



RPC

The RICS Minimum Terms – a review

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Agenda

- **The special institution conditions**
- **The amendments in 2020 and 2021**
- **Fire Safety/EWS1**
- **Cyber**
- **What may be coming in the future**









Terms of the policy

Scope of cover

To indemnify the INSURED against any CLAIM or CLAIMS

- a. first made against the INSURED and/or
- b. arising out of any CIRCUMSTANCE(S) which the INSURED shall first notify

during the POLICY PERIOD in respect of any civil liability which arises in consequence of the conduct of PROFESSIONAL BUSINESS by the INSURED and/or by others acting for and/or on behalf of the INSURED.

Terms of the policy

What is a claim?

- any demand for damages or compensation from, or the assertion of a right against, the INSURED
- any notice of intention, whether orally or in writing, to commence legal proceedings against the INSURED
- any communication with the INSURED in whatsoever form invoking any Pre-Action Protocols as may be issued and approved from time to time

Terms of the policy

What is a circumstance?

An incident, occurrence, fact, matter, act or omission that might give rise to a CLAIM.

Terms of the policy

Scope of cover

To indemnify the INSURED against any CLAIM or CLAIMS

- a. first made against the INSURED and/or
- b. arising out of any CIRCUMSTANCE(S) which the INSURED shall first notify

during the POLICY PERIOD in respect of any civil liability **(including but not limited to civil liability arising out of or based upon or attributable to any dishonest, fraudulent, criminal or malicious act)** which arises in consequence of the conduct of PROFESSIONAL BUSINESS by the INSURED and/or by others acting for and/or on behalf of the INSURED.

Terms of the policy

Dishonesty/fraud

Exclusion 9 excludes cover for fraud...

“save to the extent that the CLAIM arises by reason of and was solely and directly caused by the (actual or allegedly) dishonest and/or fraudulent act(s) of any past or present partner, director, member, CONSULTANT or employee of the PRACTICE (whether committed alone or in collusion with others) which cause any client of the INSURED to suffer loss”

Terms of the policy

Dishonesty/fraud

Two provisos:

- Where the dishonesty or fraud occurred after discovery by the Insured of reasonable cause for suspicion of that fraud or dishonesty
- Any dishonesty or fraud by the same person(s) shall be treated as one Claim, so only one limit of indemnity will apply.

Terms of the policy

Dishonesty/fraud

“Immediately on the notification of a CLAIM or CIRCUMSTANCE(S), the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made, and the INSURED will take all reasonable steps to preserve such rights and will cooperate with INSURERS...

However, INSURERS agree to waive any rights of recovery against the INSURED unless liability has resulted in whole or part from any act or omission on the part of such persons which is dishonest, fraudulent, criminal or malicious.”

Terms of the policy

Previous claims/circumstances

Excludes cover for any claim:

- the INSURED was or should have been aware of prior to the inception of this policy (including any CLAIM notified under any insurance which was in force prior to the inception of this policy and accepted as notified by the insurer of that policy);
- arising out of any CIRCUMSTANCE which has been notified under any insurance which was in force prior to the inception of this policy and the insurers of that policy have accepted that the CIRCUMSTANCE was properly notified to that policy;

Terms of the policy

Previous claims/circumstances – the proviso

The exclusion shall not reduce the rights of the INSURED under (or otherwise affect the application of) Section E - the Special Institution Condition.

Terms of the policy

Special Institution Condition

“Where there has been a failure by the INSURED to comply with their duty to make a fair presentation of the risk to INSURERS and such failure would entitle the INSURERS to avoid this policy, the INSURERS agree only to exercise their right to avoid this policy if the INSURED has admitted, or INSURERS have established by way of a final adjudication in arbitration proceedings....that the INSURED failed to make a fair presentation of the risk with the intention of misleading or deceiving INSURERS. Until such final adjudication (including any appeal therefrom) has been concluded, INSURERS shall continue to honour their obligations, and make payment, under the policy.”

Terms of the policy

Special Institution Condition

Remedies for intentional failure to comply with the duty of fair presentation:

- You can avoid the policy
- You can reject all claims that would otherwise attach to the policy
- You can retain the premium

Terms of the policy

Special Institution Condition

In the case of a CLAIM first made against the INSURED during the POLICY PERIOD where:

- a. the INSURED had previous knowledge of the CIRCUMSTANCE(S) relating to such CLAIM, and
- b. the INSURED should have notified the same under any preceding policy but did not do so

Terms of the policy

Special Institution Condition

Remedies for unintentional failure to comply with the duty of fair presentation:

- Apply the same scope of cover available under the previous policy
- Charge a further premium

Terms of the policy

Notification - Claims

“If, during the POLICY PERIOD the INSURED shall receive any CLAIM, or any notice of an intention to make a CLAIM, the INSURED shall give written notice to INSURERS as soon as reasonably practicable. All CLAIMS must in any event be notified within 10 working days after the expiry of the POLICY PERIOD.”

Terms of the policy

Notification - circumstances

“If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE(S), the INSURED shall give written notice to INSURERS of such CIRCUMSTANCE(S) as soon as reasonably practicable with such notice supplying full particulars of the relevant CIRCUMSTANCE(S) including (where possible)

All CIRCUMSTANCE(S) must in any event be notified prior to the expiry of the POLICY PERIOD.”

Terms of the policy

Notification - circumstances

INSURERS agree that any CIRCUMSTANCE(S) notified to them during the POLICY PERIOD which subsequently gives rise to a CLAIM after expiry of the POLICY PERIOD shall be deemed to be a CLAIM first made during the POLICY PERIOD.

Terms of the policy

Notification – non-compliance

Where the INSURED'S breach of or non-compliance with any provision in clauses 1, 4, 5 or 6 of Section C of this policy has resulted in prejudice to the handling or settlement of any CLAIM, INSURERS shall be entitled to reduce the indemnity afforded by this policy in respect of such CLAIM (including DEFENCE COSTS) to such sum as is just and equitable having regard to the prejudice caused to INSURERS' interests by the breach or non-compliance.

Terms of the policy

Run-off cover

- Covered under Section F
- Applies where the Insured has not been able to obtain succeeding insurance to meet the requirements of the minimum terms
- Extends the policy to provide cover for claims from consumers, with an aggregate limit of £1m
- This cannot be cancelled for non-payment the premium

Amendments in 2020

Drivers for change

- RICS obligation to ensure adequate insurance in place to protect members and consumers
- The Lloyds review
- Reduction on capacity
- Increased focus on fire risk/claims post Grenfell

Amendments in 2020

The EWS1 – a brief history

- June 2017 - Grenfell fire
- December 2017 – DCLG Advice Note on ACM
- December 2018 – Building (Amendment) Regulations
- December 2018 – MHCLG Advice Note 14
- July 2019 – MHCLG note on combustible attachments such as balconies
- December 2019 – launch of the EWS1.1

Amendments in 2020

The EWS1 – a brief history

- January 2020 – MHCLG publishes ‘Advice for Building Owners of Multi-Storey, Multi-Occupancy Residential Buildings’ (the ‘CAN’)
- April 2021 – Fire Safety Act
- July 2021 – MHCLG publishes the Independent Expert Statement
- January 2022 – Publication of PAS 9980:2022
- January 2022 – Statement from DLUHC on the use of the EWS1
- March 2022 – Launch of EWS1 (Mark 2)

Amendments in 2020

The EWS1 – a brief history

- March 2022 – Joint statement from RICS and 6 major lenders
- April 2022 – Building Safety Act
- September 2022 – expected date for new guidance

Amendments in 2020

The changes

- Exclusions relating to contractual liabilities extended to cover EWS1

“any liability incurred where the INSURED has relied upon the EWS 1 form (or as revised) and the valuation report does not exclude liability to the lender or any person deriving title to the mortgage for any losses or potential losses arising directly and solely from the valuation being provided in reliance upon the EWS1 form.”

Amendments in 2020

The changes

- Exclusions relating to contractual liabilities extended to cover EWS1
- No cover for surveyors completing EWS1 form without Insurers' agreement:

“PROFESSIONAL BUSINESS shall mean:

those services (including the giving of advice) provided to a third party, which are undertaken by members of the Royal Institution of Chartered Surveyors (or have otherwise been declared to INSURERS) and which are performed by or on behalf of the PRACTICE within the TERRITORIAL LIMITS **other than the completion of the EWS 1 (or as revised) unless specifically declared to, and agreed by, INSURERS”**

Amendments in 2020

The changes

- Exclusions relating to contractual liabilities extended to cover EWS1
- No cover for surveyors completing EWS1 form without Insurers' agreement
- Listed insurers allowed to impose exclusions relating to fire safety
- Limits of indemnity may now apply on an aggregate basis
- Policy excess apply to defence costs
- Effective date: 1 May 2020

Amendment in 2021

Fire Safety

- Insurers are not permitted without specific dispensation to exclude fire safety claims on a property four storeys or less
- Fire safety coverage must be provided as a minimum on an aggregate, defence cost-inclusive basis.
- Consider the impact of the Special Institution Condition.

Amendment in 2021

Cyber

- Addressing concerns from the PRA
- Risks increased due to the pandemic lock-down
- Excludes cover for “*any CLAIM directly arising from the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured*”
- Excludes cover for ‘Cyber Act’
- Excludes cover relating to an infrastructure failure.

The future?

RICS Review

- RICS response to “RICS PII Market: Call for views” – 16 June 2022
 - Data collection
 - Recommended broker scheme
 - Standard proposal form
 - Commitment to working with Insurers to redraft the wording from scratch.
 - Working with the Government on liability capping
 - Engagement and education
- EWS1 assessor cover coming back to the market?

Q&A



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