

# Anything to **REPORT?**

**Del Sharman**, underwriting manager at Pound Gates insurance brokers, provides an insight into how liability claims may arise and how they should be handled...

## find out more

This is just a brief overview of the complex area of public liability claims. For more information, please visit [hse.gov.uk/riddor](http://hse.gov.uk/riddor) or contact Pound Gates Early Years Business Support Team on 0845 271 3262 or email us at [childcare@poundgates.com](mailto:childcare@poundgates.com)

**A**s a result of the UK's growing 'no win, no fee' culture, nursery owners are seeing more incidents of parents pursuing them for compensation following an incident at the nursery which has caused injury or distress to their child. We often speak to nursery owners and managers who, following an incident at their setting, are unsure of what is required of them from an insurance point of view, whether they would be held liable if a claim was made, and what process their insurers would follow to investigate an incident.

Firstly, it is useful to understand how liability can arise. A nursery has a duty of care to provide a safe and secure environment for its children (and staff, and members of the public coming onto the premises). In the event of an incident at the nursery which causes injury to a child, a parent may decide to take action because they feel that the nursery hasn't delivered on its duty of care. The parent may just ask the nursery for a full explanation of how the incident occurred and be satisfied that an investigation has taken place. They may, however, demand compensation for the

effects of the incident. If they take this route it will usually be with the support of a solicitor and you will receive a solicitor's letter setting out why they feel you are liable.

## First steps

It is important when receiving such a letter that you do not respond to it. Instead, you should pass the letter, unanswered, to your insurance broker for them to provide to your insurer. Your insurer will investigate the incident, decide on the likelihood of the nursery being held responsible at law and either defend the claim or negotiate settlement on your behalf (where liability is accepted). This type of claim would fall under the Public Liability section of your insurance policy.

It is worth remembering that a person has three years after an incident to present a liability claim. However, if the incident occurred whilst the person was a minor (i.e. under 18 years of age) the injured person has up to three years after they turn 18 to bring their claim. For this reason it is essential to immediately notify insurers of incidents with the potential to result in a claim, to give them the opportunity to

gather the information needed to build a defence early. It is also a requirement for certain types of major injuries to be notified to the Health & Safety Executive (HSE) under the Reporting of Injuries, Disease and Dangerous Occurrences Regulations 1995 (RIDDOR). This often leads to the question "When does an everyday tumble turn into a potential public liability claim and the need to notify the HSE?" A full list of the types of reportable injury under RIDDOR can be found at [tinyurl.com/tnriddor](http://tinyurl.com/tnriddor). We would always recommend notifying your insurance broker or insurer of any incident causing concern.

## Investigating a claim

Once notified to the insurer, unless a formal claim has been made by the parent, the insurer is likely to take no action apart from noting their records. However, if a formal claim has been made, or it is felt that one is likely, an insurer may arrange for a claims investigator to visit the setting. They will make discreet enquiries with the management and staff and ask to review documents such as accident books, risk assessments and witness statements. The insurer will consider the claims investigator's report alongside other sources of information, such as previous case law, to reach a decision on liability.

## Utterior motives

Understandably, nursery owners are often concerned that the true motives of a parent when initiating a claim are financial. It may be reassuring to know that the parent (or more commonly their solicitor) has the burden of proof. They must prove that the injury is genuine, that it happened at the setting and that it was caused by the negligence of the nursery. Even then, the true claimant is the child and the parent is only involved because the child is a minor. Any settlement made is made to the child and is held in trust by the court until the child turns 18.

