



Local authorities and other public bodies may, from time to time, establish inquiries and investigations into a range of issues as they arise.

Occasionally, enquiries are made about the insurance position of organisations carrying out any such inquiry or investigation. As a result last year the ABI prepared a document for insured organisations carrying out an inquiry or investigation, which sets out the ABI's position on the role of insurers.

As part of the development of the new guidance, the ABI reviewed certain historic documents on this issue, including the guidance produced in conjunction with the Local Government Association on the insurance aspects of ad hoc inquiries which was issued in 1999. The new guidance takes into account more recent changes in legislation and is intended to reflect current industry practice. It replaces previous documents on this issue.

The new document is intended to provide guidance only and should not be considered as legal advice. Therefore any organisation involved in an inquiry or investigation should continue to consult its own independent legal advisers for advice in relation to its position.

GUIDANCE ON INSURANCE ASPECTS OF INQUIRIES AND INVESTIGATIONS

Many organisations set up inquiries or investigations where incidents have occurred, complaints have been made or failings have been alleged against them which require a full, structured and independent investigation. The aim of these reviews is to investigate what went wrong, what lessons can be learned and what needs to change to avoid a recurrence in the future. Inquiries can range from those set up formally under the Inquiries Act 2005 to less formal case specific arrangements. This Guidance refers to inquiries but can also apply to investigations that are not specifically set up under the Act.

The Insurance industry recognise the importance of inquiries and will not seek to:

- influence terms of reference or process
- determine the outcomes of an inquiries or investigation
- discourage policyholders from cooperating with an inquiry.

It is our view that any policyholder conducting or involved in an inquiry must act in accordance with the obligations required of them at the time that an investigation is conducted. Their focus at all times should be in establishing and reporting the facts accurately, so that the findings can be used to drive improvements. Financial implications should very much be a secondary consideration and should in no way affect how facts are reported.

It is in the context of this that we provide the following guidance to policyholders in relation to any insurances they may hold:

- If there is or is likely to be insurer involvement, early liaison is recommended. The insurer or insurers concerned will usually be those on risk when the injury or damage occurred. These may not be the same as an organisation's current insurers. Actual injuries sustained, or the time they were caused, may have been spread over many years, and involve different insurers.
- Organisations are encouraged to examine the terms of their insurance. For example, many standard insurance contracts across a range of product lines contain a clause requiring the insured not to admit liability or settle a claim until the insurer has provided written permission. One of the reasons is to ensure sufficient time to properly establish the facts surrounding an individual claim.
- Often there will be no insurance element involved. It is impossible to give comprehensive guidance as to when there will or will not be such an issue to consider; each case has to be looked at in the light of its own circumstances. Where the subject matter of the inquiry involves personal injury (including illness, mental anguish or stress), or damage to property not belonging to the organisation, it is recommended that the organisation makes an initial presumption of probable insurance involvement

Where an organisation sets up an inquiry, it is for that organisation alone to decide whether or not to hold the inquiry. Insurers would not expect or wish to be involved in such a decision. Individuals involved need to exercise their independent professional judgment to ensure that the inquiry's terms of reference, aims and objectives are achieved.

When an organisation is producing a report of an inquiry, we recommend establishing that the contents are accurate, reasonable and can be sustained by evidence. Inferences and expressions of judgment should also be supported by evidence. Policyholders may wish to refer to the terms of their policy when considering references to legal liability or matters of compensation.

Insurers recognise that it can be appropriate for an organisation to choose to make a public or private expression of regret or apology. Indeed, apologies (since the enactment of the Compensation Act 2006) can be made without there being an assumption of liability. Policyholders may wish to review such statements to check that they do not inadvertently have the effect of admitting liability in relation to insured or insurable claims or allegations.