



# After The Event Insurance Policy Guide





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# Introduction

Box Legal was formed in 2004 by an experienced team of solicitors who had spent many years recovering legal compensation for a wide range of clients.

The team identified the key elements of a new type of After The Event insurance which would improve on the ATE policies then available, and would appeal to both solicitors and their clients. At its heart lay the belief that solicitors, not insurers, should conduct their own litigation and make their own decisions.

Over the years which followed, that belief has been vindicated, and today the ClaimSafe policy is used by a large number of solicitor firms of all sizes, to support many different types of compensation claim. Over 600,000 ClaimSafe policies have been issued to date, and Box Legal's product range continues to develop and expand.

Its core vision however, remains unchanged.

# ClaimSafe Policies

Box Legal's ATE policies cover 2 main areas:

## **Personal Injury**

These policies are specifically designed to take account of the Qualified One-way Costs Shifting (QOCS) regime which applies to personal injury claims. Within this category are policies tailored to motor accidents, public liability, noise induced hearing loss, employer liability claims, product liability, holiday sickness, clinical and dental negligence claims as well as many other types of personal injury claim. The policy terms for our personal injury policies are set out later in this brochure.

## **Claims without QOCS Protection**

These are policies for a range of volume financial compensation claims where Qualified One-way Costs Shifting does not apply, for example:

- Financial mis-selling claims – including claims relating to Payment Protection Insurance (PPI), mortgage mis-selling, mortgage miscalculation, timeshare loans and sales, unlawful commission charges, payday loans, etc.
- Housing Disrepair claims
- Defective Cavity Wall Insulation claims
- Claims relating to tenancies, leaseholds and flight delays
- Japanese Knotweed and other property nuisance claims

The policy terms for these claims are also set out later in this brochure.

In addition we cover many other types of claim not listed here, and we also have facilities to quickly develop products tailored to new situations, so please contact us to discuss any specific requirements you may have.

The common element in these claims is that solicitors normally deal with them in volume. This allows success levels to be discussed and agreed at the outset, with premiums reflecting the firm's likely overall performance. The result is that the focus is shifted away from individual cases and towards overall outcomes, enabling policy reporting and administration to be kept to an absolute minimum.

You'll find it's a refreshing approach that enhances your litigation handling.

# Working with Litigation Funders

We have been working closely with various litigation funders over a number of years and for some we are their preferred ATE provider. Lending per claim for disbursements and/or work in progress, is a growing area as solicitors seek new ways to finance work and expansion. We can put you in touch with the lenders we work with, so that you can finance your cases including personal injury claims, housing disrepair work, financial miss-selling (including PPI/Plevin claims), SIPP claims and many more.

If you are already working with a funder but you are seeking a different ATE provider, then please contact us - you may well find our policies more adapted to your needs and our premiums more competitive.

# Personal Injury Cover

## QOCS - What is Covered

If a personal injury claim is unsuccessful, the ClaimSafe policy will cover both adverse costs and your own disbursements.

It is important to remember that the disbursements you incur on lost and abandoned cases are a major expense for your business. In the last 15 years they have formed more than 41% of the value of all claims paid by the ClaimSafe policy.

In particular, the Claimsafe policy allows you to instruct Counsel on a traditional hourly rate basis – the policy will pay Counsel's fees if you lose. This reduces the overall charge to your client, because without the policy, you would normally need to instruct Counsel on a "No win, no fee" agreement, and Counsel's success fee would be paid out of your client's damages when you win. If Counsel is involved, this is a major saving.

## QOCS – When Cover Applies

- When your client's claim is unsuccessful. Your own disbursements will be paid. (Due to QOCS, there will probably be no adverse costs liability).
- Your client fails to recover more than the defendant has previously offered (fails to "beat a Part 36 offer").
- You make an unsuccessful interim application and, as is normal, costs are awarded against your client.
- Costs are awarded against your client as a result of an unsuccessful pre-action disclosure application.
- The defendant obtains an order under Section 44.12 of the CPR allowing it to set off its costs against the costs awarded in your client's favour – the policy will pay the defendant's costs so they will not be deducted from your costs.
- Either party appeals and costs are awarded against your client – Rule 52.9A.
- Detailed Assessment costs are awarded against your client.
- QOCS is dis-applied because:

- The Court considers there were no reasonable grounds for bringing the proceedings \*
- The proceedings were an abuse of process \*
- The claimant's conduct of the proceedings was likely to obstruct a just outcome \*

*\* Provided the client has acted within your advice, and there was no negligence on your part.*

- Part or all of your client's claim is for someone else's benefit eg. a credit hire or credit repair claim.
- Part of the claim is for something other than damages arising out of personal injury or death (provided it is an item included in the policy cover).

#### **Not Covered:**

- Where your client has been fundamentally dishonest, although your disbursements may be covered on an ex gratia basis.

#### **Additional Cover:**

For a small extra premium, you can also obtain a range of other benefits ("Additional Cover") which protect against a shortfall in your client's damages or provide cover for some of your own costs and/or for your marketing expenses if a claim fails.

Details can be provided upon request.



# Retaining Personal Injury Clients

## Comparison with BTE Policies

The ClaimSafe personal injury policy is intended to offer superior cover to any Before The Event (BTE) policy your client may have, so that you can sensibly advise your client not to utilise their BTE policy. This is important to you because if your client uses their BTE policy they will probably have to instruct alternative solicitors on the BTE provider's panel, rather than your firm.

Achieving a superior cover is not straightforward because there are many different BTE policies in existence, and their terms change from time to time, so a client's BTE cover must always be checked, but nevertheless, a BTE policy is unlikely to include:

- a) situations where QOCS cover is disallowed (see the 3 asterisked items in the above list) or
- b) the Additional Cover benefits (see also above)

so you may be able to advise your client that using their BTE policy constitutes a riskier course of action than instructing your firm under the protection of a ClaimSafe policy.

# Types of Personal Injury Policy

We can arrange ATE policies for the following types of personal injury claim:

## **Motor Accidents**

**Occupier Liability & Public Liability** (Slips and Trips in private and public areas)

**Employer Liability** (Accidents at Work; Military Claims; Stress Claims)

**Industrial Disease** (Noise Induced Hearing Loss; Repetitive Strain Injury; Asbestosis; Occupational Asthma; Mesothelioma; Occupational Irritant Dermatitis)

**Clinical Negligence** (including Mis-diagnosis and Wrongful Birth Claims) \*

**Cosmetic Procedure Claims** (including claims against both clinics and beauty salons) \*

**Dental Negligence Claims** \*

**Food Poisoning & Holiday Sickness**

**Product Liability** (including Medical Implants)

**Injuries Caused by Animals**

**Accidents Occurring Abroad**

**Serious and Catastrophic Injuries** (arising from the above)

\* Certain types of policy such as those asterisked above and policies covering Defective Medical Product claims, are not automatically available to all panel members. If you are interested in requesting policies for these types of cases, please ask.

The pages below deal with non-personal injury claims which do not benefit from QOCS protection such as claims for Financial Mis-selling, Housing Disrepair, Defective Cavity Wall Insulation and other similar claims.

# Financial Mis-selling

We offer legal expenses policies for a wide range of financial mis-selling claims including claims arising out of:

- **Payday loans**  
Failure to assess the borrower's ability to repay the loan; wrongful encouragement to take further loans; excessive interest charges; excessive default penalties.
- **Payment Protection Insurance or 'Plevin' Claims (PPI)**  
The sale of insurance policies; providing policies whose terms at all times excluded the policyholder.
- **Excessive commission or 'Plevin' Claims**  
Recovery of undisclosed commission on policies and loans; setting aside entire transaction where undisclosed commission is exorbitant - "Plevin" claim.
- **Mortgage mis-selling**  
Recommendation of a mortgage with repayments which at the time, the borrower could not afford; recommendation of a mortgage running beyond the borrower's retirement age; other recommendations in breach of FCA rules.
- **Mortgage miscalculation**  
Recovery of overpaid interest and other charges over a number of years.
- **Timeshare sales and loans**  
Failure by a broker to advise on risk of re-mortgaging UK home to finance purchase of overseas property; failure to advise on risk of relying on income from overseas property; involvement in fraudulent timeshare sales/properties never built.
- **Self-Invested Pension Plan (SIPP)**  
Incorrect (and often fraudulent) advice to transfer a SIPP into poorly performing/non-performing/dubious assets.
- **Car Finance Loans**  
Failure to assess affordability; Excessive interest charges or add ons.

The policies can be used for small, fast or multi-track claims. Premiums are usually charged as a percentage of the damages recovered at the end of the case although fixed premiums are also available. Cover must be purchased prior to formally notifying the defendant of the claim. Solicitors must purchase policies on a regular basis and have a fee earner who specialises in these types of claims.

# Housing Disrepair

Housing disrepair claims arise when the condition of a rented house or flat (or its common parts), has deteriorated from when the tenancy began. The rental may be with a private landlord or through social housing.

In addition to a physical deterioration, the property may suffer from infestation, mould, broken services or gutters – i.e. anything that prevents a tenant from being able to live normally in their home. The tenant is entitled to repairs and compensation. There can also be an element of personal injury if the disrepair has caused an injury or sickness e.g. asthma.

Housing Disrepair claims do not normally have the benefit of Qualified One-way Costs Shifting, and the policy covers this adverse costs risk. Any related claim for poor health arising out of the disrepair (which would be covered by QOCS) is also covered by the same single policy.

The policy can be used for small, fast or multi-track claims, and the premium is a fixed monetary sum (rather than a percentage) which is fully deferred until damages are recovered.

# Property Claims

These include claims for faulty cavity wall insulation, Japanese knotweed infestation and solar panel installations. All of these types of claim have grown in recent years.

- **Cavity Wall Claims**

Can arise where a property was unsuitable for cavity insulation, or the insulation was incorrectly installed. Problems tend to occur within the first 2 years of installation and normally consist of the cost of removing the insulation and correct reinstallation if that is appropriate. Claims tend to range between £8,000 and £25,000. Identifying viable defendants can often present difficulties.

- **Japanese Knotweed Infestation**

Claims may exist where Japanese Knotweed has spread from a neighbouring property or if a surveyor failed to spot identify an infestation during a full structural survey carried out before a property was purchased. Quantum can often be high as claims will generally include a diminution in value. Problems typically relate to proving the source and spread of the knotweed.

- **Solar Panel Installation Claims**

Clients may have been persuaded to purchase solar panels, often on finance, based on misrepresentations from salespeople. Often this includes reference to energy generation levels for the south east of England in particularly sunny periods which would not apply to other parts of the country at other times. Claims can include interest which has been paid, and sometimes the cost of the entire installation. Many of the installation companies and salespeople are no longer trading and so claims tend to be made against finance companies, or large banks.

Our policies are available for either fast or multi-track claims against viable Defendants with either the ability to pay any damages awarded or with insurance available to pay a claim.

We offer staged premiums as well as premiums based on a percentage of the claim, deferred until damages are recovered.

# Policy Procedures

## Policy Requests

Policy request procedures are extremely straightforward - you can request policies directly from our website's secure area by entering some basic claim details or use your case management system to send the data to us automatically. Any bespoke or top-up policy requests can also be submitted via our website. All policy requests will receive an immediate acknowledgement and cover normally commences from the date of the request.

## Cancellations

ClaimSafe policies can be cancelled on a number of grounds, so you have the assurance that your client will not need to pay for a policy which is not required.

Cancellations are permitted where:

- Your client ceases to provide instructions or does not wish to proceed with their claim.
- You consider that prospects of success have fallen below 51%.
- BTE is discovered within 3 months of policy purchase, and the BTE provider has confirmed that you can act under their policy (you just need to provide some brief details of the BTE policy).
- Your client requests a cancellation within our 14 day cooling off period.

# The Premiums

We can supply premium details for any of the ClaimSafe policies mentioned in this brochure.

For many policies we can offer you a choice between single or staged premiums, and between a monetary or percentage premium (calculated as a percentage of the damages your client recovers). You can therefore select the premium structure which best suits your clients.

We are also able to tailor premiums to the success rates of your firm and the type of claim you are handling. In this way, firms with a good track record are able to benefit from lower premiums.

Please let us know which type of policy and which premium structure you are interested in, and we will send you details.

# Premium Payment

Policy premiums are deferred until your clients' damages are recovered and generally deducted by you from your clients' compensation.

If you have selected a staged premium we will ask you to confirm the stage which the case has reached. Similarly, if you have selected a premium which is calculated as a percentage of the damages recovered (rather than a fixed monetary sum) we will ask you to confirm the total damages recovered. There is an online facility "Calculate Premium" which allows you to input the above information and receive an up-to-date calculation of the premium. This is useful if you are involved in damages/costs negotiations.



# Administration & Claims

## **Our Website**

Our website allows you to log in at any time and access a wide variety of information. You can view and amend the information we hold on a particular policy, or update the policy if it needs to be cancelled, proceedings have been issued etc. You can also download Excel spreadsheets which will give you information about all of your firm's policies, in a variety of report formats.

## **Administration and Reporting**

Our administration and reporting requirements have been deliberately kept to a minimum. ClaimSafe policies have been designed to provide the maximum flexibility of choice with the minimum of procedures and restrictions. Normally, throughout a claim, your only reporting requirement is simply to let us know if and when court proceedings have been issued, and there is generally no need to obtain the insurer's authorisation in advance of any step.

## **Making a Claim on the Policy**

Claims are electronically submitted to the insurer on a single page form available on our website. Usually it is simply a matter of entering the figures being claimed and attaching disbursement vouchers. Over the last few years the average time from submission of a claim form to payment of the claim has been just over 7 days. It is here that the ClaimSafe philosophy pays dividends: your firm's overall success rate is monitored rather than an examination of individual policy claims. We believe that in the long run this makes sense, and is certainly welcomed by our panel firms, some of whom have been with us since we began in 2004!

# Contact Us

For further information including details of premiums, or to arrange for an on-line or face to face meeting, please contact us:

**Telephone:** 0870 766 9997

**Email:** [info@boxlegal.co.uk](mailto:info@boxlegal.co.uk)

**Live chat:** On our website at [www.boxlegal.co.uk](http://www.boxlegal.co.uk)



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