing rapidly and practically every business is now computerised. The consequent improvement in back-up systems, combined with better customer support, reduces the likelihood of a complete loss of data. The consequent reduction in the number and size of claims contributes to keeping the cost of this class of insurance very keen.

increased cost of working (expenses)
reasonable additional expenditure to avoid or diminish any reduction in turnover following a loss

reinstatement of data
Cover for the cost of reinstating data following loss or damage to computer equipment, corruption of data, and damage arising from an interruption of a public electricity supply

E Goods in transit insurance

Goods in transit cover is required for buyers and sellers of goods and, as the name implies, covers the client's own goods/property while in transit, e.g. a wholesaler delivering goods to retail outlets. The cover is for theft, loss and damage caused by accidents during transit or during loading, unloading or transit. Cover can be arranged on the basis of carriage by own vehicles or carriage by third-party vehicles, including rail or post. Generally, cover for carriage by own vehicles applies to inland transits only i.e. international transit is not covered and would instead be covered by a Marine Cargo policy (see Section F). However, the Goods in transit policy can be extended to cover limited international transit.

carriers liability (cover)

liability cover for damage to customers' goods, in line with the limits and restrictions in the carrier's terms and conditions or the standard market conditions of carriage

Insurers will require details of the goods being transported and often how they are packed, the 'estimated annual carryings', the number of vehicles and the limit required for 'any one loss'. If using third-party carriers (e.g. a haulage or delivery company), cover may be required for inland transits and also for imports and exports. Although a carrier will have **carriers liability** cover in place, their liability is restricted by their terms of carriage. This limits their financial exposure for loss or damage to the goods during transit. Because the owner of the goods agreed to these terms, they may not be fully compensated for their loss and they will therefore need their own goods in transit cover to pick up any shortfall. Insurers will require details of where the goods are coming from, the estimated annual carryings to/from each area, the limits for any one loss and the agreed basis of settlement.

As with all classes of insurance, there are relevant exclusions and conditions. An 'overnight warranty' is very common. This requires that vehicles are not left loaded and unattended overnight – unless in a secured compound.

Example 4.2 shows the information an importer and distributor of office equipment would need to supply for a cover/quotation for goods in transit insurance.

Example 4.2

Territory	Estimated annual carryings	Limit any one loss
Far East	€800,000	€150,000
Spain	€1,000,000	€100,000
United Kingdom	€1,200,000	€100,000
Inland	€2,750,000	€50,000

If the client is an exporter with transits to, rather than from, these countries, cover can be arranged in a similar fashion.

Goods in transit insurance should not be confused with carriers liability insurance. Carriers liability cover is typically purchased by shipping companies, haulage contractors, warehouse owners and others who transport or handle goods on behalf of their customers. The policy covers their legal liability for loss or damage to these goods.

Just think

Consider the client profile at the beginning of Chapter 3. Which of the covers detailed in Sections B–E are most relevant to Desks and More Ltd?

Desks and More Ltd will have a need for all of the covers detailed in Sections B–E, as per the following:

- Money cover will be very relevant to this business. There is a trade counter and money is held at the premises overnight and then transported to the bank by the client. Any client handling cash has considerable exposure.
- Computer cover will also be needed. The importance of the computer system to the success of the business was mentioned in the client profile so this class of insurance will be required. Cyber insurance should be considered as the company is heavily reliant on its computer systems for sales and data storage (see Chapter 5E).
- Goods in transit cover will be required to protect the stock while being delivered to customers and may also be required to cover the stock being imported if the cover provided by the carrier is not sufficient.
- Glass is probably the least relevant cover for Desks and More Ltd. While there is a large amount of glass at the premises, this risk is low in terms of anticipated frequency and severity.

F Marine cargo insurance

Marine cargo insurance is one of the oldest forms of insurance cover in existence. Cargoes vary from the shipment of raw materials to manufacturing centres to the transportation of finished products to consumers. Each year billions of tons of cargo valued in the trillions are moved worldwide. Anyone involved in the movement of cargo or goods in transit nationally or internationally - whether as an importer, exporter, carrier (e.g. airline, railway), freight forwarder, or a handling agent – should have a marine cargo insurance policy. Those involved in the movement of goods on behalf of the goods' owners (e.g. carriers, freight forwarders, warehouses) should also avail of appropriate liability cover in respect of the contract of carriage involved.

Cargo insurance provides indemnity for loss of or damage to goods in transit whether by road, rail, sea or air including while in storage in the ordinary course of transit (long-term storage and delay are not covered). Covers range from 'all risks' to limited perils as per the Institute Cargo Clauses (see Section H1). Coverage is usually much wider than Goods in transit insurance and covers eventualities such as contamination or deterioration of the product and insures the goods being transported on a global basis.

Cargo insurance is quite a complex insurance need and therefore, a broker is usually involved. The broker may deal with a larger international broker, a local insurer or the London and international marine markets. In recent years, shipping lines have teamed up with insurers to offer cargo insurance as part of their customer services e.g. Hapag Lloyd and Maersk.

F1 Types of policy

- **Voyage policies:** are used when an individual or a few individual sendings are made by the insured (e.g. someone emigrating from Ireland to Australia). This policy covers cargo from the time the goods are first moved into the warehouse for the purpose of immediate loading until delivery which is deemed to be at completion of unloading from vehicle/conveyance at final warehouse. If the cargo is intentionally held for storage or distribution before this occurs, insurance cover ceases.
- **Open covers:** allow an exporter or manufacturer to send cargoes on a regular basis, with tailor-made cover. Details of the types of goods to be sent and their expected voyages are declared to insurers, and insurers agree to accept all cargo sendings; provided they meet the predefined parameters of the type of goods, routes, valuation, maximum value and cover. The cover is automatic and the insured sends the insurers details of the risk on a monthly or quarterly basis.

The Institute Cargo Clauses are internationally recognised wordings used by the Irish market and are embedded in cargo insurance policies.

F2 Underwriting considerations

With cargo risks, the underwriter will be concerned with:

- the type of cargo and its susceptibility to damage
- the theft risk of the cargo
- the type of insurance cover being sought
- the value of the cargo
- how the cargo is packed
- the exposure to loss from each type of cargo
- the areas of the world the cargo is being sent to
- how the cargo is being transported (bulk or container)
- conditions of carriage in a **contract of affreightment**
- previous claims experience.

It should be noted that Marine Cargo insurance may not be required by the client if they have limited international transport and which does not involve transport by sea. In this scenario, the coverage under a goods in transit policy (see section E) may be sufficient. As Goods in Transit and Marine Cargo can offer similar cover and the terms are sometimes used interchangeably, the advisor must ensure that the coverage is suitable to each client depending on their coverage requirements for the transport of their goods.

contract of affreightment

a contract between a ship-owner and a charterer under which the ship-owner agrees to carry goods for the charterer in the ship, or to give the charterer the use of the whole or part of the ship's cargo-carrying space for the carriage of goods on a specified voyage(s) or for a specified time

Chapter 4

G Farm insurance

Insurances for farms are catered for by combined policies that provide a range of tailored covers in one policy document. Each of the insurances in this type of combined policy is looked at in various sections of this textbook, e.g. property, business interruption (see Chapter 5), liability (see Chapter 6) and motor (see Chapter 2C5, agricultural vehicles).

There are some differences between farm policies and other commercial combined policies. The most significant differences are in the property covers. Farm policies typically cover the private dwelling house and its contents, farm outbuildings, farm machinery, equipment and stock. Different farms have different types of property, so the adviser needs to obtain full details of the farm, its buildings and the types of machinery and stock. For example, arable farms (those that grow crops for food) are likely to have barns and similar structures. Livestock and dairy farms may have milking sheds and associated equipment. Some farms have specialist buildings such as poultry rearing houses or piggeries. For this reason, farm policies have specific definitions of the terms that are used. For example, the definition of insured property includes buildings, outbuildings, slatted sheds, silage, agricultural produce, poultry houses, farm machinery and farm equipment. Agricultural produce is normally defined as stock and produce, including hay, straw and growing crops.

G1 Policy cover

Insurers provide property covers for farmers on a fire and perils basis (see Section A). Although the range of perils is broadly similar to those in other commercial policies, there are some key differences. For example, unlike other commercial property policies, farm policies normally include cover for fire caused by spontaneous combustion, as farmers need protection from this risk. Heat can build up when damp hay bales are stacked, leading to a serious risk of spontaneous combustion. This can cause extensive damage to barns and other farm properties. Given the various materials used in the construction of farm outbuildings and the possible variety in the ages and conditions of the outbuildings, the storm peril is only active if noted on the schedule. It is now common practice for the farm property to be surveyed at either inception or renewal.

Other important differences include the following:

- Livestock – Farm animals are listed as a separate item on a farm policy. Standard cover is for death or injury caused by fire, lightning, explosion, storm, electrocution, flood, straying, attack by dogs, sheep worrying or during transit. Straying cover is only provided away from premises.
- Agricultural produce – A limited range of perils is available and water damage is normally excluded.
- Bulk milk storage installations – Bulk milk storage installations rapidly cool large quantities of milk and then store the milk until it is collected by a dairy. The main risks are of damage to the installation itself, or deterioration of its contents due to contamination or a change in temperature. Cover is provided on an 'all risks' basis covering sudden and unforeseen damage. Cover also extends to include deterioration/putrefaction of milk. Cover is subject to the policyholder having a maintenance contract in place for the installation.
- Private dwelling houses – cover for the farmer's private dwelling house is similar to that provided in a typical household policy. It includes the usual policy extensions, such as personal liability cover for the insured and members of their family. Household insurance is examined in the Personal General Insurance module.

Quick question 3

Combined or package policies for farmers normally include cover for household goods and personal effects as standard. Why is this the case?

Chapter 4

Chapter 4

H Contractors 'all risks' insurance

Contractors 'all risks' insurance provides protection against the risk of loss or damage to property during the course of a building contract. Security issues and theft/malicious damage risks on building sites present special challenges, making this an important type of cover for builders. Policies are tailored to meet the specific requirements of building contractors and cover damage to:

- permanent and temporary building works
- materials and equipment for the building contract, including hired-in property that the insured is responsible for
- the contractor's own equipment and property onsite
- employees' tools and personal effects while onsite.

Cover is normally on a fire and perils basis, including accidental damage (see Section A1). Policies typically **exclude** damage caused by:

- wear and tear
- mechanical or electrical defects
- defective workmanship.

Policies also normally exclude damage to an existing property that the insured is working on.

H1 Arranging cover

Most policies are arranged as annual contracts and are rated on the proposer's **turnover** and the maximum value (price) of any one construction contract. This is a convenient way of arranging cover for a builder that works on a number of different contracts throughout the year. Cover may also be arranged for a single building contract. In this case, it is rated on the contract value and duration of the contract, and adjusted to take account of the final cost if needed. The sum insured shown on the schedule is related to the contract value, plus other work or materials the policyholder is responsible for. The contract value is determined by the insured, but will usually include a costing for the scope of construction works, labour costs, sub-contractors' fees and a provision for profit.

A separate sum insured will also be required for plant and machinery owned or hired and temporary buildings. Debris removal and professional fees are also insured under a separate item.

Insurers will require details of the site security arrangements, especially outside of the normal working hours. At a minimum, the contractor will be required to secure all material and equipment in a locked compound. The perimeter of the site must be fenced in order to restrict site access to authorised personnel only.

turnover

income generated from the business at the business premises

I Aircraft insurance

The types of aircraft insured under this line of business is primarily airplanes but also helicopters, hot air balloons, sea planes and increasingly, drones.

Coverage is for the hull (the aircraft itself), third party legal liability and passenger liability. This section explores the scope of each of these coverages.

I1 Aircraft hull

This insurance policy is purchased by the aircraft owner on an agreed value basis. This means that the value of the aircraft hull is agreed at the inception of the policy rather than at the time of the loss.

Exclusions to cover are wear, tear and gradual deterioration, structural defects, electrical or mechanical breakdown.

The underwriter will seek information on the aircraft type, aircraft value, the hours flown, the pilot's experience and training, the air crew, the maintenance record of the plane and the routes which the aircraft will be flying.

I2 Third party legal liability

This cover indemnifies the insured for all sums that they may become legally liable to pay as compensation in respect of accidental bodily injury to or death of persons or damage to property on the ground and outside the aircraft. This is provided such bodily injury, death or damage is caused directly by the aircraft or by objects falling from it. The limit of liability will be agreed between the insurer and the insured and will be in respect of any one accident. There is no aggregate limit and therefore no limit to the total number of accident claims that can be made.

Exclusions to cover are noise liability and pollution damage, unless arising out of an accident occurring to the aircraft. Therefore, the policy only covers physical damage and bodily injury. Cover will not apply to persons in the service of the insured whilst acting in the course of their duties.

The underwriter will seek information on the size of the aircraft, the area of operation of the aircraft, the liability regime in the area to be covered, the type of aircraft operation, the insured's claims history and the limit of liability.

I3 Passenger liability

Passenger liability will indemnify the insured for their legal liability for injury or death to passengers whilst entering, on board, or alighting from aircraft. Loss of or damage to baggage or personal items belonging to passengers arising out of an accident to the aircraft will also be covered. The limit of liability will be agreed between the insurer and the insured. In addition, the insurer will pay any legal costs and expenses incurred with their written consent in defending any action that may be brought against the insured in respect for any claim for compensatory damages.

There will be exclusions for any directors or persons in the employ of the insured whilst acting within the course of their duties as such and specifically to the actual pilots and crew members of the aircraft; this liability is normally insured elsewhere. Contractual liability will also be excluded. This is normally only covered by special agreement after the insurers have seen and approved the contract.

The information sought by the underwriter will be the same as those for third party legal liability but will also include the seating capacity of the aircraft and the take-off and landing data (as the greatest risk of accidents to aircraft is whilst landing or taking off).

Chapter 4

J Summary

In this chapter, we looked at the main perils covered by commercial property insurance policies. We also identified some of the more specific types of property insurances that deal with a single cause of loss or damage (e.g. money or glass) or that meet the needs of a particular type of client (e.g. farm insurances or contractors 'all risks' insurance).

In reality, most commercial clients are likely to purchase a combined or package policy (Chapter 3A) that includes a range of property covers. Such policies also include the option of business interruption (Chapter 5) and liability covers (Chapter 6).

This packaging of covers reminds us that although property insurance is vitally important, additional covers are normally needed to deal with the other risks faced by commercial clients.

J1 What's next?

In Chapter 5, we will consider some of the insurances that work in tandem with and complement the cover provided by property insurances.

J2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

J3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 4.

1. List the events that are normally excluded in the definition of 'fire'.

2. Identify the key question an adviser should ask that is relevant to the peril 'escape of water from any tank, apparatus or pipe' and outline why it is relevant.

3. State what condition will normally apply for 'money in a locked safe' cover to operate.

4. Briefly explain the difference between 'goods-in-transit' and 'carriers liability' policies issued to owners of goods or general hauliers.

5. Outline why it is important to make sure that theft cover extends to cover the buildings item on a policy.

6. List three standard policy exclusions relating to material damage 'all risks' cover.

7. State the one condition that must be fulfilled for theft cover to operate.

8. State what condition/warranty insurers will normally apply to portable computer equipment left in an unattended vehicle.

9. Briefly explain why a client might arrange cover for their goods-in-transit while in the custody of a professional carrier.

10. Identify the main exposures covered by a contractors ‘all risks’ policy.

11. List the risks an insurer would be concerned with regards marine insurance.

12. List the key elements of cover provided under passenger liability.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. The definition of fire excludes:
   - explosion resulting from fire (a specified peril)
   - earthquake or subterranean fire (separate insurable perils)
   - spontaneous fermentation/combustion or heating, or any process involving the application of heat.

2. Are there any buildings empty or not in use? This is relevant because an empty building will not be heated and so the risk of burst pipes will increase in cold weather (due to the water freezing in the pipes). Also, a longer time is likely to pass before the damage is discovered if the premises is not occupied, leading to added damage/cost. From a risk management point of view, the water should be turned off in an unoccupied building.

3. There will be a condition on the policy that keys or combination codes must not be kept at the premises outside business hours.

4. Owners of goods will hold goods-in-transit policies. These are a type of 'all risks' property insurance and will be based on a limit for any one loss. For general hauliers a carriers liability policy is required. This covers the haulier's liability for damage to customers' goods, usually with liability restricted to financial limits that are customary and standardised within this industry.

5. There are two main reasons for this. Firstly, the buildings may be damaged in the course of the theft (violent entry to/exit from) and secondly, part of the buildings may actually be stolen, e.g. copper piping/lead flashing.

6. Any three from:
   - a gradually operating cause, e.g. wear and tear
   - work processes
   - poor workmanship
   - engineering-related risks.

7. There must be forcible or violent entry to or exit from the premises for theft cover to operate.

8. It is common practice for an insurer to apply a 'locked boot warranty' in respect of portable computer equipment while in an unattended vehicle.

Chapter 4

9. The legal liability of professional carriers is quite limited and their insurance covers reflect this. The limits may not be sufficient to cover the full value of the items being transported, so the owner of the goods may 'top up' this cover by arranging their own separate cover.

10. A contractors 'all risks' policy covers damage to:
    - permanent and temporary building works
    - materials and equipment for the building contract, including hired-in property that the insured is responsible for
    - the contractor's own equipment and property onsite
    - employees' tools and personal effects while onsite.

11. In relation to marine cargo insurance an insurer will be concerned with:
    - the type of cargo and its susceptibility to damage
    - the theft risk of the cargo
    - the type of insurance cover being sought
    - the value of the cargo
    - how the cargo is packed
    - the exposure to loss from each type of cargo
    - the areas of the world the cargo is being sent to
    - how the cargo is being transported (bulk or container)
    - conditions of carriage in contracts of affreightment
    - previous claims experience.

12. Passenger liability will indemnify the insured for their legal liability for injury or death to passengers whilst entering, on board, or alighting from aircraft. Loss of or damage to baggage or personal items belonging to passengers arising out of an accident to the aircraft will also be covered.

Answers to quick questions

1. There is no automatic cover. The cover for temporary removals only applies when the contents (including machinery) are removed for cleaning and repair. Separate cover would need to be arranged.

2. The effect of a breach of warranty could render the policy void from the date of the breach.

3. Very often, the purposes and activities of the farm and home premises overlap to such an extent that it is hard to distinguish between them. For this reason, it makes sense for household goods and personal effects to be included in the packaging arrangement.

Sample multiple-choice questions

1. Which of the following perils in a commercial property policy would cover damage to insured property caused by road vehicles or animals?

   A. Impact.

   B. Malicious damage.

   C. Ground heave.

   D. Landslip.

   Your answer:

2. John, a newsagent, has a money insurance policy with QRT Insurance. One of John's staff stole a sum of money from his company on 10 September. By what date, at the latest, must he have discovered the theft to have cover for this loss under his policy?

   A. 11 September.

   B. 15 September.

   C. 17 September.

   D. 20 September.

   Your answer:

3. In the context of contractors 'all risks' insurance which of the following is generally excluded from cover?

   A. Wear and tear.

   B. permanent and temporary building works.

   C. the contractor's own equipment and property onsite.

   D. employees' tools and personal effects while onsite.

   Your answer:

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 4A1i

Question type: K

Correct response: A

Learning outcome: Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to commercial property, glass, money, computer, goods in transit, marine cargo, farm, and contractors 'all risks' and aircraft insurances.

2.

Chapter reference: Chapter 4C1

Question type: A

Correct response: C

Learning outcome: Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to commercial property, glass, money, computer, goods in transit, marine cargo, farm, and contractors 'all risks' and aircraft insurances.

3.

Chapter reference: Chapter 4H

Question type: U

Correct response: A

Learning outcome: Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to commercial property, glass, money, computer, goods in transit, marine cargo, farm, and contractors 'all risks' and aircraft insurances.

Chapter

5

Other property-related and specialist insurances

Chapter 5

What to expect in this chapter

In Chapters 3 and 4, we explored the main issues to consider when arranging a client's commercial property insurance. We also identified that most commercial clients require more than one insurance product. Each policy provides important protection, but should be seen as part of a broader portfolio of covers rather than a total solution to the risks facing the client.

In order to show how the adviser can build a total solution to their client's insurance needs, this chapter will focus on insurance covers that complement and work in tandem with traditional property insurance – business interruption, fidelity guarantee and engineering insurance. We will also identify the main issues for advisers to consider when arranging these covers for commercial clients.

Chapter 5

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Business interruption insurance**	Demonstrate the key elements of policy cover, and identify the key questions an adviser should ask a client when advising about business interruption insurance.
B	**Fidelity guarantee insurance**	Outline situations where fidelity guarantee, engineering insurance, credit insurance and cyber insurance are needed and identify the key elements of policy cover.
C	**Credit insurance**	
D	**Engineering insurance**	
E	**Cyber insurance**	

A Business interruption insurance

Any interruption to the activities and income of a business can have serious financial consequences. This is particularly the case when the interruption results from a sudden and dramatic event, e.g. fire or flood. Although businesses can take steps in advance to reduce their likelihood and effect, these risks can never be completely eliminated. In addition to arranging adequate property insurances, most businesses also require some protection from the financial consequences of a sudden interruption to their operations. Business interruption insurance provides this protection.

Business interruption policies aim to place the insured in the same financial position after the loss that they would have enjoyed had the loss not happened. This is a different version of the usual definition of indemnity as it focuses on the future impact of the insured event, whereas other types of insurance involve assessing the insured's financial position just before the loss or damage occurred. Most business interruption policies indemnify the policyholder by compensating the insured for their loss of **gross profit** for a specific period after the event.

This is an important class of insurance for most commercial clients. Adequate business interruption cover can be the difference between the survival or demise of a business, particularly following extensive property damage. If damage occurs, repairs to or replacement of assets takes time. During this time the business is at risk of:

- losing orders/customers
- losing income/profit
- incurring ongoing costs and expenses.

The purpose of a business interruption policy is to:

- continue to pay the ongoing costs and expenses which cannot be paid out of the reduced income
- make up to the shortfall in net profit

gross profit

the difference between (a) turnover plus closing stock and work in progress, and (b) opening stock and work in progress plus the uninsured working expenses (variable costs)

- pay for the extra costs incurred in order to prevent or reduce the loss in income, such as:
  - overtime payments
  - costs of provisional repairs
  - advertising costs
  - installation of temporary machinery
  - subcontracting work, and
  - costs of alternative premises/storage
  - cost of outsourcing.

The following sample client profile highlights these points and outlines some issues to consider when advising a client about this cover.

Business interruption insurance sample client profile

John is a printer who recently bought his own premises; a modern industrial unit with a steel frame construction. He has already selected the appropriate property damage covers and his adviser is helping him make decisions about business interruption insurance. The adviser explains that this type of cover can protect the profits of a business in the event of a serious property damage claim.

John's printing presses are highly specialised and particularly sensitive to smoke damage. In order to arrange the cover, John is encouraged to think about 'the worst case scenario'. He imagines a situation where there is a fire at the premises. This causes damage to the building and irreparable smoke damage to the printing presses. If this were to happen, production would stop completely for a period of time and there could be a long delay in replacing the machinery.

John needs to work out the likely financial consequences of this event, so that an appropriate sum insured can be set. An important step in this process is calculating the gross profit figure for the business. The adviser explains that insurers have a very specific definition of gross profit, which differs from the definition that accountants use.

John will also need to work out how long it would take to resume trading and regain his market share after the event. He will need to consider many factors, including how long it might take to replace his machinery and whether or not he will lose customers during this period. The adviser explains that people often underestimate the recovery time for their business and that this can lead to inadequate cover.

The adviser spends a lot of time with John and asks many questions about his business. This is important as there are different types and different ways of arranging business interruption cover, as well as various policy extensions that John could choose. The adviser must also make sure that John's business interruption policy matches his property damage covers, as a **business interruption claim will only be paid when there is also a valid claim under a property damage policy**. However, certain extensions are exempt from this such as **denial of access** and **notifiable diseases.**

denial of access

Insurance for loss due to restricted access to a business

notifiable diseases

any disease that is required by law to be reported to government

Chapter 5

As well as replacing lost profits, gross profit business interruption policies also cover some of the extra expenses involved in helping the business return to its pre-loss trading position. These expenses are usually referred to as the increased cost of working. The policy covers costs that are necessary to minimise the loss of profit. For example, a policyholder might need to advertise to let the public know that they are still in business after a fire, or that they have moved to temporary premises.

The expenses must be reasonable and in proportion to the profit being protected. It is often said that 'insurers won't pay more than a euro to protect a euro'. This **economic test** will be applied to decide which expenses are reasonable in that particular context.

economic test

term relating to business interruption cover, which means that every €1 spent must save at least €1 in respect of a claim or potential claim

A1 Arranging business interruption insurance

There are a number of important issues to consider when advising a client about business interruption insurance.

Two fundamental considerations are as follows:

1. Insurers are not willing to cover losses for an indefinite period of time. Each policy has a **maximum indemnity period** for which payments can be made. This should reflect the maximum time period that the interruption will affect the business. This is discussed in more detail in Section A1a.
2. Cover is limited by the sum insured, so it is important that this is set at the correct level. The sum insured must be calculated according to the policy wording. This is discussed in more detail in Section A1b.

A key feature of business interruption insurance is that claims are always triggered by a material damage loss, such as a fire or flood. This loss must be covered by an insurance policy. If there is no cover for the material damage loss, there is no cover for the business interruption claim. This strict requirement is called the '**material damage proviso**' (or 'material damage warranty').

maximum indemnity period

a period of time chosen by the policyholder under a business interruption policy as the maximum time necessary for the business to recover to the future expected trading position (see also 'indemnity period')

material damage proviso

requirement for the admission of liability under a material damage policy before any claim is payable under a business interruption policy

A1a The indemnity period

It can be difficult to predict how long the business will be affected after a serious loss. Many clients choose a 12-month **indemnity period** and this is often the standard period offered in package policies. However, periods of 24 and 36 months are also common. The client should carefully select the length of the indemnity period, and it should represent the maximum foreseeable period of business interruption arising from an insured peril (e.g. a fire or a flood).

indemnity period

the period starting with the insured incident and ending when the business returns to its pre-loss level of trading (see also 'maximum indemnity period')

Just think

Why do insurers insist on limiting their liability according to the length of the indemnity period, rather than simply relying on the sum insured as their limitation of liability?

Insurers are not prepared to give an open-ended commitment to pay for losses because of the uncertainty about how long the business may be affected. Instead, they require the proposer to choose a suitable maximum indemnity period and to make efforts to get back on their feet as soon as possible. For gross profit cover, insurers expect policyholders to make efforts to restore the gross profit at the earliest opportunity. This avoids the insurer having to keep paying until the whole sum insured is exhausted.

Chapter 5

Several key factors must be considered when advising clients on a suitable indemnity period, including:

1. Premises:
   - For each of the client's premises, what is the maximum length of the rebuilding time?
   - Are there any special features, e.g. is the building listed or protected?
   - How long will it take to obtain planning permission?
   - Are there suitable alternative premises locally from which the insured can trade while rebuilding?
   - If the client has more than one premises, is there a relationship/ interdependency between the premises?
2. Raw materials and components:
   - What precisely are the raw materials and components?
   - How quickly can they be replaced?
   - Are **buffer stocks** kept?
3. Plant and equipment:
   - Is any specialist machinery or equipment used?
   - Is a temporary alternative possible, e.g. outsourcing and subcontracting?
   - How easily could plant and equipment be damaged from different causes?
   - How long would it take to replace/install/commission the plant and equipment?
   - Is/are second hand machinery/spare parts readily available?
4. The business environment:
   - If there is an incident, how likely is it that the business will be interrupted and to what extent?
   - Is there an element of seasonality to the business which must be considered (e.g. Christmas/Easter/holiday market)?
   - How quickly will loss of trade occur following the insured incident?
   - Are there major competitors and, if so, who are they?
   - Is there an agreement between local competitors to assist with production in the event of an incident which causes an interruption?

buffer stocks

a supply of inputs held as a reserve to safeguard against unforeseen shortages or demands

Some of these factors are relevant to gross profit cover only, and others are relevant to all types of business interruption cover. We will discuss other types of business interruption cover in Section A3. However by considering the answers to these questions, the adviser should be able to establish and recommend a suitable maximum indemnity period to the client. Insurers will provide cover for a 12 or 18-month indemnity period, but beyond this, will only consider whole numbers of years (12-month periods) up to a probable maximum of 5 years.

Just think

Consider the client profile at the beginning of this chapter. How do you think the factors listed in this section will affect the recovery time for John's printing business?

All the key factors listed will affect the recovery time for John's business. Raw materials and components are probably the least relevant. John's adviser is likely to highlight the following:

- Premises:
  - Steel-framed industrial units can be rebuilt very quickly, but there can still be delays with planning permission and other legal requirements.
  - Although John might be able to find alternative premises fairly easily, it may take longer than he expects to fully fit out the premises so that he can resume trading.
- Plant and equipment:
  - Damage to John's specialist equipment will probably be his biggest problem after serious damage to the premises. It may take a long time to replace and commission the equipment and this will have to be taken into account when setting the indemnity period. Such specialist equipment may need to be imported from overseas and the extra time required to manufacture and transport it should be factored in as well.
  - As well as setting a long enough indemnity period, John will also be advised to create a disaster recovery (back-up) plan, so that he has a temporary solution in the event of serious damage.
- The business environment:
  - If John's machines are damaged, his production will stop immediately, and his competitors may take advantage of the situation.
  - It may take John a long time to regain his market share and return to his pre-loss trading position. This needs to be taken into account when setting the indemnity period. Even if John is back in his old premises after, say 12–18 months, it could be another year before his business has fully recovered.
  - John needs a 'back-up' plan (in the event of a temporary interruption) and a business continuity plan (in the event of a larger incident) to minimise the loss to his business.

The adviser will help John to predict the likely recovery time given all of these factors. Given John's situation, the standard 12-month indemnity period is unlikely to be sufficient. A careful analysis of all of the key factors is therefore crucial when advising a client about their indemnity period.

A1b The sum insured

As noted, most business interruption policies are written on a gross profit basis (i.e. the sum insured is defined by the loss of gross profit), as their main purpose is to protect the gross profit of the business after the insured event.

The definition of gross profit in an insurance policy is different from that used by accountants, so the adviser and their client must have a very clear understanding of the term. Insurance policy extract 5.1 shows a typical policy definition.

Chapter 5

Insurance policy extract 5.1

Policy definition of gross profit

The amount by which:

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

The term 'turnover' relates to the income or revenue of the business. From the client's (and accountant's) viewpoint, all money earned from the business is usually considered as turnover. However, this is **not** the case with regard to insurance. Once again, we have a very specific definition that needs to be fully understood. It would not be in the client's best interest to include income that can never form part of a claim under the policy. Insurance policy extract 5.2 gives a typical insurance policy definition of 'turnover'.

Insurance policy extract 5.2

Policy definition of turnover

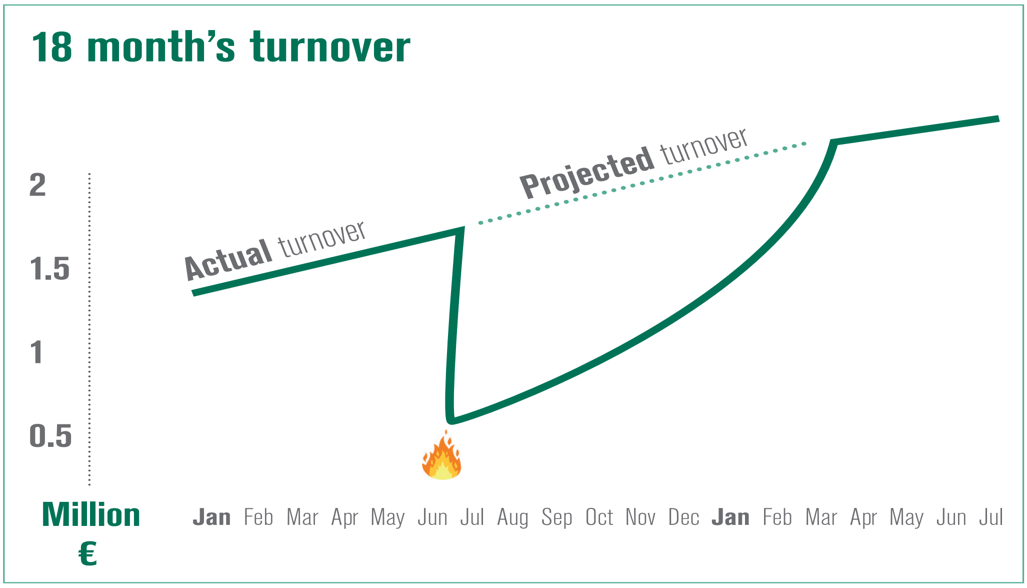
The money paid or payable to the insured for goods sold and delivered and for services rendered in the course of the business at the premises.

As the policy definition states, turnover only includes revenue (income) earned as follows:

- In the course of the business – This restricts turnover to that arising only from trading activities as defined in the business description on the policy. Other earnings (e.g. from share dividends, investments or the use of patents) are not included.
- At the premises – This restricts activities to those at the premises (which normally means those listed on the policy schedule). For example, rental income from another property would not qualify.

Figure 5.1 shows the impact on turnover of a fire at a policyholder's premises on 30 June.

Figure 5.1 Eighteen months' turnover



This shows an immediate significant loss followed by a gradual recovery to the projected turnover (i.e. the expected turnover had the loss not occurred) on 1 April.

When estimating the actual loss to the business, we also need to look at its expenses. Some expenses might actually reduce during the interruption. This affects the gross profit calculation to establish the correct sum insured.

Most businesses have two main types of expenses:

- Variable costs – These are charges that directly relate to production. Examples of variable costs include: raw materials, packing costs, delivery costs and some energy costs. In other words, they are the expenses that will not need to be paid if production stops. These are referred to as **uninsured working expenses**. However, great care must be taken when deciding which charges are in fact variable. Some expenses (such as energy or phone costs) are only partially variable. They may reduce to some extent when the business is not trading, but the supply contracts may also include some **fixed costs**.
- Fixed costs (standing charges) – These are costs that do not change according to the level of production. They are the bills that will still have to be paid during the period of interruption, so they need to be included in the sum insured. Examples include loan repayments and wageroll. It is essential to include wageroll as a standing charge as the insured will need to have all employees available as required in order for the business to recover to its pre-loss trading position as soon as possible. If key employees move to a competitor's business this will have a negative effect on the recovery. The insured may also have legal obligations to continue to pay employees.

uninsured working expenses (variable costs)

costs that always vary in proportion to turnover

fixed costs (standing charges)

costs that do not vary in direct proportion to changes in turnover

Just think

Why should the adviser establish whether costs vary directly with changes in turnover?

It is vital to establish whether costs directly vary with changes in turnover. If so, these costs can be excluded from policy cover as there is no risk to the policyholder of any loss. They are the uninsured working expenses and are deducted when calculating the gross profit sum insured.

Once the adviser has calculated the turnover figure and established the uninsured working expenses, they can then calculate the gross profit figure using the formula in Insurance policy extract 5.1.

This means deducting the uninsured working expenses from the annual turnover and adjusting the figure to take into account the value of any stock/work in progress at the beginning and the end of the year in question. As a general rule, the insurance policy definition of gross profit is normally a higher figure than the gross profit figure in the client's annual accounts. This is because the insurance definition includes the wageroll, whereas this will be a separate figure on the annual accounts.

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Just think

Let us assume that we have taken the following figures from John the printer's annual accounts:

Turnover	€2,000,000
Opening stock and opening work in progress	€800,000
Closing stock and closing work in progress	€600,000
Uninsured working expenses	€900,000

How would we calculate John's gross profit sum insured?

The formula we need to use is:

turnover + closing stock and closing work in progress – opening stock and opening work in progress + uninsured working expenses = gross profit

As per the definition of gross profit in Insurance policy extract 5.1, John's gross profit sum insured is calculated as the amount by which the sum of the turnover, closing stock and closing work in progress shall **exceed** the sum of the opening stock, opening work in progress and uninsured working expenses. So in this case, the gross profit sum insured will be:

€2,000,000 (turnover) + €600,000 (closing stock and closing work in progress)

Less

€800,000 (opening stock and opening work in progress) +
€900,000 (uninsured working expenses)

Gross profit = €900,000

Calculating the sum insured requires two more steps:

1. As the formula for calculating the gross profit of a business uses the previous year's accounts, it may not be an accurate prediction of future years' profits. The adviser must therefore adjust the gross profit to take account of (a) current trends in the business and (b) future trends, as far as these can be projected.
2. As we saw in Section A1a, the indemnity period also needs to be taken into account.

Insurers recognise the difficulties that clients face when attempting to make accurate forward projections of sums insured. **Declaration-linked gross profit** policies were introduced to address these difficulties. The client must declare a value that represents the estimated gross profit for the period of insurance. The insurer will then increase this figure by one-third, meaning that the sum insured shown on the policy schedule is 133.33% of the declared value.

The client benefits from this arrangement in three ways:

1. It is relatively straightforward to estimate the next year's gross profit.
2. The client has an uplift of 33.33%, which will provide a comfort zone for any expansion of the business.
3. 'Average' does not apply in the event of a loss.

The premium is usually provisional. This means that it is subject to adjustment at the year end, when the actual profits for that year are declared.

declaration-linked gross profit

a method of insuring gross profit that provides an uplift (increase) to allow for an increase in business. The actual gross profit figure earned is declared at the end of the period of insurance and the premium adjusted if necessary

Quick question 1

Explain to a client why wageroll should be noted as a standing charge and so included within the gross profit sum insured.

The answer is at the end of this chapter.

A2 Range of perils and clauses

The impact of the material damage proviso means that business interruption policies cover a similar range of perils to a material damage policy. This is particularly the case in a package policy, where the list of perils will be identical.

There is generally no need for the adviser to recommend covering a wider range of perils in a business interruption policy than those that apply to material damage policies. One exception, however, is that the standard business interruption policy provides cover following the explosion of an industrial boiler, whereas a standard material damage policy will not.

At this point you should review the covers outlined in Chapter 4A, as these also make up the typical perils covered under the business interruption policy. Consider also Example 5.2 which highlights the importance of insurance policy wordings clearly defining the terms, conditions and scope of cover.

Standard clauses on a gross profit business interruption policy include:

- Alternative trading clause – In the event of a loss, goods sold or services provided away from the premises, e.g. at another location owned by the policyholder or at a temporary location, are taken into account when calculating the reduction in the turnover during the indemnity period.
- Departmental clause – Any internal arrangements the policyholder may have for separating income between departments cannot be used in their favour in the event of a loss.
- Payments on account clause – This permits payments to be made before the full claim has been finalised in order to assist the policyholder in returning their business to the pre-loss level. This may be necessary for cash flow.
- Professional accountants' charges clause – This states that the policy will cover professional accountants' charges for verifying and producing figures that form part of a claim, but will exclude costs in the event of a claim.

A2a Extensions to cover

Standard policy cover applies to losses arising from insured damage at the insured's premises. However, there are several other scenarios that can cause an interruption to the insured's business. Extensions (subject to a financial limit) are available on business interruption policies to cater for some of these. Typical extensions are:

- Suppliers and customers – A policyholder may rely largely, or even entirely, on a particular supplier or customer for the continuation of their business. If there is property damage at the premises of that supplier or customer, this will affect continuity of supply or custom to the policyholder and reduce their trading level.
- Prevention/denial of access – This extension concerns access to a policyholder's premises, which may be limited or made impossible because of insured damage to premises in the vicinity. The cover will be essential for policyholders in built-up locations or where there is a bottleneck regarding access. Local exposure to flood should be considered when arranging this cover.

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- Loss of attraction – In some ways, this can be similar to prevention/denial of access. This extension provides cover if an insured's premises loses the attraction of clients or customers as a result of damage to property in the vicinity. For example, flagship store in a retail park closes which has a negative effect on the overall footfall and impacts other business in the park.
- Notifiable diseases and ancillary extensions – These extensions relate to the consequences of notifiable diseases, vermin, defective sanitary arrangements (including food or drink poisoning), murder and suicide at the insured's premises. For example, if the Gardaí were investigating a murder at a bar, and this causes a temporary closure or loss of business, the murder extension would operate. A nominal amount of cover is often provided on package policies. Importantly, the material damage proviso (see Section A1) does not apply. These extensions are particularly important for hotels, private hospitals and food production businesses.

For some of these extensions, insurers will apply a time franchise, e.g. for denial of access a period of 24 or 48 hours, before cover is activated. Please note that insurers approach these extensions differently so some insurers may not offer all options.

additional increased cost of working

additional cover for the costs of running the business following insured damage that are not subject to the normal economic test (that every €1 spent must save at least €1)

Chapter 5

Example 5.1

In February 2016 during a weigh-in for a boxing fight, a gangland murder occurred in the Regency Hotel, Dublin. The incident captured significant media attention. The hotel was closed for several days while the crime scene was investigated. the hotel took its insurer (Aviva) to the High Court to seek indemnity for the lost income in relation to the closure. The hotel also claimed for loss of subsequent bookings due to the reputational damage suffered because of its association with the incident. The claim was settled out of court.

A2b Additional increased cost of working

It is also possible for an insured to request additional cover for the **additional increased cost of working (AICOW)**. This is wider than the normal cover for 'increased cost of working' (see Section A). The usual economic test (that the expenses must be in proportion to the profit being protected/spend a euro to protect a euro) does not apply. So this extension allows the insured to incur necessary, reasonable additional expenditure to minimise the loss and maintain the turnover of the business following a loss, even if the amount payable exceeds the savings made.

The extra cover is for a specific sum so it covers increased cost of working in excess of that already covered under the standard business interruption cover. It has a separate sum insured so some insurers may add it as a separate item on a policy and others as an extension to cover.

This additional cover can be very useful where a client anticipates a need to inject funds greater than the immediate savings in loss of gross profit in order to carry on trading at pre-loss levels. It particularly benefits clients who operate in a very competitive business environment and could easily lose customers following even a short disruption to production or supply. In these circumstances, AICOW cover can provide for the cost of:

- urgent replacement (hire) of specialist machinery while a new machine is being manufactured
- outsourcing work to meet orders already received

- significant overtime payments
- advertising to alert customers that the firm is continuing to trade (in full or in part).

Just think

Consider the client profile at the beginning of this chapter. As an adviser, would you recommend AICOW for John's printing business?

When we considered the indemnity period that John might need, we noted the following:

- John has specialist machinery that cannot be easily replaced.
- John's work will stop completely if his machinery is damaged.
- John's competitors may take advantage of this situation, causing him to lose customers.

For all of these reasons, John needs a back-up plan/business continuity plan to ensure that his business can eventually recover from the loss. In the event of serious damage to John's machinery, he might want to consider outsourcing his work for a period of time. This will allow him to complete his existing orders and maintain at least some of his normal turnover. AICOW cover will meet the cost of the additional expenses incurred in outsourcing his work to another business. Crucially, it is not subject to the usual economic test.

Example 5.2

ICOW vs AICOW

AICOW

Siobhan and Rosa established a bakery in 2020 called Bread 101. They have two specialised baking ovens on their premises. A fire in 2021 caused damage to the ovens which resulted in disruption to their business. The specialised ovens are important for their business. Siobhan and Rosa are keen to lease two similar ovens for the next 6 months and have asked their insurer to pay the lease cost as part of their claim. The cost of the short-term lease is €20,000 and the estimated savings, if these ovens are leased, are calculated by the insurers at €12,000. As a result, the insurer is not prepared to pay the €20,000 lease because they consider that the lease of the ovens is not an economic proposal.

Luckily, Rosa and Siobhan's broker had arranged for an item to be included on their business interruption policy covering additional increased cost of working (AICOW) with a sum insured of €50,000. This allows the business to spend up to this amount in order to reduce an insured loss. Unlike the increased cost of working automatically provided under business interruption policies, there is no economic test for this AICOW cover. Therefore, the insurer will pay for the lease of equipment such as the ovens and other measures taken to reduce the loss provided at least €1 is saved in the total claims cost.

Example 5.2 (contd)

ICOW as part of a standard business interruption policy.

John's printing business has had a fire loss. He is adamant to continue his business and worries about having to close unless he can get back into printing without further delays. He can rent a printer to continue his work at the cost of €10,000 for 12 months. He has calculated that this expenditure will save at least €28,000 in the overall claim as it will allow him to continue to print, albeit on a reduced basis. His insurers are very happy to pay this cost as part of the standard policy cover as it makes economic sense given that the expected savings far exceed the cost of the printer rental. (This is what is referred to as the economic test – does the proposed expenditure of €10,000 to continue working result in at least the same amount of a reduction in the claim? In this case it makes clear economic sense to rent the printer and allow the business to continue to operate.)

ICOW-only cover

Mary is a graphic designer and has suffered flood damage in her office. Her business interruption cover has been arranged on an ICOW basis. Mary has arranged to rent both a unit in the local business park and some equipment to allow her to continue work for the period (3 months approximately) while the office is being repaired. Thankfully, she expects that she will not lose any clients as a result of the flood and temporary relocation. The cost of the premises and business rental is €9,000 which is well within the sum insured of €50,000 provided by the policy. Her insurer will pay this increased cost of working and has made her aware that any loss resulting in lost revenue will not be covered by this restricted form of business interruption cover.

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

Example 5.3

The Covid-19 pandemic highlighted the importance of insurance policy wordings clearly defining the terms, conditions and scope of cover. In the case of business interruption insurance, insurers were initially declining Covid-19 related claims on the basis that no liability existed under the insurance policy wording. However, the interpretation of these policy wordings was challenged by policyholders and examined by the courts. The court ruling against the insurer set a benchmark for those seeking indemnity under business interruption policies as a result of the Covid-19 pandemic.

Any unprecedented catastrophic loss event, similar to the Covid-19 pandemic, will determine how policy terms, conditions and scope of cover are reframed to remove ambiguity and manage the insurers' exposure as new and emerging risks arise.

A3 Other types of business interruption insurance

As we have seen in the previous sections, gross profit cover is the most common form of business interruption insurance. It is particularly suited to manufacturers, wholesalers, retailers and other businesses that generate their income from their trade and production at their business premises. These businesses are therefore at risk from serious interruptions to trading following damage to the premises.

However, not every business faces the same exposure to trading interruptions following damage to the premises. Many businesses need a more limited form of cover, or a policy wording that reflects the specific ways their profits are generated. We will briefly consider some of the alternative forms of business interruption insurance.

A3a Increased cost of working only cover

Some businesses can continue to trade after significant damage to their premises. Consider, for example, a financial adviser who receives commissions from the sale and renewal of life and pensions policies. Damage to their office will cause some level of inconvenience and disruption, but it may not lead to a reduction in turnover, revenue or profit. For such clients, it may be appropriate to arrange cover on the basis of **increased cost of working only**, i.e. with no cover for loss of profit or earnings. In other words, they only need to cover the increased costs incurred for the purposes of maintaining turnover after the damage. The adviser should exercise great care when dealing with clients who feel they only require 'increased costs of working only' cover. Many clients are over-optimistic about their ability to recover quickly, even from a major incident. An adviser must take a realistic view of the client's needs and provide advice accordingly. The businesses that may be suitable for this basic cover are as follows:

- Work mainly based away from the 'premises' and not critically dependent on having an office, e.g. financial advisers whose work is mainly concerned with client visits and whose record-keeping is laptop-based
- Office-type activities that are easily moved to another location (or transferred to home-based work), depending on the arrangements for data back-up and remote working, e.g. solicitors, accountants
- Charities (depending on the operational set-up and the nature of fundraising activities).

There is no formal or correct way of calculating the sum insured for this type of cover. The client, with the benefit of the adviser's advice, must identify a figure that they consider adequate to cover any foreseeable increased costs to maintain the business at its pre-loss level. ICOW-only cover commonly has a shorter indemnity period – sometimes 3 or 6 months.

You may have noticed that the term 'increased cost of working' is used in three different ways. This can seem a little confusing at first. Table 5.1 recaps on each of the meanings.

increased cost of working only (cover)

cover for increased expenditure to maintain turnover after insured damage, but with no cover for loss of profit earnings

Quick question 2

Your client is a wholesaler of children's toys who insists that some extra cash following 'any incident' (i.e. increased costs alone) is all that is needed and not a full business interruption policy of the kind you have described. What are the arguments in favour of the wider policy cover?

Chapter 5

Table 5.1 Recap – increased cost of working	
Increased cost of working (Section A)	In addition to the cover for loss of gross profit, a typical business interruption policy also covers the extra expenses that are necessarily incurred to minimise the loss of profit. These expenses are referred to as 'increased cost of working'. The expenses must be reasonable and in proportion to the profit being protected. Insurers will apply an 'economic test' to decide which expenses are reasonable.
Additional increased cost of working (Section A2b)	It is possible to extend a business interruption policy to cover 'additional increased cost of working'. This is wider than the normal cover for increased cost of working and the usual economic test does not apply. This extension to cover is useful where a client needs to incur expenses that are greater than the immediate savings in gross profit. For example, they may want to outsource their work or hire expensive equipment to meet orders and carry on trading at pre-loss levels.
Increased cost of working only (Section A3a)	It is possible to arrange a business interruption policy on the basis of 'increased cost of working only', with **no cover for loss of gross profit**. This cover may be suitable for some offices, charities and firms that carry out most of their work activities away from their premises or whose business can be easily transferred to another location.

gross revenue/gross fees

money paid or payable for services rendered in the course of the business at the premises

A3b Gross revenue/gross fees

Gross revenue/gross fees business interruption insurance covers the entire income of the business without any deductions for items such as stock. It is suitable for businesses that derive their income mainly from fees, but where the premises are key to delivering the service, e.g. accountants, solicitors, insurance brokers, advertising agencies, doctors and dentists. (Dental surgeries carry some stock but this is so nominal overall it can be disregarded when considering their business interruption cover.)

The sum insured is rated on gross revenue/gross fees and the maximum indemnity period most common to this type of cover is 12 months.

You might ask why ICOW-only cover would not always be suitable in these situations. One could argue that, for some of these businesses, location may not be critical. With some overtime costs and minor inconvenience, they could relocate and continue to trade as before very quickly. Although this may sometimes be the case, many professionals are reluctant to rely totally on ICOW-only cover and prefer to protect their entire income in the event of substantial damage.

A3c Gross rentals/rent receivable

Gross rentals/rent receivable business interruption insurance covers loss of rental income to property owners as a result of damage to their property. The sum insured is rated on gross rentals/rent receivable and, due to the length of time that may be required to rebuild a property following substantial damage, maximum indemnity periods of 24 or 36 months are common. Insurers will only pay out a claim for loss of rental income if the property is occupied by a paying tenant at the time of the loss. If the property is vacant, or if no rent is being received from the tenant at the time of the loss, the insurer will not make any payment. This is in keeping with the fundamental principle that a policyholder cannot profit from a claim.

gross rentals/rent receivable

money paid or payable by tenants (normally to a landlord)

As previously mentioned (see Chapter 4A3), cover for loss of rent receivable under a business interruption policy provides cover for loss of rental income until the building is actually reoccupied and the policyholder is back to their pre-loss position – rather than just until the building is fit for occupation as under the material damage policy.

Just think

Consider the client profile at the beginning of this chapter. Which type of business interruption cover is best for John's business?

As John generates his income from the work carried out at his premises, his adviser is likely to recommend gross profit cover. A separate sum insured for additional increased cost of working may also be considered, as noted previously.

A4 Questions to ask the client

While the complexity of what is needed varies from one client to another, it is helpful for the adviser to create a template or questionnaire for business interruption insurance. This should be used as the basis for building a complete picture of the client's business activities. Example 5.3 outlines a suitable template.

Example 5.4

Business description

Full and comprehensive business description needed before discussing basis of cover.

What is the basis of cover?

- Gross profit?
- Gross revenue/gross fees?
- ICOW only?
- Gross rentals/rent receivable?

(Tick all that apply and consider each item separately.)

Example 5.4 (contd)

Considerations

- **Buildings**
  - What is the maximum rebuilding time?
  - Are there any special construction features, e.g. is it a listed building?
  - What is the anticipated time required to obtain planning permission, if required?
  - What is the relationship between each of the policyholder's premises and the dependency between each (if applicable)?
  - Are there any suitable alternative premises available?
- **Plant and equipment**
  - Standard or specialist?
  - How long will it take to replace the plant and equipment?
  - How long will installation and testing take?
  - Is there a second-hand market? Are spare parts held?
  - Which items are critical to the business and how susceptible is the plant and equipment to damage?
  - Can any/all of the process be outsourced?
- **Raw materials**
  - What is used and how quickly can it be replaced?
  - Describe any buffer stock present. How much? Where is it located?
- **General**
  - Following substantial damage, how quickly will loss of trade occur?
  - Who are the main competitors?
  - Is there a business continuity/disaster recovery plan in place?

Selecting the maximum indemnity period

In a worst case scenario, how long will it take for the business to return to its pre-loss trading position?

Extensions required

Are any extensions required?

- Suppliers and customers?
- Prevention/denial of access?
- Loss of attraction?
- Public utilities/power and water?
- Notifiable diseases and ancillary?

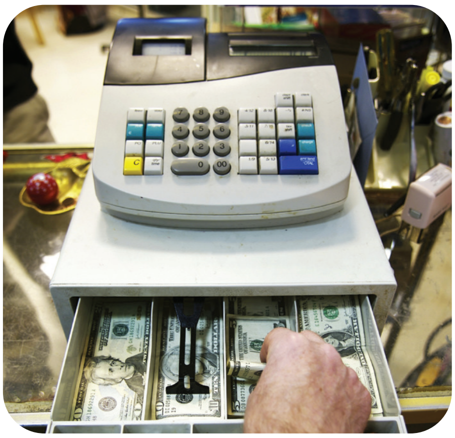
Is additional increased cost of working (AICOW) cover required?

Data back-up procedures

What are the data back-up procedures and where are duplicate records kept?

B Fidelity guarantee insurance

Fidelity guarantee insurance (or crime insurance as it is sometimes referred to) covers losses to a business from the fraudulent or dishonest activities of employees or other trusted persons (e.g. directors or volunteers). These losses can be significant, especially when they occur over a long time. There are variations of cover in the market, so care is needed in selecting the product that best matches a client's need. Cover may relate to direct pecuniary (financial) loss only or it may be more widely worded, providing cover for loss from theft of stock and money.



Insurers require very detailed information about the insured's protection systems and controls and the way that risks are managed. They may incorporate warranties in the policy to make sure that the present arrangements are maintained. Insurers may include conditions requiring annual independent audits of the insured's accounts and conditions relating to the timing of claims notifications once the fraud/dishonesty is discovered.

Cover will exclude any undisclosed change to the systems and controls that were noted on the proposal form. Policies normally also exclude cover for situations where the insured had previous knowledge of a perpetrator's fraudulent acts. Another possible exclusion is the loss or compromising of confidential information.

Cover may be extended to the cost of legal fees, reconstitution costs (e.g. rewriting the insured's software programme), impersonation fraud (e.g. transferring money due to a fraudulent instruction) and/or fraud investigator's fees.

The most straightforward means of insuring this risk is an overall limit per employee. However, a more tailored approach may be needed for firms that have complex structures or specialist departments for accounting and cash handling. Different limits may be needed for different categories of employees. Policies for charities or churches normally have a specific wording that reflects the particular characteristics of these risks.

Just think

What is the usual time limit under a money policy that is designed to dovetail with the fidelity guarantee insurance?

As we saw in Chapter 4C, a money policy covers the first 7-day discovery period. A fidelity guarantee policy will normally cover the loss beyond this period, but only if caused by an employee covered under the policy and notified during the period of insurance.

C

C Credit insurance

Credit insurance (also called Trade Credit insurance) is designed to indemnify a seller against loss as a result of the buyer failing to pay for goods already delivered on credit terms. The failure to pay could be as a result of insolvency or default for other reasons. For example, the buyer may have resold the goods to someone who has not yet paid the seller for them. The insurer will cover some or all of the buyer's debt and will then seek to recover some or all of its losses from the buyer through the insolvency process.

Up until 1998, Export Credit Guarantee insurance was available from the Irish Government. This was because insurers did not provide cover for economic or political risks as they considered them incalculable and believed that such risks fell within the Government's remit. Cover for such credit risks is now available in the private insurance market for both domestic sales and exports. However, it is limited to loss resulting from the commercial failure of the buyer. Coverage for political risk covers the insured for losses arising from named perils such as foreign currency inconvertibility and contract frustration (sovereign buyer's failure to pay). This cover is only available for export buyers and can be either standalone cover or added to a credit insurance policy.

The advantages to a business purchasing credit insurance are that it can expand into new markets or work with a new client in the knowledge that a default from the new buyer(s) will not bankrupt the business. The credit insurer will provide data and expertise regarding the creditworthiness of the new market/buyer and will specify the credit limit applicable to the policy. Credit insurance is often a perquisite for securing a loan where a business is expanding into new markets or contracting with new clients. It also allows the seller to extend credit terms to the buyer.

D Engineering insurance

The serious hazards associated with boilers and steam pressurised apparatus, plant, lifting apparatus and other machinery, have resulted in statutory requirements regarding compulsory, periodic safety inspections of such equipment. Under the provisions of safety, health and welfare at work legislation, an item needs to be inspected by a competent person at specified time intervals if it:

- utilises pressurised gas or liquid
- performs a lifting function.

Engineering insurers offer statutory inspection services and provide specialist insurance covers linked to different categories of plant and equipment. Therefore, the adviser will often recommend engineering insurance as both a means of obtaining specialist covers and of complying with the statutory requirements that apply to the client's machinery or plant.

Engineering insurance can cover a wide range of risks including:

- material damage ('sudden and unforeseen' damage to the insured property)
- breakdown, explosion and collapse of plant, e.g. boilers, cranes, pressure systems
- damage to surrounding property
- damage to goods being lifted
- third party liability (usually with a lower limit than is provided under a public liability policy)
- a limited form of business interruption cover.

The details of each of these covers is beyond the scope of this textbook, but advisers must be aware of the statutory requirements and the scope of insurances available.

cyber-insurance policy

cover that protects businesses and individual users from cyber risks, and more generally from risks relating to information technology infrastructure and activities

E Cyber insurance

A computer insurance policy protects the physical risks that such hardware is exposed to (see Chapter 4D) and a property insurance policy may cover the consequences of some cyber risks (e.g. a cyber hack of an organisation's heating system causes a fire which results in fire or water damage). However in today's business environment, as property insurers exclude such 'silent' cyber exposures, most organisations will require a **cyber-insurance policy**. It is mistakenly perceived that only large businesses (such as those in case study 5.1) need this insurance cover and small business clients may not understand why they would need it.

Despite having been written for over 25 years, cyber insurance is still considered to be a new cover. The introduction of stricter data protection legislation, the prevalence of new technologies, an increased awareness of the impact of cyber security breaches and the fact that more businesses are going 'paperless' with all critical company and customer information stored on their networks and servers have resulted in an increase in the demand for cyber-insurance products. Cyber insurance is designed to provide protection from cyber-attacks, data breaches, security breaches (including hacking and transmission of viruses), accidental loss or interruption of data, or damage to IT systems and/or networks. Case study 5.1 outlines some high-profile cyber-attacks reported over the last few years.

Case study 5.1

Musgraves

In 2017 Musgraves, which operates SuperValu and DayBreak stores, was targeted in a cyberattack aimed at extracting customers' credit and debit card details. Musgraves notified the Data Protection Commission (DPC) and the Gardaí. In 2013 SuperValu was a client of Co. Clare firm Loyaltybuild which fell victim of a huge cyberattack. It involved the breach of personal data of 1.5 million individuals whose full credit card data was compromised. The Data Protection Commission placed a prohibition order on Loyaltybuild that stopped it from operating in Ireland for a period of time.

Facebook

In October 2018 the Irish Data Protection Commission began an investigation of Facebook under the **Data Protection Act 2018**. Earlier in 2018 it had been reported that hackers accessed nearly 50 million Facebook accounts. The investigation is to examine Facebook's compliance with its obligations under the General Data Protection Regulation (GDPR) to implement appropriate measures to ensure the security and safeguarding of the personal data it processes.

British Airways and Marriott

In July 2019, British Airways and Marriott International were fined €204.6 million and €110.4 million respectively by the UK Information Commissioner's Office for having insufficient technical and organisational measures to ensure information security.

Case study 5.1 (contd)

Health Service Executive (HSE)

In May 2021, the HSE, the publicly funded health service in Ireland, fell victim to a malicious cyber-attack. The attack aimed to disrupt the health services and its computer systems, steal data, and demand a ransom for the data's return. As a result, the HSE shut down hospital and health service IT systems. The attack is estimated to have cost €100 million.

As the world economy and infrastructure becomes more and more reliant on IT, the potential impact of cyber-attacks increases. Some of the trends that businesses and cyber insurers are becoming more conscious of are

- Insider threats – whereby business data is leaked by disgruntled employees, sometimes in exchange for a bribe.
- Hacktivism – a form of activism whereby the geo-political environment motivates hackers to target certain governments and organisations.
- Ransomware groups evolution – although governments have targeted ransomware groups, these groups have splintered and evolved to target different victims, making it more difficult for authorities to track them.
- Passwordless authentication – it has been accepted by most large businesses that password authentication alone is inadequate. It is expected that biometric authentication will replace passwords as it is much more difficult to phish and also requires physical access to the device.
- Cable cutting – the world's internet connections still rely on physical infrastructure whereby there is fibreoptic cabling between countries. In recent years, there have been attacks on these cables. If continued, such attacks could cause disruption to daily life and business function.
- Rolling blackouts – with the increased demand for energy caused by the digital economy and data centres, the importance of the world energy supply chain has increased. A failure of energy supply to meet demand could result in electricity blackouts with unknown risks to cybersecurity and business function.

Businesses insure against their liability exposures and invest in upgrading and maintaining their IT security systems. However, they may neglect the measures required to address the aftermath of a security breach. In addition, some breaches simply cannot be prevented, e.g. data breaches occurring due to accidental acts of employees, an infected attachment in a spam email, or a disgruntled employee releasing confidential information to the public domain. The financial impact of a cyber-attack or data breach may include the cost of notifying the affected persons, credit monitoring costs, loss of revenue, fines and penalties related to data protection breaches and damage to brand and reputation. While the IT department is the first line of defence, a cyber insurance policy can provide the required balance of protection in the event of a breach and the specialist services required.

Just think

Piece-by-Piece, your client, is a large manufacturing business. It has general liability cover and an excellent IT Department. Explain the protection provided by cyber insurance that could complement its liability cover and the protection provided by its IT Department.

E1 Policy cover

Cyber insurance cover can address the gaps left by other insurance policies such as property insurance (Chapters 3-5), liability insurance (Chapter 6) and professional indemnity insurance (Chapter 6F). This type of insurance covers third party liability (including defence costs), first party business interruption on some policies (see Section A) and crises expenses.

There are a number of insurers in Ireland offering cyber product and, as the cyber-insurance market evolves, the products are evolving. Table 5.2 outlines an example of the cover provided by a cyber insurance policy.

Table 5.2 Cyber insurance policy cover

Liability sections	First party sections	Crisis management
Defence costs, damages and fines (where insurable by law) in relation to:	**Insured's loss in relation to:**	**Expenses paid to vendors for:**
Failure of network security	Network related business interruption	Legal advice
Failure to protect/ wrongful disclosure of information	Extra expense	Forensic investigation
Privacy or security related regulator investigation	System failure (some policies)	Breach notification costs
	Dependent business interruption (some policies)	Call centres
	Reputation damage	Credit monitoring
		Cyber extortion payments
		Media strategy costs

Insurers will require the following information:

- details of the proposer (e.g. legal identity and business activities)
- details of the proposer's data controller
- financial information (e.g. turnover for the current year and projections and the breakdown of revenues (i.e. values from website, debit/credit card transactions, average transactional value and geographical breakdown of its revenue sources))
- the type and location of data stored (i.e. systems, networks, backups, data security, and sensitivity of stored data)
- detailed information on any financial or medical records processed, stored or managed, any outsourced providers
- any business continuity plans/disaster recovery plans in place
- the security measures in place (e.g. for user accounts, anti-virus software, firewalls, intrusion monitoring, access control, hard drive encryption of laptops/PCs/smartphones, policies to destroy information when needed, and awareness training for employees)
- past claims experience (e.g. any possible loss of data or investigations.

Typical exclusions under a cyber-insurance policy:

- Bodily injury and property damage
- Contractual liability
- Proposer's non-compliance with regulations
- Intellectual property, infringement of other patents or trade secrets
- Trading losses
- Unauthorised trading
- Criminal or intentional acts by the proposer
- Unauthorised or unlawfully collected data by the proposer.
- Terrorism/war/riot
- Prior claims and circumstances
- Routine breakdown/downtime of servers.

E2 Questions to ask the client

Proposal forms are used to gather initial information. Depending on the complexity of the policy required, this may be followed meetings with the client's security team and an analysis of the risk being undertaken by a specialist cyber risk surveyor. Most insurers use outsourced service providers to report on the cyber risks, exposures and vulnerabilities associated with a proposer's business. These reports are integrated with the insurer's underwriting process and provide an additional level of information that would not be available through the standard proposal form or risk questionnaire.

While proposal forms vary, the standard information required to assess a cyber risk includes details of:

- the business (e.g. subsidiaries, revenues, number of employees, training, system administration rights)
- any previous claims or data breaches
- the type of information stored
- the business network (e.g. physical security, system security, data segregation and encryption, remote access, management of portable data)
- risk management procedures
- whether there is a dedicated data protection officer
- vendors that provide critical IT services
- legal and regulatory requirements (e.g. the privacy policy)
- details of password protections for computer equipment and how often it is changes at regular intervals
- how the business seeks, record and manage consent?
- have the company a document / data retention and destruction policy within the organisation?

This is not an exhaustive list and more in-depth information may be required if an insurer identifies higher exposures such as cover for business interruption, online trading with credit card data held by a client or a client holding healthcare or medical data.

F Summary

In this chapter, we considered some of the insurances that complement and often work in tandem with commercial property insurances. We also identified some of the important issues for advisers when arranging these covers for a commercial client. The protection provided by these policies is an important element of a client's overall insurance portfolio.

F1 What's next?

In the next chapter, we will address the area of commercial liability insurances and explore the range of covers available.

F2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

F3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 5.

1. Apart from the sum insured, identify the other key element to be considered when setting up a business interruption policy.

2. Define the term 'turnover' under a business interruption policy.

3. Briefly explain the term 'variable costs' and list those that are commonly encountered.

4. State an example of an occupation that would be suited to a 'gross revenue' basis for business interruption insurance.

5. Define the term 'indemnity period'.

6. Outline the cover provided by an 'increased cost of working (ICOW) only' policy.

7. Briefly explain the additional cover that is provided when rent receivable is insured on a business interruption basis rather than a material damage basis.

8. State the advantages to a client of arranging gross profit cover on a declaration-linked basis.

9. State **two** exclusions in a fidelity guarantee policy.

10. State which types of machinery have a statutory inspection requirement.

11. State the information an insurer would require from a client seeking a quote for cyber insurance.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. The other key element is the indemnity period. Typically, this is 12 or 24 months, but can be up to 5 years.

2. The term 'turnover' is defined in the policy as: 'the money paid or payable to the insured for goods sold and delivered and for services rendered in the course of the business at the premises.'

3. Variable costs are expenses that vary in proportion to changes in turnover. Examples of variable costs include raw materials, packing costs, delivery costs and some energy costs.

4. For those in occupations where fees are earned, e.g. an accountancy firm.

5. 'Indemnity period' is defined as: 'the period starting with the insured incident until the business returns to its pre-loss level of trading and ending no later than the maximum indemnity period chosen'.

6. An 'ICOW only' policy covers the increased costs necessary to continue trading. It does not cover any loss of gross profit.

7. Loss of rent receivable under a business interruption policy provides cover for loss of rental income until the building is actually reoccupied and the policyholder is back to their pre-loss position – rather than just until the building is fit for occupation, as under the material damage policy.

8. The advantages of arranging gross profit cover on a declaration-linked basis are that:
   - it is relatively straightforward to estimate the next year's gross profit
   - the client has an uplift of 33.33% which will provide a comfort zone for any expansion of the business
   - 'average' does not apply in the event of a loss.

9. Fidelity guarantee policies exclude:
   - any undisclosed change to the systems and control arrangements that were noted on the proposal form
   - situations where the insured had previous knowledge of a perpetrator's fraudulent acts
   - loss or compromising of confidential information.

10. Under the provisions of safety, health and welfare at work legislation, an item needs to be inspected at specified time intervals if it:
    - utilises pressurised gas or liquid
    - performs a lifting function.

11. Insurers will require the following information from the client:

- the business (e.g. subsidiaries, revenues, number of employees, training, system administration rights)
- any previous claims or data breaches
- the type of information stored
- the business network (e.g. physical security, system security, data segregation and encryption, remote access, management of portable data)
- risk management procedures
- whether there is a dedicated data protection officer
- vendors that provide critical IT services
- legal and regulatory requirements (e.g. the privacy policy)
- details of password protections for computer equipment and how often it is changes at regular intervals
- how the business seeks, record and manage consent?
- have the company a document / data retention and destruction policy within the organisation?

Answers to quick questions

1. The wageroll should be noted as a standing charge and included within the gross profit sum insured because the client will need to retain their employees (and may have a legal obligation to continue paying them) even if the client's business is not trading for a certain length of time. This is because they will be essential to returning the business to its pre-loss position. The client will also want to ensure that the employees do not move to a competitor.

2. Increased costs alone would not cater for any of the following:
   - customers that are lost and may not return
   - problems of seasonal fluctuations (e.g. Christmas and school holiday periods, when toy sales increase significantly)
   - competitors taking advantage of the situation
   - damage at suppliers' or customers' premises (not available as an extension to ICOW-only cover).

Sample multiple-choice questions

1. Which of the following is a valid reason why a business interruption claim may be refused by an insurer?

A. The claimant has made a trading loss over the preceding three years.

B. The initial incident that gave rise to the loss was the explosion of a boiler in the staff canteen.

C. The claim includes costs that are in addition to those that have appeared in the company's audited accounts.

D. Liability has not been admitted under the material damage section of an appropriate policy.

Your answer:

☐

2. CRK Manufacturing has applied to VST Insurance to effect a gross profit business interruption policy, and supplied the following figures: uninsured working expenses (€5,000), turnover (€40,000), closing stock and closing work in progress (€13,000), and opening stock and opening work in progress (€17,000). Calculate CRK's gross profit figure.

A. €15,000

B. €31,000

C. €39,000

D. €75,000

Your answer:

☐

3. What is the main cover provided by a fidelity guarantee insurance policy?

A. Losses to a business from the fraudulent or dishonest activities of employees or other trusted persons.

B. Liability towards third parties, caused by the negligent actions of employees or other trusted persons.

C. Losses to a business from the financial consequences caused by a sudden interruption to its operations.

D. Liability towards third parties caused by the fraudulent or dishonest activities of directors or officers.

Your answer:

☐

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 5A1

Question type: U

Correct response: D

Learning outcome: Demonstrate the key elements of policy cover, and identify the key questions an adviser should ask a client when advising about business interruption insurance.

2.

Chapter reference: Chapter 5A1b

Question type: A

Correct response: B

Learning outcome: Demonstrate the key elements of policy cover, and identify the key questions an adviser should ask a client when advising about business interruption insurance.

3.

Chapter reference: Chapter 5B

Question type: K

Correct response: A

Learning outcome: Outline situations where fidelity guarantee or engineering insurance is needed and identify the key elements of policy cover.

Chapter

6

Commercial liability insurances

What to expect in this chapter

This chapter deals with another potential risk faced by commercial clients – legal liability. We will examine the main insurance products that provide protection from the financial consequences of this risk, as well as some of the less common policy types. We will also consider the ways in which an adviser can develop effective solutions for commercial clients.

Chapter 6

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**Liability insurance**	Outline the basis of liability cover and demonstrate the impact of different policy triggers for liability insurances.
B	**Employers liability insurance**	Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to different liability insurances, and illustrate the underpinning knowledge by drafting a suitable client questionnaire for commercial liability classes.
C	**Public liability insurance**	
D	**Products liability insurance**	
E	**Directors and officers liability insurance**	Outline the scope of cover provided by directors and officers liability, professional indemnity insurance and commercial legal expenses insurance.
F	**Professional indemnity insurance**	
G	**Commercial legal expenses insurance**	

As we work through this chapter, you will notice that, despite the many differences in liability policies, they also share similarities. This is because they are all designed to protect the policyholder in situations where another person (third party) holds them responsible (legally liable) for the consequences of an incident, e.g. injuries from an accident or financial loss caused by a professional's bad advice.

The chapter begins with a sample client profile that shows how even a small firm can need a number of different types of liability cover.

Liability insurances sample client profile

MNO Architects operates from a small office in a town centre. It has four employees, including a young graduate trainee. The firm specialises in new domestic properties and high-spec extensions. Their liability policies were claims-free for many years, but they recently experienced a few unfortunate incidents.

In June three years ago, John, the graduate trainee, fell from a ladder while changing a light bulb. He broke his ankle and was off work for 6 weeks. He made a claim against the company, alleging inadequate supervision, unsafe equipment and an unsafe system of work. The company's employers liability policy dealt with this claim.

In August of the same year, a charity collector called into the office to seek donations. As she was leaving she tripped on a torn carpet and hurt her back. This claim was dealt with by the company's public liability policy.

A third claim was made against the company in January two years ago. A former client alleged that a house built a decade ago on the basis of plans drawn up by MNO Architects has serious defects in the foundations. The homeowner is holding the firm responsible for the defects and seeking compensation for the cost of the remedial work that will be needed.
MNO Architects referred this claim to its professional indemnity policy.

Chapter 6

A Liability insurance

Liability policies indemnify (protect) the policyholder when a claim is made against them by a third party. Where the policyholder is legally liable, i.e. at fault in some way, the policy will respond by providing cover for the financial consequences of this liability. Although each policy works slightly differently and deals with a different type of liability, all are structured to provide cover for the financial compensation that the policyholder may be legally liable to pay to the third party, as well as the other costs and expenses associated with the claim.

operative clause
clause(s) that describe(s) the standard scope of cover of each section of an insurance policy

damages
a sum of money paid or awarded as compensation for a loss or injury

Personal Injuries Assessment Board (PIAB)
independent statutory body set up to assess compensation due to an injured party when liability is not an issue

plaintiff
a person (or persons) who brings a case against another in a court of law

defence costs
costs incurred in defending a legal action brought against a policyholder

A1 Operative clause

Each type of liability policy has an **operative clause** and we will consider the wording of these clauses in the following sections. However, at this stage, it is helpful to identify and explain some common elements in their wording.

A1a Legal liability

Policies cover the insured's legal liability for **damages**. This refers to damages awarded by **Personal Injuries Assessment Board (PIAB)**, the court or agreed out of court. This is normally the most expensive element of a liability claim. Damages may be awarded for personal injuries, damage to property or for some types of financial loss (e.g. because of a professional person's negligence).

A1b Legal costs and expenses

Policies cover the insured's legal liability for the **plaintiff's** (third party) costs and expenses, as well as the **defence costs** and other expenses incurred with the insurer's consent. This is a very important element of cover. Even if a policyholder is not responsible for the incident that gave rise to a claim, they might still incur expensive costs in defending a legal action.

Liability policies do **not** cover fines or penalties arising in law or imposed by a court.

A1c Definition of the business

All commercial liability covers have one main restriction that claims must arise out of, and in the course of, the insured business. If the business description is inaccurate, or omits an important aspect of the insured's activities, this could have serious consequences in the event of a claim.

The insurer may refuse to indemnify the policyholder if the claim arose from a business activity that was not stated on the policy schedule. The client's business definition must therefore be both accurate and comprehensive. The importance of this cannot be overstated.

Once disclosed, activities such as ownership and maintenance of buildings, first aid, catering, social and sports clubs and private work carried out by employees for other employees or directors can be covered as part of the insured's business under employers liability and public liability policies. However, care should be taken as this list of activities varies from insurer to insurer.

A1d Geographical/territorial and jurisdiction limits

Operative clauses will normally state both the geographical (territorial) and jurisdiction limits of a policy. It is very important to understand the difference between these terms, as follows:

- Geographical/territorial limits – These state the areas where cover will apply. For example, an employers liability policy typically covers the insured's liability for injuries to employees in the Republic of Ireland, or temporarily working outside this territory. Other policies may cover the consequences of accidents anywhere in the world (although many insurers exclude North America due to the litigious nature, higher claims costs and higher legal costs in the jurisdiction).
- Jurisdiction limit – This is a clause stating that claims must be brought against the policyholder in a specified territory or under Irish law. This means that although a policy might have a worldwide geographical limit, the insurer will only provide indemnity for claims brought against the policyholder in the named jurisdiction.

Insurance policy extract 6.1 shows typical geographical and jurisdiction limits wordings for an employers liability and public liability policy.

Insurance policy extract 6.1

Typical geographical and jurisdiction limits

Employers liability policy wording – Geographical limits (worldwide)

Jurisdiction limit – Claims brought in courts located in the Republic of Ireland, Northern Ireland, Great Britain, the Isle of Man and the Channel Islands or any member state of the European Union.

Public liability policy wording – Geographical limits (worldwide)

Jurisdiction limit – Claims brought in any court worldwide excluding any claim brought in USA/Canada

A1e Limits of indemnity

Unlike property and business interruption insurances, liability insurances do not have sums insured. Instead, they are subject to limits of indemnity. These limits are usually chosen by the client, although insurers may offer 'standard' limits. We will consider this further when we look at the different types of liability policy.

The limits of indemnity do not act as exposure measures. Significant increases in limits can often be achieved for relatively small increases in premium. Students will recall from The Nature of Insurance module that premiums for liability policies are based on other factors, such as the business description, annual turnover and wageroll.

A2 Policy triggers and basis of cover

Different stages of a liability event may trigger a claim under the policy. The main policy triggers are:

- the initial act, usually negligence, but in some cases another legal wrong
- the actual injury, loss, or damage resulting from the act
- the manifestation of the injury, loss or damage
- the aggrieved or injured party's awareness of the injury, loss or damage
- notification of the claim to the policyholder
- notification of the claim to the insurer.

In many situations, the first four points may occur almost simultaneously. For example, if a waiter in a café carelessly spills hot soup on a customer, there is no real time lapse between their initial act, the injury they caused, the infliction of the injury, and the customer's awareness of the injury. However, some claims develop in a more complex way, particularly where they involve disease, rather than injury.

Liability policies are worded to take account of the different ways that claims can arise and the sometimes complex sequence of events. Policies are generally underwritten on one of two bases, either 'occurrence' or 'claims made'. These are explained in the following sections.

'occurrence' basis

liability policy cover that is triggered when the incident occurs (which could be over a period of time)

'claims made' basis

liability policy cover that is triggered when the third party (claimant) makes a claim against the policyholder

professional indemnity (cover)

insurance cover in respect of liability arising from breach of professional duty (by the policyholder or their predecessors)

retroactive date

the date shown on the schedule of a 'claims made' policy. There is no cover for claims arising from acts or events that happened prior to this date.

Chapter 6

A2a 'Occurrence' basis

Where cover is on an **'occurrence' basis**, the injury, damage or loss suffered, and the incident that led to it, must occur during the period of insurance. Many employers, public and products liability policies are written on this basis.

Employers liability wordings typically refer to 'death, bodily injury, illness or disease **caused** during the period of insurance'. This reflects the often complex nature of liability claims and the need to include cover for claims arising from industrial disease. It is usually very difficult to identify a single date on which a claimant became ill, particularly in claims involving long-term industrial diseases (such as deafness or asbestos-related illnesses).

Public and products liability wordings often refer to 'death, bodily injury, illness, disease and damage to property **occurring** during the period of insurance'. This is because these policies normally cover events that happen on a clearly identifiable date (e.g. the earlier example of a waiter spilling hot soup on a customer). They are not intended, for example, to cover the consequences of long-term industrial diseases.

A2b 'Claims made' basis

Where cover is on a **'claims made' basis**, the claim must be made against the policyholder during the period of insurance. The most common class of liability cover underwritten on this basis is **professional indemnity** insurance. The liability to meet the claim falls on the policy in force when the third party's claim is made against the policyholder, even if the incident giving rise to the claim occurred much earlier.

However, insurers do not give an open-ended indemnity for all past acts or events. Policies usually have a **retroactive date** which is typically shown on the schedule. There is no cover for claims arising from incidents that happened before the retroactive date. The retroactive date is agreed at the inception of the policy.

Clients can purchase 'run-off' cover in the event that the business needs to cease operations. This will protect the business for claims that may arise in the future and ensure that it is in a position to indemnify claimants even when it no longer exists as a trading entity.

Microlearning resources

In the Member Area of www.iii.ie, via the Connect logo and in Your Learning Centre, select the microlearning section of this chapter to access a resource specifically developed to help you better understand this topic.

Referring back to the client profile at the beginning of this chapter, the claim made against MNO Architects by its former client will be dealt with on a claims made basis.

A3 The packaging of covers

Combined **employers liability**, **public liability** and **products liability** policies are very common. Indeed, many insurers do not wish to insure one of these covers on a stand-alone basis but are prepared to provide cover for a combined liability arrangement. Exceptions to this may be (a) a self-employed sole trader with no employees who therefore requires public/products liability cover only, or (b) a multinational company that has public liability cover placed on a global basis and arranges employers liability cover at a local level.

As we identified in Chapter 3A, liability covers may also be offered as part of a wider combined or package policy alongside property and business interruption covers.

employers liability (cover)
insurance to cover the legal liability of the insured to any person who is under a contract of service or apprenticeship

public liability (cover)
insurance that covers injury or death to anyone on or around the policyholder's property

products liability (cover)
insurance for all providers of goods - whether manufacturers, intermediaries or retailers - against claims arising out of the use, handling or consumption of a product

B Employers liability insurance

Although employers liability insurance is not compulsory in Ireland (unlike the United Kingdom, including Northern Ireland), it is an essential class of insurance for most business owners. Legislation, including the **Factories Act 1955** and the **Safety, Health and Welfare at Work Act 2005**, places important responsibilities on employers for employee safety. There are many grounds on which an employer could be deemed responsible for injuries or illness suffered by their employees and most firms could not afford to fund these claims from their own resources.

There is no standardised market wording for employers liability policies, but Insurance policy extract 6.2 illustrates a typical operative clause.

Insurance policy extract 6.2

Typical operative clause from an employers liability policy

The company will indemnify the insured against legal liability for damages (including claimant's costs and expenses) in respect of bodily injury to or death, disease or illness sustained by any person under a contract of service or apprenticeship with the insured, while employed in or temporarily outside Ireland, and caused during the period of insurance, arising out of and in the course of their employment by the insured in connection with the business.

We will now examine the important points within the operative clause:

- 'legal liability … in respect of bodily injury ... death, disease or illness'

  Illness includes both physical and mental illness and therefore includes claims based on nervous shock or stress. Employers liability policies do not cover claims for damage to employees' property. This is addressed by the public liability policy.
- 'any person under a contract of service or apprenticeship with the insured'

  This is the basic definition of an employee. Apart from direct employees, other categories of persons are included and we will consider these in Section B1.
- 'caused during the period of insurance'

  As indicated in Section A2a, the word 'caused' is most likely to be the policy trigger.
- 'arising out of and in the course of their employment by the insured in connection with the business'

  If the employee is acting outside the scope of employment, an employers liability policy will not respond.

Other important points related to the policy wording are:

- Indemnity to other persons – An employers liability policy provides an indemnity to 'the policyholder'. Often, a personal indemnity is also granted to principals, directors, partners or employees of the policyholder, in connection with the business activity of the policyholder. This indemnity (protection) extends to the personal representatives of insured persons in the event of their death.
- Limits of indemnity – In employers liability policies, these are typically in the region of €13 million. Occasionally a client will require a higher limit and this may be negotiated with the insurer where needed. The policy schedule will state the limit of indemnity that applies.
- **Safety, Health and Welfare at Work Act 2005** – This extension indemnifies the policyholder to defend criminal proceedings brought for a breach of the Act. In the case of an accident that is the subject of a claim, the extension normally covers the legal costs in defending a prosecution. There is **no** cover for fines or penalties incurred by the policyholder.
- **Trade endorsements** – A policy may **exclude** work of a particular type or limit the height/depth at which work is carried out. Trade endorsements of this kind are common. They exclude cover for activities the insurer considers to be particularly hazardous, e.g. demolition, asbestos removal, tree felling, work at heights or depths. The adviser must be aware of the trade endorsements typically imposed by different insurers, so that they can arrange appropriate insurance cover for clients that may carry out these activities.
- Contractual liability – This is excluded as insurers do not wish to take on any additional risk or exposure than necessary. Where a client has entered into a business contract, the insurer will ask if the client has assumed any additional liability that they would not be responsible for otherwise. This is known as contractual liability. Policy wordings will generally exclude liability assumed under contract unless liability would apply to the client anyway, i.e. without the contract. However, it may be possible to add this cover as an extension in some cases.
- Employees' property – This is **not** covered by an employers liability policy. The employers liability policy is only concerned with disease, injury or death. Any liability for loss of, or damage to, employees' property would be considered under the public liability policy.

trade endorsements

endorsements attaching to liability policies relating to the business description and risks associated with the business description

Quick question 1

Why is the exact definition of the business so crucial to liability policies?

The answer is at the end of this chapter.

B1 Definition of an employee

The policy definition of an employee is: 'any person while working for the insured in connection with the business who is under a contract of service or apprenticeship with the insured'.

Insurers are keen to define the scope of the term 'employee' to make sure that it also includes some categories of persons not directly employed by the policyholder. Otherwise, the policyholder may be in doubt as to the status of these people and may be unsure if their wages should be included in the declared figure. This is important, as this figure is the exposure measure used for setting the premium and therefore certain categories are specified. These are:

labour only sub-contractors

a category of worker contracted for 'labour only' (usually without their own liability insurance) and treated as an employee under a liability insurance policy

- labour masters, **labour only sub-contractors** (LOSCs) and persons employed or supplied by them
- self-employed persons
- persons hired or borrowed by the insured under an agreement where the person is considered to be employed by the insured
- persons engaged in any training, educational or work experience programme.

Including these categories of persons in the definition of employee gives the insured important protection. For example, a student on work experience might suffer injury while carrying out tasks in the insured's business. Although the student is not under a contract of service or employment, the insured is still responsible for ensuring their safety in the workplace and may be held liable for their injuries.

As we will see in Section B2, these categories also help the adviser and the insured to identify the wages that should be submitted to insurers when arranging employers liability cover.

B2 Cover considerations

When arranging employers liability cover, the adviser must work with the client to prepare an accurate wages declaration. As mentioned, this figure is the exposure measure used for setting the premium. It must include all payments to the categories of employee identified in Section B1. Policies are normally arranged on a declaration basis. The initial premium is adjusted at the end of the period of insurance, when the exact wage figures are known and declared to the insurer.

When rating a risk, insurers also categorise employees according to the nature of their work. Typically, submissions to insurers will classify employees into the following groups:

- clerical staff
- manual/working directors
- manual work away from the premises
- drivers
- all other employees.

When arranging insurance for straightforward risks, e.g. a large retail shop, it may only be necessary to distinguish between 'clerical' and 'all other staff'. For risks with a more diverse range of job types, more categories may be required. This will certainly be the case for building contractors, where high-hazard activities (e.g. working at significant height or depth) will attract different rates. By splitting the wages per category the insurer can provide a premium based on the different exposures the policyholder faces.

It is also important to establish whether any employees are working outside of Ireland and, if so, how temporary or otherwise their employment is. Insurers often word their policies to automatically cover employees who are working 'temporarily' outside of Ireland in a clerical role. When arranging cover, the adviser should clarify the insurer's definition of the term 'temporarily' as practice varies.

The premium will normally be adjustable, with different rates for each wage category to reflect the risks that the different types of work present.

B2a Indemnity to principal

Insurers will automatically extend cover to include an indemnity to principal at no extra charge. This is important for clients who carry out work as sub-contractors for other firms. The indemnity to principal clause can extend the protection provided by the policy to the person or firm that sub-contracted work to the insured. This person or firm is the insured's 'principal'. If the principal is joined in a legal action because of an accident to one of the insured's employees, the insurers can defend the claim on behalf of the principal as well as their insured.

However, it is important to note that this protection is only given if liability would have rested on the insured had the claim been made against them. If the principal was at fault (or partly at fault), they must seek the protection of their own insurance policy.

Just think

What kind of situation would give rise to this type of indemnity?

If an employee of the policyholder is injured while carrying out a contract on behalf of a principal and chooses to sue the principal as well as (or instead of) the policyholder, the indemnity will be provided, but only if the policyholder would have been liable for the injury.

For example, consider a situation where a builder (the insured) is contracted by a property developer to construct a new shopping centre. If one of their employees has an accident onsite, the employee may make a claim against the insured and also against the property developer. In this case, if the insured is clearly liable, the indemnity to principal clause on their policy will also indemnify the property developer, who will not need to call on their own liability insurance policy to respond.

B2b Remote working

The Irish Government's **Right to Request Remote Working Bill 2022** provides the legal framework for employees to request to work remotely work and for employers to approve or refuse this request. It is a major change to work practices that could potentially lead to an increase in certain types of employers liability claims. Insurers will monitor this and, as claims data becomes available, will incorporate it into their underwriting processes and policy wordings. Irrespective of whether an employee works on the employer's premises or remotely, the requirement is that an employer provide a safe place of work for their employees. This is the critical issue when it comes to defending a claim arising from a workplace accident. Some additional risks which may arise from this change in work practices include physical injuries due to a poor work set-up (desk, chair etc.), mental health issues due to isolation and inappropriate behaviour from fellow employees exacerbated by lack of supervision.

B3 Questions to ask the client

Here is a list of questions the adviser should ask when preparing a submission for employers liability insurance:

- What are the salaries/wages for each category of employee? How many employees are there?
- Is there an up-to-date safety statement, and has it been read and signed by all employees?
- What safety, health and welfare matters should be considered?
- How frequently is training provided? How and by whom is it documented?
- Is personal protective equipment and/or supplies used?
- Are there any changes/developments planned for the business in the next 12 months?
- Is there any work away from the premises that should be considered?
- Is there any height or depth work carried out?
- What are the details of the past 5 years' claims experience?

B4 Employment practices liability insurance

Chapter 6

employment practices liability (cover)

insurance cover in respect of liability arising from employment practices

Standard employers liability cover is restricted to claims that involve bodily injury or disease. **Employment practices liability**, (often referred to as EPL), however, protects the client against employment-related litigation, e.g. sexual harassment, discrimination or wrongful dismissal (and typically excludes bodily injury as this is covered under an employers liability policy). This is now sold as a separate stand-alone policy and it has also become more affordable. All employers should consider employment practices liability cover, as the need for this type of protection has increased in recent times. Example 6.1 illustrates such a situation.

Example 6.1

Patricia was awarded €195,000 after she was refused a reference by Trevor, her former employer. Patricia claimed that her career was ruined because the lack of a reference meant she was unable to obtain interviews for other jobs.

Patricia had left the company after settling a sex discrimination complaint against Trevor. She was a competent employee with an excellent work record, but Trevor nevertheless refused to supply a reference.

The figure of €195,000 represented potential loss of earnings.

An employment practices liability policy covers compensation awards and defence costs. It does not cover fines levied under legislation.

C Public liability insurance

There are many situations that could give rise to a public liability claim. For example:

- a visitor to the client's premises could trip on a torn carpet (as in the client profile at the beginning of this chapter)
- a guard dog might attack a courier
- a sign in the client's car park could fall and cause damage to an employee's car.

It is important to note that public liability insurance covers employees' property and personal effects.

As with employers liability insurance, public liability insurance is not compulsory by law in Ireland. A large claim or series of claims could easily cripple a business financially, so this cover should be recommended for every client.

There is no standardised market wording for public liability policies, but Insurance policy extract 6.3 illustrates a typical operative clause.

Insurance policy extract 6.3

Typical operative clause(s) from a public liability policy

The insurer will indemnify the insured against legal liability to pay compensation and claimant's costs and expenses in respect of accidental

a. death, bodily injury, illness or disease

b. loss or damage to material property occurring within the geographical limits during the period of insurance in connection with the business.

Some policies also cover liability to pay compensation for financial loss caused by nuisance, trespass, obstruction or interference with rights of way, light, air or water, wrongful arrest and false imprisonment, where the wrong is committed 'accidentally'. This may be automatically included in some policies, or added by agreement. Cover for wrongful arrest and false imprisonment is particularly important for shops and shopping centres, as they may face such claims in situations where they wrongfully accuse a customer of shoplifting. Where cover is available, it may be subject to a limit of, for example €6,500 for any one incident and an aggregate (total) limit of €25,000 in any one period of insurance. It is important to identify if this cover is applicable when offering an insurance product to a client as it isn't always included as standard.

We will now examine some of the important points within the operative clause.

- 'legal liability … in respect of accidental (a) death, bodily injury, illness or disease (b) loss of or damage to material property'

  This includes loss of earnings or loss of profit resulting from unintended injury or damage. Some wordings omit the word 'accidental' but exclude deliberate acts or omissions. As with employers liability, nervous shock is included in the terms of this wording. The word 'material' restricts cover to liability arising from physical damage to a tangible thing, thus excluding non-tangible property, e.g. copyright.

- 'occurring during the period of insurance'

  The word 'occurring' is the policy trigger (see Section A2a). If there is a delay between the negligent act and the incident causing loss or damage, the insurer on risk at the latter date will be liable.

Example 6.2

A building contractor built a wall which collapsed several years later causing injury to a passerby. The wall was proven to be defective and the negligent act (building the wall) occurred when it was built. However, the insurer who is on cover at the time the incident causing the injury occurred will be obliged to deal with any claim that arises.

Other important points related to the policy wording are:

- Policy excess – An excess often applies to third party property damage claims.
- Policy exclusions – There is no standard market wording, but typical **exclusions** include:
  - height and depth limits
  - mechanically-propelled vehicle exclusions (see Chapter 2)
  - hovercraft/watercraft
  - **liquidated damages**/fines/penalties arising through contract or in law, or imposed by a court
  - products liability (see Section D)
  - advice or design provided for a fee (see 'professional indemnity insurance', Section F)
  - pollution (unless arising from a sudden and identifiable cause).

liquidated damages
'ascertained' (agreed) damages agreed at the date of contract (compared to unliquidated damages, which are only ascertainable after a loss)

C1 The nature of the exposure

There are a number of ways to rate a public liability risk. Insurers usually base their rating on turnover, as it provides a fair indication of the risk relative to the size of the business. However, 'flat rates' and other relevant exposure measures can be used, e.g. number of hotel rooms or acreage of a farm. The proposer also needs to specify work carried out away from the premises (e.g. building or repair work at a customer's premises) so a separate rate can be applied to the 'away wages' figure.

C2 Policy cover considerations and exclusions

Limits of indemnity vary but are typically between €1.3 million and €6.5 million in respect of any one claim.

It is also important to understand the nature of risks that potentially overlap but need to dovetail with other covers. We will now consider three ‘standard’ exclusions that highlight particular issues.

C2a Tool of trade risk

Liabilities under the **Road Traffic Acts 1961 and 2010** for any mechanically-propelled road vehicle must be covered under a motor insurance policy (see Chapter 2A). The adviser’s role is to ensure that the client obtains the best deal and cover by ensuring that the non-Road Traffic Act element, i.e. the tool of trade risk, is insured under either the motor policy or the public liability policy, but not both. Example 6.3 illustrates this point.

Example 6.3

A mobile crane is driven to a site, where it is taken off-road onto an enclosed building site with no public right of access. It is driven into position and stabilised by the use of its extending hydraulic arms. Under the RTA, the motor policy must cover the vehicle up to the point where it is no longer in a public place. After that, either the motor policy could be extended or the public liability policy could cater for the risk, once RTA cover no longer applies.

Factors to be balanced will include the following:

- A claim under the motor policy may affect any no claims discount but may carry much higher limits of indemnity.
- There may be a price advantage to providing cover under the liability policy if no specific extra charge is made for this.

In the present market it seems that public liability insurers are more willing to provide tool of trade cover than motor insurers.

C2b Lifts, escalators and steam boilers

Some insurers will cover these under their public liability policies, while others will have a specific exclusion. The risk may also be insured under a separate engineering policy. Where there is a choice, cover levels and price are the keys to determining which is in the client’s best interest.

C2c Advice, treatment or professional risks

Where there is an advice risk that is separate from the provision of a product or service, this should always be insured separately under a professional indemnity policy. Some small retail package policies may extend the public liability policy to include treatment risk, e.g. hairdressers and beauty salons.

C3 Policy extensions to consider

We will now consider some typical extensions under public liability policies. Some elements of cover are provided as standard under some insurers' policies but may require an extension under others.

C3a Indemnity to principal

Similar to the cover provided under an employers liability policy (see Section B2a), the public liability policy may provide an automatic extension for indemnity to a principal. It will provide cover for the principal as a result of work carried out by the policyholder, provided that the liability would have been covered if the claim had been made directly against the policyholder. The principal must observe the policy terms and should also be aware of its limitations.

C3b Contractual liability

As with an employers liability policy, the standard policy wording will generally exclude any liability assumed (accepted) under contract that would not apply otherwise (i.e. if the contract did not exist). However, in certain situations the cover may be extended, if required, at an additional cost.

C3c Cross liabilities

If there is more than one insured, the cover will apply separately to each one as if a separate policy had been issued to each, but the total limit of indemnity will remain the same.

C3d Safety, Health and Welfare at Work Act 2005

This is similar to the extension in an employers liability policy (see Section B).

motor contingent liability

an extension to a public liability policy providing indemnity to an employer when an employee uses their own car on the company's business

C3e Motor contingent liability

As noted in Chapter 2E2a, this will protect the policyholder if an employee uses their own private car on company business but does not hold the correct cover for this use. **Motor contingent liability** will operate only if the relevant motor policy fails. Cover is available as a stand-alone policy or as an extension of a motor fleet policy or a public liability policy.

C4 Public liability and County/City Councils

Most County or City Councils will require written permission for any business or person engaging in any commercial activities within its parks or open spaces. Applicants must provide evidence of public liability and (where relevant) employers liability insurance cover.

C5 Questions to ask the client

Here is a list of questions the adviser should ask when preparing a submission for public liability insurance:

- Premises risk:
  - Is public access controlled? What warning signs are in place?
  - What are the standards of housekeeping?
  - Do the client's activities produce any toxic or dangerous by-products or waste products?
  - Is there any information relevant to the pollution risk, such as the bulk storage of hazardous substances and the processes followed?
  - What are the waste removal arrangements?
  - What is the proximity to water courses, housing or farming?
  - What is the key exposure measure, e.g. turnover, 'work away' wages, number of rooms?
- Work away from premises:
  - Does any activity involve working at height or depth?
  - Does any activity involve the application of heat? If so, what is the extent of such work and what precautions have been taken?
  - Does any activity involve the use of dangerous substances, e.g. asbestos, explosives?
  - Are any of the locations hazardous?
  - Is any work undertaken outside the Republic of Ireland?

Chapter 6

D Products liability insurance

An adviser should recommend products liability insurance for every client that produces, sells, distributes, adapts or treats a product in any way. This cover is essential because of the potential for a large claim, or series of claims, which may cripple the business financially. Products liability insurance is normally arranged as part of a combined policy or alongside a public liability policy.

Quick question 2

Why do you think insurers do not wish to insure the products risk in isolation, i.e. as a stand-alone cover?

There is no standardised market wording for products liability policies, but Insurance policy extract 6.4 illustrates a typical operative clause.

Insurance policy extract 6.4

Typical operative clause from a products liability policy

The company will indemnify the insured against all sums which the insured shall become legally liable to pay as damages in respect of accidental

a. death, bodily injury, illness or disease to any person

b. loss of or damage to material property

occurring anywhere in the world during the period of insurance and caused by the goods sold, supplied, delivered, installed, erected, repaired, altered, treated or tested by the insured in Ireland, Great Britain, Northern Ireland, the Channel Islands or the Isle of Man in connection with the business after they have left the custody or control of the insured.

There are some similarities between the operative clauses for products liability and public liability insurances. Specific points to note in relation to products liability cover are:

- 'occurring anywhere in the world'

  Many policies provide worldwide cover, regardless of where the damage has arisen, and would include liability resulting from any products in another country without the insured's awareness of it.

- 'occurring ... during the period of insurance'

  This is an 'occurrence' basis. Injury or damage must occur during the period of insurance (not necessarily when the product was supplied). However, 'claims made' wordings are often imposed for hazardous product risks. These help to reduce uncertainty for the insurer about the final cost of claims. They also prevent the accumulation of limits of indemnity where losses are spread over different periods of insurance.

- 'caused by the goods sold, supplied, delivered, installed, erected, repaired, altered, treated or tested by the insured'

  The 'goods' will be defined in the policy. The definition will include all goods sold, supplied or otherwise handled by the insured; it will generally include containers, labelling and packaging, as claims may result from defects in any one of these.

- 'in Ireland, Great Britain, Northern Ireland, the Channel Islands or the Isle of Man'
  These words restrict cover to goods sold, supplied or otherwise handled in these areas.
- 'after they have left the custody or control of the insured'
  Liability arising from goods in the insured's custody is covered under a public liability policy. For goods-in-transit by road, the motor policy will usually respond to any liability for damage arising from them. Products liability insurance that covers occurrences anywhere in the world can have an exclusion apply in respect of exports to North America/Canada. This exclusion is important due to the factors mentioned in Section A1d (litigious society, higher legal and claims cost). It is more important for products liability policies due to the ability of North American plaintiffs to form a **class action**. Successful class actions have resulted in very high court awards in the past. Where an insured has sold a product for several years to a large number of customers, the potential loss for an insurer can be very high.

Other important points related to the policy wording are:

- Limits of indemnity - two limits of indemnity apply; a maximum limit, known as an **aggregate limit of indemnity**, for all claims arising under the policy in any one period of insurance and a specific limit applying to any one claim. This differs from both employers and public liability cover where the limit of indemnity applies only to any one claim and policies provides unlimited indemnity for all claims arising in any one period of insurance.
- Legal costs and expenses – Insurers are liable only for expenses incurred with their consent. However, this would be normal practice, as the insurer will want to control the whole process. The basis used is 'payable in addition to the limit of indemnity unless it is '**costs inclusive**'. Where there is a North American (United States/ Canada) exposure, it is common for products liability cover wording to be on a 'costs inclusive' basis. This is because the legal costs in North America are often quite significant and an insurer will wish to limit its exposure to the limit of indemnity.
- Policy exclusions – Typical policy exclusions apply, e.g. replacement/guarantee of a product, product recall, exports to the United States/Canada (unless agreed in advance of cover), liability assumed by contract agreement and liability arising from advice given.

D1 Nature of exposure

The main exposure the policyholder faces is due to their obligations under the **Liability for Defective Products Act 1991** and the **Sale of Goods and Supply of Services Act 1980**. The former Act gives legal responsibility to the 'producer' of goods for injury or damage caused. Importers can also be responsible for the supply of goods where goods are imported from outside the EU.

When setting premiums, insurers apply different rates to the **turnover** generated by different categories of product, e.g. low hazard goods such as paper or cardboard goods are rated lower than pharmaceutical products. Turnover is the usual basis for rating a product risk, in so far as this reflects both sales volume and court awards increasing in line with inflation.

Rates will vary according to the extent of any exports to North America. Many insurers will automatically exclude cover for products liability for exports to the United States, due to the high awards made by the courts there. Where cover is provided, a higher rate is charged. Adjustable premiums are normally used for larger risks.

Products liability cover can also extend to cover advice given about the supply of a product, e.g. what hinges to purchase for a door. When this advice is given separately, or for a fee, then separate professional indemnity cover is required.

class action

a legal proceeding in which one or more plaintiffs bring a lawsuit on behalf of a larger group, known as the class

aggregate limit of indemnity

a maximum limit of indemnity for any one period of insurance, regardless of the number of claims

costs inclusive

type of indemnity provided by liability insurance where cover for defence costs is included in the limit of indemnity

Quick question 3

A policy is underwritten on a 'costs inclusive' basis. The policy limit of indemnity is €1 million and a claim occurs. The compensation award for the third party costs €500,000. How much will the insurer pay towards this claim?

D2 Policy cover considerations

We have already considered the likely limits of indemnity available under public liability policies. The same limits are also available for products liability policies (€1.3 million to €6.5 million) and a policyholder will generally opt for the same limit under each section. However, the adviser should inform the policyholder that this limit will also act as an aggregate figure for any one period of insurance. This is because insurers are concerned that similar defect problems will reappear in products. For example, hundreds of claims could arise from a faulty batch of products or a food poisoning issue.

D2a Extensions available

Some insurers will offer extensions for products liability cover, however some specific extensions of cover are only offered by specialist markets. These extensions include:

- contractual liability – normally only considered if contracts are seen and approved by the insurer
- product recall (specialist market)
- cross liabilities
- **efficacy risk** (limited specialist market).

efficacy risk

the risk of failure of a product to fulfil its intended purpose or function

The adviser must compare exact wordings to make sure they are able to recommend the correct scope of cover.

D3 Questions to ask the client

The following is a list of questions the adviser should ask when preparing a submission for products liability insurance. The answers to these questions will enable an adviser to submit a full presentation to the market. Clearly, for straightforward retail risks, the list could be shortened. Note that these sample questions are designed to develop an awareness of the type and extent of information that an insurer may require; the list is not definitive.

- Is the client an importer/wholesaler, retailer or manufacturer of the product?
- Where are the goods sourced, and is there a right of recourse against the suppliers?
- Where are the goods sold and what percentage of sales relate to North America?
- Does the client adapt/alter the goods, e.g. turn raw materials into a finished product?
- Does the client have a successful trading record where they can point to a clean claims history or is it a new start up, where future claims are an ‘unknown’?
- What advice/instruction/information is given as part of the sales process, e.g. advice on use/consumption of the product?
- What is the exact nature of the product, what is its purpose and what are the likely effects if it fails to perform its intended function?
- What are the hazards, if any, associated with the product?
- Are there potentially hazardous substances/materials within the product e.g. asbestos, talc etc.?
- What quality control systems are in place?
- What is the expected sales turnover split between the territories it will be sold into?
- What are the conditions of sale?
- Are the products used in the aircraft or nuclear industry?
- Is any advice given for a separate fee (professional indemnity risk)?

E Directors and officers liability insurance

Many of the liabilities placed on individual directors arise from the **Companies Act 2014**. This body of legislation imposes personal responsibilities on directors and officers, who can be made personally liable for wrongful acts committed during their tenure. A 'wrongful act' is broadly defined to include any 'breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, libel, slander, breach of warranty of authority or wrongful trading'.

Directors and officers (D&O) policies are designed to cover such liabilities. Areas that this legislation covers, and to which this class of insurance responds, include property transactions, share sales, company assets and the firm's financial status, matters relating to remuneration and disclosure of conflicts of interest.

directors and officers liability (cover)
insurance cover to protect individuals when they are held personally liable for their actions as a director or officer of a company under particular legislation

Potential claims against company directors and officers include legal actions brought by:

- shareholders – for error resulting in the under-performance of the firm financially causing loss in share value
- creditors – for breach of duty resulting in the firm being placed in receivership
- competitors – for a misleading statement or libellous comment
- employees – for breach of employment legislation
- government bodies – for breach of company legislation
- trustees – for breach of duty in handling pension funds.

'Losses' include financial sums that directors are personally liable to pay as damages, and legal costs incurred in the defence or settlement of claims, including criminal actions and disqualification proceedings.

Cover **excludes** fraud or dishonesty on the part of directors, fines, penalties and **punitive damages**.

punitive damages
damages awarded by a court designed to punish the defendant rather than compensate for loss suffered by the plaintiff

D&O is written on a 'claims-made' basis (see Section A2b). The policy has two parts which indemnify:

- the directors as individuals in a personal capacity (known as 'Side A')
- the company (known as 'Side B)'.

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A 'nil' excess normally applies to claims taken against directors personally. Where the claim is made against the 'entity' (i.e. the firm), a sizeable excess may apply.

Insurers generally rate a D&O liability risk on reviewing:

- the limit requested
- an audited set of financial accounts for a company
- the completed proposal form
- the business activities
- the quality of management
- the length of time in business
- any mergers and acquisitions
- the organisational structure
- any international operating exposures
- the claims history.

E1 Questions to ask the client

The adviser should obtain the following underwriting details from the client:

- The company, its history and business description – Any recent merger or acquisition activity (or future plan) is also important.
- Finance and ownership – This includes details of who owns the company and how it is financed, as well as details of its financial strength and whether shares of the company are traded on an exchange.
- Territory – If the company trades in the United States, or has US subsidiaries or a US parent company, then it may be exposed to the US legal environment (see Section D1).
- The directors – Information on the company board and its composition – the individuals themselves – is required, as well as any systems in place for training and appraising directors.

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F Professional indemnity insurance

This type of policy covers liability (including liability for the claimant's costs and expenses) incurred in connection with the conduct of professional business by the policyholder or their predecessors. Simply put, it indemnifies the policyholder against the financial consequences of a breach of professional duty. Typical examples of professions requiring this type of cover are builders, architects, engineers, accountants, solicitors and, of course, insurance brokers/advisers.

Professional indemnity cover will also be required if there is any type of 'treatment risk' (e.g. nursing) or 'dispensing risk' (e.g. medication) and can in some cases also extend to provide medical malpractice cover, though this is quite specialist. Cover is not restricted to injury or damage, and will extend to include breach of contract. It will not, however, include criminal liability.

The following are examples of how professional indemnity claims may arise:

- An insurance adviser overlooks notifying an insurer of a permanent change of vehicle, which is then involved in an accident.
- A building surveyor does not notice a structural defect in a premises and is subsequently sued by the new property owner, who incurs significant costs to correct this when it comes to light one year later.
- A beautician injures a customer when providing a treatment.
- An architect designs a high-rise apartment block that does not conform with fire safety building regulations.

The limit of indemnity can apply to the total of all claims in the period (aggregate basis) as well as applying on an 'any one claim' basis. The insurers will also pay defence costs incurred with their written consent.

Cover is normally subject to a sizeable excess and is on a 'claims made' basis (see Section A2b). This means that policies cover claims made against the insured during the period of insurance, even though the breach of duty may have occurred at an earlier time. As stated in Section A2b, there is no cover for claims arising from incidents that took place prior to the retroactive date.

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Some policyholders need to continue cover for a number of years after they cease trading. For example, an engineer who is retiring might be concerned about future claims from their former clients. In this scenario, they can arrange 'run off' cover for an agreed number of years after they close their practice. This ensures that they have the protection they need if some unexpected claims arise in the future, based on design or advice given in the past.

For rating purposes, insurers often look to the previous year's revenue rather than the current or projected year, or they may use an average of all three years.

F1 Exclusions

Professional indemnity policies typically exclude liability arising from:

- asbestos risks
- liquidated damages
- dishonesty and/or fraud committed by a director/partner
- performance (of a financial product)
- employers, public and products liability risks (other than advice or design)
- directors' and officers' claims, employment disputes, pension and benefit schemes
- ownership use or occupancy of property.

F2 Questions to ask the client

The adviser requests a quotation by completing and submitting a proposal form to the insurer. For this class of insurance, there tends to be a tailor-made proposal form for each specific profession (e.g. accountant, solicitor, insurance broker, engineering company), as the type of occupation will be key to the submission. There are, however, certain elements common to all submissions:

- the date the business was established
- confirmation of the principals' experience in the business
- number of employees, together with their qualifications and the ratio of qualified to non-qualified employees
- full and precise description of the business undertaken (and previous business activities now ceased)
- details of all locations where the business is conducted
- alterations in business activity
- largest contracts undertaken (brief overview) and details of typical current contracts
- detailed information about sub-contractors (whether or not they hold their own professional indemnity insurances and, if so, whether or not the limits of indemnity are in line with the client's)

- any previous bankruptcy, insolvency or winding-up
- previous insurance details – to establish if there are any 'gaps' in cover
- past claims (including claims declined)
- awareness of potential or pending claims situations
- details on how long various services have been offered e.g. an accountant who recently started offering taxation advice.

This final point needs further consideration. It is very important that the client/adviser formally declares any circumstances under any previous insurance that they might (or should) reasonably expect to give rise to a claim. Failure to do so can allow the insurers to refuse an indemnity if a claim subsequently arises. Insurers are entitled to know about any possible exposure in advance of agreeing cover.

Quick question 4

Why is it advisable to notify the insurer of any potential claims situations within a reasonable time before renewal?

F3 Renewal procedure

It is vital to ensure that renewal procedures are completed in good time for this class of insurance. Prior to renewal date, the policyholder must complete a renewal declaration form. This form will require notification of any incidents the client is aware of that could give rise to a claim in the future, and any other alterations the insurer should be aware of when considering renewal terms.

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G Commercial legal expenses insurance

Commercial legal expenses cover is not a liability cover but should be considered in association with liability insurances.

Commercial legal expenses cover can be purchased as a standalone policy but is often included as standard within ‘package’ and ‘combined’ policies. Liability and motor insurance policies provide important cover in situations where a policyholder has allegedly caused harm to a third party or damage to their property. Cover is available under these policies for the legal and other costs incurred in the pursual and defence of legal actions brought against the policyholder. This protection, while valuable in its own right, does not deal with every situation in which a client could face expensive legal costs.

Commercial legal expenses insurance provides indemnity for costs arising out of the need to seek legal advice or to pursue or defend a civil action. Cover is restricted to certain types of claim as listed in the policy schedule (e.g. legal costs arising out of tax and VAT investigations) and the amount of cover provided is limited to an amount per claim. Cover does not include legal action costs for which indemnity is recoverable elsewhere, e.g. employers liability or public liability policies.

Other legal costs may be incurred in different business contexts (see Example 6.4). This could include cases arising from:

- employment and compensation awards: disputes with an employee relating to a contract of employment or related legal rights
- legal defence: work related criminal prosecutions, including Health & Safety, Gardaí or motor prosecutions
- bodily injury: pursuit of a claim following a sudden work-related event away from the policyholder’s premises
- tax protection: a formal enquiry into your business tax affairs by the Revenue Commissioners
- property protection: disputes relating to property following damage, nuisance or trespass
- statutory licence appeals: an appeal against a decision to alter, suspend, revoke or refusal to renew a statutory licence or registration
- contract disputes: disputes arising out of buying, selling or hiring goods and services
- debt recovery: recovery of undisputed debts where policyholder has already unsuccessfully attempted to recover through their own process.
- the recovery of uninsured losses from at fault third parties.

Example 6.4

Elizabeth worked as a delivery and salesperson for Big Bakers. Big Bakers became aware that the income received from the shops that Elizabeth delivered to, did not reflect the value of the goods which regularly left Big Bakers' premises. Big Bakers dismissed Elizabeth, but she took her case to the Workplace Relations Commission and Big Bakers faced an unfair dismissal claim. The Gardaí were informed of the claims against Elizabeth and upon investigation she confessed that she had taken Big Bakers' goods and had sold them on. Following this, the case was withdrawn from the Workplace Relations Commission.

Commercial legal expenses insurance is becoming increasingly important, particularly for the average individual or small company, for whom involvement in any legal process is very expensive. It is becoming increasingly difficult to recover costs from a third party, even when an action has been successful.

There are relatively few providers and most insurers offering this cover outsource it to one of the major specialist insurers. We will therefore restrict our consideration to the scope of cover that may be provided on a stand-alone basis (elements of which may be incorporated in 'package' or 'combined' policies).

The main policy provisos are that the insurer will **only** fund:

- a legal action where there is a reasonable prospect of success for the policyholder (see Example 6.5)
- legal costs incurred with the insurer's prior consent.

Example 6.5

Kim injured herself at work and made a claim under her legal expenses insurance as she wanted to pursue a case against her employers for negligence. But Kim's legal expenses insurer rejected the claim as it had no reasonable prospect of success. This was because Kim was actually at fault for her accident.

This allows the insurer to be fully involved and in control of the claim from the outset. Policies also include cover for legal costs in defending or pursuing a claim, expenses for jury attendance and sometimes a percentage of a financial compensation award. Along with cover for costs of defence and prosecution of legal matters, insurers offer a range of extra benefits, e.g.:

- Legal advice helplines available 24/7 for commercial issues within EU law
- Counselling helpline for employees and their families
- Online employment manual providing up-to-date guidance on employment law
- Access to legal document library.

Due to the nature of the protection provided, there is a fairly lengthy list of conditions. Many of the conditions are concerned with the insurer's wish to control the process so that their position is not prejudiced. When an adviser is providing advice and guidance, they should emphasise to the client the need to obtain the insurer's consent or instructions at every stage.

H Summary

In this chapter, we considered the main liability covers – employers, public and products liability. The demand (and need) for what were once considered 'non-mainstream' liability covers such as professional indemnity and directors and officers insurance will continue to grow as regulation and legislation impose greater responsibilities on firms and individuals, and as society becomes more litigious. Although not a liability cover, the protection offered by legal expenses cover was also discussed.

There are other specialist covers available for specific groups or purposes, e.g. pension trustee liability, warehouse keeper's liability, libel and slander. These do not fall within the scope of this textbook, but they would obviously need to be considered for clients whose businesses involve exposure to these liabilities.

H1 What's next?

In the final chapter of this textbook, we will look at the procedures involved in successfully pursuing a claim, as well as the roles and responsibilities of all parties throughout the claims settlement process.

H2 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

H3 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 6.

1. State the two bases under which liability policies may be underwritten.

2. The cover under some liability policies is on a 'claims made' basis. Briefly explain what is meant by this term.

3. Apart from those under a contract of service or apprenticeship, list the categories of worker specified as employees in an employers liability policy.

4. List four questions that the adviser should ask when preparing a submission for employers' liability insurance.

5. Identify which type of liability policy covers an employer's legal liability for damage to employees' property.

6. Outline what exposure measures insurers may use to rate public liability policies.

7. Outline the normal territorial limits of a products liability insurance policy.

8. State the purpose of a 'jurisdiction' clause.

9. Briefly explain what is meant by a 'wrongful act' covered under a directors and officers liability policy.

10. State the main areas of cover in a commercial legal expenses policy.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. These are known as 'occurrence' and 'claims made' bases. Occurrence basis refers to when the loss or injury occurs. Claims made basis refers to when the loss or injury is notified.

2. Where cover is on a 'claims made' basis, the claim must be made against the policyholder during the period of insurance. The liability to meet the claim falls on the policy in force when the third party's claim is made against the policyholder, even if the incident giving rise to the claim occurred much earlier.

3. Specific categories are:
   - labour masters and persons supplied by them
   - labour only sub-contractors and persons employed by them
   - persons hired or borrowed by the policyholder under an agreement where the person is considered to be employed by the insured
   - self-employed persons
   - persons engaged in any training, educational or work experience programme.

4. Four questions an adviser can ask a client are:
   - What are the salaries for each category of employee?
   - What safety, health and welfare matters should be considered?
   - How frequently is training provided?
   - Is there any work away from the premises that should be considered?

5. A public liability policy covers an employer's legal liability for damage to employees' property. (Only bodily injury, death or illness of the employee is covered under an employers liability policy.)

6. The normal territorial limits of a products liability insurance policy are for claims happening anywhere in the world, caused by the goods sold, supplied, delivered, installed, erected, repaired, altered, treated or tested by the policyholder in Ireland, Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

7. The normal territorial limits of a product liability policy are for claims occurring anywhere in the world during the period of insurance and caused by the goods sold, supplied, delivered, installed, erected, repaired, altered, treated or tested by the insured in Ireland, Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

8. A 'jurisdiction' clause may provide that claims must be brought against the policyholder in a specified territory or under Irish law.

9. A 'wrongful act' covered under a directors and officers liability policy typically means any breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, libel, slander, breach of warranty of authority or wrongful trading committed by a director or officer of the company.

10. Cover includes legal costs incurred in defending or pursuing a claim, expenses for jury attendance and sometimes a percentage of the financial compensation award.

Answers to quick questions

1. The business definition acts as a policy restriction. Only claims arising in the course of the business (as defined in the submission/proposal/policy schedule) will be covered. Any activity beyond this (unless falling into the automatic policy extensions, e.g. canteen, social and welfare committees) is not covered. Insurance for these risks is not compulsory in Ireland, so an insurer could decline to deal with a claim.

2. Insurers do not wish to insure the products risk in isolation because there may be occasions where there is doubt about which section of the policy provides cover. This could happen regarding the use of a product or supply of the wrong product, i.e. where the product itself has no defect, but causes injury or damage when put to use. Examples of this include using the wrong grade of cement in a building project or dispensing an incorrect drug. From an adviser's point of view, the potential for gaps or disputes naturally leads to placing the public and products liability together. Another consideration is that insurers are more comfortable looking at the total liability exposure.

3. Due to the compensation award for the third party costing €500,000 and that the policy is underwritten on a costs inclusive basis, the insurer will pay up to €500,000 towards the costs of investigating/defending the action. This is the remaining amount of the €1 million limit. The policyholder will have to pay any costs above €500,000.

4. The requirement for 'Any circumstance notified … or known to the client (or which should have been known) … which might reasonably be expected to produce a claim …' is very broad. Declarations for professionals such as solicitors or financial advisers may be lengthy due to the nature of their work and the current economic/litigious climate. Clients may fear that a future claim would be turned down if a court held that they knew or ought to have known information and they did not declare it.

Sample multiple-choice questions

1. Vitalogy Architects effected a professional indemnity policy with SRT Insurance in January 2019. For the previous five years, Vitalogy Architects had a professional indemnity policy with BTY Insurance. Both policies provided cover on a 'claims made' basis. In April 2019, Vitalogy Architects submitted a claim to SRT Insurance relating to negligent advice Vitalogy provided to a client in April 2016. Where does the indemnity lie in this claim situation?

   A. Vitalogy Architects should contact its previous insurer, as BTY is liable to meet any potential costs associated with this claim.

   B. Due to switching insurers, Vitalogy Architects has left itself exposed and must meet the cost of this liability from its own resources.

   C. Providing the claim is valid, SRT will meet the costs associated with Vitalogy Architects' claim.

   D. Providing the claim is valid, SRT will contribute towards any potential costs but will also seek an equal contribution from BTY.

   Your answer:

2. An employers liability policy indemnifies the insured against legal liability for damages in respect of:

   A. bodily injury, disease or illness only

   B. bodily injury, death, disease or illness

   C. bodily injury, death, disease or loss of property

   D. bodily injury, death or disease only

   Your answer:

3. In the context of employers liability insurance, which of the following is an example of a trade endorsement?

A. FY Plastics' premium will be adjusted at the end of the year if its actual wage bill is lower than originally estimated at the inception of the policy.

B. WM Construction has an exclusion on its policy stating that it must not carry out any work above 15 metres in height.

C. LK Plastics has a warranty in its policy stating that it cannot conduct business with certain suppliers without the insurer's consent.

D. XR Construction will be offered a premium discount if it endorses its insurer's product in an advertising campaign.

Your answer:

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 6A2b

Question type: A

Correct response: C

Learning outcome: Outline the basis of liability cover, and demonstrate the impact of different policy triggers for liability insurances.

2.

Chapter reference: Chapter 6B

Question type: K

Correct response: B

Learning outcome: Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to different liability insurances, and illustrate the underpinning knowledge by drafting a suitable client questionnaire for commercial liability classes.

3.

Chapter reference: Chapter 6B

Question type: U

Correct response: B

Learning outcome: Demonstrate the key elements of policy cover to determine appropriate underwriting information applicable to different liability insurances, and illustrate the underpinning knowledge by drafting a suitable client questionnaire for commercial liability classes.

Chapter

7

The claims process

What to expect in this chapter

This chapter looks at the claims process for commercial insurances and the role of the adviser in this process. We will consider the different elements of the process, as well as the people and organisations that are involved at the different stages. In doing so, we trace the journey of a typical claim from the moment of first notification, to the insurer's decision on the outcome of the claim.

Most of the information in this chapter deals with the claims process that insurers will follow when considering claims made by policyholders under commercial insurance policies. However, intermediaries such as insurance brokers also have a role in the process and we will consider their potential role in Section B. Advisers working for intermediary firms should of course be familiar with the wider claims process so that they can provide professional and timely advice to their clients.

Learning outcomes for this chapter

Section	Title	At the end of each section you should be able to:
A	**The claims process**	Identify the stages of the claims process and demonstrate the role of the intermediary in this process.
B	**The role of the intermediary**	
C	**Claims notification**	Demonstrate the general insurance claims process, and explain the roles and responsibilities of all parties throughout the claims settlement process.
D	**Claims reserving**	
E	**Claims investigation**	
F	**Claims settlement**	

A The claims process

The claims process for commercial insurance begins with notification of a potential claim, followed by investigation of the claim and ultimately the outcome (usually settlement) of the claim.

Sometimes, these stages may be merged, or some might be omitted altogether. For example, an insurer may be willing to accept claim notification and information over the phone rather than requiring the completion of a claim form.

Figure 7.1 shows the different elements involved at each stage of the claims process.

Figure 7.1 The claims process

Claims notification
- Claim form
- Supporting documentation
- Duties of the insured

Claims reserving
- Estimating the likely cost of the claim

Claims investigation
- Professionals involved
- Personal Injuries Assessment Board
- Insurance fraud

Claims settlement
- Claims payment
- Salvage

Although there are common elements, the handling and processing of claims will differ according to a number of factors:

- the type of insurance and cover
- the claimant
- whether the claim involves loss, injury, damage or liability
- the nature and potential size of the claim.

Many different accidents, incidents and scenarios may result in claims. Some of these are simple and straightforward, e.g. a small burst pipes claim involving damage to flooring, while others can be significantly more complex, e.g. a major fire in a food-processing plant. As a result, there is almost limitless scope for different outcomes to emerge.

Figure 7.2 is a brief outline of a claims handling process that may be used for a property claim. However, it should be noted that procedures may vary depending on the outcome of the previous step.

Figure 7.2 Claims handling checklist – property insurance

Claims handling checklist
– property insurance

POLICYHOLDER

- [ ] Act as if uninsured.
- [ ] Notify and supply information.

NOTIFICATION

- [ ] Give the policyholder proper instructions about what they must do.
- [ ] Advise re emergency repairs, notification to Gardai, if appropriate.
- [ ] What is the claimant's interest in the policy?
- [ ] Was the policy in force at the appropriate time?
- [ ] Has the premium been paid?
- [ ] Did the loss result from an insured cause/peril?
- [ ] Does an exception/exclusion apply?
- [ ] Is there a breach of a relevant Warranty or Condition?

If an exception/exclusion applies or there has been a breach of warranty or condition, advise the insured that the claim may not be admissible and reserve rights. Further investigation may be required.

- [ ] Is the claim below the amount of any excess? **If so, advise the policyholder.**
- [ ] Is any action necessary to avoid further damage?
- [ ] Open claim file and check reinsurance.
- [ ] Request the completion of a claim form and any supporting information (for small straightforward claims only).
- [ ] Appoint loss adjuster (if a larger more complex claim) and advise the policyholder of the loss adjuster's contact details and also of their right to appoint their own loss assessor at their own expense.

CLAIM FORM

- [ ] Gather any further details needed from the policy-holder.
- [ ] Check the claim form/claim information in line with the policy cover – clarify any discrepancies.
- [ ] Check the adequacy of the sums insured on the policy – is there any underinsurance?
- [ ] Obtain a copy of the Garda Report, if applicable.
- [ ] Obtain written repair and/or replacement estimates and proof of purchase if appropriate.
- [ ] Does an excess apply?
- [ ] Is the policyholder registered for VAT? (if so, any claims payments will be exclusive of VAT)
- [ ] Issue all supporting documentation to insurers.

INVESTIGATION/LOSS ADJUSTER ACTION

- [ ] Do experts need to be appointed/consulted?
- [ ] Establish that cover exists under the policy.
- [ ] Establish the amount of the loss.
- [ ] Are there any subrogation rights?
- [ ] Issue Final Report to insurers.

SETTLEMENT

- [ ] What is the most appropriate means of settlement? (repair/replace/cash/reinstatement)?
- [ ] Obtain Acceptance Form
- [ ] Cheque to be issued within ten business days of the settlement amount being agreed.
- [ ] Refer to Arbitration/Conciliation/Mediation if any dispute regarding quantum or liability.

POST SETTLEMENT ACTION

- [ ] Advise the policyholder that claim payments may affect future contracts of this type.
- [ ] Collect reinsurance?
- [ ] Is there an Automatic Reinstatement of Sum Insured Clause on the policy?
- [ ] If so, is an additional premium due?
- [ ] If not, appropriate cover should be arranged.
- [ ] Insurers may also seek to recover their VAT outlay in handling the claim from the policyholder if the policyholder is VAT registered.

Chapter 7

B The role of the intermediary

Where a policy has been arranged through an insurance intermediary, such as a broker, the policyholder will often make the first notification of a claim to the intermediary. In this situation, the adviser's primary responsibility is to inform the insurer of the potential claim and pass the relevant documents to the insurer within 1 business day.[8]

Following initial notification of the claim, the nature of the intermediary's involvement will depend on a number of factors.

B1 Client relationship

In some cases, the intermediary may wish to be involved in the claims process to a greater extent than strictly required. For example, they may wish to:

- support the client relationship and demonstrate the added value they bring
- bring their expertise and experience to bear for both the client's and insurer's benefit
- be fully appraised of any situation in which a claim will be declined or not fully met
- assist the insurer in complex situations to clarify matters for both the insurer and the client
- assist in recovering claims for uninsured losses
- provide advice if a complaint is made following the declining of a claim, e.g. advice in relation to procedures involving the Financial Services and Pensions Ombudsman (FSPO).

As noted in Chapter 1A, there may be a service level agreement (SLA) in place for large or complex risks that assigns specific responsibilities to the intermediary. For example, they may have agreed to assist with the recovery of uninsured losses in non-fault motor claims or help the client negotiate settlement of a property claim with an insurer or **loss adjuster**.

loss adjuster
independent expert in processing claims from start to finish (and appointed by the insurer)

Just think

Regardless of the terms of any SLA, what is the main reason an intermediary would want to become involved in the claims process?

A claim can be seen as an opportunity for an intermediary to support the relationship with a client and to show the added value they bring to the process. This can have a positive effect on client loyalty and on retention rates.

8 Provision 7.8, CPC.

B2 Type of claim

The extent of the intermediary's role will vary according to the type of claim. For example, it would be unusual for them to have a significant involvement in claims from third parties. In this instance, the intermediary's main role is to emphasise to the client the need to forward correspondence received from third parties to the insurer, quickly and unanswered.

However, the intermediary's role in property or own damage motor claims (for example) may be more significant. The intermediary can add considerable value to the claims process through their specialist knowledge of an industry or niche market. However, for some classes their role may be restricted to assisting with any problems that emerge, rather than active involvement throughout the process.

B3 Delegated authority

Occasionally, an intermediary may have authority to settle claims on behalf of the insurer. In this situation, all of the insurer's regulatory obligations will fall on the intermediary. We considered the insurer's regulatory obligations in relation to claims in The Nature of Insurance.

C Claims notification

Normally, the policyholder will contact their insurer or intermediary when they have a clear intention to make a claim under a commercial insurance policy. However, for some policies, notably motor and liability, the policyholder must report any event that is likely to give rise to a claim as soon as possible.

Sometimes an insurer will receive initial notification from a person other than the policyholder. For example, a third party to a motor accident might contact the insurer before the policyholder reports the incident. When this happens, the insurer will normally contact their policyholder and make further enquiries before proceeding with negotiation or settlement.

The policy may specify a time limit for notifying a claim to the insurer. Property insurance policies usually state that notification must be immediate and followed up with full particulars of a claim in writing within a time period, e.g. 7, 15 or 30 calendar days.

The claims notification conditions in a policy are designed to ensure:

- early investigation in order to minimise the cost
- early appointment of loss adjusters or solicitors where appropriate
- detailed evidence is not lost through delay
- the insurer's financial position is accurate and up to date (through early and accurate reserving)
- the insurer reports certain losses to reinsurers within the required timelines
- potential recoveries from third parties can be initiated
- awareness of losses that may develop into future claims.

If the policyholder fails to comply with the claims notification conditions, the insurer's position may be compromised; giving the insurer grounds to reject the claim. The exception to this rule is that insurers cannot avoid Road Traffic Act (RTA) liability claims on these grounds (**Sixth Motor Insurance Directive 2009**). However, the insurer may be able to recover its outlay from the policyholder.

The insurer also has regulatory obligations at notification stage. For example, where a claim form is needed, the Consumer Protection Code (CPC) requires the insurer to issue this document within 5 business days of the claim notification. We considered these regulatory obligations in The Nature of Insurance module.

Chapter 7

C1 Claim forms

Claim forms are an effective way of obtaining full details about a claim. The purpose of a claim form is to:

- Establish whether the policyholder is entitled to indemnity under the policy - The insurer must be satisfied that the loss, actual or potential, is covered under the terms of the policy, and that the information given on the form matches that given on the proposal form.
- Provide sufficient information to permit the insurer to begin processing any claim, if appropriate.
- Help the insurer determine liability, i.e. who is at fault.
- Help the insurer decide the severity (potential cost) of the claim - This allows the insurer to place an accurate case reserve (estimate) on the loss, damage or liability and to review this as the claim progresses.
- Enable the insurer to take an early view on whether there is likely to be a claim from a third party (for motor and liability insurance).
- Enable the insurer to take an early view on the possibility of recovery rights, either by subrogation or contribution.

accident report form

preferred term for a claim form used in motor and liability insurances

In motor insurance, the form is known as an '**accident report form**'. It is a policy condition in motor insurance that all accidents are reported to the insurer, regardless of whether the policyholder intends to make a claim or expects a claim to come from another party, hence the term 'accident report form', rather than claim form.

Quick question 1

State any three key reasons for insurers to request a claim form.

The answer is at the end of this chapter.

C2 Other supporting documentation

In addition to the claim form, other supporting documentation may be needed. This will vary according to the type of policy and the nature of the claim, and includes:

- property claims – receipts, repair estimates, valuations, photos
- motor claims – vehicle service history, vehicle registration certificate, NCT certificate, a copy of the driver's licence
- business interruption claims – audited accounts, turnover projections and details of the material damage policy in force at the time of the loss
- liability claims – copy of accident book entry, maintenance records for machinery, photos, witness statements, medical reports.

C3 Insurer's advice to the policyholder

Following the initial notification, the insurer will advise the policyholder on what they need to do, or what the insurer intends to do.

In order for insurers to provide an indemnity, the policyholder must adhere to the claims conditions on the policy at the time of, and immediately following, a loss. The consequences of a breach of a **condition** or **warranty**[9] were dealt with in The Nature of Insurance. Remember also from that module that under the **Consumer Insurance Contracts Act 2019**, a representation made by a consumer cannot be treated as a warranty. The insurer will remind the policyholder of the relevant claims conditions. For example, the policyholder must:

- take immediate action to minimise the loss
- keep any damaged items, as the insurer may need to inspect them
- notify the Gardaí immediately about loss or damage by theft, malicious act or riot, strikes, civil commotion or labour disturbances
- notify the fire brigade immediately of any fire or explosion
- send the insurer any letter, claim, writ, summons or other legal document, unanswered, as soon as received
- not admit liability, offer or negotiate any payment of a third party claim, unless the insurer approves this.

Depending on the type of claim, the insurer will need to take specific action when notified of an incident. For example, the insurer may:

- arrange for towing of damaged vehicles to the nearest repairer
- advise of any requirement to approach PIAB (if sufficient information is available)
- advise the policyholder to take steps to prevent further damage or loss
- advise that it will arrange for boarding up of a broken glass shop front
- advise that it will appoint a loss adjuster.

Quick question 2

While driving a commercial vehicle, Seán loses concentration and collides with another vehicle. As the driver of the other car is quite distressed, Seán tries to calm him by admitting that he was entirely to blame. He tells the driver not to worry because the insurer will sort things out.

How might the insurer react to Seán accepting responsibility for the accident without consulting it?

condition

provision in a policy that must be complied with

warranty

term (in an insurance contract) that, if broken, automatically voids the contract as a whole from the date of breach

Chapter 7

9 Note: The **Consumer Insurance Contracts Act 2019** deals with the use of warranties in consumer insurance contracts. However, this textbook presumes that the insureds being referred to do not fall within the Act's definition of consumer. See Chapter 2C5d on information relating to consumers and warranties.

C4 Checking the claim information

Once the policyholder has provided the required information, the insurer will check that:

- the cover was in force at the time of the loss (or, under certain policies, when the claim was made)
- the premium was paid in full
- the person making the claim is as named in the policy or a person entitled to indemnity
- that insurable interest existed at inception/renewal and at the time of the loss
- the peril (or event) is covered by the policy
- the policyholder has taken reasonable steps to minimise the loss
- all conditions and warranties have been complied with
- the principle of **utmost good faith** was complied with[10]
- no exceptions or policy exclusions are relevant
- the value of the loss is accurate and is not in excess of the sum insured.

utmost good faith

the positive duty placed on non-consumer proposers to voluntarily disclose, accurately and fully, all facts material to the risk being proposed, whether requested or not

These checks will give an indication of the likely outcome of the claim. Claims may be:

- valid – payable under the policy when the policyholder meets all requirements
- invalid – if the policyholder does not meet all the requirements, or if fraud can be proven
- partially met – where the claim is valid, but subject to a reduction, e.g. because of an excess or underinsurance/average clause).

If it appears that there may have been a breach of a warranty, the insurer will arrange for a detailed investigation of the claim. The adviser should alert the policyholder to the seriousness of the situation and liaise with the insurer to establish its attitude to the breach and the proposed course of action.

The insurer may also request the Garda report of an incident. For many classes of insurance, e.g. motor, fidelity guarantee and money, where theft or riot is involved, there will be a policy condition that the policyholder must inform the Gardaí. This can be confirmed by providing insurers with the Garda reference number (also known as the 'Pulse' number)[11] or a copy of the Garda report form. This form shows the brief details of the loss, provides the Garda incident number and is stamped by the Gardaí to confirm they have been advised of the loss. For some motor claims, a full Garda abstract will be required. This will include measurements of the accident locus (location) and witness statements.

[10] The **Consumer Insurance Contracts Act 2019** removes the duty of utmost good faith from consumers. This textbook presumes that the commercial insureds being referred to do not fall within the definition of consumer.

[11] Pulse is the Gardaí's computer incident report system.

D Claims reserving

When an incident is notified to the insurer, the claims handler estimates the likely cost of the claim. This estimate is known as the 'case reserve'. When setting a case reserve, the handler must consider all relevant aspects. This may include damage to the policyholder's property, claims from third parties, professional fees and VAT. The initial case reserve is normally based on limited information, so it will need to be updated when more information becomes available.

Insurers adopt a variety of practices at the early stages of notification. It is common for an insurer to assume, in liability situations, that the policyholder is 100% liable until it knows differently and is able to make an accurate assessment. Insurers may apply a standardised case reserve based on the information they have to hand and their previous experience of average claims costs. Standard reserves vary depending on the insurer and line of business involved.

Normally, for property and own damage claims, estimates can be assessed fairly accurately at the early stages of notification. However, larger losses and business interruption losses may not be accurately estimated until some time after the event. When an insurer appoints a loss adjuster, they will request a preliminary report as quickly as possible. This report will include an assessment of the likely extent of the loss.

Accuracy in reserving is very important for a number of reasons:

- Insurers must make adequate provision for their present and future claims liabilities. This is a vital element in calculating an insurer's solvency, ensuring compliance with **Solvency II** and fulfilling its regulatory responsibilities.
- Underwriters rely on claims data when setting premium rates. They consider **claims reserves** and claims payments when assessing the profitability of each class of business. If the claims reserves are inadequate (or too high), these premium projections (estimates) will produce inappropriate rates.
- An insurer may be required at any time to provide a report on its underwriting results or profitability. Accurate claims reserves are vital to any assessment of an insurer's financial performance.
- An insurer which underestimates its claims reserves risks becoming insolvent as it may not have enough capital to pay the claims as they fall due.

claims reserves

funds set aside by an insurer to meet the cost of present and future claim payments

E Claims investigation

The purpose of the investigation process is to establish whether or not a claim is valid. This involves considering all aspects of the loss and to what extent the policy should respond to the claim. The steps involved in the investigation process will vary according to the type and size of the claim. Some claims may be settled quickly, with little need for investigation. Others require more detailed enquiries and the involvement of other professionals.

E1 The claims handler

The role of the claims handler is to:

- deal with claims quickly and fairly
- distinguish between genuine and fraudulent claims
- assess the likely cost of a claim in order to allocate an appropriate case reserve
- determine whether others (e.g. loss adjusters) should be involved
- settle claims efficiently and with minimum cost.

The claims handler may settle some claims immediately, provided the policyholder has submitted all the necessary documentation. For example, if the claim involves minor loss or damage to the policyholder's property, the claims handler may decide that no further investigation is needed. Following a discussion with the policyholder to establish the facts, call recording may be used to verify the decision.

A claims handler will normally oversee all aspects of the investigation and handling of a claim. Where a claim cannot be settled straightaway, the handler may decide to make further enquiries. This may be because:

- the claim is large or complex
- the circumstances or full extent of an injury is unclear
- the policyholder's claims history is of concern
- fraud is suspected.

In these circumstances, the claims handler may seek assistance from a **claims investigator** or a loss adjuster.

claims investigator (inspector)

an individual who is skilled, experienced and qualified to investigate the circumstances of individual claims on behalf of an insurer

E2 The claims investigator

A claims investigator is often an employee of the insurer, although they may also work on a freelance basis or for a specialist firm. The claims handler may appoint a claims investigator to contact the policyholder and obtain more information about an incident. This may involve:

- inspecting and photographing damaged property or an accident location
- taking a statement from the claimant, policyholder or witnesses about an incident
- investigating the cause of an accident or incident
- assisting the claims handler in making an early assessment of whether or not the policyholder is at fault
- negotiating settlement of the claim.

Claims investigators are often involved in motor or liability claims.

E3 Loss adjusters

A claims handler will typically appoint a loss adjuster for large property damage claims or those that involve complex policy wordings. The role of the loss adjuster is to investigate claims on behalf of the insurer.

Where an insurer appoints a loss adjuster (or expert appraiser), it must:

- notify the policyholder of the loss adjuster's contact details
- tell the policyholder that the adjuster acts in the interest of the insurer
- advise the policyholder that they have the option to appoint a **loss assessor** at their own expense
- maintain a record of this notification.

loss assessor

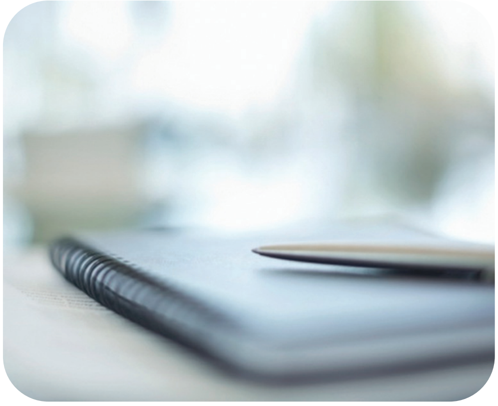
expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf

Loss adjusters also provide other services, which include:

- ensuring that the interests of the policyholder are preserved
- ensuring that any emergency action is undertaken, e.g. to protect property
- checking that the insurance cover was in force and was adequate e.g. adequacy of sums insured
- acting to minimise the extent of the loss (benefitting both the insurer and the policyholder)
- attempting to bring about a fair and swift settlement as defined within the terms of the policy.

A loss adjuster will supply the following documentation to the insurer:

- A preliminary report – This normally outlines the full circumstances surrounding the loss, e.g. date, how the loss occurred, and if a third party was involved or responsible. This report may include photos of the damage and will include a full description of the risk, e.g. details of construction and occupancy. Also, the preliminary report comments on whether the cover is adequate, suggests the amount the insurer should reserve as the possible settlement figure, and tells the insurer what steps are now being taken in handling the claim. The insurer will then review all the details provided.
- A final report – This provides full details of the claim and how the settlement was calculated. It will also address the possibility of recovery from a third party. For complex losses, or where there is a long waiting period, the loss adjuster may provide an interim report(s). They may also recommend an interim payment to assist the policyholder's business recovery, e.g. cash flow for a business.



E4 Loss assessors

Although not appointed by an insurer, a loss assessor may also become involved in the claims process. Loss assessors are appointed by, and act on behalf of, a policyholder. The policyholder pays the loss assessor's fees, but they cannot recover these costs from the insurer, i.e. the fees cannot form part of the insured's claim.

The services and assistance that loss assessors provide include:

- ensuring that the interests of the policyholder are protected
- checking that the insurance cover was in force and was adequate
- attending the loss scene to meet with the loss adjuster
- assessing the damage and formulating the claim
- advising the policyholder on claim preparation and presentation of the claim, including documentation required
- advising the policyholder on options offered or available
- negotiating and ensuring that the proposed settlement is fair and reasonable under the terms of the policy
- attempting to bring about a swift settlement.

Loss assessors have similar skills to those of loss adjusters and perform similar functions.

However, there are two very important differences:

- The policyholder appoints the loss assessor to act entirely on their behalf and for their benefit. This is in contrast to loss adjusters who, although appointed by the insurer, have a duty to be independent and impartial.
- Loss assessors, who act on behalf of consumers, must be registered as insurance intermediaries under the **EC (Insurance Mediation) 2005 (as amended)**. As we have already noted, insurance intermediaries are subject to the Consumer Protection Code (CPC). They are also subject to the Central Bank **Minimum Competency Code** (MCC) and **Fitness and Probity Standards**. Loss adjusters do not require registration under the **EC (Insurance Mediation) Regulations 2005 (as amended)**. They are specifically exempt, as they are considered to be either independent or acting for the insurer.

E5 Solicitors

In complex liability or motor claims, the insurer may appoint a solicitor to investigate or defend the claim on behalf of the policyholder against a third party claimant. The solicitor, who may be an in-house solicitor of the insurer, may also be involved in the defence of civil or criminal proceedings covered by the policy (e.g. motoring or health and safety offences). Insurers may also seek the advice of a solicitor where there is a dispute in general about a policy wording or the application of a principle of insurance.

E6 Motor engineers

Whether an employee of the insurer or contracted for a particular job, the motor engineer will:

- confirm that the damage has in fact occurred
- confirm the repairer's estimate on the extent of damage, cost and length of repair time
- confirm whether damaged parts should be repaired or replaced
- establish whether the vehicle can be economically repaired or whether it is a total loss
- if a total loss, oversee disposal of the vehicle and recommend a valuation
- issue a report to insurers outlining these facts and providing photos of the damaged vehicle.

In many cases, the engineer will also arrange for bidders to make offers for **salvage**. Motor engineers deal with the damaged subject matter of insurance (i.e. the vehicle) and the insurer; they do not deal with the claimant.

Minimum Competency Code

code issued by the Central Bank of Ireland setting minimum professional standards for financial service providers, with particular emphasis on dealing with consumers

Fitness and Probity Standards

set of standards issued by the Central Bank to assess the business history, skills, qualifications and character of persons who perform an insurance function

Quick question 3

Who pays the fees of:

a. a loss adjuster

b. a loss assessor?

salvage

what remains of the subject matter of insurance after an insured event where the insurer treats the claim as a total loss

E7 Special considerations for third party claims

Where a claim involves injury to a third party or damage to their property, the insurer will investigate the circumstances of the incident and the allegations of negligence against its policyholder. For personal injury claims, PIAB will play a significant role in the assessment of the claim.

E7a Personal Injuries Assessment Board (PIAB)

Personal Injuries Guidelines

guideline principles governing the assessment and award of damages for personal injuries with a view to achieving greater consistency in awards

Personal Injuries Assessment Board (PIAB) is the independent statutory body set up to assess compensation due to an injured party. Its aim is to reduce costs (especially legal costs) and administration fees for personal injury claims and to reduce the timeframe for settlement.

All claims involving personal injury except medical negligence must be submitted to PIAB for assessment before court proceedings can be issued. The parties to the claim follow a formal process that is subject to strict deadlines, and according to compensation levels set by the **Personal Injuries Guidelines**. These Guidelines came into effect on 24 April 2021 and replaced the Book of Quantum[12]. The Guidelines apply to all applications already made to PIAB which have not yet reached assessment stage. However, they will not apply to cases where an assessment has been already been made or cases which are currently in the Court system. Although there are some similarities to the Book of Quantum, these Guidelines comprise twelve categories with new sub-categorisations to include reference to psychological injuries, scarring cases and chronic pain. It is anticipated that the overall level of personal injury awards and the associated legal costs will reduce significantly with the implementation of these Guidelines.

Under the **Personal Injuries Resolution Board Act 2022**, where a claim proceeds to litigation and a PIAB assessment has been accepted by the respondent (insurer), the claimant will not be able to recover their costs and will be responsible for the respondent's legal costs unless the court awards a higher amount than the PIAB. This Act has widened PIAB's to include purely psychological claims and will rename the PIAB to the Personal Injuries Resolution Board.

PIAB will **not** make an assessment if:

- there is insufficient precedent, i.e. there is no similarity to previous cases to quantify (assess) the injury
- the claim arose from medical negligence.

When investigating personal injury claims, insurers must take account of PIAB procedures and timescales. Of particular importance is the 90-day (calendar days) deadline for the insurer to confirm whether or not they consent to assessment by PIAB. In practical terms, this means that the insurer needs to investigate the incident without delay and make a decision about whether their policyholder was at fault.

If the insurer disputes liability and refuses to agree to an assessment, PIAB will issue the claimant with an 'authorisation' which will allow them to pursue their action through the courts system.

Chapter 7

[12] The Personal Injuries Assessment Board's Personal Injuries Guidelines can be found on its website, www.piab.ie.

E8 Insurance fraud

Insurance Ireland estimates that insurance fraud costs Irish insurers and policyholders €200 million per year. Its prevention has become a high profile issue in recent years. Examples of how fraud occurs in individual insurance claims include:

- inflating a genuine claim, e.g. a gross exaggeration of damage values
- creating a fictitious event, e.g. a theft that never took place
- not disclosing, or misleading insurers about, the financial interest in an insured property, e.g. a motor claim where the insured does not disclose that the vehicle is the subject of a car loan
- causing deliberate damage to an insured property, e.g. arson
- taking out different policies on the same risk, e.g. multiple personal accident policies
- adding a false element to an otherwise valid claim, e.g. claiming for theft of items that either did not exist or were not stolen.

Example 7.1 illustrates a fraudulent claim for flood damage to a vehicle.

Example 7.1

A policyholder alleged their BMW X5 jeep was written off as a result of flood damage. The claim was worth €45,000. The claimant had only third party cover at the time of the flood damage. However, the following day they took out comprehensive cover and, with a tow-truck driver assisting the scam, alleged that the flood damage took place three days after cover was increased. Both the claimant and tow-truck driver were convicted of conspiracy to defraud and sentenced.[13]

All advisers need to be aware of fraud indicators. Once a defined number of indicators are present, insurers are prompted to undertake a fraud investigation. Examples of fraud indicators are:

- frequent change of insurer to avoid a single insurer gathering too much information
- unusual changes to cover, e.g. adding accidental cover to a household policy mid-term
- unclear ownership of goods, as this may suggest that the property was either stolen or owned by someone other than the policyholder
- financial difficulties (though this can be difficult to establish)
- excessive pressure to settle, or willing to settle quickly for a smaller sum
- an inconsistent story or possible false facts
- lack of cooperation

[13] 'Driver Caught Out Over Flood Damage' (General Motor – Motor Fraud/Flood Damage), ©2013 Insurance Ireland, www.insuranceconfidential.ie.

- suspicious timing of claim e.g. a delay in submitting the claim or a claim submitted shortly before renewal or shortly after policy inception
- insistence on a cash settlement
- suspicious documentation, e.g. lack of receipts or paperwork, or documents that seem 'too good to be true'.

E8a Fraud prevention and detection

A number of industry initiatives have been designed to deter would-be fraudsters as well as to detect fraud after the event. These include the following:

- Insurance Ireland, in cooperation with An Garda Síochána, has put in place 'Guidelines for the reporting of suspected insurance fraud'.
- Insurance Ireland also set up the 'Insurance Confidential' hotline in 2003 to allow members of the public to report cases of suspected fraud.
- InsuranceLink allows insurers to cross-reference individual claims with other insurers.

The **Civil Liability and Courts Act 2004** states that if a plaintiff gives false or misleading evidence on any part of their claim, the court will dismiss the action (as long as the dismissal would not cause an injustice). This legislation also provides for fines of up to €100,000 or a term of up to 10 years' imprisonment, or both, for those who knowingly give false or misleading evidence in a personal injuries action. On summary conviction, i.e. relatively minor offences, a fine of up to €3,000 and/or a term of imprisonment up to 12 months are the maximum penalties.

The **Civil Liability and Courts (Amendment) Bill 2021** proposes to increase the fine for minor offences to €5,000 and to give the court powers to order the plaintiff to pay the legal costs of the defendant where the court has dismissed an action due to the plaintiff giving false or misleading evidence. Additionally, the court can direct the matter to the Director of Public Prosecutions.

These initiatives and penalties have undoubtedly had an impact on reducing the level of fraudulent claims in Ireland. However, it is difficult to measure this.

F Claims settlement

The final stage in the claims process is the actual settlement. The vast majority of claims are settled in a way that satisfies both the policyholder and the insurer. However, where a policyholder is dissatisfied with an insurer's decision, they may pursue a complaint through the insurer's internal complaints procedures and/or another method of dispute resolution. The Compliance and Advice module addressed the topics of dispute resolution and complaints handling in the claims process, including the role of the Financial Services and Pensions Ombudsman (FSPO) and arbitration clauses in insurance contracts.

F1 Settlement methods

Students will recall from The Nature of Insurance that insurers have four options when settling claims: payment of money, repair, replacement or reinstatement. The repair, replacement and reinstatement options only apply if stated in the policy. If those options are not stated, the policyholder has a legal right to financial compensation. It should also be noted that the reinstatement option does not usually apply to motor insurance.

F1a Payment of money

This is a very common method of settling claims. Some types of claim (e.g. business interruption, liability, money and fidelity guarantee) are always settled in this way.

Unless an interim payment has been made, a cash payment is made in full, and final settlement of a claim. This is typically confirmed by an 'acceptance form' which is signed by the policyholder. Where a third party to the claim also signs this agreement, it is known as 'a form of discharge'. These forms are used to ensure that the claim cannot be reopened at a later stage if, for example, the claimant feels that the settlement amount was too low.

Payment to the claimant must be made within 10 business days of their agreement to accept the settlement offer.[14] Where payment is made to a third party, the policyholder must be informed.[15]

[14] Provision 7.18, CPC.

[15] Provision 7.21, CPC.

F1b Paying for repairs

If an insurer decides to settle a claim by arranging and paying for repairs, it must notify the claimant in advance of the scope of the work and its cost. The onus is on the insurer to make sure that the work is carried out to a satisfactory standard. The insurer must certify in writing that the repairs restored the claimant's property to at least the same standard as before the damage.[16] This is the most common way motor claims are settled.

Most motor insurers have their own panel of approved repairers, who will often allow a price reduction on both parts and labour in return for a guaranteed volume of work. Approved repairers also provide a guarantee of standards.

The benefits of approved repairer schemes for the motor policyholder include:

- collection and delivery of the damaged vehicle
- no requirement to obtain repair estimates
- guarantee of quality for the repair work
- provision of a loan car while repairs are carried out.

For the policyholder, there are often financial implications (e.g. an increased excess or no courtesy car) if they do not use the insurer's approved repairers. However, the insurer must make these implications and options known to the proposer at the quotation stage.

Insurers may also use approved repairers for other types of property claims, e.g. damage to computers, mobile phones or photographic equipment, and for glass breakage.

Quick question 4

An insurer has agreed that stock damaged by a fire is no longer usable and should be treated as a total loss. There are some metal components that could be sold for scrap but the policyholder would rather leave all this to the insurer to sort out. Is the policyholder entitled to do this?

F1c Replacement

Where an item is lost, stolen or damaged beyond repair, insurers may arrange to replace the item, rather than make a cash settlement based on its value. In reality, this method of settlement is more common in personal than in commercial insurances.

F1d Reinstatement

Property insurance policies normally also give an insurer the right to settle a claim by reinstating a property that has been destroyed or extensively damaged. However, as outlined in The Nature of Insurance module, insurers rarely exercise this option.

F2 Salvage

When a motor or commercial property claim is settled on a total-loss basis, an insurer is entitled to the value of the salvage. Salvage simply means what remains of the subject matter of insurance after the insured event, e.g. an unrepaired car following a motor accident. The insurer will often choose to take charge of the salvage and obtain the best price for its disposal. However, the policyholder has no right to abandon the subject matter of insurance to the insurer.

[16] Provision 7.13-7.14, CPC.

G Summary

In this chapter, we considered the claims handling process from notification through to settlement. This process, and its outcome, will be a key factor in determining whether the insurance product has 'worked well' for a client. The client's satisfaction or dissatisfaction with the claims process will undoubtedly influence their future decisions about insurance products and providers.

In Chapter 1, we identified that:

- A client's past experience (including their experience of making a claim) will influence the wants and needs that they present to an insurance adviser when considering their future options (see Chapter 1B1).
- When deciding which insurer or product to recommend to a commercial client, the adviser will consider the quality and efficiency of the insurer's claims service (see Chapter 1D2). If an insurer consistently provides a poor claims service, the adviser will be reluctant to recommend that insurer to a client.
- Where an insurer provides an excellent claims service, both the client and the adviser are likely to have a preference for remaining with that insurer.

As you worked through Chapters 2, 3, 4, 5 and 6, you will have built up a detailed knowledge of commercial insurance products. This product knowledge is key to the adviser's ability to guide their client through the claims process. The extent of cover under a policy, and the policyholder's compliance with the policy conditions, will directly determine the outcome of a claim. It is therefore essential that an adviser has a detailed knowledge of the commercial insurance products available in the market.

G1 Study tips

It's important to remember that this textbook is the primary information source for this module. All the questions in your exam will relate directly to information featured in the textbook. Use the 'End of chapter questions', 'Quick questions' and the 'Sample multiple-choice questions' to quickly test what you've learned so far. Make a note of any topics/areas you need to improve in and keep it to hand so you can refer to it when you revise this chapter again before your exam.

In addition to the textbook, your Member Area has many online study supports that can help you as you study this module.

G2 Online learning supports

Your Member Area includes a guide to success, an automated study planner, an exam countdown timer and study tips guide. These study supports are invaluable in reinforcing what you have learned from the textbook so far. The webinars, chapter-by-chapter key points and other supports will help you to break down the chapter content when revising.

Completing online mock exams and reviewing the personalised feedback that follows is a great way of testing your knowledge and preparing for exam day.

To access these online study supports, just log into your Member Area on www.iii.ie and click on the **Connect** logo.

End of chapter questions

Use these questions to test your understanding of what we've covered in Chapter 7.

1. State the reasons an adviser might wish to be involved in the claims process beyond what is strictly required by regulation.

2. State the main purposes of the claims notification conditions in a commercial insurance policy.

3. State the obligation the Consumer Protection Code (CPC) places on the adviser when forwarding a claim form to an insurer.

4. List the various responsibilities of a claims handler.

5. List the contents of a loss adjuster's preliminary report.

6. State the functions of a motor engineer in connection with an own-damage motor claim.

7. List the types of personal injury claim that Personal Injuries Assessment Board (PIAB) will not assess.

8. List three ways that fraud may occur in commercial insurance claims.

9. State the types of claim that are typically settled by the payment of money.

10. List the benefits for the policyholder of a motor insurer's approved repairer scheme.

Answers to end of chapter questions

Check your answers against those below and make a note of any points you left out. This will highlight the sections you may need to look at more closely during your revision.

1. An adviser may wish to be more involved in the claims process so that they can:
   - support the client relationship, and demonstrate the added value they bring
   - assist the insurer in complex situations, to clarify matters for both the insurer and the client
   - bring their expertise and experience to bear for both the client's and insurer's benefit
   - be fully appraised of any situation in which a claim will be declined or not fully met
   - assist in recovering claims for uninsured losses
   - provide advice if a complaint is made after an insurer declines a claim, e.g. advice in relation to Financial Services and Pensions Ombudsman procedures.

2. The claims notification conditions in a policy are designed to ensure:
   - early investigation in order to minimise the cost
   - early appointment of loss adjusters or solicitors where appropriate
   - detailed evidence is not lost through delay
   - the insurer's financial position is accurate and kept up to date
   - the insurer reports certain losses to its reinsurer within the required timelines
   - potential recoveries from third parties can be initiated.

3. Under the CPC an adviser must, on receipt of the completed claims documentation, transmit it to the insurer within one business day.

4. The role of the claims handler is to:
   - deal with claims quickly and fairly
   - distinguish between genuine and fraudulent claims
   - assess the likely cost of a claim in order to allocate an appropriate case reserve
   - determine whether others (e.g. loss adjusters) should be involved
   - settle claims efficiently and cost-effectively.

5. A loss adjuster's preliminary report will usually contain:
   - full circumstances surrounding the loss, e.g. date, how the loss occurred and if a third party was involved or responsible
   - photographs of the damage
   - a full description of the risk
   - a suggested case reserve as the possible settlement figure
   - comments on the adequacy of the cover
   - a full description of the insured property
   - the steps being taken in the handling of the claim.

6. The motor engineer will:
   - confirm that the damage has in fact occurred
   - confirm the repairer's estimate on the extent of damage, cost and length of repair time
   - confirm whether damaged parts should be repaired or replaced
   - establish whether the vehicle can be economically repaired or whether it is a total loss
   - if a total loss, oversee the disposal of the vehicle and recommend a valuation
   - issue a report to the insurer outlining these facts and providing photos of the damaged vehicle.

   They may also arrange for bidders to make offers for salvage.

7. Personal Injuries Assessment Board will not make an assessment if:
   - there is insufficient precedent (similarity to previous cases) to quantify the injury
   - the claim arose from medical negligence.

8. Any three of the following:
   - The inflation of a genuine claim, e.g. gross exaggeration of damage values
   - Creating an fictitious event, e.g. a theft that never took place
   - Not disclosing, or misleading insurers about, the financial interest in an insured property, e.g. a motor claim where the vehicle is the subject of a car loan
   - Causing deliberate damage to insured property, e.g. arson
   - Taking out different policies on the same risk, e.g. multiple personal accident policies
   - Adding a false element to an otherwise valid claim, e.g. claiming for theft of items that either did not exist or were not stolen.

9. Business interruption, money, liability, professional indemnity, directors and officers liability and fidelity guarantee claims are typically settled by the payment of money.

10. The benefits of approved repairer schemes for the motor policyholder include the following:
    - collection and delivery of the damaged vehicle
    - no requirement to obtain repair estimates
    - guarantee of quality for the repair work
    - provision of a loan car while repairs are carried out.

Answers to quick questions

1. Claims forms are used to (any three of the following):
   - establish whether the policyholder is entitled to indemnity under the policy, i.e. that the insurer is satisfied that the loss, actual or potential, is covered under the terms of the policy and that the information given on the claim form agrees with that given on the proposal form
   - provide sufficient information to permit the insurer to begin processing any claim, if appropriate
   - assist the insurer in deciding on the severity (potential cost) of the claim, so that it is able to place an accurate case reserve (estimate) on the loss, damage or liability and to review this as the claim progresses
   - enable the insurer to take an early view on whether there is likely to be a claim from a third party (in respect of motor and liability insurance)
   - enable the insurer to take an early view on the possibility of recovery rights, either by subrogation or contribution.

2. Strictly speaking, the insurer could turn down the claim because Seán breached a claims condition. In this situation, they would deal only with the **Road Traffic Act** element of any claim (i.e. the part of the claim they had to pay due to the compulsory nature of motor insurance) and then seek recovery of the cost from Seán. In practice, insurers will only do this if they felt their position had been prejudiced. In other words they are committed to pay out something they would otherwise not have had to pay.

3. The fees of (a) a loss adjuster are paid by the insurer and the fees of (b) a loss assessor are paid by the policyholder.

4. The insurer's agreement to pay a 'total loss' means the insurer is entitled to the value of the salvage. However, it is the insurer's choice whether to take charge of the salvage and obtain the best price for its disposal. The policyholder has no right to abandon the subject matter of insurance to the insurer.

Sample multiple-choice questions

1. Where the first notification of a claim has been made to an intermediary, what is the maximum number of business days by which the intermediary must inform the insurer of the potential claim?

   A. One day.

   B. Three days.

   C. Five days.

   D. Ten days.

   Your answer:

2. A policyholder has failed to comply with the claims notification conditions contained in their policy, but the insurer must still meet the claim. This is because the claim:

   A. is subject to the provisions of the Consumer Protection Code

   B. relates to third party personal injury under a motor policy

   C. is subject to the provisions of the Personal Injuries Assessment Board

   D. relates to third party personal injury under an employers liability policy

   Your answer:

3. Personal Injuries Assessment Board (PIAB) notifies ABC Insurance of Patrick's intention to make a claim against the company. ABC Insurance has still not confirmed whether it is consenting to the PIAB assessment 48 days later. Within what maximum number of days must ABC Insurance now confirm this?

   A. 2
   B. 12
   C. 42
   D. 52

   Your answer:

Answers to sample multiple-choice questions

1.

Chapter reference: Chapter 7B

Question type: K

Correct response: A

Learning outcome: Identify the stages of the claims process and demonstrate the role of the intermediary in this process.

2.

Chapter reference: Chapter 7C

Question type: U

Correct response: B

Learning outcome: Demonstrate the general insurance claims process, and explain the roles and responsibilities of all parties throughout the claim settlement process.

3.

Chapter reference: Chapter 7E7a

Question type: A

Correct response: C

Learning outcome: Demonstrate the general insurance claims process, and explain the roles and responsibilities of all parties throughout the claim settlement process.

Study Tip

Do you wish to find a specific website, acronym, key term or legislation within this textbook?

You can do a quick find in the module eBook, which is available on **Connect** via your Member Area Login at www.iii.ie.

Referenced websites and legislation

Websites

Central Bank of Ireland:
www.centralbank.ie

Commercial Vehicle Roadworthiness Testing
www.cvrt.ie

Financial Services and Pensions Ombudsman:
www.fspo.ie

Health and Safety Authority:
www.hsa.ie

Insurance Confidential
www.insuranceconfidential.ie

Insurance Ireland:
www.insuranceireland.eu

InsuranceLink:
www.inslink.ie

The Insurance Institute:
www.iii.ie

Data Protection Commission
www.dataprotection.ie

Personal Injuries Assessment Board (PIAB):
www.piab.ie

Legislation

Civil Liability and Courts Act 2004
Civil Liability and Courts (Amendment) Bill 2021
Consumer Insurance Contracts Act 2019
Companies Act 2014

Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

Data Protection Act 2018

EC (Insurance Mediation) 2005 (as amended)
EU Directive 2014 on periodic roadworthiness tests for motor vehicles and their trailers

Factories Act 1955

General Data Protection Regulation 2016

Insurance Distribution Directive 2015
Insurance Distribution Regulations 2018
Insurance Mediation Regulations 2005

Liability for Defective Products Act 1991

Motor Insurance Directives 1972-2009

Personal Injuries Assessment Board (Amendment) Act 2019
Personal Injuries Resolution Board Act 2022

Road Traffic Act 1961
Road Traffic Act 2010
Road Traffic (Compulsory Insurance) (Amendment) Regulations 1992

Safety, Health and Welfare at Work Act 2005
Sale of Goods and Supply of Services Act 1980
Second Motor Insurance Directive 1984
Sixth Motor Insurance Directive 2009

Acronyms and abbreviations

Additional increased cost of working	AICOW
Certificate of Roadworthiness	CRW
Comprehensive (motor insurance cover)	COMP
Consumer Insurance Contracts Act 2019	CICA
Consumer Price Index	CPI
Consumer Protection Code	CPC
Continuing professional development	CPD
Directors and officers (liability cover)	D&O
Data Protection Commission	DPC
Employment practices liability	EPL
European Economic Area	EEA
European Union	EU
Financial Services and Pension Ombudsman	FSPO
General Data Protection Regulation 2016	GDPR
Gross vehicle weight	GVW
Health and Safety Authority	HSA
Heavy goods vehicle	HGV
Increased cost of working	ICOW
Labour only sub-contractors	LOSCs
Light commercial vehicle	LCV
Motor Insurers' Bureau Ireland	MIBI
Minimum Competency Code	MCC
National Fleet Database	NFD
National car test	NCT
Personal Injuries Assessment Board	PIAB
Public service vehicle	PSV
Road Traffic Act	RTA
Service level agreement	SLA
Small-to-medium enterprise	SME
Social, domestic and pleasure	SDP
Third party fire and theft (motor insurance cover)	TPF&T
Third party only (motor insurance cover)	TPO
Third party property damage	TPPD
United Kingdom	UK

Glossary of Key Terms

accident report form	preferred term for a claim form used in motor and liability insurance
additional increased cost of working	additional cover for the costs of running the business following insured damage that are not subject to the normal economic test (that every €1 spent must save at least €1)
adviser	individual (person) involved in the advising process; this may be an employee of an insurer or an intermediary
aggregate limit of indemnity	a maximum limit of indemnity for any one period of insurance, regardless of the number of claims
'all risks' policy	a general term used to describe the widest form of insurance cover subject to a list of exclusions
annually-adjusted policy	a policy arrangement where the insured notifies changes to the insurer at the end of each period of insurance, and the premium is adjusted if necessary
arbitration	a less formal but still legally binding process whereby cases are heard by an arbitrator rather than a judge in court
average (clause)	a clause in an insurance policy stating that, where a sum insured is inadequate, a claim settlement is reduced in proportion to the percentage of underinsurance
broker	an insurance intermediary that provides their principal regulated activities on the basis of a fair and personal analysis of the market[17]
buffer stocks	a supply of inputs held as a reserve to safeguard against unforeseen shortages or demands
carriers liability (cover)	liability cover for damage to customers' goods, in line with the limits and restrictions in the carrier's terms and conditions or the standard market conditions of carriage
Certificate of Motor Insurance	document required by law, which is issued by an insurer to a policyholder and proves that an acceptable minimum level of cover is provided by a motor insurance policy
claims experience (history)	a detailed breakdown of past losses, giving details of paid and outstanding claims normally covering five years (ideally confirmed by the holding insurer)
claims investigator (inspector)	an individual who is skilled, experienced and qualified to investigate the circumstances of individual claims on behalf of an insurer
'claims made' basis	liability policy cover that is triggered when the third party (claimant) makes a claim against the policyholder
claims reserves	funds set aside by an insurer to meet the cost of present and future claim payments
class action	a legal proceeding in which one or more plaintiffs bring a lawsuit on behalf of a larger group, known as the class
client	a person, firm or organisation that has appointed a regulated entity to act on their behalf for insurance purposes

17 Provision 4.18, CPC.

combined policy	type of policy that groups together a number of separately underwritten covers in one contract
condition	provision in a policy that must be complied with
consumer (potential consumer)[18]	any of the following: a. a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts) b. incorporated bodies with an annual turnover of €3 million or less in the previous financial year (provided not part of a group with a combined turnover of more than €3 million) ...and includes a potential consumer.
Consumer Protection Code	code issued by the Central Bank of Ireland setting out requirements that regulated firms must comply with in order to ensure a minimum level of protection for consumers
contract of affreightment	a contract between a ship-owner and a charterer under which the ship-owner agrees to carry goods for the charterer in the ship, or to give the charterer the use of the whole or part of the ship's cargo-carrying space for the carriage of goods on a specified voyage(s) or for a specified time
contractual liability	non-statutory liability that arises by terms of a contract voluntarily entered into, and that would not have arisen in the absence of that contract; typically an exclusion under most policies but can be arranged by agreement with the insurer
contingent third party cover	extension on a motor fleet policy to protect a policyholder when their employee is using their own vehicle for business purposes
contribution	the right of an insurer to share the cost of an indemnity payment among similarly (but not necessarily equally) liable parties
costs inclusive	type of indemnity provided by liability insurance where cover for defence costs is included in the limit of indemnity
cover comparison chart	a means of visually displaying the key differences between the characteristics of different insurers' policies
crop spraying	a way of covering crops with chemicals in order to kill harmful insects and diseases
custodian warranty	a requirement by insurers that a certain number of able-bodied adults accompany money in transit (under a money insurance policy)
customer	person, firm or organisation, to whom a regulated entity provides, or offers to provide, an insurance product or service (for an intermediary, the terms 'client' and 'customer' being interchangeable) and any person who requests such a product or service
cyber-insurance policy	cover that protects businesses and individual users from cyber risks, and more generally from risks relating to information technology infrastructure and activities
damages	a sum of money paid or awarded as compensation for a loss of injury

18 Adapted from CPC (Definitions).

day one reinstatement	a means of countering the effects of high inflation by providing an automatic increase in the sum insured based on an accurate reinstatement sum insured on the first day of the cover
declaration-linked gross profit	a method of insuring gross profit that provides an uplift (increase) to allow for an increase in business. The actual gross profit figure earned is declared at the end of the period of insurance and the premium adjusted if necessary.
denial of access	insurance for loss due to restricted access to a business.
defence costs	costs incurred in defending a legal action brought against a policyholder
directors and officers liability (cover)	insurance cover to protect individuals when they are held personally liable for their actions as a director or officer of a company under particular legislation
driving by unlicensed drivers	an extension to cover a policyholder when no licence is required for the driver by law or where the driver's licence status is unknown
durable medium	any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference, for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored
economic test	term relating to business interruption cover, which means that every €1 spent must save at least €1 in respect of a claim or potential claim
efficacy risk	the risk of failure of a product to fulfil its intended purpose or function
employers liability (cover)	insurance to cover the legal liability of the insured to any person who is under a contract of service or apprenticeship
employment practices liability (cover)	insurance cover in respect of liability arising from employment practices
estimated maximum loss	the maximum loss the insurer is likely to sustain as a result of a single incident (within probability)
excess	the amount of a claim that must be paid by the insured
exposure measure	an actual or proxy measure of risk as appropriate to the type of insurance
fair and personal analysis of the market	advice based on an analysis of a sufficiently large number of insurance contracts available on the market to enable the intermediary to make a recommendation, in accordance with professional criteria, as to which insurance contract adequately meets the customer's needs[19]
Financial Services and Pensions Ombudsman	statutory body that acts as an independent mediation service to resolve complaints from customers about the conduct of a regulated financial service provider that cannot be resolved internally
firm	a regulated entity (as used throughout this textbook to refer to insurers and/or intermediaries)
first loss cover	a means of insuring less than the full value of property (usually for theft cover where there is a high sum insured) with the insurer's agreement
Fitness and Probity Standards	set of standards issued by the Central Bank to assess the business history, skills, qualifications and character of persons who perform an insurance function
fixed costs (standing charges)	costs that do not vary in direct proportion to changes in turnover

[19] **Insurance Distribution Regulations 2018.**

fleet-rated risk	an insurance risk that applies to collections of vehicles owned by the same business
floating basis	a means of insuring (usually) stock or contents that is located across a number of risk locations
Green cards	internationally recognised insurance document which provides proof of insurance cover and compliance with minimum compulsory insurance cover requirements
gross profit	the difference between (a) turnover plus closing stock and work in progress, and (b) opening stock and work in progress plus the uninsured working expenses (variable costs)
gross rentals/rent receivable	money paid or payable by tenants (normally to a landlord)
gross revenue/gross fees	money paid or payable for services rendered in the course of the business at the premises
heave/ground heave	a displacement of land
housekeeping	an aspect of commercial moral and physical hazard that relates to management standards, contingency planning, tidiness and attitude to safety
increased cost of working (expenses)	reasonable additional expenditure to avoid or diminish any reduction in turnover following a loss
increased cost of working only (cover)	cover for increased expenditure to maintain turnover after insured damage, but with no cover for loss of profit or earnings
indemnity period	the period starting with the insured incident and ending when the business returns to its pre-loss level of trading (see also ‘maximum indemnity period’)
indemnity to principal	an extension to a liability policy that provides cover for a policyholder’s principal in circumstances where the policyholder would have been liable
index linking	a method of calculating the sum insured on buildings and contents that is adjusted monthly in line with appropriate indices, but in times of very low inflation may be set at ‘nil’
inner limits	specific maximum limits for defined items within an overall sum insured (generally relating to contents)
internal risks	motor trade liability cover specifically designed for premises risk (including servicing and maintenance)
insurer’s capacity	the insurers ability to accept risk or meet future request for increases in cover
labour only sub-contractors	a category of worker contracted for ‘labour only’ (usually without their own liability insurance) and treated as an employee under a liability insurance policy
landslip	landslide or movement of land
limited analysis of the market	analysis of a limited number of contracts and product producers available on the market
limit of indemnity	financial limit imposed by an insurer, representing the maximum amount it will pay in any particular claim/circumstance
liquidated damages	‘ascertained’ (agreed) damages agreed at the date of contract (compared to unliquidated damages, which are only ascertainable after a loss)
loss adjuster	independent expert in processing claims from start to finish (and appointed by the insurer)

loss assessor	expert in dealing with insurance claims, appointed by the insured to prepare and negotiate a claim on their behalf
market value	the value achievable for an item on the open market at the time in question
material damage	the physical loss or damage to property
material damage proviso	requirement for the admission of liability under a material damage policy before any claim is payable under a business interruption policy
Mediation	the process of settling a dispute arising from certain types of insurance claims. The dispute will be between the insured and the insurer.
maximum indemnity period	a period of time chosen by the policyholder under a business interruption policy as the maximum time necessary for the business to recover to the future expected trading position (see also 'indemnity period')
Minimum Competency Code	code issued by the Central Bank of Ireland setting minimum professional standards for financial service providers, with particular emphasis on dealing with consumers
motor contingent liability	an extension to a public liability policy providing indemnity to an employer when an employee uses their own car on the company's business
named driver basis	basis of cover for motor trade road risks insurances, in which cover is restricted to the drivers named on the certificate of insurance
no claims discount	a reduction of premium for successive claim-free years, which increases to a maximum over a period of (usually) 5 years, and held in the client's own name
notifiable diseases	any disease that is required by law to be reported to government
occasional business use	cover that indemnifies employers when their employees sometimes use their own vehicles on company business
'occurrence' basis	liability policy cover that is triggered when the incident occurs (which could be over a period of time)
open drive basis	a means of rating and basis of cover for motor trade and motor fleet insurances, in which drivers are not named individually, but may be subject to certain restrictions (e.g. a certain age band, or employees only)
operative clause	clause(s) that describe(s) the standard scope of cover of each section of an insurance policy
package policy	single policy containing different types of cover, underwritten and rated on an inclusive basis
personal consumer	a consumer who is a natural person acting in their private capacity outside their business, trade or profession
Personal Injuries Assessment Board (PIAB)	independent statutory body set up to assess compensation due to an injured party when liability is not an issue
Personal Injuries Guidelines	guideline principles governing the assessment and award of damages for personal injuries with a view to achieving greater consistency in awards
plaintiff	a person (or persons) who brings a case against another in a court of law
products liability (cover)	insurance for all providers of goods - whether manufacturers, intermediaries or retailers - against claims arising out of the use, handling or consumption of a product

professional indemnity (cover)	insurance cover in respect of liability arising from breach of professional duty (by the policyholder or their predecessors)
proposer	a person, firm or organisation applying for insurance cover
public liability (cover)	insurance that covers injury or death to anyone on or around the policyholder's property
public place	under the Road Traffic Act this is 'any place where the public have access with vehicles'
punitive damages	damages awarded by a court designed to punish the defendant rather than compensate for loss suffered by the plaintiff
regulated entity	a financial service provider authorised, registered or licensed by the Central Bank or other EU or EEA member state, that is providing regulated activities in the State
reinstatement memorandum	commercial property policy provision, whereby the sum insured must represent the full value at the time of reinstatement but providing a 15% margin of error in respect of partial losses
reinstatement of data (computer insurance)	cover for the cost of reinstating data following loss or damage to computer equipment, corruption of data, and damage arising from an interruption of a public electricity supply
retroactive date	the date shown on the schedule of a 'claims made' policy. There is no cover for claims arising from acts or events that happened prior to this date.
risk appetite	measure of a proposer's willingness to accept risk
risk averse	a desire on the part of an individual or company to minimise the risks to which they are exposed, either through risk management or insurance
risk management	the identification, analysis and economic control of those risks that can threaten the operations, assets and other responsibilities of an organisation[20]
risk seeking	a willingness on the part of an individual or company to accept risk
road risks	generic term for motor trade insurances designed to cover motor risk 'away from the premises'
safety statement	a legally required document that describes the management of health, safety and welfare responsibilities within the organisation
salvage	what remains of the subject matter of insurance after an insured event where the insurer treats the claim as a total loss
seasonal increase	specific percentage uplifts to sums insured on stock automatically provided by insurers for defined periods (e.g. Christmas and Easter)
service level agreement (SLA)	a formalising between parties of the obligations and measurement tools for the agreed standard of service being provided primarily by an adviser, though some responsibilities will be placed on the client
sonic bangs	a shockwave from an aircraft or other item travelling faster than the speed of sound
spontaneous combustion	a fire that is caused by a process of self-heating rather than an outside ignition source
statement of suitability	written statement setting out the reasons why a product or service (or options if listed) offered to a consumer is considered to be (most) suitable for that consumer (also known as a 'reasons why' letter)

[20] Risk Management, Chartered Insurance Institute (CII), London, 1991.

stock debris removal	the process of clearing, removing and disposing of damaged stock from a business premises
stock declaration basis	a method of allowing a policyholder to establish a stock sum insured to allow for seasonal fluctuation
submission/risk presentation	a thorough and accurate outline of a risk for presenting to insurers in order to obtain a quotation
subrogation	the right of an insurer, after payment of a claim, to stand in the place of the policyholder and pursue any possible recovery rights from a third party responsible for the loss
subsidence	the gradual caving in or sinking of land
target stock	stock that is particularly attractive to thieves, usually due to its portability and value
tied insurance intermediary	any person who: a. undertakes insurance or reinsurance distribution for and on behalf of one or more insurance or reinsurance undertakings or other intermediaries, in the case of insurance products that are not in competition b. acts under the responsibility of those insurance or reinsurance undertakings or other intermediaries, and c. is subject to oversight of compliance with conditions for registration by the insurance or reinsurance undertaking or other intermediary on whose behalf it is acting.[21]
tool of trade risk (third party working risk)	a risk capable of being covered under a motor or liability policy for a vehicle of special construction while working as a tool of trade
trade endorsements	endorsements attaching to liability policies relating to the business description and risks associated with the business description
trade plate	a special type of number plate issued to motor traders, which allows them to use untaxed/unregistered vehicles on the road in limited circumstances
trade plate basis	a means of rating and very restricted basis of cover for motor trade road risks based on the number of trade plates held by the policyholder
turnover	income generated from the business at the business premises
underwriter	a person or firm who assesses a risk proposed for insurance, decides whether to accept it and, if so, sets the level of premium required and the terms and conditions to be applied
underwriting	process of risk pooling, risk selection (choosing who and what to insure) and assessment of individual risks that meet the insurer's risk criteria
uninsured working expenses (variable costs)	costs that always vary in proportion to turnover
utmost good faith	the positive duty placed on non-consumer proposers to voluntarily disclose, accurately and fully, all facts material to the risk being proposed, whether requested or not
warranty	term (in an insurance contract) that, if broken, automatically voids the contract as a whole from the date of breach

[21] **Insurance Distribution Regulations 2018.**

Formulae

Gross profit

(Turnover + closing stock and closing work in progress) – (opening stock and opening work in progress + uninsured working expenses)