



Specimen coursework assignment

M96 – Liability insurances

The following is a specimen coursework assignment including questions and indicative answers.

It provides guidance to the style and format of coursework questions that will be asked and indicates the length and breadth of answers sought by markers. The answers given are not intended to be the definitive answers; well-reasoned alternative answers will also gain marks.

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Coursework submission rules and important notes

Before you start your assignment, it is essential that you familiarise yourself with the information in the *Coursework Support Centre* available on www.revisionmate.com

Please note the following information:

- These questions must not be provided to, or discussed with, any other person regardless of whether they are another candidate or not. If you are found to have breached this rule, disciplinary action may be taken against you.
- Important rules relating to referencing all sources including the study text, regulations and citing statute and case law.
- Penalties for contravention of the rules relating to plagiarism and collaboration.
- Coursework marking criteria applied by markers to submitted answers.
- Deadlines for submission of coursework answers.
- You must not include your name or CII PIN anywhere in your answer.
- The total marks available are 200. You need to obtain 120 marks to pass this assignment.
- Your answer must be submitted on the correct answer template in Arial font, size 11.
- Answers to a coursework assignment should be a maximum of 10,000 words. The word count does not include diagrams however, it does include text contained within any tables you choose to use. The word count does not include referencing or supplementary material in appendices. **Please be aware that at the point an assignment exceeds the word count by more than 10% the examiner will stop marking.**

Top tips for answering coursework assignments

- Read the Learning Outcome(s) and related study text chapter for each question before answering it.
- Ensure your answer reflects the context of the question. Your answer must be based on the figures and/or information used in the question.
- Ensure you answer all questions.
- Address all the issues raised in each question.
- Do not group question parts together in your answer. If there are parts (a) and (b), answer them separately.
- Where a question requires you to address several items, the marks available for each item are equally weighted. For example, if 4 items are required and the question is worth 12 marks, each item is worth 3 marks.
- Ensure that the length and breadth of each answer matches the maximum marks available. For example, a 30-mark question requires more breadth than a 10 or 20-mark question.

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The coursework questions link to the Learning Outcomes shown on the M96 syllabus as follows:

Question	Learning Outcome(s)	Chapter(s) in the Study Text	Maximum marks per answer
1	Learning Outcome 1	Chapter 1	10 marks
2	Learning Outcome 2	Chapters 2 & 3	20 marks
3	Learning Outcome 3	Chapters 4 & 5	20 marks
4	Learning Outcome 4	Chapters 6 to 8	20 marks
5	Learning Outcome 5	Chapters 8 & 9	20 marks
6	Learning Outcome 6	Chapters 8 & 10	20 marks
7	Across more than one Learning Outcome	Across more than one chapter	30 marks
8	Across more than one Learning Outcome 8	Across more than one chapter	30 marks
9	Across more than one Learning Outcome	Across more than one chapter	20 marks
10	Across more than one Learning Outcome	Across more than one chapter	10 marks

M96 specimen coursework questions and answers

Question 1 - Learning Outcome 1 (10 marks)

You are an insurance broker and one of your clients is a furniture manufacturer with one large factory. Over the years, the company has made improvements to its risk management and the factory has recently been extensively modernised. It has also changed the products it makes and the manufacturing process.

You are looking to arrange the renewal of the client's liability insurances and are considering an alternative insurer. You are preparing a full broking presentation, which includes a detailed five-years claims history.

- (a) Identify, with justification, **two** limitations of the claims history. (4)
- (b) Explain **three** ways in which you could present the claims history for this client to a new underwriter in order to obtain the best terms for your client. (6)



Answer to Question 1 (Learning Outcome 1)

(a) Two limitations of the claims history in this case are:

- The change in products and procedures. Although I am able to submit a full five-year history of the claims, it will mainly show claims resulting from the old products and procedures. The insured may have a poor claims history which emanated from poor procedures, or may have resulted from poorly designed products. The claims history may not clearly show if and how the risk improvements have improved the claims history.
- The influence of the extensive modernisation. As it is only recent, it will be difficult to demonstrate with any factual information, the positive effect this has had on claims, or may have in the future. I could highlight any historic claims that have resulted from the previous layout. The modernisation has likely improved the working environment at the premises making it safer for employees, as well as visitors. There may be fewer accidents as a result. There may also be modernised equipment that satisfies work equipment regulations.

(b) As the broker, I will be required to present the claims history in the most positive way possible in order to secure the best terms for my client. My presentation must be honest and truthful, but must highlight all the positive steps the client has taken to minimise risk. Three ways I could present the claims history are therefore:

- 1) Identifying any claims emanating from products which are no longer sold – there would be little point in showing the underwriter a claims history showing high frequency claims emanating from furniture products which the insured no longer manufactures, or they manufacture but it has been significantly altered to improve safety. Highlighting the insured's ability to review and respond to such risks, will also show them in a positive light. From the claims history, it will be possible to identify the date when changes were made and show what effect this has had on claims (if indeed this has been positive).
- 2) Advise the underwriter how the modernisation has improved the work environment – as the broker it may be worth providing photographs or even arranging a visit to the premises to show what improvements have been made to the work environment. It may be that the whole building interior has been modernised, with non-slip floors and clear walkways, reducing the possibility of accidents. It is noted that the modernisation has been recent so the claims history cannot prove that the modernisation will reduce claims, but you will be able to demonstrate how the environment has improved and how accidents that previously occurred, would no longer.



- 3) Identify the reasons for the changes – the reasons for the changes are likely to be that the Insured is constantly reviewing their risk assessments and considering their claims history and they therefore took steps to minimise further claims. As the broker, I would say that the client is very pro-active in regards to safety and has a risk manager employed specifically for the task who continually looks for ways to reduce the risk. I would highlight the point that the client takes risk management very seriously and the claims history can (hopefully) demonstrate a decline in claims following the changes.

Question 2 - Learning Outcome 2 (20 marks)

You are an underwriter for a liability insurer which specialises in hotels and restaurants of all types and sizes. One of your policyholders is a UK-based budget hotel chain.

The budget hotel chain is considering the viability of buying a group of luxury hotels and restaurants, LWP plc, which operates throughout the UK. LWP plc has the following features at each of their hotel & restaurant locations:

- Indoor swimming pools.
- Saunas, Jacuzzis and steam rooms.
- Gymnasiums.

Before any decision is made to purchase LWP plc, the budget hotel chain conducts due diligence to identify the operating costs. LWP plc's broker has asked you to consider any changes required to the current liability insurance programme.

- (a) Explain, with justification, **two** underwriting considerations you would take into account when underwriting the liability risks associated with LWP plc compared to the existing business. (12)
- (b) Explain, with justification, **four** underwriting factors that would be of importance to you in determining the proposed premium rate for LWP plc compared to the existing business (8)

Answer to Question 2 (Learning Outcome 2)

(a) Two underwriting factors I would consider are:

- Types of risks - I would look at the current portfolio to look at what luxury hotels we had on the existing book of business. This would assist in determining what risk factors are involved and whether there were any increased hazards to be aware of. As a specialist in this industry, it is likely I will have a lot of luxury hotels



on the book so I could consider their performance compared with a similar sized risk in a budget chain.

As in the scenario, luxury hotels such as LWP plc tend to provide extra services. We are aware that LWP plc have facilities including indoor swimming pools, saunas, Jacuzzis, steam rooms and gymnasiums. Each of these facilities carry with them extra risks compared with a budget hotel chain. I would undertake further research in to LWP plc either via the broker or from information obtained on the internet. Significant information would be available on sizes of the hotels, locations and others specific features. I would use this information to compare with similar hotels on my portfolio. I could then consider what premium and terms I wish to offer.

- Claims history of luxury hotels – I would be interested in reviewing the claims histories of the luxury hotels I have on the book and trying to find hotels of a similar nature to LWP plc. This would help me predict the likely future claims that would be received if the hotels were purchased and I took the risk on. I would likely compare the number of beds with the resulting claims history so that I could try and forecast the rate I may offer. The claims history of other similar businesses would also show any particular areas of concern. For example, there may be high frequency losses resulting from the onsite indoor pools, such as slips at the pool side. I could consider any special terms to be applied in respect of that risk.
- (b) Four underwriting factors that would be of importance in determining the rate for the new group are:
- No of rooms/beds – hotels are often rated according to the number of beds, as this is a confirmation of the size.
 - Premises – luxury hotels may be in a better location in terms of the property risk, but in terms of liability they are likely to have increased hazards due to the extra services, size of the grounds etc.
 - Staff numbers / wage roll – there will likely be increased staff numbers as luxury hotels wish to provide a better and more attentive service. This may include an increase in kitchen staff, waiters, porters, reception staff etc. The employers' liability risk would therefore be increased for such a risk.
 - The level of indemnity requested and size of any excess – the level of indemnity can vary particularly with public liability policies, where it is usually anything from £2million upwards. On employers' liability policies, the industry standard is to provide a £10 million limit of indemnity. The rate charged will vary accordingly to reflect the limit requested. The proposer may also be willing to accept retention of an excess. This may encourage underwriters to reduce the rate.



Question 3 - Learning Outcome 3 (20 marks)

You are the claims handler for an employers' liability insurer. You receive a claim from a solicitor alleging their client was injured whilst working for your policyholder, who is a farmer of wheat and other crops. The policyholder has been Insured with you for five years.

You investigate the situation and establish the following:

- The farmer had asked a self-employed contractor, who repairs and services farming machinery, to assist him on the farm.
 - The contractor was operating the farmer's combine harvester, on which the farmer provided some guidance.
 - The farmer did not check the experience of the contractor, as he assumed that the contractor had sufficient experience from his role.
 - The contractor's hand became trapped in the combine harvester and he sustained significant injury.
 - Subsequently, the Health and Safety Executive (HSE) attended the scene of the injury and issued a prohibition notice on the farmer for use of the combine harvester.
 - The incident occurred eight months prior to the claim being made. The policyholder did not notify you at the time as he did not think he would be held liable.
- (a) Explain, with justification, whether the contractor has a valid claim under the farmer's employers' liability policy. (8)
- (b) Explain, with justification, **two** potential breaches of workplace legislation that the solicitor may put forward to the insurer to justify the claim. (8)
- (c) Explain, with justification, **two** further actions the HSE could take in addition to issuing the prohibition notice. (4)

Answer to Question 3 (Learning Outcome 3)

- (a) In law, there is a four-point test to confirm whether a person will be deemed an employee. This includes who has power of election, whether they are remunerated, who has control and who has power of suspension (CII study text, M96 Liability insurances, 2018). The most significant of these is whether the 'employer' had exercised control over the activities of the 'employee'. In this case, we shall need to consider whether the farmer exercised control over the contractor. It seems in this case that he did have control as he showed the contractor what to do and likely requested him to use the combine harvester to do the harvesting. The contractor is likely to be deemed an employee by law.



In order to determine whether he would be considered an employee under the policy, we would need to refer to the policy wording. The policy wording defining employee is usually very broad and much wider than the legal definition of employee. Policies generally cover full time paid workers, agency workers, volunteers, trainees, labour only sub-contractors etc. Policies can vary but they will all contain a list of what they define as 'employee'. The policy will also usually cover 'self-employed persons performing work under a similar degree of control and direction by the insured as a person under a contract of service' (CII study text, M96 Liability insurances, 2018). If the farmers' policy has similar wording, therefore, I consider that the contractor will have a valid claim under the employer's liability policy for the farmer.

Another consideration that will need investigating is late notification. The policy will usually have a general condition that claims are notified within a 'reasonable' time, or within a specific time. We should note that employers' liability insurance is compulsory, so exclusions and conditions cannot be used by Insurers to avoid settling valid claims by employees. They may have a further condition advising that in the event that conditions have not been complied with, they can seek recovery from the Insured upon conclusion of the claim.

In this instance, the contractor has clearly suffered injury which the farmer has not reported for eight months. The farmer states that this is because they did not think they were liable; however, the condition will usually state that they should report 'any incident which may give rise to a claim'. The insurer will therefore have to consider whether the farmer has complied or not.

It will usually depend on whether the condition is a condition precedent, which means that the Insurer does not need to show prejudice. If it is not a condition precedent, the Insurer will need to show that there has been prejudice, i.e. whether evidence is still available and/or whether witnesses are still available.

As stated previously, this condition will not hamper the contractor's right to claim under the employer's liability section of the policy, but may affect any rights of recovery the Insured may have against the farmer.

(b) Two potential breaches of workplace legislation are:

- Potential lack of training – we are aware from the scenario that the contractor appears to only have recently commenced work for the farmer. Some guidance was provided, but it appears that the farmer relied on his assumption that the contractor was experienced. This was on the basis that he repaired and serviced similar equipment in his own business. It is not known whether he had experience in working with this specific combine harvester. Under the Health & Safety at Work etc. Act 1974. and also under various other regulations including the Provision and Use of Working Equipment Regulations (PUWER) 1998, employers are

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responsible for ensuring that employees receive the correct training and guidance and are competent. It will be for the Court to decide whether the 'guidance' given to the contractor was sufficient, but given the circumstances, I think it is likely that they will conclude it was not sufficient and the farmer is in breach of safety regulations.

- Lack of guarding on machinery – under the PUWER 1998, there is a requirement to prevent access to dangerous parts of machinery. This is usually done by having a guard in place to cover any moving parts. However, if this cannot be done, then full training and instruction should be provided. The contractor should have been advised what to do in the event of a blockage. It is apparent from the circumstances that his hand has come in to contact with dangerous parts and therefore, it is assumed that there was no guarding in place, or the guarding was not sufficient. This may be in breach, especially as there was likely insufficient training.
- (c) Following the issue of the prohibition order, the HSE will likely undertake further investigations in to the incident and will request further information from the farmer. They may invite the farmer to an interview under caution in order to discuss the method of working and the cause of the incident. They will also collect any relevant evidence or documentation and discuss this with the farmer.

Following investigations, they will decide whether the farmer has breached health & safety legislation and whether they have a sufficient case to prosecute the farmer. The HSE have the power to fine the farmer or even, if the breach is very significant, to imprison them. Fines are currently increasing in value and can have significant effects on small businesses. The HSE will decide on the significance of the breach and also the impact of the injury when deciding what further action to take.



Question 4 - Learning Outcome 4 (20 marks)

You are a public and products liability underwriter for an insurer. You are considering the renewal of one of your policyholders, a public school. The school is attended by 1,500 pupils from the age of 5 to 18 years old. The parents of the pupils regularly visit the school for a range of social events, including fundraising.

The school commissioned a building contractor to conduct a major refurbishment and building programme, to take place during the summer break.

During the next school term, two pupils were seriously injured in separate incidents, as a result of faulty installation of floor tiles by the building contractor. The parents of these pupils have made claims against the school for the injury sustained by their children.

- (a) Explain, with reference to the relevant legislation, the liability of the school and the liability of the building contractor. (8)
- (b) Explain, with justification, **four** significant underwriting considerations you would take into account when underwriting the liability risk for the school. (12)

Answer to Question 4 (Learning Outcome 4)

- (a) In order to consider the liability of the school and of the contractor, I would review the Occupiers' Liability Act 1957. I say the 1957 act rather than the 1984 Act, as the latter relates to trespassers. In this case, it seems that the injuries were to visitors rather than trespassers, so the 1957 Act applies.

The school would likely be deemed an occupier (CII study text, M96 Liability insurances, 2018) of the premises as they are responsible for the daily management of the premises and invite pupils and others on to the premises. As occupier, they have a duty to ensure that visitors are 'reasonably' safe for the purpose of their visit. It should be noted that an occupier must consider that children are generally less careful than adults. The school in this case must therefore be responsible for ensuring that any work done on the premises, especially during school hours is carried out with due care and safety.

In relation to contractors under the Occupiers' Liability Act 1957, the occupier (i.e. the school in this case) must ensure that any construction or maintenance work is undertaken by a competent contractor. This would likely mean checking that the contractor employed had good references and completed works safely and to a high standard. The school would also need to check the contractors risk assessments and method statements to ensure they were in place and suitable for the task.



In this case, we know that the incidents occurred due to faulty installation of floor tiles. We do not know whether it was obvious that the installation was faulty, or whether the school carried out any inspections to check the work once it was done. If the school made reasonable checks and did not notice any issue, it may be possible to redirect any liability to the contractor on the basis that they were the employed 'expert'.

Under the Sale and Supply of Goods Act 1994 (CII study text, M96 Liability insurances, 2018), the contractor has a duty to undertake all works with due care and skill, so they should have made sure to do this. If the works were faulty, then it would be possible to redirect any claims to the contractor or their insurers.

It is possible that both parties are deemed to be liable as they both have duties under legislation. Both will need to provide evidence that they acted reasonably to ensure the safety of visitors to the school.

- (b) Four significant underwriting factors I would take in to account when underwriting the liability risk for the school are:
- Number of pupils – we know in this case that there were 1,500 pupils which is quite a large school. The underwriter may apply a rate for each pupil, or they may have a rate for certain sizes of school. The number of pupils obviously affects the risk as the more pupils, the more likelihood of injury.
 - Age of pupils – the underwriter may also consider the age of pupils. In this case, the children are aged between 5 and 18. This is quite a broad range and the underwriter may wish to know what steps are taken to separate the pupils. This would be important as older children can be more boisterous, whereas younger children are more vulnerable and having all children in the same vicinity increases likelihood of injury.
 - Claims history – the underwriter would wish to see a claims history for the school usually between 3 and 5 years, to give them sufficient knowledge and understanding of the specific risk. They can compare this claims history with other schools that they may insure and confirm whether it is a good risk, or perhaps a bad risk which they may not wish to underwrite or they may wish to impose special terms.
 - Activities at the school – we are aware that the school has a very active range of social events and parents often visit the school. It is likely that the school will organise activities perhaps in or out of the school. Under the liability policy, the Insurer may become responsible for claims resulting from these activities so the underwriter will want to know exactly what they do and then make some assessment of the level of risk. They may impose certain restrictions for activities, or may impose a condition that the Insured seeks permission prior to arranging specific activities before confirming cover. Alternatively, the underwriter may just apply a rate for each activity undertaken.



Question 5 - Learning Outcome 5 (20 marks)

You are an insurance broker. One of your clients, STL plc, has asked you for advice. STL plc has recently acquired another company, which they incorporate in to their business as a subsidiary. This subsidiary subsequently suffered significant financial loss, when they lost a contract with their major customer. This loss has caused a sharp fall in STL plc's share value.

At a recent shareholder meeting a number of shareholders expressed dissatisfaction with STL plc's Board of Directors stating that they should have foreseen the loss of the contract prior to the acquisition.

- (a) Explain, with justification, **four** possible ways shareholders could claim against the Director's and Officer's liability policy should they wish to seek compensation from STL plc's Board of Directors. (12)
- (b) Explain, with justification, **two** significant actions STL plc's Board could have taken which would have reduced the likelihood of a successful claim against them by their shareholders. (8)

Answer to Question 5 (Learning Outcome 5)

- (a) A directors and officers (D&O) policy is usually obtained to cover the directors of the company in their own individual right and also to provide cover for the company or an organisation as a whole. The reason for this is that the directors can be sued directly for negligent decisions and actions that have been taken.

There are many scenarios which would lead to a claim under the D&O policy and a potential action by the shareholders, as in this example is the most common. Four specific ways that the D&O policy could operate are explained below.

Loss of profits / share price

Shareholders can sue for a loss in profits or poor performance causing a fall in share price and also for insolvency. In this instance, the shareholders are suggesting that a poor decision was made when purchasing the subsidiary company as insufficient checks were done. The shareholders believe that STL plc should have foreseen the loss of the subsidiary's major customer. In other words, the shareholders suggest that STL plc did not undertake proper due diligence. The policy would provide cover for the claim and/or any defence costs arising from it.

Failure to act with proper care and skill

It is important to be aware that directors can be liable under both common law due to failure to act with proper care and skill, or under statute, the most recent one being the Companies Act 2006. This listed further duties of a director to include a duty to act



within powers, duty to promote the success of a company, duty to exercise independent judgement, duty to exercise reasonable care, skill and diligence, duty to avoid conflicts of interest, duty not to accept benefits from third parties and a duty to declare interest in a proposed transaction or arrangement with the company (CII study text, M96 Liability insurances, 2018).

Financial consequences of loss of major customer

If the shareholders make a claim, the policy will cover STL plc for any financial demand resulting from a wrongful act, any criminal prosecution, official investigations and defence costs. STL may face a claim from the shareholders to the effect that they have lost money due to the failure of the board to recognise that the subsidiary was going to lose a major customer. The policy would cover any financial loss up to a limit of indemnity (which is usually on an aggregate basis).

Defence costs for any prosecutions

In this instance, it does not look like there was any deliberate wrongdoing on the part of the directors so it is unlikely that a criminal investigation or prosecution would arise, but the policy will cover the claim for the financial loss, if indeed STL plc's directors are deemed liable. If they are not liable, the policy will cover the defence fees. The policy will cover any financial loss of STL plc for the claim as well as any possible detrimental effect on the directors involved, such as disqualification. It will not cover any criminal penalties.

The policy is written on a claims made basis, but as the broker, I would need to advise the Insurers of the potential claim as soon as I become aware, otherwise policy indemnity may be an issue if a claim is made in the future.

- (b) Two significant actions that the board could have taken to prevent a successful claim are:
- Undertake due diligence – prior to an acquisition being made, it is vital that a company undertakes proper and thorough due diligence checks. STL plc should have checked all of the subsidiaries accounts, obtained details of their customers to ensure they were financially viable, undertaken risk assessments relating to the suitability of the company as an acquisition to ensure that the culture, technology and premises were compatible with STL plc. It is not known whether STL were aware that the subsidiary was going to lose this customer. They may have undertaken full checks and been aware this was going to happen. They may therefore have taken this in to account in the offer they made to purchase the company.



- Keeping the shareholders fully advised - purchasing a company is a very big decision and should not be taken lightly. The shareholders would have needed to be kept informed of the decision and advised of developments. The Board are at all times required to be transparent with the decisions that are taken. They are also required to have control measures and contingency plans in place in order to comply with corporate governance requirements. If the shareholders were indeed kept advised in respect of the acquisition and advised of all the control measures and contingency plans in place, then there may be a valid defence. The shareholders may have been asked to vote on the decision to purchase the subsidiary and provided they were aware of the full facts (including the loss of the major customer), they may not be able to make a successful claim.

Question 6 - Learning Outcome 6 (20 marks)

You are an insurance broker and are asked by a physiotherapist to arrange professional indemnity insurance for them.

The physiotherapist would like to ensure she is adequately covered for claims that may arise from her business. She has not purchased professional indemnity insurance before. The business has been operating for five years and has grown quickly. She has her own patients and also trains and supervises other self-employed physiotherapists.

- (a) Explain, with justification, **three** significant professional indemnity liability risks arising from the physiotherapist's business. (6)
- Explain the cover available to indemnify the physiotherapist against **each** of the
- (b) three significant professional indemnity liability risks you have explained in (a) above. (6)
- (c) Identify, with justification, **four** significant items of information that a professional indemnity underwriter would require before offering terms for this business. (8)

Question 6 – Learning Outcome 6 (20 marks)

(a) Three significant liability risks the physiotherapist faces are:

- Negligent advice when training – as the physiotherapist has put themselves forward as a professional physiotherapist and trainer, she would be expected to provide advice of a professional standard and training to her trainees up to the standard of other physiotherapists in the profession. If the advice given on training was poor or sub-standard, then the physiotherapist may be sued for this by the trainees.

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- Negligent provision of treatment directly by the physiotherapist – the physiotherapist provides treatment to clients and this will likely be as they have some kind of medical need. The physiotherapist will need to be able to identify the need for treatment (i.e. what is wrong), advise on what treatment is needed and provide the necessary treatment. Again, if the clinical need is not correctly identified or if the incorrect treatment is provided, then the physiotherapist may be sued by her patients.
 - Negligent provision of treatment by the physiotherapist's trainees – the trainees are working on a self-employed basis and the physiotherapist has presumably therefore trained them to be able to work to a professional standard. Therefore, if they complete treatment which is deemed to be negligent and this is as a result of the training provided by the physiotherapist, then they may be sued by either the trainee on a subrogated basis, or by the person receiving the negligent treatment.
- (b) The cover available to the physiotherapist under a professional indemnity policy for the above risks is:
- The policy would cover the legal liability for any breach of professional duty by the physiotherapist owed to the trainees. When the physiotherapist is providing advice, the policy will cover negligent advice where there is a special relationship, which in this case between trainer and trainee, there would be. The professional indemnity policy would not usually cover bodily injury or third party property damage as this would more appropriately be considered under a public liability or products policy. However, if the injury or property damage was as a direct result of negligent advice, this may be covered.
 - Cover for any resultant financial damages that the self-employed business may face as a result of the negligent training or advice.
 - The policy would cover any negligent treatment provided by the physiotherapist, or perhaps a failure to provide the required treatment. It is important to note that the policy would usually be worded to indemnify any 'error or omission occurring or committed in good faith' (CII study text, M96 Liability insurances, 2018). This means that they must at all times be acting according to their profession or skill. In other words, the policy is unlikely to provide cover if the physiotherapist has been careless or reckless.
- (c) The following information would be considered key information that an underwriter would need before offering terms on the risk:

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- Any previous notifications of complaints, or incidents / claims that have been made – it is noted that the physiotherapist does not have insurance already, so will not have a readily available claims history. However, professional indemnity policies are usually written on a claims made basis so the physiotherapist will need to give details of any notifications that they have already had which may lead to claims. They will usually be asked to sign a declaration that the information they have provided is correct.
- Professional qualifications – the underwriter will likely require proof of any professional qualifications that the physiotherapist has and when they were obtained and what is being done to keep them up to date. This will usually also cover their experience in the field.
- Details of trainees – if the policy is to cover the professional liability of any trainees, the underwriter would need details of all their qualifications and experience. They would also need to know how many there were, what records the policyholder keeps of their training and how they monitor the work that they do. This is because the policy covers the advice given by the physiotherapist, so the underwriter will want to ensure that following advice, the physiotherapist monitors the trainees to ensure they have correctly understood and implemented the advice. The role is clearly a manual one, so practical training as well as theoretical would likely be needed.
- Record keeping procedures – it is important that records are kept in good order. The underwriter will want to know how records are kept, that they record all training and advice given, details of any customer feedback etc. They will also need to ensure that patient's records are kept and held confidentially and with due consideration to its duties under the Data Protection Act 1998.



Question 7 - Across more than one Learning Outcome (30 marks)

You are an underwriter for UK-based liability insurer, FXY Ltd. One of FXY's policyholders is a local council whose responsibilities include the following:

- Refuse collection and a recycling facility.
- Road maintenance.
- Parks and playgrounds.
- 500 staff including office workers.
- A weekly information bulletin for town residents.

The council have held their liability policy with FXY Ltd for three years, but over the past six months, the number of claims has increased significantly.

- (a) Identify, with justification, **two** significant employers' liability risks for the council. Refer to **one** relevant statute law or regulation in support of your answer. (6)
- (b) Identify, with justification, **two** significant public liability risks for the council. Refer to **two** relevant statute laws or regulations in support of your answer. (6)
- (c) Identify, with justification, **one** significant professional liability risk for the council. (3)
- (d) Explain, with justification, for **each** of the five significant risks that you have identified above, **one** underwriting action that you can implement to manage FXY's exposure to the risk. (15)

Answer to Question 7 (Across more than one Learning Outcome)

- (a) Two significant employer's liability risks are:
- Manual handling – during the refuse collection, employees will be tasked with collecting refuse and the weight of items will not be apparent. As they often collect household waste, this can vary in weight. Whilst some of the manual handling aspects have been removed with the use of wheelie bins, there may be recycling that is still collected in bins and the wheelie bins still need to be pushed and pulled and loaded on to the dust cart. This may be a strenuous task in some cases. The Manual Handling Regulations 1992 would apply here.
 - Road maintenance – employees that undertake road maintenance will be at risk. They will be required to inspect and repair roads, which will likely mean being on the roads and therefore at risk of collisions with motorised vehicles. They will therefore need to have appropriate training to undertake the task, be provided with appropriate equipment and be provided with high visibility personal protective equipment (PPE). The Personal Protective Equipment Regulations (2002) govern the need for appropriate PPE to be provided by employers and also require that



employees are trained in the correct use of PPE i.e. how to use it, when to wear it etc.

(b) Two significant Public liability risks are:

- Use of the playground – under the Occupiers' Liability Act 1957, it is stated that occupiers must be aware that children are less careful than adults, and occupiers therefore need to take this in to account when considering risks. As playgrounds are designed for children, there is a significant public liability risk. The council must ensure that the playground is safe to use and fit for purpose. This includes the ground space as well as all the equipment, which can be difficult to maintain in the outside environment.
- Potholes in pavements – as the council are responsible for the highways, they will have a duty to ensure that the pavements are well maintained. This is also a very onerous task given the large stretches of pavements and walkways in a typical town. The council will have to ensure they inspect the highways and fill in any holes or repair significant defects within a 'reasonable period'. This is all governed by the Highways Act 1980. There are defences to this act and case law determines what is considered a 'defect'. The Council can defend claims if they can show they have a reasonable system of inspection and repair in place. This will depend largely on footfall in the area, when the last inspection was done and whether they should reasonably have known of the defect and whether the time to repair was reasonable.

(c) One significant professional indemnity risk is the publication of the weekly information bulletin. This bulletin may contain adverts for local businesses, or articles about people. There is a risk of libel and slander and there is also a risk of inaccuracies within the published information. An example is a local business which has paid the council money to display their advert in the newsletter. The council may display the advert but mis-type the telephone number, meaning that the business receives no additional sales as a result of the advert. The council may be sued for the cost of placing the advert and any resultant financial losses as a direct result of the lost business.

(d) For each of the above risks identified, one underwriting action I would implement to manage FXY's exposure to risk is:

- Manual handling – I would ensure that the council implement a documented system of training for all employees carrying out the task of refuse collection. They should ensure that training is provided at induction stage and on a regular basis as a refresher course throughout the employment. This training should cover correct manual handling techniques, how to use any mechanical assistance, what to do in the event a load is too heavy etc. As the Underwriter, I would ask to see the policyholder's records to ensure that this is being done.

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- Road maintenance – I would ask the council to provide me with evidence that they provide the appropriate PPE and have the appropriate risk assessments in place. The PPE may include steel toe capped boots and high visibility clothing. Again, I would wish to see documented records that the Insured had these procedures in place. If they did not, I would charge an increased premium.
- Playgrounds – I would charge a higher rate for council's that had playgrounds, unless they could demonstrate that they had a reasonable system of inspection in place and preferably, that they employed independent contractors to inspect the playgrounds and undertake any maintenance. This would mean that in the event of a claim, there would be potential to redirect to the contractor, which should reduce the risk.
- Potholes – as the underwriter, I would need to check the claims history relating to potholes. I would assess the frequency and the severity of claims and consider the appropriate underwriting action. One underwriting action I could take would be to have a condition precedent to liability that the policyholder must have monthly documented inspection and maintenance procedures in place. This would encourage them to inspect the risk regularly and take action. Therefore, if claims for pothole trips for example were made, we should be able to demonstrate that the council has complied with their duties. It will also hopefully help prevent accidents in the first place.
- Advertisements – high costs can be involved in defending libel and slander claims emanating from incorrect advertisements. It may be necessary therefore to charge an increased excess in respect of claims of this nature. This will ensure good risk management by the Insured as it forces them to participate in the risk. It is then that they will be encouraged to adopt good procedures to avoid events giving rise to claims.



Question 8 - Across more than one Learning Outcome (30 marks)

You are a specialist risk manager working for a large insurance broker. You have been asked to carry out a risk management review for one of your clients, EMC plc, an events management company. This company provides support and expert advice to manage large scale prestigious events and conferences worldwide. They market events, arrange and book conference venues and supply event and conference literature. This includes booking the travel and accommodation for delegates and speakers.

Your review establishes that EMC plc has recently appointed a director who is looking to increase profits. He has commenced a process of staff reduction. Staff remaining in post feel they are being put under significant pressure due to the additional workload.

The recently appointed director has generated a negative culture where profit is the most important objective and risk management has been neglected.

- (a) Explain, with justification, **five** significant liability risks faced by EMC plc. (15)
- (b) Explain, with justification, for **each** of the five significant risks you have identified above, **one** risk management action you can take to improve the risk which would make it more attractive to an underwriter. (15)

Answer to Question 8 (Across more than one Learning Outcome)

(a) The five significant liability risks faced by the company are:

- Professional indemnity risk: organisation of prestigious events – although event management may not previously have been considered a business needing professional indemnity cover, in recent times, there has been a number of incidents in this industry that have led to claims involving financial loss. EMC plc will have to undertake their work with due care and skill. There is a risk that a small error ‘behind the scenes’ will lead to a prestigious event going wrong, which would be a disaster for any business that is represented at the event. It could lead to a loss of reputation for a client or for many clients, which may result in financial losses. These would be considered under a professional indemnity policy.
- Professional indemnity risk: literature must be correct – as the events are very prestigious and worldwide, it is vital that all literature relating to the event is of high quality and all marketing materials are correct, without a single error. EMC plc need to demonstrate their professionalism in marketing literature to make sure that this meets with the expectations of their clients. Due to the events being

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worldwide, there will likely be the added difficulty of translating information and using the correct spelling and grammar in all languages.

- Directors & officers (D&O) risk: cutting corners – although in the short term, it seems the Director is very profit driven which may appeal to the shareholders, in the longer term, if they are cutting corners, the events are likely to not be managed as well and large scale errors could occur. This is likely to lead to an eventual decline in business due to a loss of important customers and extensive damage to the businesses reputation.
 - D&O risk: employment practices and human resource issues – there is a potential risk for the Director to face claims arising from the human resource issues he is creating. It is noted that there has been a significant reduction in staff. The Director and the business will need to demonstrate that correct employment practices have been followed when making redundancies and that there has been no discrimination and everything was done fairly.
 - Employers' liability risk: stress – the new director seems to be creating a very negative culture where pressure has increased significantly following a reduction in staff and there is high pressure to meet targets. In addition, risk management has been ignored. This could lead to stress for the remaining employees. It is important when employees advise that they are suffering from stress, that appropriate action is taken. This may mean reducing workloads, or making sure there is an environment where employees are not exclusively target driven. Reporting of issues needs to be encouraged and a negative environment will prevent this.
- (b) One risk management action I would take to improve the risk from an underwriting perspective is as below:
- Professional indemnity risk: organisation of prestigious events – underwriters will wish to know what steps the policyholder has taken and is taking to ensure that risks are reduced to the lowest possible level. This would involve having a good recruitment policy to ensure that all staff had the skills for the job, making sure checks are done throughout the organisation of events and checking clients are happy at all stages of the organisation process. The Underwriter will want to know that risk assessments are done for major events to ensure that all risks have been identified and that management are taking steps to address these. Documented risk assessments can help as if risks are identified and appropriately addressed, and there is evidence in place to support this, then there is potential to defend claims that arise.



- Professional indemnity risk: literature must be correct – the risk of printing literature would need to be addressed through quality assurance measures, having measures in place to verify the quality and correctness of literature. Ideally there should be checks in place to check that literature is correct with the client prior to print. There should be documented paper trails to evidence what instructions have been given. Taking these steps would help satisfy any concerns underwriters may have regarding defamation claims resulting from the business.
- D&O risk: cutting corners – all processes whether old or new would need to be risk assessed and all risks reduced to the lowest possible levels. Underwriters would want to know details of the previous claims history and also what steps have been taken to address these and avoid further claims. From the scenario presented, it does seem that the Director at EMC plc is making matters worse. Underwriters would therefore wish to satisfy themselves as to his skills and any previous claims history relating to this director in previous roles. This would help underwriters understand the moral risk relating to the Director and give them an understanding of the likely future claims resulting from his management practices.
- D&O risk: employment practices and human resource issues – the Underwriter would wish to ensure that staff files are well maintained and all meetings and complaints from staff are documented correctly and safely kept. Having well maintained files may help defend any resultant employment claims that arise, provided that any issues have been appropriately addressed. If on the other hand a claim is submitted regarding previous complaints, and there are no records, there may be difficulties in defending any actions.
- Employers' liability risk: stress – similarly to the above risk, Underwriters would wish to ensure that staff files are well maintained. The policyholder should have a system in place for monitoring any sickness periods of staff and having return to work interviews in place. Any work related issues should be recorded and action taken if the sickness was as a result of alleged stress. Stress claims can be defended if the policyholder is either not aware of any issues, or they are aware but have taken appropriate action to reduce any further stress. A lack of any documented system would suggest that this is not done appropriately, so underwriters will want further details on the recording systems. All staff should be asked to sign any return to work documents.



Question 9 - Across more than one Learning Outcome (20 marks)

You are an underwriter for a liability insurer. A broker contacts you regarding a prospective new client, RAR plc. RAR plc are a manufacturer and seller of children's toys. All toys are manufactured in the UK but sold worldwide.

RAR plc maintains all customer details on an electronic database constructed from information collected online from its customers. All sales are online direct to customers.

RAR's broker presents the risk to you in order to obtain a quote for a commercial combined liability policy.

- (a) Identify, with justification, **two** significant liability risks resulting from the e-commerce activity of RAR plc. (4)
- (b) Explain, with justification, **two** appropriate mitigation measures for each of these liability risks, which may result from the e-commerce activity of RAR plc. (6)
- (c) Identify, with justification, **two** significant product liability risks resulting from the activity of RAR plc. (4)
- (d) Explain, with justification, **two** underwriting actions that could be taken to reduce your exposure to RAR plc, should you choose to quote and offer terms for this new business. (6)

Answer to Question 9 (Across more than one Learning Outcome)

- (a) E-commerce activity has significantly increased since the rise of the internet. Consumers are increasingly using the internet for all kinds of activities, including shopping, banking and seeking and exchanging information.

As RAR plc undertake all their sales over the internet, internet sales would present one of the main liability risks. As all information exchanged between RAR plc and its customers over the internet, there is a security risk. Once a sale is made, financial and personal details are provided from customers to RAR plc. There is potential that this information could be hacked during or after the data is provided.

Another liability risk arising from e-commerce would be the storage of data. Once RAR plc has collected information about customers, they will usually store it for some time. The Data Protection Act 1998 is the legislation dealing with storage of data and there are various provisions that need to be complied with in relation to storage, security, the keeping of records, accuracy of records and destroying the data securely when it is no longer needed.



- (b) RAR plc will need to ensure that it has appropriate fire walls and security in place to prevent access to customer's data. There have been various publicised cases where either personal data or financial data held has been hacked so this is a very live issue. As the underwriter, I must check what security systems and fire walls are in place. This would include checking what efforts RAR plc have taken to address cyber-crime. I would need to ask for details of any previous incidents or claims and if they have had incidents or claims, how many people were affected and how were the problems solved. These are all considerations for the underwriter to address in respect of internet sales.

In respect of the second identified e-commerce risk, I would wish to check what procedures RAR plc have in place to ensure that information is appropriately stored. It could be that all data is held electronically, or there may be an electronic and paper file. I would want to understand who can access this information and what measures are in place to prevent others accessing the information.

The storage of data is very important, especially where it is stored in bulk and accessible by a number of parties. There is potential for full customer files being hacked if data is held electronically. Staff at RAR plc need to be appropriately trained and they all need to have secure passwords, with different authority levels in place to add, alter or delete records. Only the very senior managers should be able to access all records and certain types of information. Staff should only have authority if they need access to do their job.

- (c) One of the major risks from a product liability perspective is that RAR plc is making toys. We do not know what age range these are intended for but it is likely that they are for children of younger ages. A minor has three years from their eighteenth birthday to claim. This means for example, if a minor aged six is injured by a product, the minor has around 15 years to present a claim to the Courts. The Underwriter may not know about incidents for a long time. They will therefore have to take account of this long tail risk in their incurred but not reported claims reserves (CII study text, M96 Liability insurances, 2018).

In addition to the above, claims involving minors often require Court approval which will increase the cost of claims. Underwriters therefore need to be aware of the increased time span of claims involving minors and the increased costs.

Another product liability risk is that products can be sold worldwide and there is potential that claims could be brought in various jurisdictions where costs and damages are increased.

- (d) If I chose to quote and offer terms for RAR plc based on the information I have been provided, I would place an exclusion on the policy in respect of any North American risk. We are aware that products are sold worldwide and as this would be new



business, I would initially wish to exclude the North American risk. This is because costs of claims in North America are much higher than elsewhere (CII study text, M96 Liability insurances, 2018). The wording would also need to have an appropriate jurisdiction clause and choice of law clause, so that if claims do arise, they can be dealt with in the appropriate jurisdiction and by the intended law.

Another underwriting action I would take would be to apply a condition relating to the storage of data. The condition would be worded so as to exclude any claims arising from negligent storage of data. This would encourage RAR plc to ensure all data is appropriately password protected and that all staff are trained and aware of the importance of protecting customer data.

Question 10 - Across more than one Learning Outcome (10 marks)

You are a liability underwriter for a UK-based insurer who writes liability business in several countries and has both the capacity and the appetite to grow the portfolio.

You are asked by an insurance broker to arrange liability cover for their client, TTH plc, who manufacturer and sell small electronic kitchen appliances, such as kettles, toasters, mixers and microwaves. TTH plc operates in fifteen countries across Europe and Asia.

Explain, with justification, the **two** most significant factors that will influence your ability to offer terms.

(10)

Answer to Question 10 (Across more than one Learning Outcome)

The two most significant factors that will influence my ability to offer terms would be:

- 1) It will be important to understand which specific countries TTH plc operate in so that I can then consider the applicable laws and claims costs there. If I, as the underwriter, do not have any experience writing risks on those countries, then significant research would be required in to claims costs, jurisdiction, laws etc. As the underwriter, I would be aware of the Insurers appetite for such business and I must ensure that it falls within the guidelines set. For example, some Insurers will only write small and medium sized businesses, and as TTH are a plc, they may not wish to write this size of business. In addition, they may not have written manufacturing businesses before and I would therefore carefully need to consider the potential product exposure.

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In the case of Europe, a freedom of services basis could operate. For the countries in Asia, it would need to be established if the policies can be underwritten on an admitted or non-admitted basis. Details of the timescales of claims and any unusual laws would need to be known.

- 2) Another issue would be to establish exactly what cover is required. Based on the information in the scenario, it is likely that they will require employers' liability, public and products liability and directors' and officers' cover, given that they are a plc and will be answerable to shareholders.

Again with directors and officers liability, corporate governance rules in the UK have largely shaped the risk and there are stringent rules and practices for D&O, which has led to an increase in claims (CII study text, M96 Liability insurances, 2018). It may be different in less developed countries, also the exact position regarding liability in European countries should be established. It is very important therefore that I am familiar with the environment in which business is written. I would need to check what the environment was like in the fifteen countries presented, for each of the liability covers requested.

Reference List

Lear, D. & Vascotto, M. (2018) M96 Liability insurances, Chartered Insurance Institute.



Question deconstruction and answer planning

The following three plans are based on 10, 20 and 30 mark questions respectively.

Question 10 - Across more than one Learning Outcome (10 marks)

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Explain, with justification, the **two** most significant factors that will influence your ability to offer terms.

(10)

Question deconstruction

- Review the specific learning outcomes that relate to this question in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- Consider the context. You are a liability underwriter, working for a company that hopes to expand. You have been asked by an insurance broker to write international business.
- There is only one part to the question and the two most significant factors must be explained and your reasoning for why you chose those factors should be justified.

Answer plan

- Chose the two most significant factors within this context. Explain each (3 to 4 marks are available for each discussion. Justify each factor (1 to 2 marks are available for each).
- As this is a 10 mark question, your answer should be shorter than the answers to either a 20 or 30 mark question.



Question 5 - Learning Outcome 5 (20 marks)

You are an insurance broker. One of your clients, STL plc, has asked you for advice. STL plc has recently acquired a subsidiary company. The subsidiary subsequently suffered significant financial loss, when they lost a contract with their major customer. This loss has caused a sharp fall in STL plc's share value.

At the recent shareholder meeting, a number of shareholders expressed dissatisfaction with STL plc's Board of Directors stating that they should have foreseen the loss of the contract prior to the acquisition.

- (a) Explain the protection available to STL plc's Board of Directors under their directors and officers insurance, should the shareholders seek compensation. (12)
- (b) Explain, with justification, two significant actions STL plc's Board could have taken which would have reduced the likelihood of a successful claim against them by their shareholders. (8)

Question deconstruction

- Review learning outcome 5 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- Consider the context which includes the fact that you are an insurance broker and one of your clients has asked for your advice in terms of protection available and potential actions they could have taken.
- The marks in part (a) are greater than for part (b).
- The 8 marks available in part (b) include justification.

Answer plan

Part (a): You need to **explain** the possible protection offered under a D&O policy in this example.

Part (b): You need to **explain** two actions (3 marks for each explanation) and **justify** why you chose those actions in the context of the scenario (1 mark for each justification).

As this is a 20 mark question, your answer should be longer than the answer to a 10 mark question but shorter than the answer to a 30 mark question.



Question 8 - Across more than one Learning Outcome (30 marks)

You are a specialist risk manager working for a large insurance broker. You have been asked to carry out a risk management review for one of your clients, EMC Plc, an events management company. This company provides support and expert advice to manage large scale prestigious events and conferences worldwide. They market events, arrange and book conference venues and supply event and conference literature. This includes booking the travel and accommodation for delegates and speakers.

Your review establishes that EMC Plc has recently appointed a director who is looking to increase profits and has therefore commenced a process of staff reduction. The majority of the staff feel they are under significant pressure to take on more work.

The recently appointed director has generated a negative culture where profit is the most important objective and risk management has been neglected.

- (a) Explain, with justification, **five** significant liability risks faced by EMC plc. (15)
- (b) Explain, with justification, for **each** of the five significant risks you have identified above, **one** risk management action you can take to improve the underwriting risk. (15)

Question deconstruction

- Review the relevant learning outcome relating to the content in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- Consideration of the context which includes your role as a specialist risk manager for a large broker, conducting a risk management review for a company that is very focused on profit at all costs. There are a range of different factors that are important to the context of the question and need to be referred to in your answer.

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Answer plan

Part (a) is worth 15 marks and part (b) is also worth 15 marks, so each needs to be answered equally in length and depth.

In part (a) you need to explain the five significant liability risks (2 marks for each explanation) and also to justify your choice (1 mark for each).

In part (b) you need to explain and then justify one risk management action you would recommend for each of the five risks you have identified.

As this is a 30 mark question, your answer should be longer than the answers to 10 and 20 mark questions.



Glossary of key words

Analyse

Find the relevant facts and examine these in depth. Examine the relationship between various facts and make conclusions or recommendations.

Construct

To build or make something; construct a table.

Describe

Give an account in words (someone or something) including all relevant characteristics, qualities or events.

Devise

To plan or create a method, procedure or system.

Discuss

To consider something in detail; examining the different ideas and opinions about something, for example to weigh up alternative views.

Explain

To make something clear and easy to understand with reasoning and/or justification.

Identify

Recognise and name.

Justify

Support an argument or conclusion. Prove or show grounds for a decision.

Outline

Give a general description briefly showing the essential features.

Recommend with reasons

Provide reasons in favour.

State

Express main points in brief, clear form.