

GETTING TO GRIPS WITH RISK – MANAGEMENT SYSTEMS AND THE INSURER

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The main types of insurance used by organisations as part of their strategy to manage risks are explored. The importance of safeguarding organisations' assets is emphasised along with the need to introduce formal risk management systems. The application of various management systems is considered with particular focus on health and safety issues and BS OHSAS 18001. The benefits of adopting management systems are outlined in terms reducing accidents and claims, cost savings and improved business performance.

KEYWORDS: insurance, risk management, safety management systems, OHSAS 18001

INTRODUCTION

All process industries, irrespective of size and products, have risks and use insurance as part of their strategy to manage those risks. The risks to which organisations are exposed include those relating to personal injury, property damage or loss (buildings, plant, equipment, raw materials, materials in process, finished goods, and money), lost production and sales, lost profit, adverse publicity and the loss of reputation, and arise particularly from health and safety and environmental issues. It is important, therefore, that organisations safeguard their assets and introduce a risk management system to achieve this objective.

WHAT HAPPENS IF THINGS GO WRONG?

If risks are not controlled and incidents occur, then several different groups of people can be harmed and various types of damage can be caused.

The people at risk can be on site, nearby or even remote from the site and include employees, contractors, visitors, members of the public (neighbours or customers) and members of the emergency services who attend an incident. The range and types of harmful effects and subsequent injuries is extensive, from minor injuries to multiple fatalities.

Damage arising from incidents includes property damage (both on and off-site), environmental damage (chemical releases and run-off of contaminated water from fire fighting) and business damage (interruption of production, loss of profits, adverse publicity and loss of reputation).

There are many well known major incidents in the UK that have given rise to multiple fatalities and/or significant plant, property and environmental damage from the explosion at Hickson and Welch, Castleford (1930) through Flixborough (1974) and Piper Alpha (1988) to Buncefield (2005).

Insurance is very important element in safeguarding the organisation's assets.

TYPES OF INSURANCES

A range of different types of insurance are available in the market place to transfer the risk and provide cover if things go wrong and include:

- Employers' Liability Insurance – covers liability to employees;
- Public Liability Insurance – covers liability to third parties both on and off site (from both an injury and a quality perspective) and third party property;
- Environment Impairment Liability Insurance – covers gradual or on-going releases, emissions or discharges that lead to insidious pollution;
- Fire/Property Insurance – covers on-site property;
- Business Interruption Insurance – covers loss of profit and consequential loss;
- Contractors and All Risk Insurance – covers loss arising from construction work;
- Engineering Insurance – covers risks arising from the use of work equipment (pressure systems, lifting equipment, etc.); and
- Directors and Officers Liability Insurance – covers the liability for the acts and omissions of directors.

It is worth noting that it is illegal for insurers to offer insurance against any penalties that may be imposed by the Courts.

The most important of these types of insurance from the perspective of personal injury, property damage and environmental issues are Employers' Liability, Public Liability, Fire/Property and business interruption insurances. Each of these will be dealt with in a little more detail.

EMPLOYERS' LIABILITY INSURANCE

An employer has a duty of care towards his employees and if they suffer injury or ill-health as a result of their work activities they are entitled to sue their employer for damages to compensate them for the injury that they have suffered if they believe the employer is responsible.

In order to obtain compensation the employee is required to demonstrate that the employer owed him a duty of care, that the employer was in breach of that duty of care and that the breach led directly to the injury suffered by the employee.

To ensure that sufficient funds are always available to pay for such compensation, the Employers' Liability (Compulsory Insurance) Act 1969 requires all employers, with a limited number of exceptions, to take out an insurance policy to cover their legal liability to their employees. The main exceptions are Government Departments and Agencies, local authorities, police authorities, National Health Service organisations, some other organisations funded through public funds and private family businesses where the employees are close relatives of the employer.

The annual premium of the Employers' Liability (EL) insurance is based on a percentage of the wages paid to employees and takes into account a number of issues including the type of industry, the inherent risks and the claims experience.

Standard EL policies are limited to £5 million liability per event. However, in practice most Insurers provide cover up to a limit of £10 million liability per event. If an Insured requires additional cover beyond the £10 million liability, then a further premium is required.

PUBLIC LIABILITY INSURANCE

Public liability insurance unlike EL insurance is a voluntary insurance and provides cover for the policy holder for their liability to persons who are not employed who may be harmed (contractors, visitors, members of the public and members of the emergency services) and third party property which may be damaged as a result of the policy holder's undertaking. Public liability policies normally specify a limit of liability, often £1m or £2 m. Cover up to £5 m is readily available. For large, complex organisations policies with liability up to £100 m can be purchased.

The premiums of public liability policies are based on the risks associated with the premises, processes and activities, including any work undertaken away from the site, and risks associated with the products of the undertaking.

Public liability insurance covers certain aspects of pollution. It excludes pollution other than that which is caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specified time and place during the period of insurance. In other words, an emergency event. As mentioned earlier on-going releases, emissions and discharges which lead to insidious pollution are not covered. Environmental Impairment Liability Insurance would be required for on-going issues.

FIRE/PROPERTY INSURANCE

Fire/property insurance is a voluntary insurance and premiums are based on the value of the property, the trade and the processes undertaken. In other words, the risk or likelihood of a fire occurring. Discounts can be given for

any good feature of the "risk" such as management procedures to prevent fires and fire fighting capabilities.

Basic policies can be extended at extra cost to cover special perils such as:

- aircraft (but not sonic boom);
- explosions (but not steam boilers);
- rioters;
- malicious persons;
- earthquake;
- impact by vehicles;
- storms;
- floods;
- burst pipes; and
- leakage from sprinklers.

BUSINESS INTERRUPTION INSURANCE

Business interruption insurance is also a voluntary insurance which compliments and follows on closely from the material damage risk arising from fires and other perils outlined above in relation to fire/property insurance.

WHAT THE DOES THE INSURER NEED?

The Insurer expects the Insured to disclose all relevant facts about their business and to take all reasonable care and to take appropriate steps to:

- protect employees and to prevent accidents and the occurrence of occupational ill-health;
- prevent injury to third parties;
- protect the environment; and
- protect their own property and to prevent damage to the property of third parties.

The Insurer needs to know that the Insured is managing health and safety, environmental and quality issues effectively and is maintaining property in a good and safe condition. In other words, the Insured is complying with both statutory requirements and the common law duty of care. Insurers encourage their insured to strive towards appropriate best practices.

The Insurer needs to know that the Insured gives due priority to health and safety, environmental and quality issues, that these are not optional extras but are integral parts of both the management function and the activities of all members of line management. In relation to health and safety the current best practice on leadership is set out in the booklet "Leading health and safety at work" (Institute of Directors/Health and Safety Executive, 2007).

The Insurer needs to know that the Insured has a positive commitment to health and safety, environmental and quality issues and its continual improvement at the highest level within the organisation. In order to demonstrate this, the Insured needs to provide sufficient resources and have well documented management systems in place to prevent accidents, dangerous occurrences, ill-health and, ultimately, claims. It is also important for the insurer to know that insurance indemnity arrangements are in place

for all contractors and any other third parties working with the Insured and that an appropriate level of cover is provided.

If a claim arises as a result of any failure in the Insured's duty of care for either his own employees or other persons, the Insurer looks to the insured to provide evidence to refute the claim. Overall the Insurer needs to have confidence in the Insured's ability to maintain and improve their health and safety, environmental and quality performance. In other words, the Insured needs to have effective risk management systems in place.

WHAT DOES THE INSURED NEED TO DO?

In order to give the Insurer this confidence the Insured needs to have the following systems and procedures in place:

- comprehensive and positive policies establishing the health and safety, environmental and quality management systems;
- risk assessment and risk control procedures;
- safe systems of work and operating procedures;
- training procedures and programmes;
- property maintenance systems and procedures;
- a programme of periodic checks, inspections and audits;
- emergency preparedness and response procedures;
- investigation procedures for all accidents, dangerous occurrences, near misses and cases of occupational ill-health; and
- a progressive risk reduction programme.

In order to show that the management systems are effective there should be clear and comprehensive records to demonstrate the achievements in all these matters, including the decision-making process. Records should be kept permanently.

The adoption of such an approach should provide the framework to demonstrate that the Insured is a reasonably prudent employer who has taken reasonable measures to provide good standards of health and safety, environmental protection and product safety to prevent accidents, dangerous occurrences, ill-health, and consequent claims by employees and other persons.

The Company's approach to the management of health and safety, environmental, quality and property issues can be demonstrated to the Insurer through periodic liaison meetings, including claims reviews, claims investigations and liability and property surveys.

FORMAL MANAGEMENT SYSTEMS

The first formal management system that became a British Standard was that for quality management and first appeared as BS 5750. The current version of this system is BS EN ISO 9001:2000 "Quality management systems – Requirements" (British Standards Institution, 2000). This management system is based on the "plan-do-check-act" management model and embodies the principle of continual improvement. This approach was used subsequently in the

development of both environmental and health and safety management systems.

The most well known and widely used environmental safety management system is set out in BS EN ISO 14001:2004 "Environmental management systems – Specification with guidance for use" (British Standards Institution, 2004). A second system that can be used is described in the European Union's Eco-Management and Audit Scheme (European Union, 2009). In addition, there is a third system that can be used and this is described in BS 8555:2003 "Environmental management systems. Guide to the phased implementation of an environmental system including the use of environmental performance evaluation" (British Standards Institution, 2003).

There are a number of occupational health and safety management systems which can be applied including that set out by in the HSE Booklet HS(G)65 "Successful health and safety management" (Health and Safety Executive, 1997), BS OHSAS 18001:2007 "Occupational health and safety management systems – Requirements" (British Standards Institution, 2007) and ILO-OSH 2001 "Guidelines on occupational safety and health management systems" (International Labour Office, 2001).

In addition, a number of industry sectors have published their own guidance on health, safety and environmental management systems, notably the CIA's Responsible Care Management System (Chemical Industries Association, 2003). The CIA system can be applied to quality, environmental and health and safety management and, this too, is based on the "plan-do-check-act" management model embodying the principle of continual improvement.

Guidance on an integrated approach to the management systems for quality, environment and health and safety has been published in the Publicly Available Specification – "PAS99 Requirements for Integrating Management Systems" (British Standards Institution, 2006). This guidance is also based on the "plan-do-check-act" management model.

WHAT DO FORMAL MANAGEMENT SYSTEMS PROVIDE?

These standards provide excellent frameworks for organisations to use for the establishment of systematic approaches to the management of quality, environmental protection and health and safety. The achievement of accredited certification to these standards represents a best practice approach.

Organisations that achieve certification to BS EN ISO 9001 will be able to demonstrate to their public liability insurers that they have taken appropriate action to ensure the quality of their products or services, particularly in relation to product safety and the protection of their customers, and to prevent claims.

Organisations that achieve certification to BS EN ISO 14001 will also be able to demonstrate to their public liability insurers that they have taken appropriate action to control the storage and use of hazardous substances to

prevent incidents involving their release to the environment. The controls provided for environmental protection also provide protection for members of the public who could be injured by the release of hazardous substances. The Insured will be able to show that positive action has been taken to prevent claims.

Organisations that achieve certification to BS OHSAS 18001:2007 will be able to demonstrate to both their employers' liability insurers and their public liability insurers that they have the appropriate procedures in place for the assessment and control of risk. Certification will also allow organisations to demonstrate that they have taken appropriate action to prevent accidents and occupational ill-health and to prevent claims of negligence by their employees and other persons.

BS OHSAS 18001:2007 "OCCUPATIONAL HEALTH AND SAFETY MANAGEMENT SYSTEMS – REQUIREMENTS"

The management model used in BS OHSAS 18001 mirrors the approach used in the standards for quality management and environmental management and is shown in Figure 1 below.

In this model the occupational health and safety (OH&S) policy must state the overall objectives and a commitment to the prevention of injury and ill-health and continual improvement in OH&S management and OH&S performance. The policy must be defined and authorised by top management.

Planning should include: hazard identification, risk assessment and risk controls; legal and other requirements; and objectives and the OH&S management programme. This programme should describe how the organisation establishes and maintains systems and procedures for achieving its objectives.

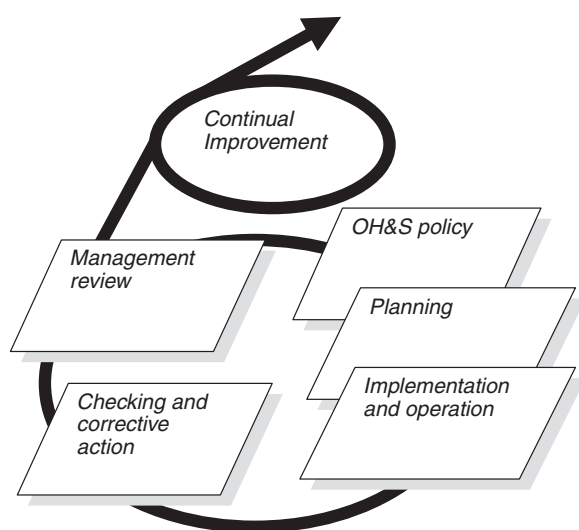


Figure 1. Management model

Implementation and operation includes: resources, roles, responsibility, accountability and authority; competence, training and awareness; communication, participation and consultation; documentation; control of documents; operational control; and emergency preparedness and response.

Checking and corrective action relates to: performance measurement and monitoring; evaluation of compliance; incident investigation, nonconformity, corrective action and preventive action; control of records; and internal audit.

Management review requires the organisation's top management to review the OH&S management system at fixed intervals to ensure its continuing suitability, adequacy and effectiveness.

BS OHSAS 18001 is supported by two documents:

- BS OHSAS 18002:2008 "Occupational health and safety management systems – Guidelines for the implementation of OHSAS 18001:2007" (British Standards Institution, 2007); and
- BS 18004:2008 "Guide to achieving effective health and safety performance" (British Standards Institution, 2008).

Both documents give detailed guidance which will help organizations to achieve certification, to establish a management system or to improve an existing system as they strive to become fully effective in the management of their occupational health and safety performance.

BS 18004 replaces the former standard BS 8800:2004 "Occupational health and safety management systems – Guide" (British Standards Institution, 2004) and is structured to fully support BS OHSAS 18001. BS 18004 contains excellent technical guidance on how to achieve both the objectives specified in BS OHSAS 18001 and effective health and safety performance. This guidance represents current standards of best practice.

The guidance set out in the annexes to BS 18004 builds on and expands those previously included in BS8800. The guidance covers:

- guidance on implementation and operation;
- promoting an effective OH&S management system;
- guidance on setting objectives and planning and implementing OH&S programmes;
- guidance on risk assessment and control;
- operational control;
- occupational health;
- worker involvement;
- emergency preparedness and response;
- measuring performance;
- incident investigation; and
- internal audit.

The annexes on operational control, worker involvement, emergency preparedness and occupational health were not previously included BS 8800. From an insurance perspective the guidance on emergency preparedness and occupational health provision are of particular interest.

EMERGENCY PREPAREDNESS WITHIN BS18004

This annex gives guidance on how to cope with incidents such as fire, explosion, the release of flammable or toxic gas or liquid, aircraft impact, terrorist action and natural disasters such as earthquakes, floods and storms. A detailed plan is required to contain and deal with the emergency, to make the premises safe, to address the immediate health and safety issues of employees and others who may be affected by the emergency and to protect the environment. Having a well rehearsed emergency plan in place, based on risk assessment, will demonstrate to insurers that appropriate action has been taken in order to minimise the risks to personnel, property and the business. However, the aftermath of the incident also needs to be managed and a business continuity plan or contingency plan is essential if the business is to survive.

From the business interruption insurance standpoint, it is essential that the Insured examine all the potential threats to the business arising from natural occurrences, accidents or crime and the potential effects of such events on the business and the staff both in the short and long term. Therefore, risk assessments should be carried out on all routine operations (setting up, production, maintenance, process interventions and cleaning) and all possible events mentioned earlier. For complex operations, the insurer expects that risk assessments would encompass HAZOPS, Quantified Risk Assessments, etc. The assessment procedures should review and record the effectiveness of existing controls and, if necessary, should specify the additional steps which should be taken to eliminate, reduce or control the risks.

This will allow a business continuity plan to be established with back up procedures for critical activities such as:

- power supplies and other services;
- manufacturing capability (capacity at other sites, sub-contracting, replacement equipment);
- the sourcing of critical raw materials;
- the storage of raw materials and finished products;
- telecommunications (staff, customers) and IT needs;
- media relations/control; and
- staffing requirements and needs.

The duties and responsibilities of all key personnel must be clearly defined within the plan and appropriate training should be given and recorded. Regular practices should be held to familiarise relevant personnel with their roles and to enable the plan to be implemented effectively.

The British Standard BS 25999 – Part 1 “Business continuity management. Code of practice” (British Standards Institution, 2006) provides a good framework to enable the insured to develop a business continuity plan and represents current best practice. The detailed requirements for a business continuity management system, based on best practice, are contained in the British Standard BS 25999 – Part 2 “Business continuity management. Specification” (British Standards Institution, 2007). The International Standards Organisation currently has work

underway to develop an international (ISO) standard for business continuity management.

Organisations that achieve certification to BS 25999 will be able to demonstrate to their business interruption insurers that they have taken appropriate action to protect their business and prevent claims for loss of profit.

OCCUPATIONAL HEALTH PROVISION WITHIN BS18004

The annex on occupational health in BS OHSAS 18004 describes the role of occupational health physicians and nurses. Guidance is given on a three tier approach to the monitoring of employee health by means of pre-employment medical screening, risk-based on-going health surveillance and post-employment medicals. Other services provided by occupational health personnel are described and include absence monitoring, return to work and rehabilitation schemes, advice and counselling and health promotion. The provision of good occupational health service will demonstrate to the employers’ liability insurer that health issues are an important and integral part of the health and safety management system.

DO MANAGEMENT SYSTEMS HELP IN THE DEFENCE OF CLAIMS?

BS OHSAS 18001 requires organisations to establish and maintain procedures for the recording and investigation of accidents, incidents and non-conformances. Accidents that lead to physical injury and cases of occupational ill-health often lead to claims. In order to minimise the number of successful claims and their cost, it is important that organisations have robust systems in place for both accident investigation and claims handling and management as an integral part of the overall management system for the control of risk and employee health and safety. Therefore, from an Insurers perspective BS OHSAS 18001 is the ideal vehicle to ensure that all relevant documentation relating to accidents and occupational ill-health is assembled at the earliest opportunity. Similarly, BS ISO 9001 and BS ISO 14001 are ideal vehicles to ensure that documentation relating to product safety and environmental incidents is assembled promptly.

It is essential that all accidents, no matter how trivial they may seem, are recorded and brought to the employer’s attention as soon as possible, and certainly no later than the end of the working period. This should prompt an immediate investigation to ensure that the facts can be established as soon as possible and that witnesses can be identified. Early intervention allows evidence to be collected before any possible changes are made and whilst the event is still fresh in the witnesses’ memories. The time needed to complete the investigation depends on the complexity or severity of the event.

It is important to gather as much evidence as possible during the investigation rather than to wait to see whether a claim will be made by the injured person at some time in the

future. Potential claimants have three years from the date of knowledge of the injury or damage to make a claim. In the case of physical injury or damage it is three years from the accident. In the case of ill-health the three year period starts from the date of diagnosis of the illness. Youngsters have three years from their eighteenth birthday to initiate a claim.

Waiting for up to three years after the event to gather evidence is at best problematical. For example, witnesses may no longer be employed, may have moved away to new and unknown addresses, may have died, may not remember all the salient facts or may, simply, change their stories.

The evidence that needs to be collected at the time of the investigation includes witness statements (giving both positive and negative information), photographs, plans, drawings, sketches, risk assessments (both before and after the event), operating procedures, safe systems of work, training records, recent inspection and audit reports. This list of documents is not exhaustive. Depending on the circumstances encountered in the investigation other relevant documents may be identified or may be generated at a later stage.

It is crucially important that all accident investigators are given appropriate training on the techniques of accident investigation, the reasons why investigations are necessary and the importance of the collection of documentary evidence for claims defence purposes.

When claims are received by an insured, it is important that they are dealt with in an expeditious manner. To enable this to happen, a formal procedure needs to be established and agreed with both insurer and the broker for the administration of claims. This procedure is usually referred to as the Claims Protocol. This protocol should include details of the documents that should be assembled for each claim, the time limits for notification and the details of contacts at the Insurer. The Insured needs to train and appoint all the personnel who have roles and responsibilities within the protocol. This includes the central co-ordinator for sending information to the Insurer and the central contact for liaison with the Claims Inspector.

BENEFITS

There are significant business benefits of adopting formal risk management systems and achieving certification. Organisations will be able to demonstrate their positive approach to the management of risk to all interested parties including the Health and Safety Executive, the Environment Agency and their Insurers. Sound, well documented risk management systems should lead to a reduction in accidents, dangerous occurrences, ill-health and, ultimately, to a reduction in claims.

In terms of Employers Liability Insurance premiums fluctuate over time, partly as a result of market conditions. Most legal changes in recent years have increased costs to both employers and their insurers. Adoption of a health and safety management system should help employers demonstrate to their insurers that they are applying best

practice to the control of risk and this should enable employers to contain premium increases. There is potential, therefore, for cost containment and cost saving.

In addition to the potential cost savings in relation to insurance premiums, organisations should be able to reduce the uninsured costs of accidents.

Organisations should also be able to achieve other benefits such as the avoidance of criminal penalties, the promotion of cultural change, enhanced quality and reliability, increased efficiency and productivity, improved prestige and public image, better industrial relations and increased profitability.

Further benefits of adopting risk management systems relate to corporate governance issues. The Corporate Manslaughter and Corporate Homicide Act 2007 has the provision to penalise "management failure", so the adoption of a management systems approach should assist in defending any such action. The adoption of OHSAS 18001 would mirror what many companies are already doing for quality and environmental management and would give directors an assurance that they are applying best practice to health and safety and thus enable them to comply with corporate governance demands. The adoption of formal risk management systems will also provide increased shareholder confidence in the activities and performance of the organisation.

Overall, achieving certification to BS EN ISO 9001, BS EN ISO 14001 and BS OHSAS 18001 should be the catalyst for the promotion of a culture of excellence for quality, environmental issues and health and safety within an organisation.

CONCLUSION

The Insurer supports the certification of management systems and believes that they provide a positive contribution to the control of risk. Accredited certification is a clear demonstration to the Insurer that an organisation gives due priority to quality health and safety and environmental issues, provides sufficient resources and is fully committed both to the pro-active management of risk and to the continuous improvement of their performance.

Whether or not an organisation seeks certification, the Insurer advocates that all organisations should have well documented management systems for the control of risk.

The views expressed in this paper are those of the author and do not necessarily reflect those of his employer.

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