



Mitsui Sumitomo Insurance Group

Innovation through Insight



A Short Guide to Accident Investigation and Claims Management



Accident investigation and claims management

Introduction

We have produced this short guide to help our clients reconcile real and perceived tensions between the thorough investigation of accidents and the effective management and defence of claims.

This guide does not detail the various techniques for accident investigation. Such guidance is widely available from many other sources and we recognise that most of our clients have their own sophisticated procedures for accident investigation and reporting.

Instead, we aim to provide helpful guidance on the collection and collation of pertinent information during the investigation process. Should an accident give rise to a claim, this will help us reach a prompt and considered decision on liability.

In the event of a claim against them, employers are required to disclose fully all relevant documents. Companies may therefore be deterred from carrying out rigorous accident investigations for fear of having to hand over potentially damaging findings to claimants' solicitors. Mitsui Sumitomo Insurance Group (MSIG) firmly believes that this risk is far outweighed by the benefits of effective accident investigation, among which are:

- Above all, identification of the underlying and root causes of accidents to prevent the same or similar accidents happening in future.
- To comply with statutory accident investigation and reporting requirements.
- To facilitate data collection and analysis.
- To help plan and target risk management initiatives.
- To enable us to make timely and informed decisions on liability.

The depth of an investigation and the amount of evidence collected will usually depend on the actual or potential severity of the incident. Clearly, fatalities and major injuries will always attract a detailed investigation. However, there may be other, less serious incidents which, because of their nature or the individuals involved, are anticipated to result in a claim. These should also be investigated thoroughly.



When to investigate

The importance of timely investigation cannot be overstated. As a general rule, investigations should take place:

- As soon as possible after the accident.
- Only once the area has been made safe.
- Before opinions turn into facts.

Investigation protocol

Most clients already have their own accident investigation protocols. As a minimum, we recommend that they should:

- Identify who should carry out the investigation and obtain witness statements
- Recognise the importance of identifying the people involved and the key witnesses.
- Ensure that the full sequence of events is established.
- Identify features of the site that may be relevant to the accident.
- Identify any documents that may have a bearing on the circumstances of accident.
- Recognise the importance of conducting an investigation with an open mind, neither apportioning blame nor leaping to conclusions.
- Ensure that the recording of information starts immediately.
- Ensure that the initial investigation is factual - who, what, where, when - and that this part of the investigation is under the control of trained direct line management.
- Ensure that the next stage of the investigation deals with how and why. This should be reserved for more serious or potentially serious incidents and should only be undertaken by trained and competent investigators.
- Result in a detailed analysis of the facts and evidence, with concrete outcomes.



- Make sure that the findings of investigations are implemented and their effectiveness reviewed.
- Advise on the circumstances under which it is appropriate to seek immediate legal advice on handling the HSE or police, particularly when the incident involves death or serious injury.

Collecting evidence

Witness statements

It is important that statements are taken as soon as possible after the event, while being sensitive to the impact that a serious accident can have on witnesses and colleagues. The longer it is left, the more likely it is that witnesses will unintentionally turn opinions into facts and their recollection will be contaminated by conversation and hearsay. Basic criteria for the efficient collection of witness statements include:

- Witnesses should be identified and soon as possible and the key content of their evidence should be recorded.
- Depending on the severity and circumstances of the accident, this may require sensitive handling and a full interview may need to be scheduled for another time.
- Witnesses should be interviewed separately as soon as possible after the accident.
- The use of open questions should be used to encourage open answers e.g. who, what, where, when and how.
- Interviews should be factual. Opinion, hearsay and second hand information should be avoided.
- The questions and answers should be recorded at the time. The statement should be signed and dated by the witness as a statement of the truth.
- Keep the contact details of witnesses in case they move on.

Photographs and sketches

Accident investigation reports can be enhanced by good quality photographs and sketches. The essential criteria for such supporting evidence are:



- Photographs should be taken of the accident scene as soon as it can be done sensitively.
- If digital photographs are taken, the person taking the photographs should provide a written statement confirming that they have not edited the photographs.
- Photographs should show the accident scene clearly. It may be helpful to include an everyday object in the photograph to illustrate perspective and scale.
- The use of sketches and plans should also be considered where relevant, particularly to show the layout of a workplace or the internal workings of machinery. Again, these need a signature to validate their origin and purpose.

Document collection and collation

The efficient and consistent collation, collection and submission of relevant documents as part of an accident investigation are essential. For the prevention, defence and management of claims, it is the most critical part of the process. Decisions on liability are usually determined by the presence or absence of good quality documentation.

The following list indicates the key documents that should be collated or referenced as part of a detailed accident investigation. The list is not exhaustive. The absence of any relevant documentation should be reported.

- **First aid report.** Whilst we recognise that it is an injured person's legal right to make the entry in the accident book, it is more usual and preferable for the entry to be made by either a trained First Aider or a supervisor. The entry should be made as soon as possible after the injury occurred. It should be factual and should be restricted to information about the injury and any treatment provided. Details of the circumstances of the accident should not usually be recorded. However, if the injured person does report the circumstances, use the form of words, "Joe Bloggs *reported that* he slipped and fell" instead of simply, "John Bloggs slipped and fell". This is particularly important where there are no witnesses to the incident.
- **RIDDOR report.** This should be completed only by authorised persons. In the section under Circumstances of the Accident, the author should restrict the entry to factual information and offer no detail regarding causation. The same is true if the incident is reported by telephone. The person making the report should write down the entry and dictate it to the Incident Report Centre.
- **Internal accident report.** Ideally, internal accident reports should be divided into two parts and completed consistently, in line with the company's reporting and investigation policies and protocols. The first part should be completed for all incidents. It should be restricted to factual information - who, what, where and when. Authorised and trained investigators should then use a standard risk matrix, taking into account the actual or potential severity of the incident and the likelihood of recurrence, to decide whether a more detailed investigation



is justified. If so, they should complete the second part of the accident report, which focuses on how and why the incident occurred and what further controls are required.

- **Risk assessments.** Risk assessments for all activities relevant to the accident should be collated, including details of the people who completed them and, where available, details of their training. Where the findings of risk assessments have identified the need for additional control measures, it is important that the job of implementing these controls is assigned and that the work is completed within a specified timescale. Records of the work carried out, signed and dated by the responsible individual, should also be collated. If records are not available, this should be indicated.
- **Safe Working Procedures.** SWPs for all activities relevant to the accident should be collated, including details of the people who developed them and, where available, details of their training. Records to show that SWPs have been issued to staff should also be collated. These should be signed by recipients to indicate that they have understood them. If records are not available, this should be indicated.
- **Policies.** Policy statements, including details of responsibilities and arrangements relevant to the incident, should be collated as part of an accident investigation. This important document is often overlooked, yet could often be the starting point.
- **Induction training records.** Signed and dated induction records, along with details of the syllabus, should be included, not just for the injured person but for all individuals involved in the incident.
- **Other training records.** Where relevant, other training records for everyone involved in incident should be collated, including internal, external, formal and on-the-job training. These records should be signed and dated and accompanied by details of the course syllabus.
- **Permits to Work.** Any relevant Permits to Work should be included as part of document collation. These could include hot work permits, permits to dig or excavate, access permits, confined space permits, electrical permits, etc.
- **Method Statements.** If they relate to the accident in any way, any agreed method statements, including draft versions where appropriate, should be collated.
- **Maintenance and service records.** Where static or mobile plant and equipment is involved in an incident, the investigation should collate all relevant specification, maintenance and inspection records. These could include CE Certificates of Conformity, CE Certificates of Incorporation, Statutory Inspections, servicing records and periodic inspection records.



- **Monitoring records.** All formal and informal monitoring records should be collated as part of an incident investigation. These could include daily pre-start operator checks, inspection records, COSHH records, checklist inspections and records of audits and tours.
- **Occupational health and other personnel records.** Pre-employment questionnaires and all subsequent occupational health records are often of particular importance since they might provide evidence of a pre-existing or underlying condition that contributed to the incident. These records should be retained, but not included within the investigation report.
- **Consultation and communication records.** Minutes or records of safety committees, daily pre-shift meetings and other consultation forums should be collated. They provide evidence of safe practices and processes and a good workplace culture. Evidence of relevant tool box talks should also be collated.

Claims notification

MSIG recognises that all clients will have their own internal processes for handling claims notifications. However, to protect your position fully, you should make sure that MSIG is notified immediately. We recommend the following:

- Ensure that the claims handling procedures agreed with MSIG are followed. These will usually include:
 1. In the case of Employers' Liability, immediate notification to the appointed Third Party Administrator (TPA) (this is usually a liability adjuster or solicitor) of any incident resulting in an absence of three or more days or which is likely to give rise to a claim.
 2. Letters from the injured party's solicitor should not be acknowledged but immediately sent direct to the TPA.
 3. The TPA will review all cases and commence proactive desk-top handling, liaising with you to obtain relevant documentation, including investigation reports and witness statements.
 4. The TPA will decide whether a site visit is required and will appoint an investigator if appropriate.
- Be prepared for, and co-operate fully with, the ensuing investigation.
- Ensure that all relevant personnel, including witnesses, are available for interview during the investigation visit.



- Locate and collate all documents, in accordance with any Claims Documents Disclosure List, in preparation for the insurers/loss adjusters' investigation, including all sickness absence and return to work documentation.

Full disclosure of documents in the preliminary stages of any claim is required so it is vital that these are submitted.

Having immediately notified the incident to your TPA you should also:

- Avoid delay in forwarding any correspondence or documents that you receive in relation to the incident, in accordance with policy conditions.
- Avoid entering into any discussion on the merits of the case with the injured person or his representative.
- Make no admissions of liability.
- Keep the TPA informed of the injured person's progress.