

Guidance

FOR INSURERS AND LOSS ADJUSTERS:

ABI and CILA guidance on property claims handling which is compliant with asbestos legislation

Insurers cover damage to buildings and contents caused by a number of insured events, or “perils” such as fire, flood, storm, escape of water, subsidence etc.

Insurers face a wide variety of claims involving damage to buildings, damage to contents, or damage to both buildings and contents, where the extent of the damage varies widely from minor damage right through to catastrophe situations.

Insurers have necessarily developed a range of methods to deal with the variety of claims received where there is damage to customers’ homes or businesses. Options available to insurers are commonly:

- Cash settle at desk based upon information/estimates supplied by the customer, with or without the use of an “evaluation tool” (a software tool which has been developed for this purpose)
- Appointment of contractors/suppliers with (delegated) authority to assess the level of damage and to undertake insured repairs
- Appointment of in house Loss Adjusters to inspect and instruct contractors / suppliers, or to cash settle based upon estimates from the customer’s contractor
- Appointment of external Loss Adjusters to inspect and instruct contractors / suppliers, or to cash settle based upon estimates from the customer’s contractor
- Appointment of Loss Adjusters, Surveyors or Engineers to “project manage” the restoration and repair process and oversee the work
- In some cases the customer will elect to appoint their own contractor and the insurer will either settle the claim direct with the contractor with the permission of the customer, or settle the claim with the customer.

The insurer must ensure, as far as is reasonably practical, that any supplier or contractor that they use is vetted and competent to do the work that they are contracted to do (see step 11 for more details).

Whether the damage is major or minor, Insurers, Loss Adjusters and insurers' contractors must be aware of and comply with all relevant legislation, such as Building Regulations and health and safety law. Clearly there will be claims where there are Asbestos Containing Materials (ACMs) in damaged property. The **Association of British Insurers (ABI)** and the **Chartered Institute of Loss Adjusters (CILA)** therefore asked the **Health and Safety Executive (HSE)** to work with them to produce guidance on how insurers and loss adjusters should approach claims, taking into account the possibility of ACMs being present. The guidance is intended to be straight-forward and easy to use and to encourage a proportionate and responsible approach to risk management by those employed by the industry.

The content of this guidance is in line with advice from the Health and Safety Executive. For more details, please see www.hse.gov.uk/asbestos.



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1. First Notification of Loss (FNOL) to Insurer/Broker by Customer

This is the first contact between the customer and the insurer or broker, normally via a call centre. The task of the call centre employee is to take basic details of the cause of the damage and the cost of repairs where this information is known. Normally call handlers and customers have little experience of buildings or of asbestos related matters. Insurers will not, therefore, generally ask for information relating to Asbestos Containing Materials at this stage.

Call handlers route the claim based upon the information provided by the customer. If a customer advises that asbestos is present in the area of damage, the insurer should note this information and progress the claim accordingly.

2. Cash settlement based upon information supplied by the customer

For cash settlements based upon customers estimates (or where they propose to do the work themselves), insurers are unlikely to be in a position to warn customers of potential dangers. Insurers are reliant upon the information provided by the customer.

Where a need for an asbestos test or asbestos removal has been identified, then insurers should ensure that the cash settlement takes account of this cost.

Insurers sometimes calculate cash settlement using a “scoping tool” (computer software) and information provided by the customer. The use of scoping tools to provide a settlement valuation, or as the means to verify an estimate, including taking a description of damage to prepare a like for like reinstatement, does not constitute the insurer acting as a “designer” under the Construction, Design and Management Regulations 2007.

3. Appointment of someone to visit and inspect

Where an insurer has been made aware of the presence of ACM's at FNOL, and arranges an inspection, this information should be provided to the party appointed to inspect.

It is good practice for insurers to advise customers during the FNOL call that they should avoid the area of damage as far as possible pending the inspection. Customers should also be advised that where it is possible to close an area or room off, this should be done and customers should avoid any interference with the damage. This is good practice in order to minimise any potential risk.

Those appointed by insurers to inspect damage should be competent. Where it is just to identify the risk then asbestos awareness training should be sufficient. Where an insurer appoints a contractor, the insurer must satisfy itself that the contractor is competent to undertake the work (see Step 11 for more details).

4. Pre-visit risk assessment

Insurers' representatives appointed to inspect damage should undertake a pre-visit risk assessment. This may be undertaken over the telephone with the customer, on the doorstep prior to entry onto the premises, or a combination of both. The risk assessment should be recorded and in regard to commercial properties insurers' representatives should ask for a copy of the property's asbestos management plan if available.

Such an assessment will likely include the age of the building, whether it has been altered or extended, and whether the presence of ACM's is likely.

The assessment should try to identify whether any potential ACM's have been disturbed in consequence of the damage, or as a consequence of the customer's actions.

In commercial premises there is a 'duty to manage' asbestos. This includes common areas in let or shared domestic premises.

The asbestos survey required by law should be requested and inspected by the insurer representative either prior to entry, or as soon as possible during the visit.

If the loss adjuster or contractor believes that there is a potential risk of ACM's being present in the location of the damage, the immediate advice should be to isolate and vacate the affected areas pending an inspection by the insurer's representative.

5. Visit – Initial Measures

In commercial premises the asbestos survey should be requested and reviewed if this has not been undertaken prior to the visit.

In all cases, commercial and domestic, a 'suitable and sufficient' risk assessment must be undertaken prior to commencement of any work. This is necessary to identify any asbestos risk, and the measures that must be followed to protect workers undertaking remedial work, and should be proportionate to the repair to be undertaken. The assessment must be recorded.

Even where the 'duty to manage' asbestos survey is available, a suitable and sufficient assessment of risk should be undertaken before any work involving asbestos is undertaken. What is suitable and sufficient may be influenced by the presence or absence of the 'duty to manage' survey and the extent of the damage to the property. It is important to recognise that the 'duty to manage' is separate from the duty owed by employers to employees and others. Therefore a 'suitable and sufficient' survey will always be necessary, and what constitutes 'suitable and sufficient' will depend on the circumstances.

Inspection and checking is only required in areas where access is required and where repairs relating to the claim are to be done (i.e. not for the whole building if other rooms are not affected). If the inspection is going to disturb ACM's or otherwise lead to exposure the inspector should wear the necessary protective clothing and footwear. RPE should be worn if in doubt or if there are concerns,

If the loss adjuster or contractor believes that there is a potential risk of ACM's being present in the location of the damage, the immediate advice should be to isolate and vacate the affected areas pending confirmation.

Where inspection indicates a possibility that ACM's may have been disturbed by damage, or may need to be disturbed in the course of repair, an asbestos test must be undertaken to confirm or otherwise the presence and location of ACM's. In the event of doubt, a test is required.

In cases where material may contain asbestos, it must be assumed that ACM's are present unless and until a test confirms otherwise.

The loss adjuster or contractor must undertake a proper risk assessment as required by their firm's health and safety procedures and should wear PPE in appropriate circumstances such as where there appear to be airborne ACM's or some factor may create airborne ACM's during the inspection. They should also have an appropriate level of knowledge and training.

HSG 264 is a guide in respect of the Refurbishment and Demolition survey. Normally this type of survey is unnecessary for insurance repair or reinstatement. The requirement is that the survey should be 'suitable and sufficient' and relevant to the area that work is being conducted in – what this consists of will be dependent on the circumstances of the site and the specific work required.

The requirement to establish the presence of ACM's is limited to areas where there is damage and where repairs may disturb other ACM's. Where, for example, a suspended ceiling requires repair but does not require intervention into the ceiling void, a survey of the void is not necessary.

6. Alternative Accommodation

Whether insurance policies provide cover for alternative accommodation or not is a matter between insurers and customers. This contractual matter is outside of the remit of health and safety legislation.

Normally, where damage can be isolated within a property and remains undisturbed, alternative accommodation is not necessary and would not, therefore, be covered by insurance.

Where ACM's are confirmed as present, the customer should be informed and advised not to disturb the material. The affected room or area should be isolated. Alternative accommodation is not normally required unless the room or area cannot be isolated.

Wider consideration may be required where the affected area is a kitchen or bathroom and there are no alternative facilities. Insurers may cover the cost of alternative accommodation, depending upon the terms of the insurance. Alternatively, customers will be required to fund their own arrangements.

Textured coatings are low risk and fibres are not released or spread easily so alternative accommodation is not normally required in such instances.

7. Validation of loss

The Loss Adjuster or contractor must have appropriate training to identify potential ACM's, to identify where such materials are damaged, and identify where they may be disturbed during the course of repairs.

Where potential ACM's have been identified, validation should include the cost of any asbestos tests necessary.

Where work is required to encapsulate or remove and dispose of ACM's in relation to insured damage, validation should include the reasonable cost of such work, including the appointment of licensed contractors where this is necessary.

The insurer is not responsible for removing ACM's where these are unrelated to the insured repair necessary. For example, where ACM's are discovered under a floor slab, and repair of the slab is sufficient to repair insured damage, there is no requirement for insurers to pay for removal and disposal of the ACM's.

8. Before the work starts

Any work that is licensed should be notified to the HSE in writing at least 14 days before the work starts. A licensed contractor must undertake all licensed work.

Some minor work involving asbestos can be undertaken without the need for a licence. However some (but not all) unlicensed work will need to be notified to the HSE before work starts. Further information is available on the HSE website and notification can be made online. Once notified, the work can proceed.

Contractors must comply with the duties under the Control of Asbestos Regulations 2012 for all work involving ACM's. In all instances contractors must undertake a risk assessment prior to commencement of the work to identify ACM's, and select appropriate work methods to reduce any risks identified. The assessment should be recorded. Workers must have appropriate information, instruction and training to allow them to undertake the work safely.

Where work is unlicensed a licensed contractor is not necessary, however the contractor carrying out the work must still be competent to work with asbestos. Where contractors identify licensed work or work that may be unlicensed but where they lack the requisite expertise, the contractor should report this to the Loss Adjuster or directly to the insurer.

While there is no legal duty to warn domestic property owners of the presence of asbestos in homes where this is outside the area of insured damage it would be good practice to do so. In commercial premises there seems to be no duty to warn either, despite the duty to co-operate. But again it would be prudent in either situation to make it known to the policyholder, and in commercial premises to advise that the presence of asbestos should be added to the duty holder's register.

9. During the work

Where further work is identified, or where previously unidentified ACM's are discovered during the course of the repairs, work should cease whilst a further risk assessment is undertaken.

Consideration should be given to:

- whether the method of undertaking the work should be altered;
- whether licensed contractors must now be appointed, and
- whether the work must be notified to the HSE.

Any reassessment must be recorded.

10. Surge situations and notification of HSE

The 14 days notification period for licensed work may be waived by the HSE in cases of emergency - for example in the Cockermouth or Toll Bar flooding situations.

In surge situations, where resources are stretched and early action is a necessity to reduce customer hardship the ABI and/or CILA may contact the HSE to request a shortening of the notification period, so that work can commence quickly.

11. Selection and management of panel suppliers and contractors

Employers are responsible for training and the health and safety of their own staff.

Where an insurer appoints a supplier / contractor the insurer must satisfy itself that the contractor is competent as far as health and safety is concerned. The insurer must make reasonable inquiries and undertake due diligence in the selection process to ensure that the supplier or contractor is competent. Asbestos specific questions should be asked within the selection process. This should be followed up by audit.

The insurer must be satisfied that the contractor provides suitable training to its employees. Training needs to suit the employees and the role that they undertake. For example, asbestos awareness training may be all that is necessary where the employee inspects damage and will not disturb asbestos. Where disturbance of ACM's is part of the employee duties, more detailed training is necessary.

The insurer must satisfy itself that there is processes for ensuring sub-contractors are competent and audit to ensure that the process is followed as far as reasonably practicable.

Where audit identifies health and safety failings on the part of the supplier or contractor, remedial actions must be put in hand, and action taken to ensure compliance.

Site inspections may be appropriate, but it is recognized that the value of such inspections could be limited. It is impossible to cover a representative sample of claims, given the number of claims submitted and the wide geographical area concerned. The threat of inspections, however, may have some value, but insurers are not 'required' to inspect provided that other suitable checks are in place to ensure compliance. It is for individual insurers to decide whether this is a proportionate approach to risk mitigation.

12. The customer instructs his own expert or contractor

Where an insurer is aware that ACM's are damaged or likely to be disturbed in the repair, it is good practice to advise the customer. The results of any asbestos tests undertaken should be advised to the customer.

The selected contractor must be competent to identify and manage asbestos.

The contractor or supplier is responsible for the health and safety of its employees, and for the health and safety of those who may be put at risk as a result of the work they are doing. The contractor or supplier must ensure that it complies with health and safety regulations.

Where a customer has selected his own contractor, then the customers' contractor is responsible for health and safety, not the insurer.

The insurer is not responsible for the competence of suppliers or contractors appointed by customers or for ensuring that they are complying with regulations during the course of repairs.

13. Obligations on the contractor

Health and safety legislation deals with the manner in which repair work is undertaken, not the contractual obligations of insurers arising from the original insured event. Regulation 17 of the



Control of Asbestos at Work Regulations requires that every employer who undertakes work which exposes or is liable to expose any employees of that employer (or any other person) to asbestos must ensure that where such work has been completed, the premises, or those parts of the premises where the work was carried out, are thoroughly cleaned.

The requirement does not extend to other parts of the premises unaffected by the work, or to contents of the property unaffected by the work, whether these are contaminated or not.

Note however, that for non-domestic premises, there is a requirement under Regulation 4 of CAR for people to cooperate with the duty holder responsible for managing risk from asbestos in the building (e.g. the building owner). This means that any information on the presence of asbestos should be passed on to the duty holder for non-domestic premises.

14. Furniture and furnishings in damaged properties

The Control of Asbestos Regulations relate to how employers carry out work involving asbestos and subsequently clean the area where that work was carried out. Insurers are not generally required by the Regulations to remove, dispose of, or to clean items of furniture or other contents. Any obligations in relation to these items arise solely out of the terms of the contract between the insurer and the policyholder.

Generally speaking, contamination of contents is likely to present a very low risk where there is no visible contamination. Items can often be cleaned and reused. In regard to the cleaning of soft furnishings vacuum cleaners used should be Class H, however, decisions on cleaning and reuse should in all cases be based on the circumstances of the incident and the extent of contamination and type of ACM involved.