



CIL A Guidance Note
Flooding in November 2009 - Business Interruption Issues

1) Introduction

This guidance note is being issued subsequent to an open invitation for questions/comments, and builds on the CIL A Flooding Guidance issued in the summer of 2007.

Whilst much of the guidance in the 2007 note remains applicable, there are some specific issues arising particularly with regards to flooding in Cumbria that we believe require specific comment. We have commented specifically on claims in Workington and Cockermouth and have given general comments with regard flooding elsewhere.

2) Workington

In the summer 2007 flood note there was significant discussion about the issue of wide area damage and the need to distinguish between loss arising from damage at the insured Premises, and loss arising because of general flooding (to Premises belonging to others), to the extent that this would have occurred even had the insured Premises themselves not suffered flood damage.

There are no wide area damage issues relevant to Workington. The damage is more localised and predominantly affects the North side of the river. This makes consideration of (non-damage) claims on the South side of the river simpler - if turnover reduces after the flooding, in the absence of any other explicable cause, it may be reasonable to take it at face value that such a downturn is caused by denial/hindrance of access. We have commented on the application of the term 'vicinity' below.



Many businesses may be unaware that they have denial/hindrance of access cover, or alternatively may be holding back on making claims on the mistaken premise that a claim can only deal with a loss which has occurred up to that date rather than setting in motion a business interruption claim running into the future.

3) Cockermouth

Cockermouth has very significant localised damage. Main Street (the feature heart of the town) has been very severely affected. In common with Workington, the widespread damage seen in 2007 is not present in this instance, and no adjustment to quantum is required to address it.

Access/hindrance to the centre of Cockermouth is not as severe as Workington, due to the shorter distance of alternative routes to by pass closed bridges. This is likely to change. Car park facilities have been restricted, and are likely to become severely congested once re-instatement works commence. One car park to the North of the river is now cut off from the centre of Cockermouth. Businesses currently suffering no denial or hindrance may yet suffer from hindrance in the future. It is suggested that policies will respond to Denial/hindrance of access flowing from congestion during reinstatement works in the area in the same way as denial/hindrance caused directly by flooding.

In the short term turnover is more likely to be depressed for many businesses because of the significant damage to Main Street i.e. apart from damage itself, loss of attraction will be a far more significant factor than hindrance of access.. Many Denial of Access wordings require a physical prevention or hindrance of access rather than a disinclination to visit. Loss of Attraction covers are however likely to respond to the impact of Main Street being damaged. Whilst a minority of businesses will have specifically requested Loss of Attraction cover, some modern package wordings give a hybrid Denial of Access/Loss of Attraction cover which may respond.



Cockermouth (and other) claims may consequently arise in the following circumstances:

Circumstances	Comment
1. Damage at the Premises (no extensions)	The degree of damage is significant. If it is minor, it is likely to be concluded that part of the loss is due to loss of attraction/denial of access and is therefore uninsured. Where the damage is more severe Insurers will need to be consulted as to the extent, if any, that they would require any downward trend to be applied to reflect loss of attraction or denial of access.
2. Damage at the Premises, business has both Denial of Access and Loss of Attraction cover	The whole of the quantum shortfall can be addressed, with the proviso that if the period of loss is extended, and towards the end of the Maximum Indemnity Period arises from one of the extensions, the relevant comments against the extension below should be considered.
3. Damage at the Premises with Denial of Access cover (no Loss of Attraction)	There may currently not be a significant Denial of Access, but one could arise in the future once general re-instatement works commence. In the interim, if there is no significant damage to the premises, any loss arising from Loss of Attraction will not be covered.



4. Damage at the Premises with Loss of Attraction (no Denial of Access cover) - albeit this an an unlikely combination of cover	Losses arising currently likely to be dealt with in full. This will only change if a new hindrance/denial of access arises, which will likely reveal itself in a further noticeable decline in turnover.
5. Denial of Access cover only - no damage to Premises	For the majority of businesses, there is currently no significant Denial of Access. Subject to the particular merits of a claim, loss is likely to arise due to Loss of Attraction and will be uninsured. This could change as reinstatement works get underway and congestion arises.
6. Loss of Attraction only - no damage to Premises	Currently, there is a Loss of Attraction and claims are likely to be met in full. As the high street is re-instated, this will diminish and Denial of Access issues may increase. The impact of the latter will be uninsured.

4) Loss outside Workington/Cockermouth

Businesses that have been flooded other than the two specific locations discussed should be considered on their merits.

As noted above, the widespread flooding seen in 2007 has not occurred on this occasion, and at face value there is no requirement to consider the impact of loss arising from Damage to customers premises, as was necessary in 2007. However, the impact of Damage to infrastructure in the wider region may impact more significantly



where there are restricted road routes available, and wider area Damage to infrastructure rather than customer's Premises (which was the issue in 2007) may require consideration.

5) Coverage Issues

Adjusters are reminded that some policies will restrict Maximum Indemnity Periods by way of an inner limit for denial/hindrance of access - it should not be assumed that the Maximum Indemnity Period applicable to the wording generally will automatically apply. Likewise, some policy wordings are likely to treat the denial/hindrance as a policy trigger in the same way as a fire or flood and allow the Maximum Indemnity Period to continue from that point. Such wordings will respond to any turnover shortfall during the repair period and during the build up period of turnover to its pre-incident level. Other wordings may restrict cover to the time during which access is hindered or denied - once the hindrance/denial is removed, the cover under such wordings will cease and there will be no on-going allowance for the recovery of turnover to its otherwise normal level.

Some policies have specific exclusions for elements of infrastructure including road bridges.

Finally, whilst this note has contemplated reductions in turnover following the flooding, there may be some businesses that may have enjoyed higher turnover as a consequence of the general impact of the flooding had their own Premises been unaffected. An upward trend may be appropriate in those cases. In most cases, policies require adjusters to consider the loss arising had the damage at the Insured Premises not occurred, but assuming that the damage to other Premises and the wider area had still taken place.



6) Vicinity

Some policy wordings define vicinity as a specific distance from the cause of the denial/hindrance of access, and in those cases the policy wording can be applied in a straight forward manner. In the absence of any specified distance in the policy, the view of the CIL A is that the term 'vicinity' will be self-defining (as with the specific circumstance of Workington on this occasion) - if a business shows a sudden deterioration following the flood, then in the absence of any other explicable cause, such a downturn can reasonably be attributed to a denial of access. For a business to suffer a downturn because of the loss of use of a bridge, for example, itself suggests that in terms of the economic radius of that shop or businesses catchment area, the bridge or other denial/hindrance must fall within that.

It is noted that some policies exclude road bridges specifically in wordings. Some require property which is damaged in the vicinity to be insured. At least one of the bridges in the vicinity is insured (unusually) and the CIL A will attempt to assist with better detail should this be necessary in any particular case.

There are bridges currently under assessment following the flooding which may in due course require no significant repair works (it would seem unlikely that any bridge will be entirely undamaged). On the basis that a loss of use can be equated to damage, the CIL A believes that denial/hindrance of access arising from the loss of use from a bridge will potentially give rise to a claim irrespective of whether subsequently repair works are necessary or not.

There are precedents to this. Following the Manchester bomb, the Royal Exchange building was taken down brick by brick for assessment and was found to be undamaged and the bricks were put back. That was accepted as damage for consideration of claims at the time.



7) Conclusion

The 2007 flooding note, guidance on the economic effects of widespread damage, and the CIL A flooding master class notes have been circulated to members. Much of the content of those notes remains relevant.

In particular, impairment of use (of roads/bridges) following a fortuitous and unexpected event such as this recent flooding, is generally accepted to constitute Damage (as opposed to normally anticipated, seasonal flooding).

The purpose of issuing this note is to support a consistent approach to losses on the part of adjusters, albeit policy covers vary and some policyholders have paid a higher premium for wider cover. Some policies will cover aspects of loss that others will not, and it is not the intention of the CIL A to suggest an approach that disregards that. The particular policy wording will always apply regardless of general guidance in this or previous technical notes.

As with other notes, these views are those of the CIL A and have not been approved by the ABI or individual Insurers. Therefore, if any claim gives concern, e.g. the distance from the damaged property in the context of vicinity, the claim should always be referred to the Insurer.