



## Claims Defensibility Review

Helping you assess your risk  
management approach and  
reduce your exposure



**Gallagher**

Insurance | Risk Management | Consulting



When was the last time you thoroughly reviewed your Health & Safety policies and documentation? Could you defend your business in the event of a liability claim being brought against you? Through a Claims Defensibility Review Gallagher can help you reduce your risk exposure and protect your business.

The COVID-19 pandemic has seen businesses across all sectors having to manage risk like never before and it is expected that insurers will see a spike in employers' liability and public liability claims<sup>1</sup>. Therefore it is important that organisations check their Health & Safety policies, procedures and documentation to identify any potential areas that may require attention.

### What is a Claims Defensibility Review?

Gallagher's Claims Defensibility Review concentrates on the ability of a company or organisation to defend a civil liability claim arising under the rules governing civil litigation in the UK, namely the Civil Procedure Rules. Through a thorough review process we will highlight the strengths and weaknesses in your present arrangements for defending an employers' liability or public liability claim and work to reduce your risk exposure in order to help you meet your Health & Safety duty of care to employees, residents and the public.

### How does it differ from an Insurance Review?

The Claims Defensibility Review is a service we offer over and above our insurance review and is designed to improve your defensibility against liability claims brought against your company.

An insurance review is a separate, more generalised annual review that we recommend clients carry out as early as possible, especially given the current climate. During an insurance review a broker should check to see that you have sufficient levels of cover for your business. We conduct a cover analysis, by understanding your business and the sector you operate within, and we conduct an audit on your insurance programme to ensure an adequate level of insurance.

The insurance review and the Claims Defensibility Review can work together within our integrated risk management offering.

<sup>1</sup> <https://www.insurancetimes.co.uk/analysis/hospitality-and-leisure-sector-should-expect-surge-in-el-claims/1434460.article>

## Why is a Claims Defensibility Review important?

The Civil Procedure Rules require a party to disclose all documents relevant to the claim, regardless of whether they are beneficial or detrimental to their defence. In our experience, Defendants or their insurers all too often find themselves having to admit liability at an early stage due to failings in documentary evidence.

A Claimant only has to prove his or her case on the 'balance of probabilities' to receive an award of damages and this 'balance' can be as little as 51%. Claimants often achieve this standard of proof due to a lack of documentation and evidence available to defend a claim.

Consequently, over recent years Defendants and their insurers have identified the development of a 'compensation culture' which has brought about a noticeable increase in not only the numbers of claims being made but also the total cost of claims to insurers.

At present legal costs recoverable by a successful Claimant regularly account for more than half the insurer's total outlay due to 'additional liabilities' payable under Conditional Fee Agreements (e.g. 'no win no fee' agreements) which can entitle the Claimant to recover as much as a 100% increase in costs if they succeed at trial. This continues to form a major outlay for insurers.

By reviewing your existing Health & Safety policies, procedures and documentation we can help to ensure you what you have in place is adequate and is not likely to hinder your defence in the event of an employers' liability or public liability claim.



## What does the review involve?

The review looks closely at the documentation which the Claimant's lawyer is entitled to see either prior to or after the issuing of court proceedings. This exercise will therefore highlight the strengths and weaknesses in present arrangements for defending an employers' liability or public liability claim based upon existing policies, procedures and documentation. It will make recommendations for changes which will improve defensibility prospects in the future, with the aim of leading to a significant reduction in claims-related costs and the time spent within the business dealing with claims.

This process is an objective assessment of the documentation in place at the time of the review. It should also be remembered that all observations are made objectively, in the same way that the Trial Judge will assess each party's evidence should a claim proceed to trial.

We will assign a dedicated consultant who will remain your point of contact throughout the duration of the contract to ensure continuity.

### The benefits

A Claims Defensibility Review by Gallagher can offer you:

- Increased confidence in existing arrangements.
- Evidence of a sound management culture.
- Compliance with current standards and legal duties.
- Validation of the investment being made to improve risk management performance.
- The ability to benchmark the value and effectiveness of your efforts to date.
- The prioritisation of future improvement strategies and targeting of resources.
- Help reducing the frequency of incidents, injury, damage and consequent claims.
- Increased data and information available for marketing your needs to insurers.
- Advice on appropriate legislation.
- Focused practical advice based on your business needs and activities.
- Clear recommendations and guidance on improvements required and existing good practices.
- The ability to demonstrate to stakeholders, regulatory authorities and to insurers your proactive commitment to risk management.

Using Gallagher to carry out this work enables you to demonstrate the independence, competence and continuity of your management approach.

## The deliverables

Your Claims Defensibility Review will deliver:

- A review of your Health & Safety policies/systems used to examine the ability to defend against future employers' liability claims.
- The above review culminating in a report with full action plan on our findings.
- In many instances the aforementioned work can be funded by insurers, and any additional work that is required by you can be arranged and quoted for separately.

## Other services from Gallagher

Gallagher offers a wealth of services from our in-house risk management team and a panel of carefully selected partners, include system plan development, auditing, testing and training.

Our insurance, risk management and consulting services help our customers face their future with confidence.

## Book your review

To book your Claims Defensibility Review, please contact us on **0800 61 222 61**.

For further information please visit our Cost Control portal at [ajg.com/uk/confidence](http://ajg.com/uk/confidence)

### Our services include:

- Health, Safety & Environment
- Business Continuity Management
- Fleet Risk Management
- Legal (Regulatory & Contract)
- Risk Management Online
- Human Resources Risk Management
- Property Risk Management
- Occupational Health
- Employee Benefits & Wellbeing
- Health & Protection Services including Critical Life Cover



## Gallagher Business Assist

If you need to make a claim we can help you do this through Gallagher Business Assist, our dedicated claims management and loss recovery service.

Through this in-house facility you will receive specialist support and guidance in the event of a qualifying claim, including the appointment of an assigned Loss Adjuster who will work closely with your insurer. Gallagher Business Assist typically applies to claims of business interruption or material damage exceeding £10,000.

As one of the world's largest insurance brokers, we have the knowledge, experience and insurer relationships to provide a stronger chance of a successful claim outcome.

## About Gallagher

Founded in 1927, Gallagher has grown to be one of the largest insurance brokerage and risk management services firms in the world. With a global network, our organisation employs over 33,000 people, providing impactful solutions in more than 150 countries. From covering the construction of major airports, to placing policies that help safeguard personal property, to providing risk management services to the players, clubs and communities of the Premiership Rugby league, we're committed to protecting what matters most to our clients.

It's The Gallagher Way.



## Would you like to talk?

For more information and to book your Claims Defensibility Review please call us on **0800 61 222 61**.

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Registered Office: Spectrum Building, 7th Floor, 55 Blythswood Street, Glasgow, G2 7AT.  
Registered in Scotland. Company Number: SC108909. FPI307-2020 Exp. 06/10/2021.

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