

Insuring Your Clients Building Project

Advice for Architects, Project Managers and Building Professionals

If you are advising clients on their building project, administering, coordinating or managing the project, it's important to ensure that you put in place clear and unambiguous contracts, so that everyone is clear of their obligations and the consequence of non-performance.

There are a multitude of standard contracts that can be purchased and tailored to fit the requirements of each individual job. These include contracts from JCT, CIBSE, RIBA and NEC which all offer good protection to the customers and contracting parties.

All these contracts include various options for insuring any existing structures and the works. It is important to select the insurance clauses that provide the property owner with the best protection and are most suitable for the job. Although you will not need to be an insurance expert, you should have a fair knowledge of how the clauses work and how they are used to protect the client properly. If you structure these clauses incorrectly you could leave yourself open to a professional negligence claim.

JCT Homeowners Contract

A JCT Homeowners contract is used for small jobs where the cost is less than £50,000. It doesn't touch on the insurance requirements as typically these will be minor maintenance issues rather than structural work.

In the unlikely event that you are involved with a Homeowners contract you should advise your client to contact their home or property insurers to confirm what, if any cover they will provide during the build.

If the property owner's insurance will continue to give full cover during the works then you should check with the contractor that they have adequate insurance for the works. This will include public liability, employers liability and contractors all risks cover with a joint names extension. Make sure that the trade description and number of employees declared to insurers is appropriate for the job and arrange to get a copy of the endorsement naming the client as a joint insured.

This arrangement is not ideal because it puts the property owner at risk by creating ambiguities about who is covering what. For example, it may be uncertain if a fire claim is the fault of the builders (and falls to be covered by their liability policy) or if it is a fault with the existing wiring (and should be covered by the property owners and contractors all risks policies). If the project is to be covered by both policies, who pays for what? At best this leads to delays, at worst where insurers fail to agree, deadlock.

This arrangement also relies on the builder's policy to be valid. A builders policy is a commercial contract and places a higher duty of care on the policyholder when making disclosures than a domestic project or renovation policy. A builder's policy can be voided at the point of claim on an unrelated error in disclosure - for example an undisclosed business failure of one of the directors. This would have a detrimental affect on the property owner, who would not receive a payout for the damaged works.

If in doubt, or the property owner's insurers will only offer restricted cover, or refuse cover, proceed as per Minor Works below.

RIBA Domestic Building Contract

The RIBA contract is equivalent to the JCT Homeowner Occupier as it is used for light, non-complex work. It does not contain insurance options, but instead lists the insurance requirements.

JCT Minor Works

The JCT minor works contract is the most common building contract in use for building projects and renovations. The JCT minor works contract is used for works that are small, non-complex, and up to a contract value of around £500,000. The insuring clauses for the minor works contract are found in section 5.

This section deals with the liability of the contractor for personal injury, death or damage to property and for the insurance of the works and the existing structure by either party. It also sets out the requirements for evidence of the insurance cover.

Existing Structures and Works

Where there is an existing structure, it might be tempting to select an option where the property owner insures their property and the contractor insures the works, however the best protection for the property owner is given by insurance clause 5.4b, which is the insurance of existing structures and works by the employer (property owner) in the joint names of the employer and the contractor.

This requires the existing structure and contract works to have insurance against all risks for the full reinstatement value. It prevents the property owner's insurer from arguing that the contractor should pay a claim if something goes wrong. It also provides protection for the property owner as the employer against a breach of a policy condition by the contractor, which improves the certainty that claims will be met.

Using this clause puts the property owner in control of the insurance and as a result they can be confident that the information provided to insurers is correct and that premiums have been paid in full. If the insurance is for a domestic

homeowner the policy will be treated under the retail rules which place a lower burden of knowledge on the policyholder when making disclosures to insurers.

This arrangement allows the property owner to replace the contractor as joint named policyholder and/or add additional contractors as necessary. This ensures that the works remain covered in full throughout the works if multiple builders/contractors are used, resolving any complications if a contractor goes bust, walks off the job or if specialists are used for individual areas of the work.

Control of the Works Policy

Having control of the works policy also means that the property owner has control of any claims and money received as a result. This contrasts to a builder's contractors all risks policy which is in the control of the contractor, who can choose whether or not to make a claim, will receive any claims monies payable and is under no obligation to pay or use the proceeds to reinstate damaged works. If the builder has gone into liquidation or has become bankrupt (as is not uncommon when a fire or storm causes significant damage and stops work) the claims monies will be paid under a contractor's policy to the liquidators, and the property owner will be just another creditor, who may or may not, after a number of years, receive any of the compensation.

New Builds

If the works being undertaken are a new build, with no existing structure then JCT clause 5.4A will be the most suitable. The JCT MW contract does not specify who is to provide or pay for the insurance policy needed to cover the works, however for all the reasons mentioned above the best solution is always for the Employer to provide the insurance.

Some Building Contractor's insurances can be extended to include a Joint Name, however this may just be a "note of interest" which does not provide the employer with any right of control over the policy. Equally if the builder changes between different stages of the renovation project the work that has been completed will not be insured by anyone. See also the notes above about control of the works policy.

JCT insurance Option 5.4C

This clause should only be used if there is a specific reason which means that the other clauses are unsuitable.

This clause does not call for a "Joint Names" element, it is understood that the Employer can arrange buildings and works insurance in their own name, or the Employer can arrange buildings insurance and the Contractor can arrange works insurance.

The main reason this clause might be used is in cases where the existing structure is not insurable. For example, work on an ancient monument or a building that is structurally unsound or exposed to the elements might make it impossible to insure the existing structure. It might also be employed where a third party controls the freehold of the property to be worked on - for example for purpose built or converted flats.

If this clause is used the best position is for the Employer to have responsibility for insuring both elements (structure and works).

Scottish Building Contracts

The Scottish building contracts (SBCC) clauses are numbered 6.4a, 6.4b and 6.4c. The clause details are the same as above e.g. 6.4a is 5.4a etc.

JCT Intermediate and Standard Works Contracts

The JCT intermediate contract is used for medium to large sized building and renovation projects where the contract value is likely to exceed £500,000 and the work itself is complex. The standard building contract is designed for large and complex projects, with a contract value in excess of £1,000,000.

The specific insuring clauses for injury, damage and insurance are contained under section 6 on both contracts and the clauses cover all of the items detailed in the minor works contract.

The important clauses relating to property are held in item 6.7 a, b and c, set out in schedule 1 of the intermediate and standard contract booklet. The clause order is slightly different to the minor works contract; Sections 6.7 a and b are used in relation to new works only, whereas insurance option c specifies insurance by the property owner of existing structures and works in or extensions to them.

Option C is the clause you should use where there is an existing structure involved in the contract with the insurance being placed and held by the employer in joint names with the contractor.

For new builds Option B provides the best protection for the property owner.

Contractors Liability Insurance

All JCT contracts require the contractors to hold Public and Employers Liability cover. If you are administering the contract, you should check that the cover is in place and is suitable. This means you should make sure that the cover limits are high enough to cover any possible damage to the property being worked on and neighbouring buildings.

You should also check that the trade description on the policy adequately reflect the work being undertaken, and that the correct disclosures have been made to insurers by way of contract values, the number and type of employees and splits in cover for bona fide and labour only contractors.

Is the policyholder title correct (i.e. does it mirror the name of the Limited company as shown on Company House records?).

You should record the policy start and renewal dates and make a note to obtain updated policy details as and when these expire (as the cover may change during the course of the project).

What subcontractors will the main contractor use and how will they be covered? Does the main contractor's policy provide suitable cover for labour only sub-contractors? You should obtain insurance details for any bona fide contractors to be used and subject these to the same checks as the main contractor.

If there is any danger of a contractor going off-piste and making minor (or major) design changes as they carry out the work they will need Professional Indemnity cover. It is a wise precaution to ask contractors to hold this cover for any building project as any damage that results from these tweaks won't be covered by the Architects or Structural Engineers policy. The absence of cover could lead to a negligence claim against the project manager/contract administrator.

Insurance For Other Trades and Professions

Do not forget that there are many other people involved in a project. From Architects to Building Engineers, Quantity Surveyors to Interior Designers. Everyone should have adequate insurance, which in most cases will include professional indemnity as well as public and employers liability covers.

It is wise to retain records and record all these details in an insurance register. JCT Insurance Expert offer an insurance contractor checking service for our renovation and building project customers.

Non Negligence and Party Wall Insurance

This insurance can be referred to by many names; Party Wall Liability insurance, 21.2.1 insurance, 6.5.1 insurance or Non Negligence Insurance.

It is used if the project includes works that are in close proximity or on a party wall (shared wall), near to adjoining properties or businesses – for example a tennis or swimming club where the courts or pool adjoin or are located near to where pile driving or excavation works are to be undertaken.

Non Negligence insurance covers liability claims that arise for injury to any person or damage to any property, where negligence by the contractor and/or any sub-contractors cannot be clearly established. The cover is specifically for damage resulting from collapse, subsidence, heave, vibration, weakening or removal of support and lowering of ground water arising out of the contract works.

In plain English this means that if the works that are being undertaken cause loss or damage to others in the vicinity and this results from collapse, subsidence, heave, vibration, weakening or removal of support or lowering of ground water and the possibility of this damage could not have been anticipated by the experts or was not the fault of the workmen, then a claim can be made under this policy.

Non-Negligence insurance does not cover damage which can reasonably be foreseen to be inevitable, having regard to the nature of the work to be executed or the manner of its execution. It would not for example cover the cost of repairing cracks in a neighbouring property which result from the build, but it would cover the collapse of a neighbours

ceiling due to vibration, even if this happens a few months after work is completed, if the ceiling had been inspected prior to the work taking place and was not at that time thought to be vulnerable to damage during the build

The Contractor or the Property Owner can take out this insurance, however it benefits the Property Owner if they have control of it, so ideally it should be arranged and bought by them.

In order to make a successful non-negligence claim, Insurers will expect a schedule of condition to be drawn up which shows the condition of the property to be worked on and the neighbouring properties before the works are undertaken. This should contain pictures and note any pre-existing damage.

This document is essential in a claims situation because the onus is on the property owner (not the neighbour) to prove that the damage that is being claimed for was caused as a result of the carrying out of the works, and was not pre-existing or foreseeable. Clients may struggle to make a claim if they do not have reasonable evidence of condition from an expert (building engineer, surveyor or party wall surveyor) that was collated prior to the work commencing.

Building Guarantees, Structural Warranties and Latent Defect Insurance

This specialised insurance provides cover for the cost of repairing hidden defects in the construction that come to light after the project is completed. Similar in nature to an NHBC guarantee these products offer vital protection for the integrity of the works for up to ten years after the project has completed. This can be for the whole build or for parts of it, such as the foundations or flat rooves for example.

Often overlooked, these products are best purchased at the outset of the project. This is because the insurers structural engineers will want access to the works to assess their adequacy. Insurers surveyors may replace the services provided by building control, which will offer a saving if instructed at the commencement of a project.

These types of cover will invariably be needed by lenders during and after the works are completed.

If purchased after the building project is completed a higher premium will be payable as insurers can't adequately assess what has been done and your client might not be able to get the full cover that a lender requires. Not having cover in place can delay or derail a property sale, resulting in higher interest charges applying or reduce the sale value of a property.

You may be asked by your client to provide an Architects Certificate instead of purchasing a structural warranty or guarantee. You should be very wary of providing this type of warranty as it essentially places the liability for anything that goes wrong structurally with the property on you. Whilst you will have Professional Indemnity cover, a claim against your policy will affect your premiums, and the damage may not be covered if you have not been negligent, in which case you will have to pay out personally as the letter of guarantee holds you accountable for any losses, whether insured or not.

It is in any event much better advice for the client to have a structural guarantee as this only requires proof that something has gone wrong with the build and does not need any proof of negligence or poor workmanship in order for repairs to be effected.

Free CPD for Architects, Surveyors, Project Managers and Property Professionals

JCT Insurance Expert is pleased to offer free CPD sessions to Architects and their staff to help improve understanding of JCT insuring clauses.

And finally

Having the right construction insurance in place safeguards your clients and provides peace of mind for everyone throughout the building project. By understanding the different types of cover available and consulting with a construction insurance broker like JCT Insurance Expert, you can ensure that you, your client and the building project are well-protected against unforeseen risks.

Get a Quotation

For a quotation, help or advice call JCT Insurance Expert on **01825 745 410** or email **enquiries@eig.email** Or download, complete a proposal form and send it back to us.



Property Owners and Contract
Works Proposal Form



Non Negligence Proposal Form