Professional Indemnity Insurance
- Sector Crisis?

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Objectives

- Professional Indemnity (PI) Insurance – scope and breadth?
- Current market situation and market cycle
- Market trends & policy changes (Limits, conditions, exclusions etc)
- Positioning yourself / your client.

Professional Indemnity (JCT 6.12)

Insures against:

"Legal liability against loss arising from claims made against you during the period of insurance by reason of a wrongful act in or about the conduct of the Professional Activities in connection with the business"

Notes:

- Professionals = greater duty of care than the public at large
- Linked to collateral warranty's
- Negligence based - failure to expected level of skill & care
- "Claims made basis": continuity / *"run off"*
- Reasonable commercial terms and conditions (6-12 years)
- Does not cover "defective workmanship"

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Market Sector in Crisis?

- Generally cyclical in nature, but sharp spike from 2019 onwards
- "Brutal" for some sectors / disciplines
- Shrinking capacity and appetite across global market, not just UK
- Affecting all businesses; large, small and individuals
- Seller's market; underwriters balancing their portfolio's
- Rating increases plateaued in many areas, but double-digit rate uplift remains the norm
- No immediate sign of an easing of market tension

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Key Drivers

- Specifically, the tragic events of Grenfell brought the scope of PI cover into sharp relief with the Hackitt Review. Also lower Ground Basement issues, Defective Wall Insulation.
- Market already suffering from years of underrating
- Carriers leaving for more profitable classes
- “Claims made” capture (*significant factor*)
- Increased demand coupled with less capacity = higher premium
- Overly generous cover offered in the “good years” (civil liability / occurrence basis / low excesses / reduced underwriting scrutiny / lack of true risk management data)
- Sympathetic claims assessment and settlement

- More complex and large-scale projects using new technology and modern methods of construction – lack of u/w data and loss history fueling conservative approach
- Insufficient legal due diligence on contracts – accepting unlimited liability or significant financial caps out of step with risk profile
- Increasing frequency and severity of claims; uncertainty and confusion over “claims made”
- Professional and Regulatory bodies – stipulating minimum scope and breadth of cover
- Legal fraternity; modifying contract documents to create commercial advantage
- Increasing demand for collateral warranty’s

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The Lloyd’s Impact

- The 2018 Lloyd’s of London review – second least profitable class of business underwritten in this market
- Unprofitable for years
- Post review – scrutiny of loss-making syndicates and action plan to address
- Remainers increased premium, modified terms – sellers' market

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Fire Carve Out

- Since late 2019 market wide approach to exclude or limit cover for claims relating to fire safety. Effectively a withdrawal of cover for any passive or active fire issues, retrospectively as well as in the future.

- Moved on from previous exclusion or limitation that only related to the combustibility of façade/ cladding above a certain height. Example of the most onerous exclusion is outlined below.

  “This policy shall not indemnify the insured for any claim, circumstance, loss, liability, cost, expense or defence costs, or part thereof, arising in respect of or in any way related to or in connection with the fire safety of any building.”

- April 2021 – RICS clarifies fire exemption not permitted on PI policies relating to < 4 storeys with aggregate / costs inclusive basis of cover

- Market still nervous about offering any form of fire safety related cover, especially in view of the “claims made” basis of cover.

Current Market Position ..

- Underwriters reducing exposure across whole book
- Aggregation of limits rather than occurrence
- Layering of schedules (£1m - £2m now the norm for primary cover)
- Substantially increased excesses
- Height / cladding / fire safety restrictions
- Costs inclusive
- Negligence based wordings rather than civil liability
- Tougher stance on claims

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How to Respond to the Market challenge?

Start Early – at least 3 months out!

Insurers are reviewing risks in far greater detail than ever before. This takes time. For many underwriters it remains a "take it or leave it" situation; they have another 100 risks waiting on their desk to review.

Manage Expectations – Yours and Theirs!

It may not be within your gift to offer the same cover to your clients, funders and others, however loud they shout and stamp their feet. Rates are going up – it's just a matter of how much and what other terms will apply.

Despite starting early, the pandemic has delayed issuing of terms, very often coming in days before renewal. Be prepared.

Set Your Business Apart

A proposal form only tells so much about you. Take time to prepare a pack on what is special about your business. Be clear about your risk management processes, how you mitigate / remove / transfer risk. Check and double the answers carefully on the proposal form – innocent oversights can be costly!

Present to Underwriters

You know your business best. Take the time to speak to an underwriter who is eager to learn more about you and your firm. IT means this can be achieved simply and the broker should always be able to facilitate this.

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Claims History

Provide forensic detail if you've had losses, specifically detailing what remedial action was taken to prevent re-occurrence and / or mitigate the financial impact.

Onerous Terms and Conditions of Engagement

Push back! Easier said than done but try to agree a common-sense position on reward v exposure. Caps on liability, back-to-back arrangements with sub-contractors and sub-consultants

Understand Your Sub-Consultants

Make sure you know if their cover has changed as your policy will carry a warranty piggybacking yours – this could be a problem if there is a disconnect. Carry our regular audits. A warranty is a strict contract term!

Basis of Cover

If moving from "occurrence" to "aggregate" look at increased overall limit, usually 50% uplift through layering.

Explore aggregate cover with a "1" or "round the clock" reinstatement provision?

Reverse engineer – take your budget and see what programme you can purchase for that?

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Fire Carve Out

Rather than a full exclusion, consider options for:

- Restricted cover for “rectification and rework costs only”, with an aggregated sub-limit
- Higher excess, which also applies to costs of defending such fire safety claims
- Full exclusion, but maybe only for claims that actually allege a breach of “relevant fire regulations”
- Full exclusion, but rather than “any and all fire safety issues within a building” a specified list of elements such as fire doors, internal walls, facades, roofs etc.

This is where early and effective communication with underwriters can make a big difference on availability and cost of cover.

How Much is Enough Cover?

The limit carried should reflect your exposures to claims as a result of analysis of the following factors;

- **Your risk -** consider the potential value of catastrophes risks on each of your projects

  What proportion of your contract contributes to the overall project risk?

- **Legal costs -** to defend your position as well as the third parties legal costs (should you be deemed at fault.)

- **Legacy/ historic work** – it’s the level of cover currently held that will apply to your historic work, it is important that you consider that PI claims and the circumstances behind them often take time to manifest.

- **Contractual obligations** – often the limits purchased are set by the contractual terms required to adhere to by employers**.**

- **Cost** - what can you reasonably afford?

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Questions?