

## LMA Guidance note on the updated definition(s) of Bodily Injury in LMA3150B / LMA3151B

This guidance note is provided for information only and does not constitute legal advice and shall not form part of any contract.

This guidance is divided into two parts and is intended to explain the rationale behind the changes made to the definitions of “Bodily Injury” in LMA3150B and LMA3151B.

Part A reflects the LMA’s understanding of English common law and the requirements of the LMA’s members in respect of these model wordings.

Part B highlights how the model definition of “Bodily Injury” differs in respect of the optional North American Jurisdiction Extension.

Please note that all LMA model wordings are purely illustrative and are published and distributed for the guidance of Lloyd’s managing agents, brokers and other market participants. All contracting parties are free to agree to different conditions/amend the models as they see fit; the LMA does not protect its intellectual property rights over model wordings. It is for underwriters to decide whether or not any contractual language is acceptable on any given risk.

### Part A – English Common Law Position

**Previous definition:** “*BODILY INJURY means bodily injury, sickness, disability or disease. BODILY INJURY shall also mean mental injury, mental anguish, shock or death if directly resulting from bodily injury, sickness, disability or disease.*”

**Updated definition:** “*BODILY INJURY means physical injury, disease or psychiatric injury of a person who is not an INSURED.*”

*BODILY INJURY does not include suffering or death unless directly arising out of the above.”*

Term removed	Rationale
Bodily	The term “physical” has been used to replace the previous circular reference of “ <u>BODILY</u> INJURY means <u>bodily</u> injury ...”
Sickness	<p>A redundant term; sickness, illness, disability, etc. can be used to describe both direct and indirect effects of physical or psychiatric injury and do not separately give rise to a legal liability to pay damages. Claims would be subject to the usual tests of causation.</p> <p>Also, there is a risk that “sickness” could be interpreted as meaning feeling unwell or distressed, which is not on its own compensable under English law. However, under English law, where a physical or psychiatric injury is incurred, relevant indirect effects are already taken into account under Pain, Suffering and Loss of Amenity (PSLA) in general damages, as part of an overall assessment of a bodily injury.</p>
Disability	Disability is a potential result of physical or psychiatric impairment, not a type of bodily injury. Where relevant, disability is taken into account under Pain, Suffering and Loss of Amenity (PSLA) in general damages, as part of an overall assessment of the attributable effects of a bodily injury.

Term removed	Rationale
Mental injury	Replaced with the term “psychiatric injury”.  In terms of legal liability to pay damages, psychiatric injury is conceptually equivalent to physical injury in English law. There is no legal requirement for psychiatric injury to be a consequence of physical injury to any person.
Mental anguish	An informal term with no clear meaning in law or medicine; best avoided in contractual language (unless an agreed definition is stated). The range of interpretations could span from any healthy emotional response to circumstances, to severe self-perpetuating anxiety. The former is taken into account as PSLA. The latter may be classed as a psychiatric injury if sufficiently severe. In either case these events are already addressed by the other terms used in the definition of Bodily Injury.
Shock	Where any type of shock is diagnosed, this is likely to be compensable under the coverage already provided by the terms physical or psychiatric injury.  Where “shock” is interpreted as meaning “distressed”, it may be taken into account under Pain, Suffering and Loss of Amenity (PSLA) in general damages, as part of an overall assessment of a bodily injury.

Term added	Rationale
Physical injury	Any physiological change to a person that directly results in greater than <i>de minimis</i> pain, suffering and/or loss of amenity including but not limited to: burns, fractures, bruising, contusions, amputations, poisoning, infection, cancer, loss of sensory cells, osteonecrosis, cellulitis, dystonia, synovitis, osteoarthritis, neuropathy, vibration white finger, allergy, fibrosis and chronic inflammation.
Psychiatric injury	A psychiatric injury that directly results in greater than <i>de minimis</i> pain, suffering and/or loss of amenity.  Psychiatric injury does not include functionally normal experiences such as grief, elation, anxiety, joy, rumination, fatigue, increased vigilance, low mood, poor concentration, compulsion. [which are mediated by human agency]. Such psychological states may be taken into account as PSLA.
Suffering	Any type of distress that is not a physical or psychiatric injury and is not directly compensable. Suffering may be taken into account as PSLA as part of an overall assessment of a bodily injury.

## Part B – NORTH AMERICAN JURISDICTION EXTENSION

**Previous definition:** “*BODILY INJURY means bodily injury, sickness, disability or disease. BODILY INJURY shall also mean mental injury, mental anguish, shock or death if directly resulting from bodily injury, sickness, disability or disease.*”

**Updated definition:** “*BODILY INJURY means physical injury or physical disease of a person who is not an INSURED. BODILY INJURY does not include suffering, mental injury, mental disease, mental disorder, or death of a person unless directly arising out of that person’s physical injury or physical disease.*”

The definition of bodily injury for use in respect of the North American Jurisdiction Extension (where provided) has undergone some minor updates. Coverage for bodily injury in this section is limited to mental injuries resulting purely and directly from physical injuries, as per the previous definition. A number of terms have been removed/added, incorporating the rationale from Part A as far as possible and reflecting US legal advice provided to the LMA.

Term removed	Rationale
Bodily	See rationale under Part A.
Sickness	See rationale under Part A.
Disability	See rationale under Part A.
Mental anguish	See rationale under Part A.
Shock	See rationale under Part A.

Term added	Rationale
Physical	See rationale under Part A for removal of the term “bodily”. The term “disease” has been qualified by the word “physical” to avoid courts having to interpret whether “disease” standing alone includes mental injuries.
Suffering	See rationale under Part A.
Mental disease / mental disorder	US Courts have not been required to interpret the phrase “psychiatric injury” in the context of general liability insurance. Therefore, language more familiar to US courts has been used.