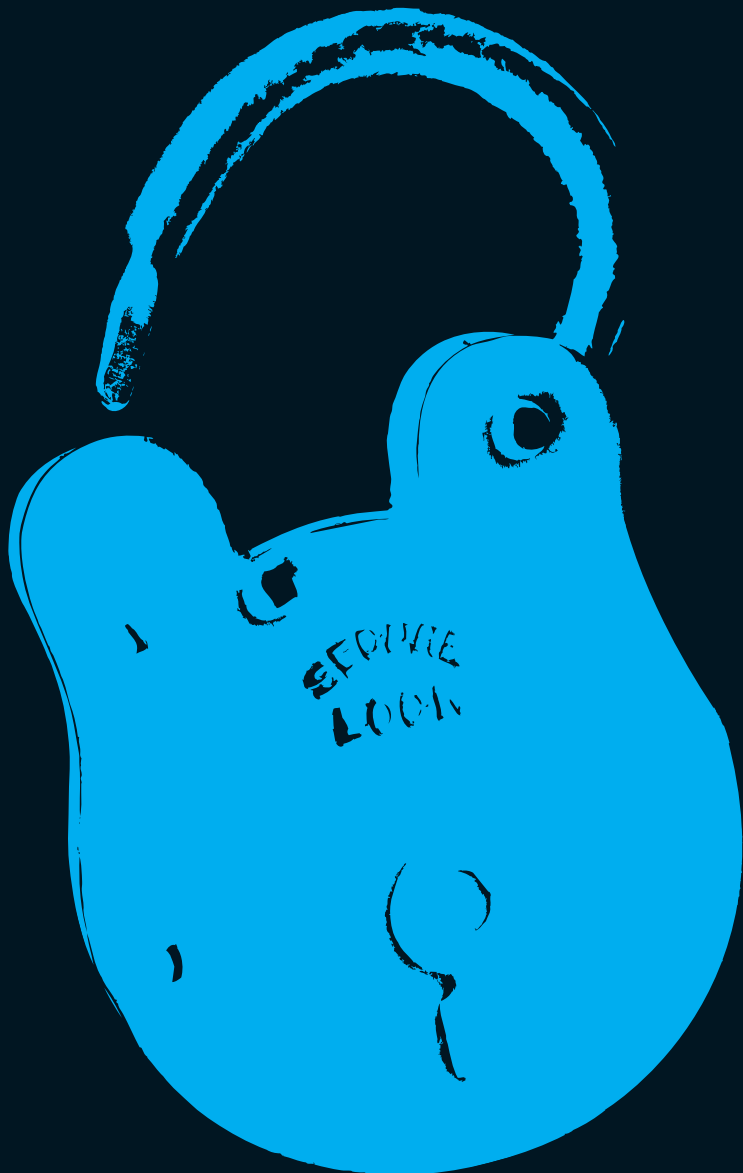


# Liability considerations for managing site closure and redundancies

Issues forum – August 2009



**The implications of redundancy and site closure will be at the forefront of many people's minds, particularly in an economic recession, reflecting in the way businesses operate, staffing levels, capital expenditure projects, as well as the behaviour of management, staff, suppliers and customers. Accordingly, there is a clear case for designating management resource to the site closure strategy and formulating an action plan which considers the key issues, how they will be addressed and how information and documentation will be captured and archived in an easily retrievable manner.**

**Strategy for site closure and redundancies:**

- Organisations should appoint an executive team to create the site closure risk register. This should generate a strategy to plan, manage and monitor the site closure process. Inform your insurers, brokers and the enforcing authorities, and seek their advice.
- Take a corporate 'snapshot' i.e. video recording and photographs of the land, premises, processes, plant and equipment during normal working conditions pre-run down. Pay particular attention to contentious processes or exposures that could have long term risk and liability potential, for example, repetitive manual handling processes, asbestos, vibration, noise, chemical exposures, quality control procedures, environmental processes, etc.
- As the nature of activities changes up to the closure date any new, non-routine or enhanced risk exposures should be identified and assessed, with competent individuals nominated to manage the process and implement necessary controls. For example, consider the safe movement, storage and disposal of plant, equipment and process materials. The fundamental disciplines of documented task risk assessment, safe system of work and training procedures must be maintained.
- It is important for organisations to take control of the retention of evidence given that claims protocols require relevant documentation to be disclosed in the event that liability is to be denied. Once a site has closed or redundancies have occurred, access to documentation and witness evidence, instrumental to the successful defence of claims, may be lost.



## Documentation

The Pre-Action Protocol for Personal Injury Claims only allows insurers three months from acknowledgement of the Letter of Claim to investigate a claim and provide a decision on liability. Consequently, QBE will need to review certain documents when considering legal liability and it is therefore critical that these can be accessed quickly.

If it is decided that the claim is one to defend, documents in the defendant's possession which are material to the allegations being made, have to be disclosed. Annex B in the Pre-Action Protocol lists documents likely to be material in different types of claims.

As such, it is essential that these documents are created, retained and easily retrievable.

Access to documentation should be restricted to key individuals e.g. senior management, health and safety managers, insurers, solicitors, enforcing authority etc. If a company uses a web-based or online document management system, key personnel should have specific accounts with usernames and passwords with privileges so that only authorised people can view, edit and delete them. Back up of all electronic files should occur on a regular basis if saved onto a hard drive or server.

For employee personal injury claims, QBE require details of 13 weeks pre-accident earnings together with details of any payments made to a claimant during the period of absence. This will enable the extent of any loss of earnings claim to be accurately quantified. It is essential that payroll records are retained.

Paper records must be kept in an orderly manner in a secure location. Whilst originals are preferable, copied documentation will suffice.



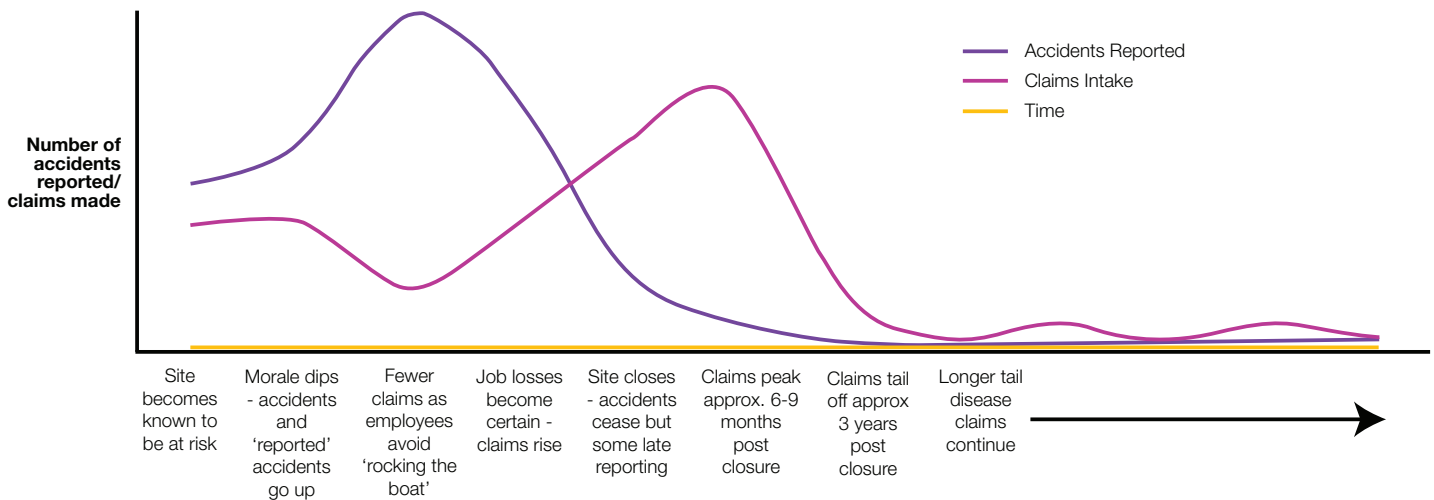
## Limitation

Section 11 of the Limitation Act 1980 states the limitation period for actions including damages for personal injury, is three years from the date at which the cause of action accrued - this normally being the date of the injury. For minors at the time of the accident, three years from when they reach age 18.

QBE recommends that all records relating to accidents should be retained for at least four years from the date of an accident or if the injured party is a minor, four years after they reach age 18.

Documentation relating to potential disease claims, such as work related upper limb disorders, should be retained for longer than 4 years, with the general rule being that records should be maintained for at least 4 years after any anticipated claims activity has ceased. For long-tail claims such as noise induced hearing loss, respiratory diseases, hand arm vibration syndrome etc, this could be 40 years or more.

## Site closure – The claims dynamic



### Accident investigation

Following speculation that a site may close or jobs may be lost, individuals may be less inclined to draw adverse attention to themselves and consequently, in the short term, it would not be unusual to see claims intake fall.

As the facts become clearer and it is evident that individuals will be adversely affected, loyalty to the company will naturally reduce and thoughts may turn to pursuing a claim once termination is inevitable.

In anticipation of an increase in claims frequency post site closure, raise vigilance levels and ensure robust incident monitoring, investigation and recording, even for minor events. A dip in morale can lead to an upswing in accident numbers and frequency, but often with a reducing severity as more minor injuries are reported.

In summary, a timely and comprehensive investigation of all accidents becomes increasingly important where there is the anticipation of, or actual announcement of, site closure or redundancies.

It is essential the investigation team visit the accident location as soon as possible after an accident to collate all relevant schematic drawings, sketch plans and photographs and so compile a clear picture of the scene at the time of the accident. Photographs and video footage taken at the accident investigation stage can become crucial evidence in court, and even more so when a site has closed or the operation in question has ceased. Keeping a written record of what each picture shows is also important along with running commentary of the workplace if capturing the processes on video. Information should include the date and time taken and the identity of the photographer with personal contact details.

Digital images are acceptable and should be securely retained; it is best practise to have the date on the digital images.

It is vitally important that all relevant and appropriate witness statements are gathered at the time of the accident. You should obtain written, signed and dated statements from all direct and indirect witnesses and the supervisor. Even where individuals state that they did not see anything it is important to capture this information. We recommend that you obtain the home address and telephone contact number of any witness to assist with future contact.



## Human resources

Redundancy is a very unsettling time for those on the receiving end and the company should consider how it can minimise its impact. Providing coaching sessions, job shops and interview training helps individuals to identify wider opportunities and at the same time provide the tools and the confidence to face their changing circumstances more positively.

The effect of managing employee relationships in this empathetic way will help maintain morale and can help minimise accidents. It will also reduce feelings of anger towards the employer which in turn makes individuals less inclined to pursue claims, or even in extreme cases leading to acts of theft, arson and sabotage.

Another temptation for the organisation is to cut down the numbers of 'non productive' staff such as health and safety managers. This may well prove to be a false economy at a time when they will be more important than ever in controlling accidents and mitigating the consequences of future claims.

Where processes or people are being located to another site, ensure that the site has made the necessary arrangements to both cater for any additional exposures posed by new equipment and processes, and ensure that transferred employees are trained and competent within their new environment.

Where the site is sold or employees transferred, for example, under TUPE, seek legal advice to ensure that all relevant present and future liabilities are transferred to the buyer.

## Occupational health and disease

Some safety legislation requires that employers retain records, particularly regarding health surveillance, for 40 years or more e.g. The Control of Asbestos Regulations 2006, regulation 22. This requirement reflects the longer term nature of certain diseases that have been proven to have been contracted whilst at work, such as chest/lung disorders and other long latency type illnesses and diseases. There are differences between judicial systems within the UK for limitation. The limitation period may differ in disease cases and may be three years from the claimant's date

of knowledge or from the date when it was reasonable to have acquired knowledge that their disease may be connected to their work. The date of knowledge may therefore be some time after the date of any exposure.

Employee work history records should be reviewed to confirm that sufficient information is held to clearly identify what roles, jobs, departments and work areas the individuals were engaged in, and for what periods.

Safety arrangements that were in force in a particular area should also be recorded with dates indicating the periods they were effective.

## Other liability considerations

You should consider the duties posed by public, property owners, occupiers and environmental liabilities - for example, what additional steps need to be taken to protect visitors and the public arising from a redundant site and the buildings and structures therein? How will the site be secured against trespassers or arsonists? What is the potential for fire to spread to neighbouring buildings? What danger exists in terms of pollution? Are there containers which need to be maintained to avoid seepage? Where contaminants have been stored on site, have they been safely removed and pose no environmental threat?

Where site closures take place then the physical security of property and assets is essential. Ensure that you check your tenancy agreement, if applicable, so that you are aware of your duties. Many property insurers have a standard clause regarding non occupancy of premises and stipulate conditions of cover such as turning off mains service, emptying water tanks, removing combustible materials, boarding ground floor windows and letterboxes, and generally taking all reasonable precautions to secure the buildings against unauthorised entry (validated by regular documented inspections).

It is also a sensible measure to nominate appropriate competent contacts with the knowledge and expertise to take both immediate and long-term responsibility for liaising with insurers, local and regulatory authorities on issues relating to the site's legacy.



## Conclusion

When rationalising a site's processes, looking at making employees redundant or planning a full site closure, the organisation's changing liabilities should not be overlooked. There is a clear business case for designating sufficient financial and management resources to a strategy that properly considers the key issues.

Current and future exposures need to be identified, plans need to be in place to address them and information will need to be captured and archived in an effective and easily retrievable manner. Without these fundamental risk management steps, a business could find that it has gone through all the tough decisions necessary to preserve its short-term position, only to expose itself to liability issues which undermine its long-term viability.

## Further information

You can find additional information on the HSE website [www.hse.gov.uk](http://www.hse.gov.uk) and also on the following websites:

[www.qbeeurope.com/rm](http://www.qbeeurope.com/rm) (in particular the Major Accident Toolkit Issues Forum and the Risk Management Standard on Accident Investigation).

[www.opsi.gov.uk](http://www.opsi.gov.uk) for specific Regulations and Acts.

## Author biographies

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Melanie joined QBE in 2006 bringing over 5 years of management and health and safety consultancy experience, predominantly in the facility management and construction sectors. Melanie holds the NEBOSH National Diploma in Occupational Safety and Health, is a Graduate Member of IOSH and a Member of the International Institute of Risk and Safety Management.

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