

Fact and fiction

A view on the UK
Compensation Culture



QBE



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Fact and fiction

There is undoubtedly a popular perception in various cross sections of the country that the UK has an out of control compensation culture, witnessed by a significant increase in spurious claims from unscrupulous members of the public and employees. The very existence of a growing compensation culture is a frequently debated topic attracting widespread media attention, and often eliciting very different responses depending on the interests and experiences of the stakeholders concerned.

From an insurer's perspective, evidence suggests there has been a steady fall in the numbers of employers liability (EL) claims driven by both a fall in accident frequency and severity rates and the proportion of employees working in high risk sectors. The UK has shifted from a heavier, manufacturing-industry orientated model to an economy rooted in the service-industry and light assembly sectors. With that reduction in risk exposure has come a corresponding improvement in the workplace health and safety environment in the UK. However, insurers will tell you that any decreasing frequency has been significantly offset by the rising total cost of EL insurance claims.

The withdrawal of legal aid in England and Wales relieved the burden on the taxpayer, but the costs are now ultimately borne by the policyholders of liability insurers in the form of conditional fee arrangements (CFAs), success fees, and after the event (ATE) insurance premiums. There has also been a substantial general increase in solicitor costs, notwithstanding inflationary pressures on general and special damages. NHS recovery charges and increased future loss settlements as retirement ages extend will undoubtedly increase the claims burden further.

The facts and the fiction of compensation culture may be two different things. What should be important to organisations are their individual claims experiences and the adequacy of their existing risk management strategies in managing their specific organisational exposures.

In the context of EL insurance, compensation is of course sought as a result of the employer's negligent breach of common law or statutory duty in relation to health and safety laws. An increase in the frequency of EL claims would suggest deterioration in health and safety standards in the workplace and correlate with greater frequency of accidents and ill-health. This does not always necessarily follow. Union organisations make a valid point that the majority of work related accidents and ill-health do not result in compensation claims. This can be the case for many organisations. Indeed there is no strong evidence supporting the general argument of an increasing propensity to claim compensation for accidents at work. In fact, the long running aggregate claims experience of liability Insurers is more or less consistent with underlying changes in the exposure of employees to risk.

Insurers inevitably focus a significant proportion of their time and energy with organisations experiencing significantly disproportionate claims frequency and severity rates. This claims culture can be unique to individual organisations, often with significant variations in claims conversion (a measure of the number of accidents resulting in claims) from actuarial

norms, industry peers and even between individual sites. In part, this can be explained by the varying nature of the activities of the organisation, reflecting the frequency and severity of the accident and ill-health profiles experienced. An obvious example is the low risk nature of an office as compared to a high risk construction environment. It is more difficult to explain significant claims conversion variances in like-for-like businesses. These often have almost identical operations, and can even be part of the same organisation. In such situations one could say there must have been an evolutionary process specific to that operation, site or business which has disproportionately affected the desire or propensity of employees to claim against the employer.

Organisations often blame trade unions in pushing the compensation agenda, and cite too much regulation and a perceived reluctance on the part of insurers to defend claims. Most worrying is when blame is cynically landed on the workforce, with senior managers often misguidedly concluding that their organisation has been infected with the compensation culture epidemic in rather general and unspecific terms. It is ironic that organisations often start playing the blame game themselves rather than engaging pro-active strategies and interventions to control the claims culture in their own workplaces.

Claims culture should be considered seriously as another threat on the risk register. A typical risk management approach to the subject is set out as follows:-

Identification

Organisations should attempt to establish the significance of their own claims culture. Pro-active insurers can help in providing claims data and analysis, whilst also benchmarking similar clients against one another in terms of account/portfolio performance. Some notable indicators of a deteriorating position may include: - (1) Claims frequency is increasing in a disproportionate manner to accident, ill-health, and absence data, (2) The quality or strength of claims has reduced i.e. there are reduced good grounds for defence, and: (3) there is a shift to claims for less serious accidents e.g. where no lost time was incurred.

Analysis

Employers need to understand the many variables in their employees' rationale for making claims. This is really about understanding the culture of the site or organisation rather than simply the claims culture which may be a manifestation of the wider environment. The employees' opinion of, and treatment by, their employer has a major bearing on a claims culture. It is telling that stress and bullying/harassment claims often arise out of the grievance process or as a bolt on to employment tribunals. Another obvious motivation can be the employer's refusal to offer discretionary sick pay for genuine work related absence. Whilst the claim may originally have been quite simply an attempt to recoup lost wages, the eventual damages and costs can dwarf the amount of wages claimed. Employers citing adversarial union relationships need to consider their own approach to engendering a positive, open and co-operative dialogue. In circumstances such as site

closures and redundancies the employer can have limited control over motivations but effective liability control measures can still be utilised.

Economic control

In the context of EL insurance and the correlation between claims, accidents and ill-health, good health and safety practice should be the first aim. Organisations are operating in an environment in which the concept of competency is very much at the fore, and the introduction of the Chartered grade of membership through the Institution of Occupational Safety and Health (IOSH) earlier this year means health and safety has been acknowledged as a professional, management discipline. However, competence needs to be supported by the correct proactive attitude and level of support from senior management. This means encouraging high-level strategic communication between internal company functions, notably human resources, health and safety, occupational health, risk and insurance and operational managers. This allows the setting of meaningful targets and Key Performance Indicators (KPIs) and will form the basis for the implementation and monitoring of risk based improvements. Also fundamental to engendering a positive culture, is that ownership of health and safety is an integrated component of both organisational and individuals' key objectives. Too often, performance in this area is not measured, and so is not managed.

There is little doubt that unions can play a significant role in organisations making serious attempts to improve their performance, particularly in communications and training. Conversely, they cannot be blamed for encouraging the workforce to take their employers to task when lip-service on the part of management is obvious. Employers should also consider whether their existing liability controls are sufficient. This includes being able to validate employees' competence in the tasks they perform, having robust investigation policies and procedures, and, not least of all, the use of holistic occupational health, absence management and employee wellbeing policies. Often, it is those traditional softer issues which lie at the heart of a claims culture and which cost organisations money. Underpinning this, there must be a successful claims defence strategy with a systematic document capture, archive and retrieval facility.

Employers should seek the assistance of pro-active insurers and brokers in supporting their efforts to manage their experience of claims culture. Often they have experience of managing similar problems within and outside the particular industry in question. Insurers welcome the opportunity to engage with those organisations who seek advice on liability risk management strategies targeted at minimising the direct and indirect costs of claims.

By targeting a combination of health and safety performance, employee motivations and liability considerations, rather than engaging in the blame game, organisations should be in a better position to understand and manage their employers' liability risk exposure.

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