

# **PERSONAL INJURY CLAIMS AND THE LICENSED TRADE**

## **WHAT CAN YOU DO TO KEEP CLAIMS COSTS DOWN?**

In common with most, if not all of our customers, your business is at constant risk from personal injury claims. There are mixed messages coming from the media as to the existence or otherwise of a “claims culture”, but as specialist insurance brokers operating in the sector, we know that we are still receiving a steady flow of injury claims on a weekly basis.

The licensed trade is amongst those most vulnerable to the effects of this phenomenon. Commercial premises where the general public will drink alcohol, sometimes to excess, where music plays and dancing takes place, attract both incidents and accidents. Furthermore, in environments where there is no written record kept of the identity of individuals on your premises, then we increasingly find that the courts are effectively asking you to prove that claimants were not on your premises at the time of their alleged accident, even if you have no knowledge of any accident having taken place.

The situation is far from hopeless, however, and many claims remain capable of defence. However to give your business the maximum chance of defending any claim that may be made, you need to ensure that you adopt working practices that will generate documentary evidence of good, responsible management when your Insurers are defending a claim on your behalf, and will reduce the risk of genuine accidents occurring the first place.

The vast majority of claims involving the licensed trade relate to slips and trips within the premises. Drink spillages, wet toilet floors/dancefloors and inadequately cleared broken glass are probably the biggest culprits. It is imperative that you engage your staff to carry out regimented inspections/clearing exercises of the premises (predominantly focusing on the above issues/areas) and written records should be made and safely retained. We enclose some sample checklists for your use. Inspections should be carried out, ideally, every 15 minutes – a less frequent timetable will allow the solicitors to argue that the regime is inadequate.

A significant proportion of claims arise from incidents outside the building, often well outside your operating hours. If the public can access your land (perhaps using it as a shortcut) then the courts will find you responsible for any injury they may sustain resulting from a defect in your premises (e.g. a pothole in the car park). A claim in these circumstances, without any witness evidence, will prove almost impossible to defend, as long as the solicitors provide photographic evidence of the defect, and the claimant’s injuries are consistent with a fall as described, then the claim will, in all likelihood, succeed.

You need to make regular inspections of all areas comprising your premises, both inside and outside the building, to ensure that defects are identified, and that remedial repairs are undertaken as soon as is practicable, to prevent both genuine accidents occurring, and opportunist fraudulent claims from succeeding.

Do risk assessments to identify possible hazards to both staff and customers e.g. could your new disabled access ramp prove a tripping hazard? Does lighting need to be improved in the car park? Use notices and signs to warn of potential hazards that cannot easily be removed (e.g. steep stairs, low doorways etc). Buy “A” boards to warn of wet floor surfaces when cleaning is

being undertaken. The presence of all of these can also be used by Insurers to defend claims when accidents occur. Do not put off simple tasks such as fixing loose carpets or staircase handrails – anything that could cause an accident creates the risk of a claim.

Make sure that staff or other customers that witness any incident potentially giving rise to a claim are interviewed, and a written statement taken detailing their version of what has taken place. These can be an invaluable tool if the claim comes in months, if not years later (claimants have three years from the accident date to make their claim), when staff involved at the time are no longer employed by you, and up-to-date contact details are not known.

Keep any CCTV footage you may have of the day when any accident occurs. For the nominal cost of extra discs/tapes you may find that you have evidence that helps to defend a £20,000 claim.

It will also help your insurers to defend the claim if all the correct legislative procedures have been adopted when an accident occurs. Complete an entry in the accident book, and make a “RIDDOR” report if the incident is reportable. Remember that Supercover supplies you with an accident book compliant with new legislation, and a records storage service, all at no cost to you. Guidance on RIDDOR along with downloadable report forms is available from [www.riddor.gov.uk](http://www.riddor.gov.uk).

Much of the above information also relates to employee accidents, and employees continue to make a significant proportion of injury claims in this sector. Make sure that staff are properly trained to safely use potentially dangerous equipment such as deep fat fryers. Put notices up reminding staff of correct procedures and potential dangers to be avoided when using such equipment. Issue written regulations to them relating to issues such as appropriateness of footwear. Such documents can be produced after the event to help argue that you had fulfilled your duties as an employer.

At the end of the day, please do not underestimate the importance of measures such as these – particularly checklists, which have, in the past, defended claims that would otherwise have succeeded. In the licensed trade the only defence that your Insurers can use for many claims is based upon documents such as these – i.e. they can only seek to argue that your business is responsibly run, that all legislative procedures are followed, and that every possible effort is made by you to avert accidents.

Our customers are often dismayed at Insurers’ decisions to settle what they believe to be spurious or opportunist claims, usually failing to appreciate both the legal difficulties insurers face in defending them, and the relatively simple measures that they can introduce to keep both the risk of accidents and the cost of claims down.

We would stress that **none of the measures are compulsory** – we are simply trying to give you the tools to best deal with a problem that faces us all.