

ADJUSTERS AS OPPOSED TO ASSESSORS

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IT seems that there is perennial debate about the relative responsibilities of loss adjusters and loss assessors. Much has been said and written on the subject but, nevertheless, it remains the subject of considerable interest to players in the market. For the sake of clarity let it be accepted that *loss adjusters* are instructed only by the insurance market whereas *loss assessors* are retained by the Insured, otherwise referred to as the policyholder or equally as the claimant.

In practical terms the difference between loss adjusters and loss assessors is very distinct and, with very few exceptions, their roles are never reversed. The position of the loss assessors has one particular characteristic in common with most professions in that they accept instructions from the public at large, corporate or otherwise. Loss adjusters are unusual in accepting instructions from such a narrow base of clients.

The reasons for this development are historical. The need to assess or settle claims is as old as insurance itself. Since the earliest days of non-marine insurance, underwriters or the insurance companies have needed external assistance to properly evaluate damage. It was of course inevitable that architects and surveyors, being skilled in matters of property loomed large in the provision of such assistance and with the passage of time claimants themselves would also have used similar services.

Thus the situation developed wherein insurers and claimants would rely to some extent on such professional advice. Probably until the thirties such claims advisers were generally known as assessors, the term adjuster being relatively unused. It had nevertheless become the practice for insurers to regularly use the same assessors, usually individuals or small firms, and strong relationships developed between the companies and such assessors to the extent that it was unlikely for insurer's assessors to take instructions from members of the public because of potential conflict. By the same token there were assessors who had not established relationships with insurers and who

therefore would deal with insurance claims on behalf of the public. Thus the lines were drawn. In the thirties a number of frauds were experienced involving assessors which eventually culminated in a few prison sentences being served. Although the majority of assessors were not involved in these crimes, it was clearly a matter of great concern to all concerned in insurance matters and the innocent majority was anxious to display its integrity. This spirit coincided, in 1940, with wider needs for the establishment of a

professional body the result of which was the formation of the Association of Fire Loss Adjusters.

This was the first formal use of the word adjuster in the context of fire loss claims although average adjusters had been involved in marine claims for a long time and the terms adjuster had seen some use in America. It therefore well served the requirement to identify those members of the new body who were primarily involved in adjusting small claims for the insurance market as a whole. Those assessors who dealt with claims on behalf of the public eventually formed their own association (the Institute of Public Loss Assessors).

There are, in addition, some other bodies serving particular sectors of the market but the background outlined above serves to illustrate the progress of loss adjusting as we now find it practised although the Association of Fire Loss Adjusters was eventually granted a Royal Charter to become the Chartered Institute of Loss Adjusters. By the rules of the institute, to which all members agree to be bound, a loss adjuster acts predominantly on instructions of insurance offices, Lloyd's underwriters, or governmental departments and "must at all times preserve impartiality". This really is the nub of any debate about the relative responsibilities of adjusters and assessors. Whereas the former aspire to complete impartiality between insurer and insured, the latter freely acknowledge that their efforts are for the exclusive benefit of their clients.

The concept of impartiality despite reliance



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on one side for remuneration has both merit and justification even if neither is immediately apparent. Before discussing the point, let me dispense with the notion that loss adjusters are quasi-arbitrators. The essential difference is that an arbitrator considers submissions from both sides before making an award; a loss adjuster, apart from receiving factual information such as details of policy cover from the insurers, receives claim details only from the claimant so as to "adjust" the loss in accordance with policy terms and conditions.

There are certain similarities between loss adjusters and some other professions. For example, quantity surveyors are retained by building-owners/developers to give advice and recommendations on the cost of works. The quantity surveyor, retained and paid by the building's owner, has a contractual obligation in many forms of building contracts which require the quantity surveyor to prepare valuations for payment to the contractor. In practice the contractor, usually by use of surveyors in his own employment, will negotiate with the quantity surveyor and reach an agreement as to the amounts to be included in the valuations. This practice works well and, for the most part, is not regarded as other than totally straightforward and acceptable. Thus the building owner/developer without his own specialised skills, will take the advice of his retained surveyor who will have reached amicable agreement with the party to be paid (the contractor).

All that is not much different from the

position of the loss adjuster. The insurance market does not, of course, always use adjusters; a very large proportion of the total claims experienced are of relatively small value and might be dealt with by an insurer's own claims department. It is usually the larger or more complicated loss which involves instruction of loss adjusters. Thus the insurer in retaining the loss adjuster is seeking impartial professional advice as to the amount of policy liability, and the adjuster will use his negotiating skills to achieve an amicable agreement with the claimant.

It is often argued that he who pays the piper calls the tune — *Point d'argent, point de suisse* in French or, as the Germans say: *Wer bezahlt, hat zu bestimmen*. Yet the delicate position of the loss adjuster dictates that the tune should be of his own, properly considered selection. It is perhaps inevitable that the claimant may feel that the loss adjuster, retained and paid by the insurer, is there to serve the best interest of the insurer and to reduce the claim to the lowest possible amount; indeed it is generally accepted that the loss adjuster, to a limited extent, is the agent of the insurer. In this context the loss adjuster can take decisions on insurers' behalf as to the disposal of salvage, temporary measures in mitigation of the loss, investigations for third party recovery aspects and the like. None of that detracts from the adjuster's ability to be impartial.

The insurance market is highly sensitive to public opinion and good customer relations. It

is not to insurers' liking to have complaints landing on chief general managers' desks about loss adjusters and their attitude to claims. Brokers also have tremendous influence in the placing of business and are very protective of their clients. For both reasons if a loss adjuster was perceived to be in the habit of repeatedly seeking artificially low settlements, then there is a very high risk of his workload disappearing.

In a similar vein, whilst insurers are comfortable with the idea of working with the same loss adjuster for a significant proportion of their claims handling requirements, they would soon suffer discomfort if they perceived a tendency on the part of any one adjuster to habitually recommend unjustifiably high settlements and, once again, the number of instructions could rapidly fall away. The fine balance necessary in an adjuster's performance is therefore clearly identifiable and serves to illustrate why the adjusters, quite apart from professional impartiality, must be seen to be getting it right by both sides and especially by insurers.

There is a further point to be recognised. Traditionally, particularly so far as property claims are concerned, it is the practice of loss adjusters to charge fees related, in some way, to the value of the loss. The technical reasons why this is attractive to insurers need not be discussed here; suffice to say that the collation between a higher loss and a higher fee is instantly recognisable but is overcome by the adjuster's instinct for impartiality.

The position of the loss adjuster, therefore, is that he is appointed by, reports to, and is paid by the insurer whose primary requirement is an impartial recommendation as to the amount of policy liability. Adjusters are frequently asked by claimants if an assessor should be appointed to protect the claimant's best interest. Assessors themselves would argue very strongly that their own appointment is essential on the grounds that adjusters cannot serve two masters but are obliged to act in the best interest of the insurer. From everything above it is clear that such is not the case and that the claimant must decide for himself, on the basis of his own particular circumstances, whether or not an assessor is necessary.

Advice and assistance to claimants, apart from that provided by an adjuster, can take many forms. For example, building damage might require the involvement of architects, surveyors or consulting engineers, while business interruption losses might need the attention of a chartered accountant. Insurance policies cover reasonable professional fees incurred in this way and these days many such professionals are well experienced in helping the policyholder present a claim and may even regard it as not involving sufficient extra work as to warrant an additional fee. The cover for professional fees in insurance policies usually specifically excludes costs incurred in present-

ing the claim. For this reason loss assessor's fees must be found by the insured; although some policies do cover their fees, such cases are very much the exception.

Nevertheless an insured's interests can be well served by the appointment of an assessor, and adjusters frequently find that it can be helpful to conclude a complicated claim with an assessor as opposed to explaining the technicalities of insurance practice to a policyholder who is a layman in insurance matters. It is also a fact that the adjuster has no responsibility for preparing the claim details; it is assumed that policyholders know their own business best and that in suffering a loss they are best able to record the necessary details. Indeed most policies contain a condition that full details and particulars of the claim should be provided by the policyholder to the insurer as soon as is reasonably possible although the precise requirement varies from insurer to insurer.

For a variety of reasons, following a loss, a claimant may not be best placed to assemble these details and although the adjuster would offer every assistance by indicating the form in which the claim should be presented it may well be that the claimant would prefer an experienced assessor or other advisor to do it for him. In this context many brokers offer assistance with claims presentation to their clients, but large losses might take the requirement beyond the broker's available resources.

The adjuster's role in the loss situation goes well beyond merely settling quantum. Apart from internal research of underwriting papers and the like, insurers make no enquiries as to the circumstance of a loss and rely entirely upon the adjuster to ascertain all the facts. Thus for the adjuster to be able to properly report to insurers, he will need to satisfy himself that the material facts on which the policy was issued are accurate. For the sake of efficiency an assessor will probably look at these matters during the early part of dealing with a claim but will not need to go about it quite so exhaustively as will the adjuster.

Further an assessor does not need to be quite so concerned with cause as the adjuster needs to be; a fire started deliberately raises questions about the possibility of fraudulent intent on which the adjuster must report satisfactorily to insurers and which may involve forensic investigations. The assessor's role in questions of under-insurance is reactive rather than proactive whereas an adjuster is bound to satisfy himself that sums insured are adequate and that average does not apply. The adjuster will be more alert to potential recovery aspects related to third party liabilities because the whole of insurers' outlays could be recouped; the assessors will only be interested if his client has suffered uninsured losses.

Although both insured and insurer retain an



interest in salvage, it is the adjuster who will take a more positive role, not least because the assessor will usually take the view that the claim should initially encompass the full value of the damaged items and will be content to allow the adjuster to ensure that salvage realisation is maximised (which must be achieved with the utmost regard to ethics).

Thus, for the most part, loss adjusters and loss assessors have an antagonistic relationship. Nevertheless, in some respects their interests in a claim may converge. For example the assessor, with his client's interest being his prime concern, will not want to see his client's business interests unnecessarily or avoidably damaged by delay in dealing with matters properly.

Equally the loss adjuster will not want to allow delay in dealing with the claim or in having reinstatement undertaken giving rise to an increase in policy liability for business interruption losses. In such circumstances, and there may be others, the adjuster and the assessor will have complementary objectives.

There is one area in which the insured's interests become entwined with those of insurers — the captive insurance company. It

has been suggested that the assessor in acting for an insured group in its capacity as a claimant, can effectively act as the adjuster for the same group in its capacity as an insurer — in the form of its captive. In practice the suggestion is not entirely tenable because the nature of captive insurance companies is such that heavy reliance will be placed on reinsurance in the normal insurance market. In these circumstances reinsurers will invariably need to know that losses have been properly quantified by loss adjusters in the usual way.

In conclusion it is true, a fact that they will themselves freely admit, that loss assessors serve only one master whereas all the available evidence, and the practicalities of their working environment, clearly indicate that loss adjusters can be and are entirely impartial. They will not be told which tune to play. ■

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