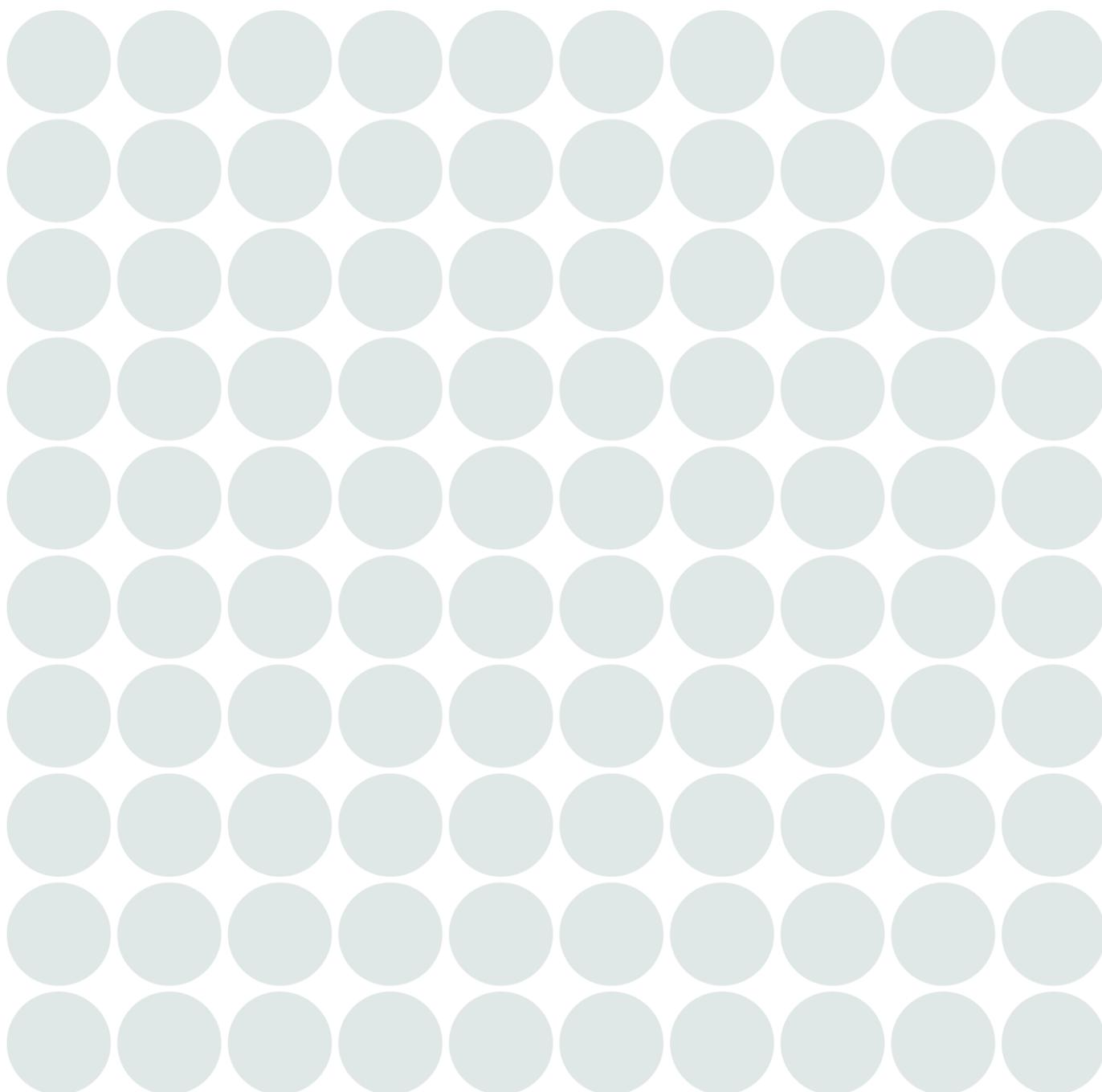


Managing liability risks in a challenging retail environment

And some thoughts on the future of the high street



Challenges on the high street

These are challenging times for all retailers, both small and large. It is not only as a result of an evolving and complex risk agenda, but one that is accentuated by a difficult economic climate and an on-going squeeze on consumer spending.

The risks are diverse. Disposable income has been impacted as spending cuts, structural unemployment and high consumer debt rise. VAT has increased whilst the value of Sterling has decreased, pushing up the cost of imports. Dependence upon international sourcing is also increasing, but so too is the cost of raw materials. The 'traditional' retailing model is frequently changing and the costs of operating stores has increased, leading to a reduced demand for retail floor space. This in turn may exacerbate existing cost pressures, endangering the survival of smaller retailers.

There has been a significant change in consumer expectations, but these are constantly changing also. Free delivery, Wi-Fi hotspots are now basic requirements, as are trust, authenticity and transparency. Behaviour has also changed. Consumers of all ages and backgrounds are online and are mobile. They demand a flexible and responsive customer experience utilising a range of communication channels (e.g. the internet, email, chat, social media, tweets, forums, SMS etc.).

Responding to these risks is problematic and it is easy to see how the management of liability issues can become 'lost'. Whilst focussing on proactive sourcing strategies; judging volumes; responding to the online challenge; providing excellent service; actively managing costs and so on, ensuring the health and safety of your employees and customers alike may be the last thing on your mind – particularly if you are looking to change your retailing model and reduce the number of outlets in your portfolio.

But failing to manage health and safety effectively can have damaging consequences. Not only can it result in enforcement action, prosecution and associated reputational damage, but also spiralling insurance costs as claims frequency increases and associated costs mount. Minimising the potential for accidents and other adverse events to reduce the total cost of risk is key to containing insurance spend. And, should things go wrong, being in a position of strength to defend claims can minimise cost and protect reputation.

Typical causes of liability loss

It has often been said that shops are 'low-risk'

environments and in a sense they are. They do not have some of the complex hazards that you might find on say a construction site or in a foundry. But this is not to say that retail premises and activities do not present hazards to employees, customers and others. Retail premises are diverse, ranging in size, layout and customer footfall. Their locations vary significantly and there are a myriad of products and services sold through a wide spectrum of retail solutions.

At Zurich, we deal with some 40,000 personal injury claims every year. We see a broad variety of risks and receive a complete range of views from our customers about the problems they face in managing health and safety in the retail sector, including the difficulties faced by smaller organisations.

Looking at the types of losses in detail, it is clear that there are certain types that occur regularly in retail premises. They include claims from employees (Employers' Liability) resulting from slips and trips; falls from height; manual handling; workplace transport and being injured by tools or equipment. For customers and other third parties (Public Liability), claims result from slips and trips; falls on the level; being struck by objects or equipment; water damage and defective premises.

Minimising the potential for these events is essential. To do this effectively, a number of principles need to be adopted. Implementing them in a sensible and proportionate manner will help to prevent accidents; drive appropriate performance and – where things do go wrong – provide a basis for the defence of claims. These principles are verifiable by an insurer and apply to both Employers' and Public Liability as this relates to the management of health and safety. Critically, these principles reinforce significant aspects of current statutory requirements. They complement established and accepted guidance prepared by the Health and Safety Executive (HSE). As such, the principles and the framework they underpin are already in place and create no additional burden on any organisation, particularly small or medium sized enterprises.

The key principles include:

- **senior management commitment and leadership** - For most, there should be evidence that senior managers have

recognised and adopted the actions established in the 'joint code' published by the HSE and the Institute of Directors (IoD) – 'Leading health and safety at work'¹. This sets out a number of leadership actions for Directors and others to ensure effective leadership on workplace health and safety matters. It applies to all organisations of all sizes – although further contextual guidance has been provided by the HSE for SMEs² and is relevant in the retail sector

- **the appointment of competent assistance** – Under the requirements of the Management of Health and Safety at Work Regulations³, most organisations are required to appoint one (or more) competent people to assist them in complying with health and safety requirements. The definition of 'competence' will not be the same for all organisations – retail premises are not construction sites! Therefore, competence will be determined by the size; nature of the undertaking; and its risk profile set against the required training, experience and knowledge of those individuals who are to provide the assistance. For some retail premises, sufficient levels of competency may be as simple as having an understanding of relevant current best practice; an awareness of the limitations of one's own experience and knowledge; and the willingness and ability to supplement existing experience and knowledge, when necessary by obtaining external help and advice. Further guidance on this important issue is available from the HSE⁴
- **the adoption of a structured management approach for health and safety** - Applying a structured approach to managing health and safety is not only a legal requirement⁵ for many, but essential in preventing accidents at work. Employers are required to make appropriate arrangements to ensure the effective planning, organising, controlling, monitoring and review of any preventive and protective measures that are put in place. Again, the extent of these arrangements will be determined by the size and nature of the retailer concerned. The most notable and accepted approach, is the one put forward by the HSE in their publication 'Successful health and safety management'⁶

- **the adequacy of general risk assessment** - General risk assessment has been a statutory requirement for over twenty years. Done properly, these risk assessments are the cornerstone of a structured, effective and transparent management approach to the control of retail health and safety hazards. Under the requirements⁷, most organisations are required to complete them to identify the precautions they need to take to comply with the law. Where they employ five or more employees, the risk assessments must be recorded. Of course, risk assessments won't prevent workplace accidents on their own, but if used as a first step to developing appropriate safe systems of work, then significant steps can be taken to prevent them. Similarly, when faced with a claim, being able to provide evidence of a 'suitable and sufficient' risk assessment is just one element of a defence – albeit an important one.

Practical hazard management – a worked example

With these key over-arching principles in place, hazards can be managed effectively in a structured manner. Take, for example, slips and trips. These are the most common cause of workplace accidents. They affect just about every retail establishment with sales assistants and customers being most at risk. They are the most common cause of public liability claims for retailers. At Zurich, slips and trips account for 21% of all liability claims we handle, with 95% of major slips and trips resulting in broken bones – although other injuries can result.

Key considerations for prevention include:

- Identification of any specific regulations or guidance that may apply in your specific circumstances. Useful resources are available at www.hse.gov.uk/slips/index.htm
- Completing any necessary risk assessments to determine what needs to be done (if anything) to comply with the requirements you have identified for preventing slips and trips. In most circumstances, assessments should be recorded, reviewed and updated (as necessary)
- Where the slip resistance of flooring is a specific issue consider a more detailed assessment using the HSE's Slips Assessment Tool (SAT) available at

www.hse.gov.uk/slips/sat/index.htm

- Ensuring that risk assessments are completed by someone who is competent. Where employing the services of a health and safety consultant, they should appear on the Occupational Health and Safety Consultants Register (OHSCR), further information available at www.oshcr.org
- Implementing and maintaining the precautions identified as being necessary by any risk assessment (see below)
- Ensuring that employees are appropriately consulted on the required precautions
- Providing (and recording details of) adequate information, supervision and training for employees relating to these precautions and any associated responsibilities. The level and detail of this should be identified by any risk assessment
- Completing and retaining any records required relating to risk assessment, maintenance, inspections and other checks
- Recording the arrangements and responsibilities as part of the health and safety policy or supporting documentation where appropriate and review these where necessary.

Typical precautions for retail premises might include the following:*

- Providing and maintaining suitable floors, walkways, steps, ramps, handrails and lighting
- Selecting floor surfaces and coverings to meet the needs of store environments, with particular emphasis on increasing the slip resistance where necessary
- Using matting at entrances and around certain retail areas (e.g. fruit, flowers etc.) and other precautions to minimise walk-in floor contamination
- Improving layouts to permit clear vision and safe access, particularly around display racking
- Identifying changes in levels on floors and stairs

- Demarcating pedestrian walkways, areas for the safe storage of equipment and other materials
- Adopting good housekeeping standards, particularly during stocking up and sales periods where there is generally less space, with the potential for more merchandise on the floors and an increased footfall
- Adopting good spill procedures to prevent floors, stairs and other areas becoming slippery
- Using the right cleaning methods for the type of floor, excluding pedestrians until the work is complete
- Removing snow and ice from footpaths, steps and car parks promptly
- Implementing a robust, regular and documented system of inspection of floor surfaces, carpets, matting etc. through formal floor walks and rectifying any identified defects promptly
- Maintaining shopping trolleys properly
- Maintaining and inspecting escalators in accordance with manufacturers' instructions
- Requiring staff to wear suitable footwear
- Providing training and information for retail staff on general health and safety issues including the prevention of slips and trips in-store; any 'clean-as-you-go' policy, picking up stock, keeping walkways clear, removing obstructions or reporting defects etc.
- Implementing formalised accident reporting and investigation procedure – including the timely collation of supporting evidence.

*This list is not exhaustive.

Defending claims

Adopting the hazard management approach set out above will go a long way in preventing accidents and other adverse events. However, should things go wrong, it will also assist in the defence of any claims should these arise – particularly if these appear to be fraudulent.

However, of critical importance will be the ability to evidence this approach in relation to a specific hazard in question. This will rely heavily on being able to provide:

- Information gathered at the scene of the accident detailing the injured parties, extent of injury, the circumstances (time, location, environmental conditions etc.); the layout of the area (including any sketches/photographs); witnesses statements; CCTV etc.
- Investigation documents that may include accident books, internal accident report forms and investigation reports; first-aid reports and records; RIDDOR report forms and related documents; any Enforcing Authority correspondence relating to the event; minutes of any meetings at which the event or related matters were discussed etc.
- Relevant documents drafted to meet specific health and safety requirements and as identified in the hazard management approach e.g. risk assessments; records of maintenance, inspections and other checks; records of information, supervision and training provided; policy documentation etc.

The future of the high street

British High Streets are under threat primarily because of changing customer behaviours. To understand what the issues are and some of the proposals for revitalising them see the following publications which should be of interest:

1. The Government has set up a 'Future High Streets Forum' which advises government on the challenges facing high streets and helps to develop practical policies to enable town centres to adapt and change.
2. Southampton University has a project underway looking at the future of the High St which can be accessed at www.highstreetfutures.co.uk
3. The Government published a report in December 2011 'Understanding High St. Performance' produced by Genecon which is worth considering. It can be accessed at <http://www.bis.gov.uk/assets/BISCore/business-sectors/docs/u/11-1402-understanding-high-street-performance.pdf>

4. A site worth looking at is that of RIBEN (Retail Industry Business Engagement Network) <http://www.riben.org.uk/>
5. Another report worth looking at is one produced by Experian in September 2012 called 'Town Centres Futures 2020'. This report can be downloaded from the Experian website

¹Leading health and safety at work, Health and Safety Executive and the Institute of Directors, INDG 417

²available at www.hse.gov.uk/leadership/smallbusinesses.htm

³The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 7)

⁴Getting specialist help with health and safety, INDG 420 and the HSE Statement to the external providers of health and safety assistance, HSE

⁵The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 5)

⁶Successful health and safety management, HSG 65, HSE

⁷The Management of Health and Safety at Work Regulations, SI 1999/No. 3242, (Regulation 3)

For more information please contact your normal Zurich contact.

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