

BuildingBlocks

RISK INSIGHTS FOR THE CONSTRUCTION INDUSTRY

HOW IS COVID-19 IMPACTING WHAT WAS ALREADY A CHALLENGING MARKET PLACE?

Find out more in our UK Construction Market Update

COVID-19 FAQs

Read our frequently asked questions from clients and prospects about how different parts of their insurance programme will respond to Covid-19.

FEATURE ARTICLE:

Alex Rosenfeld, Senior Associate at Fenchurch Law, reviews the cladding exposures faced by contractors and the impact these have had on Professional Indemnity insurance.



Gallagher

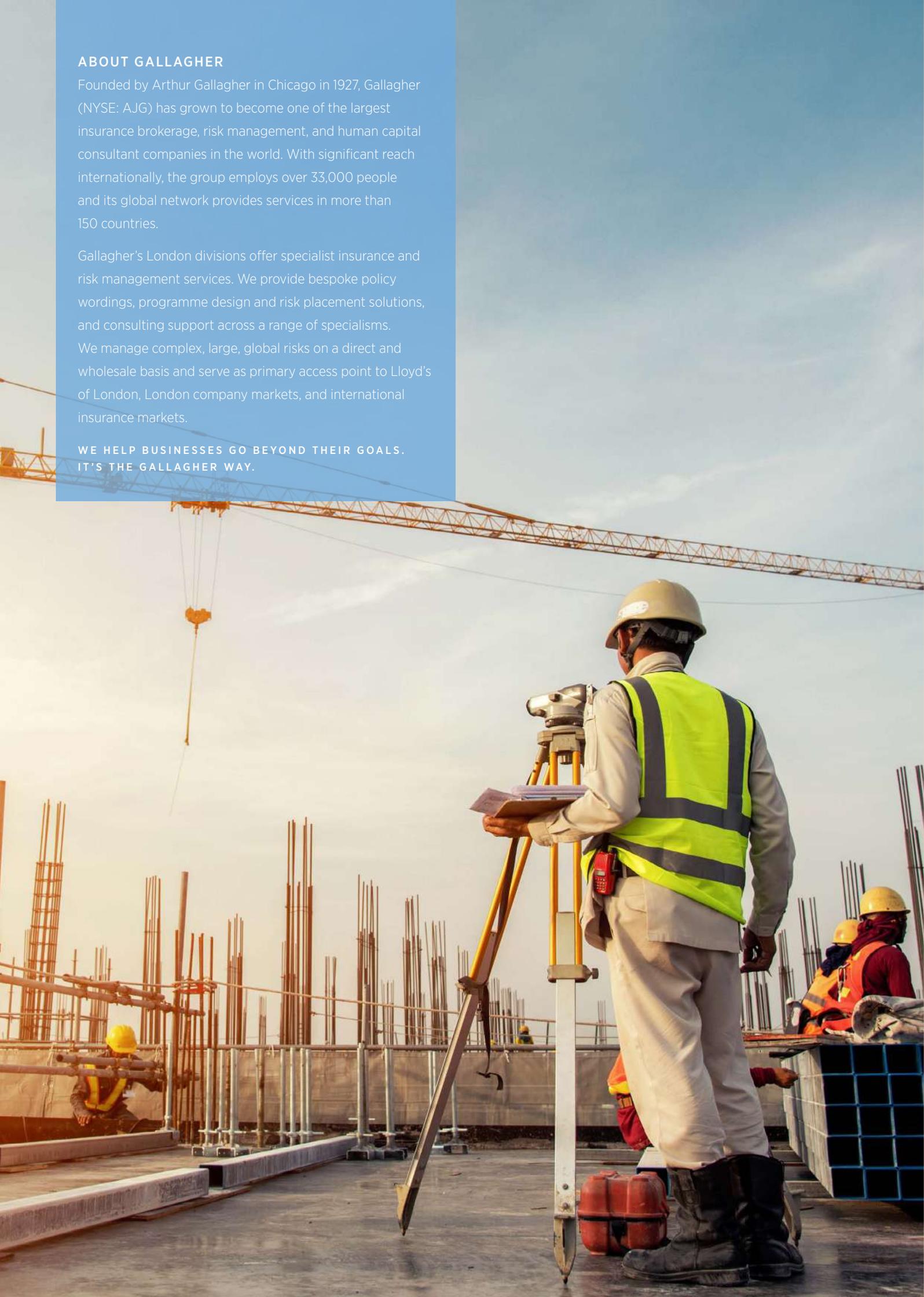
Insurance | Risk Management | Consulting

ABOUT GALLAGHER

Founded by Arthur Gallagher in Chicago in 1927, Gallagher (NYSE: AJG) has grown to become one of the largest insurance brokerage, risk management, and human capital consultant companies in the world. With significant reach internationally, the group employs over 33,000 people and its global network provides services in more than 150 countries.

Gallagher's London divisions offer specialist insurance and risk management services. We provide bespoke policy wordings, programme design and risk placement solutions, and consulting support across a range of specialisms. We manage complex, large, global risks on a direct and wholesale basis and serve as primary access point to Lloyd's of London, London company markets, and international insurance markets.

**WE HELP BUSINESSES GO BEYOND THEIR GOALS.
IT'S THE GALLAGHER WAY.**



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BY MARTIN HILLER

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EXECUTIVE SUMMARY



Welcome to the third edition of Building Blocks – Gallagher’s specialist risk publication for the UK Construction sector.

Within this issue, we review the current insurance market conditions for the UK construction industry. Although our update is overshadowed by the impacts of the global Covid-19 pandemic, we remain optimistic for the construction industry’s future as a result of the government commitment to significant infrastructure expenditure on social and civil projects over the next 5 years plus the continued housing demand. While we anticipate the second half of the year to return to the ‘new’ business as usual, we will step-up and support our clients and prospects providing guidance on Covid-19 related issues together with advice in achieving their risk and insurance objectives in respect of existing and tenders for new projects

We have collaborated with a number of specialists within Gallagher, as well as external contributors, to bring a wide range of articles about the diverse risks faced by the construction industry and some of the insurance solutions available. As you will expect, there is focus on the highly topical area of cladding and fire safety

risk and implications for Professional Indemnity insurance, where we expect another round of tough renewals this year. We also include a review of modular construction techniques and feature an interesting case study on insurance procurement options for local authority housing partnerships.

Since the last edition of Building Blocks, the specialist Gallagher London construction team has continued to grow. Our lenders due diligence team is now established and we have also recruited highly experienced practitioners in asset management and surety. As the insurance market changes it will be the quality of our team and the depth of our knowledge which allows us to differentiate from our peers and deliver the results our clients expect.

We hope you enjoy the issue and don’t hesitate to get in touch.

MARTIN HILLER
Chairman, Gallagher Construction



ABOUT GALLAGHER CONSTRUCTION

Our Construction division arranges insurance for UK and international contractors and designs bespoke owner-controlled programmes across a wide spectrum of projects. Our clients range from contractors and engineers, to sponsors, financiers and local authorities. With our help, project stakeholders can identify, mitigate and transfer risk more strategically.

We offer products and services to enable our clients to manage complex risks of all sizes, including:

- Construction / Erection All-Risks
- Delay in Start-Up
- Pre-handover & Operational Risks
- Business Interruption
- General & Third-party Liability
- Marine Cargo
- Latent Defects
- Environmental / Pollution Liability
- Terrorism & Political risk
- Mergers & Acquisitions
- Legal Indemnity.



01.UK CONSTRUCTION MARKET UPDATE

2019 was a challenging year for the construction insurance market, with increasingly difficult conditions for both employers and contractors on all core construction policies, but with volatility most pronounced in the Professional Indemnity market.

However, the content in our Q1 Summary is overshadowed by the implications of Covid-19.

We believe that the vast majority of Construction Projects will have to stop work; the question of policy coverage will arise for non-damage causes that result in delay and potentially/ultimately financial loss to owners. Construction insurers are reviewing their portfolios with trepidation, attempting to establish policies that include delay insurance and where they may receive notifications in due course. Insurance coverage and policy understanding for any future similar scenarios is under review and will take time to be addressed fully.

The wider market implication and loss of reserves/capital to the insurance markets is yet to be established but we know the total cost will be significant.

Leaving aside the impact of COVID-19, over the past year we have seen increased rates and cover restrictions across all classes. Insurers now require a more in-depth technical understanding of the risk and consequently there is ever increasing importance placed on the underwriting submission.

While coverage continues to be available in the London market, underwriting authority is reduced, particularly impacting the regional hubs where cover has, in some cases, become difficult to obtain.

Construction “All Risks”

Upward pricing trends have continued with rate increases impacting both civil engineering and building projects in the UK. Risks with greater potential for water damage or complex works involving high value existing structures have been most severely impacted.

Water damage excesses continue to be an area of focus and many insurers now consider GBP50,000 per claim to be the minimum acceptable level.

The insurance industry efforts to address water related issues also continue with the publication of the 5th edition of the Construction Insurance Risk Engineers Group guidance note.

Insurers are also seeking to manage their long term exposures in an effort to avoid under-pricing on multiyear projects, where they have previously suffered losses on long term fixed rates.

In terms of capacity, while a number of historically strong CAR insurers withdrew at the start of the year, there were few meaningful exits in the second half of 2019. However, some insurers, such as Liberty and Castel, have entered the market, while others continue to maintain growth strategies within their defined risk appetite.

Casualty

2019 continued with the corrective action which swept in during 2018. Lloyd's "Decile 10" review of this sector, a full in depth analysis of the 10 worst performing classes, resulted in significant action being taken against some of the largest syndicates in this class with civil engineers one of the areas under scrutiny.

This has resulted in a sizable shift in attitude amongst Casualty Insurers, with increased focus on their Combined Operating Ratios; or in layman's terms, underwriting for profit rather than top-line income.

One effect of this change is that insurers have a reduced appetite for participation on the lower layers of a liability tower, particularly at a GBP1m attachment point. Where insurers do deploy capacity at this level they are limiting.

Another consequence is insurers are limiting their exposure on multiple layers of the same risk on the condition that they do not participate on consecutive layers. Following several high profile refurbishment fires, the addition of heat conditions to the policy wording is also becoming more prevalent.

As highlighted in previous publications; whilst this paints a fairly negative picture, the good news is that there is still significant capacity for the right risks, both managed and brokered correctly. The quality of the underwriting submission means that where brokers present meaningful information to underwriters, they are still able to secure meaningful terms for their clients.

Construction Professional Indemnity (PI) market

The biggest change has been in the Professional Indemnity market conditions. The results of the remedial plans put in place by Lloyd's for 2019 which saw caps placed on insurer's gross written premiums (GWP) have continued into 2020 and rates are still rising at levels not seen since 2002. Whilst some insurers have reported greater flexibility on the capacity they can deploy in 2020, we still expect many to have limited appetite for new business and this will continue to create pricing tensions on most renewals, particularly in light of Covid-19, after new business.

Overall, the Construction PI market capacity has roughly halved in the last 18 months, and this reduction in capacity continued with five further Lloyd's insurer "books" being placed into runoff since November 2019. Insurers are continuing to push for higher levels of self-insured retentions to further manage their exposures and absolute coverage exclusions on combustibility and Fire Safety in buildings have become more

commonplace, with insurers continuing to scrutinise the extent of cladding project reviews undertaken by contractors and their compliance with the relevant building regulations.

It is difficult to forecast how long these hard market conditions will continue; PI, being by nature a long tail class of business, we expect insurers to remain very cautious for the remainder of the year. Aside from Argenta Syndicate entering PI there are no further signs of new capacity entering the market in 2020, but previous cycles would suggest that eventually new capital will be attracted by potential returns and a much improved rating environment; however, the timing of this is equally difficult to predict and is likely to be further compounded by the issues facing insurers arising from Covid-19.

With almost all brokers and underwriters now working remotely, it is extremely important for clients to prepare well in advance of their renewal date to establish a renewal strategy and engage with a range of markets. As in 2019, the quality of the underwriting submission is of the utmost importance in being able to secure renewal terms, particularly on risks with distressed claims experience.

TO FIND OUT MORE >

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02.COVID-19 FAQs FOR THE CONSTRUCTION INDUSTRY

With the considerable impact that COVID-19 has had on the Construction industry, insurance policies are being tested. Many of our clients and prospects have raised questions about how different parts of their insurance programme will respond to COVID-19 and we are seeing some common themes. We have created a list of frequently asked questions (FAQs), which we hope you will find helpful.

Whilst our UK offices are closed in line with government guidelines, our team continues to operate remotely and work closely with clients to help with their insurance needs. We understand that your company may also be adjusting to a somewhat different way of working, so we promise to do everything we reasonably can to support you during this challenging and uncertain time.

For more information and advice, please contact your account executive, email the team at uk.construction@ajg.com or visit the below websites. We will also be posting information on a dedicated area on our website.

- The World Health Organization (“WHO”)
- UK Department of Health and Social Care
- The Association of British Insurers.



Q. Due to the COVID-19 outbreak we are proposing to cease (or have ceased) all works on site; how will this affect our Construction All Risks (CAR) Insurance?

- A. There is a number of implications that the cessation of activities may have on your CAR insurance; these are considered below:
- **Cessation of Works clauses:** many CAR policies will contain a specific cessation of works clause which effectively allows for insurers to amend policy terms and conditions should a set period of time elapse with no works undertaken on site. The number of continuous days the works must be ceased before insurers have this right will vary from policy to policy, however many are either 90 or 180 days. It is therefore important that contractors and employers are recording site shut down dates and periods of inactivity to ensure they are not falling foul of such policy conditions.
 - **Material Change:** in the absence of a specific cessation of works clause, the shutdown of a site for an extended period of time would be considered a material change in risk. Due to obligations imposed on insureds under the Insurance Act 2015, contractors and employers have an obligation to notify insurers of any 'material facts' about a risk - not just at inception but also throughout the length of the policy period. The Insurance Act defines something being material as a fact which 'would influence the judgment of a prudent insurer in determining whether to provide insurance for the risk and, if so, on what terms'. However, the definition of what constitutes a 'material fact' is often subjective. For example, a cessation of works could be considered a material risk - therefore given that in absence of employees being onsite this increases the potential of risks such as arson or theft, whilst also increasing the potential severity of losses such as escape of water and fire. It is therefore important that contractors and employers are engaging with their broker to ensure that any material changes are brought to the attention of insurers in a timely manner.
 - **Reasonable Precautions:** all contracts of insurance contain a principal clause that an insured must take reasonable precautions to prevent a loss. With respect to a site shutdown, as less people would be on site than usual, insurers will therefore be looking to see that any potential risks associated with this are assessed and mitigated against. Insurers have provided guidance and checklists to assist clients in this regard; however key areas of focus include; security (entering the site; plant/materials theft etc.), fire protections (including the mitigation of arson threats) and escape of water mitigation plans. Given the amount of information produced by insurers in this regard, contractors and employers should engage with their broker to ensure that insurer's expectations are being met or exceeded.

Q. Due to the COVID-19 outbreak we are proposing to continue works on site (or recommence following a site shutdown); are there any considerations we need to make or any details we need to notify insurers of?

- A. As long as Public Health England and UK government guidelines are being adhered to and there is no material change in the risk on site, insurers will not need to be notified should works continue (or recommence) on site. Insurers expectations, as always, will be that contractors and employers will risk assess the situation and take appropriate reasonable precautions to prevent a loss including harm or injury to their employees and sub-contractors. If however insurers have amended the provisions of any policy due to the cessation of works, insurers should be notified of any return to work on site to ensure any amendments or restrictions in policy cover can be reverted back to their original state or relaxed.

Q. We intend to continue working on site and will be implementing measures which allow our employees to observe social distancing. Would our insurances indemnify a future claim from employees or subcontractors who claim to have contracted COVID-19 on site?

- A. Employers Liability (EL) and Third Party Liability (TPL) insurance policies will typically indemnify the contractor for all sums which they become legally liable to pay in respect of bodily injury, injury, illness or disease, with the EL responding to claims made by employees of the contractor and the TPL responding to claims from third parties. Therefore, if the claimant could establish that the virus was contracted through their employment and the contractor was found to be legally liable, these policies may respond, subject to policy terms and conditions.

From a claims defensibility standpoint, contractors should be prepared to document the measures that they have put in place to safeguard the welfare of employees and members of the public. This should take account of the government advice for social distancing within the Construction sector, which can be found at the following link (<https://www.gov.uk/guidance/social-distancing-in-the-workplace-during-coronavirus-covid-19-sector-guidance#construction>).



Q. How are insurers responding to COVID-19 with respect to policy terms, conditions and premiums?

A. While we have not seen any significant changes in Construction All Risks, Third Party Liability and Employers Liability premiums as yet, we do expect insurers to be actively evaluating losses incurred over this time which may factor into future pricing. While over periods of inactivity, CAR exposures could be heightened due to less staff on site to counter unauthorised site access, escape of water and theft; casualty exposures are likely to diminish during sustained inactivity periods. The effects on premium and deductibles therefore may vary depending on class of insurance. Since the start of the outbreak however, we have seen insurers introducing exclusions in cover in respect of losses arising out of contagious and communicable diseases. We would therefore expect that for the foreseeable future, any new policies incepted or renewals would contain likely such exclusions.

Q. As a consequence of the COVID-19 outbreak we are expecting to see a drop in overall turnover and potentially wage roll for this financial period; as our policies are rated on these figures, will we get a return premium?

A. Construction All Risks, Employers Liability and Third Party Liability insurances are typically placed on an adjustable basis, meaning estimates are provided at the start of the period looking forward which are then adjusted on expiry of the period based on what was actually achieved. If the turnover estimated for any given period exceeds what was actually achieved for the period, a return of premium may be due. Many policies also do contain a minimum premium level, which regardless of the turnover achieved, is the minimum premium payable for the period. This will therefore need to be taken into consideration when evaluating how much premium may be reimbursable from that paid. Given the COVID-19 outbreak and exceptional circumstances we see ourselves in.

With respect to claims, exposures for some CAR risks will be heightened at this time given the idle state of many construction sites across the UK, it's therefore important that insureds are taking necessary steps to protect their assets during this time to aid in future negotiations.

For casualty risks, generally over periods of prolonged inactivity on site casualty exposures will reduce. However, as insurers are deploying capacity which cannot be used elsewhere, they may still seek a premium for this opportunity cost.

Should a contractor or employer be approaching renewal we suggest engaging with your Gallagher account executive to ascertain insurers' thoughts in this area and working towards an amicable solution for all.

Q. As a consequence of the COVID-19 outbreak managing cash flows for the foreseeable future will be a priority; what assistance is available with respect to the paying of our insurance premiums?

A. With respect to assistance in this regard, early engagement with your Gallagher account executive is key. Insurer's standard payment terms are typically between 30 and 60 days, however attaining 90+ day payment terms is agreeable in some circumstances. In addition to negotiating extended payment periods with insurers, Gallagher are able to source premium financing, which if available to you subject to underwriting, will facilitate the payment of larger premiums over a number of months. For more information in respect of premium financing, contact your account executive.



Q. As a consequence of COVID-19 we are looking at undertaking activities which are outside the scope of our normal activities and include assisting in supporting the community. Will our insurance cover these activities?

A. Any activities that an insured undertakes which is outside the scope of that declared to insurers should be raised with insurers for agreement (whether COVID-19 related or not); therefore early engagement with your Gallagher account executive before the activities are undertaken is key.

With respect to motor; as a result of COVID-19 we have seen contractors using company vehicles for activities which are outside the normal scope of their business activities, an example being the delivery of PPE to hospitals and care homes. While largely the stance from insurers seems to be that these particular activities could be covered by Social Domestic and Pleasure extensions, we would suggest that particular examples are raised with insurers and specific agreement to cover sought as this stance may vary (along with policy terms and conditions).

Generally, insurers have been particularly concerned about the management of risk surrounding employees contracting the virus, therefore being able to provide evidence of risk assessments and training in this regard will be vital to ease insurer concerns.

Q. As a consequence of COVID-19 the majority of our motor fleet is not being used; given they aren't being driven, would we be able to receive a return premium?

A. Based on guidance we have received from insurers to date on this topic, the only circumstance in which insurers appear willing to consider a return of premium would be to declare the vehicle as SORN (Statutory Off Road Notification) and remove it from the policy.

SORN is the process of taking your vehicle off the road, this may be for a number of reasons and could include the expectation of the vehicle not being required for an extended period of time due to COVID-19. If your vehicle is classified as SORN, it is unable to be used on a public road, this includes being driven or parked. There are certain circumstances in which a SORN declared vehicle can be driven on a public road, however these are limited and include to attend a pre-booked MOT appointment. If a vehicle is used on a public road when declared SORN, fines can be imposed of up to GBP2,500 along with court prosecution. Once your vehicle is declared SORN you may however be entitled to a pro-rata refund of any unused road tax.

If a SORN declaration is opted for, vehicle owners/hirers need to be certain that the vehicles will be stored securely on private land and not driven on a public road for the duration of the period they are declared SORN to prevent uninsured losses or fines being imposed.

The process for declaring and un-declaring a vehicle SORN is relatively straightforward, albeit may be administration intensive for larger fleets. For more information on this please contact your Gallagher account executive or visit the DVLA website: <https://www.gov.uk/make-a-sorn>

TO FIND OUT MORE >

For more information, please contact your dedicated account executive or email the team directly at uk.construction@ajg.com

03. CONSTRUCTION POLLUTION RISKS AND COVID-19

The impacts of COVID-19 on the construction industry are widespread, and are likely to lead to a number of unfortunate consequences. In this article, we will specifically consider how these consequences could impact the environmental liability of landowners, developers and funders.

Environmental law is primarily based on 'the Polluter-Pays' principle, under which liability for pollution is intended to rest with the entity that caused the pollution or released the contamination.

In practice, however, case law such as *Corby*¹ demonstrates that organisations which employ contractors and sub-contractors can retain a contingent responsibility for pollution caused or released by their contractors and can potentially be held liable, even if the employed entity no longer exists when claims or regulatory actions ensue. These cases also demonstrate that such claims or actions may not arise until many years after the pollution was caused by the contractor's works.

Employer, contractor and sub-contractor liability

This legal liability position is often reinforced by contractual environmental provisions in, for example, Project Agreements or Asset Protection Agreements. Under such provisions, the main contractor is commonly responsible for liabilities arising from the actions of its sub-contractors, and employers can be held responsible for the activities of its contractors and sub-contractors. These contractual liability allocations are frequently backed by onerous indemnity provisions.

The collapse of large UK construction firm Carillion in 2018 was widely reported, but what was less widely reported was the significant increase in insolvencies of smaller construction companies as a knock-on effect. A study by the accounting firm Moore Stephens² showed that the number of construction firms becoming insolvent increased by a fifth in the first quarter following the collapse of Carillion.



The impact of the COVID-19 shutdown

Whilst it is obviously far too early to predict the overall long-term impact of the COVID-19 outbreak on the construction industry, it sadly seems almost inevitable that some increase in insolvencies of construction companies will likely result.

One consequence of this is an increased likelihood of employers facing liabilities, at some point in the future, if pollution has been caused or released by contractors they employ. There have been a number of cases where site run off, water overflows and other events have led to contamination escaping a construction site and impacting adjacent properties or natural resources. This can be an especially heightened risk with sites that are left dormant or partially developed.

Employers must consider their actions before and during site shutdown to reduce the risk of pollution and contamination.

In the Crest Nicholson case³, the judge specifically cited the impact of the developer's actions in the removal of hardstanding as a significant contributing cause of the contamination release. The judge held that the removal left open ground for a protracted period, resulting in increased rainfall percolation which led to exacerbation of groundwater contamination.

Implementing preventative measures

It is particularly important for those who employ contractors or sub-contractors, whether it is landowners, developers, main contractors or investors, to consider carefully both how project works are managed to prevent pollution and how long-tail pollution liabilities are financially protected.

The potential for pollution liabilities to arise should be carefully considered from the outset, to ensure environmental risks are properly identified, assessed and managed throughout the project. Employers should carefully review their procedures for selecting and appointing works contractors and also for monitoring and managing their contractors' activities, to ensure their controls are sufficient.

Ensuring specific cover is in place

Employers should also consider implementing appropriate financial protection via environmental insurance in the form of a Contractor's Pollution Liability policy. This can either be made a required insurance to be taken out by the (main) contractor, with the employer named as an additional insured on the policy, or taken out directly by the employer on a project-wide basis to protect all interested parties that include: the employer, contractor, sub-contractors and any lenders.

Cover can be also obtained on a contingent basis, solely for the benefit of the employer and any lenders. The contingent approach could have the advantages of i) likely to see premium savings and ii) potentially covering liabilities arising from pollution caused/released by deliberate actions of the contractor.

To learn more about how our specialist teams can help you to manage and transfer the heightened pollution risks resulting from events such as COVID-19, please contact us on the details below.

TO FIND OUT MORE >

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¹ Corby Group Litigation v. Corby Borough Council [2009] EWHC 1944 (TCC)

² Smithers, Rebecca (1 October 2018). "Insolvencies in UK building firms rise 20% after Carillion collapse". Guardian. Retrieved 1 October 2018

³ Crest Nicholson Residential Limited, R (on application of) v Secretary of State for Environment, Food and Rural Affairs and Others [2010] EWCH 561 (Admin)



04.CFL INSURANCE: KEEPING YOUR DEVELOPMENT ON THE RIGHT TRACK

Over recent years, we have seen a marked increase in the number of developments taking place in close proximity to railways, with both consumer demand and demographic necessity making this a trend which looks set to continue.

Demand for space and convenience

Modern homeowners demand transport convenience. Developers often market their properties as 'a short walk to' or a 'number of minutes from' the nearest railway station because this factor is of increasing importance for prospective buyers. A recent CBRE study found that houses within 500 metres of a London tube station experienced value growth of nearly 10% every year since the financial crash, versus on average 6.9% for all other housing stock in the borough.⁴

Coupled with this, the UK's population growth over the past decade has created an ever increasing demand for space to build new homes and workplaces. The government recently stated its ambition to meet this demand by

delivering 300,000 extra homes per annum by the mid-2020s and with heavily regulated planning policies applying to greenfield sites, the focus is on making better use of existing brownfield development opportunities within our towns and cities. With space at a premium, part of the solution is to ramp up development near, adjacent or above operational railway lines.⁵

Alongside increased demand for development sites, the government continues to commit significant investment to its rail infrastructure, both through extensions to existing networks such as the planned Thameslink station in Brent Cross, and entirely new lines such as Crossrail and the long mooted East West Railway linking Cambridge with Oxford. This expanded footprint of rail infrastructure means more development in proximity to its component assets.

⁴ www.cbreresidential.com/uk/en-GB/content/mind-gap-how-living-near-tube-station-affects-house-price-growth

⁵ www.researchbriefings.files.parliament.uk/documents/CDP-2019-0147/CDP-2019-0147.pdf

What does this mean for developers?

Whilst there is an unquestionable need to make effective use of this land, developments near railways do give rise to additional risks, particularly during the construction phase of a project.

Where a development has a risk of causing disruption to rail infrastructure owned by Network Rail, London Underground or Transport for London, it is considered within the 'zone of influence', meaning that the developer is likely to be obliged to enter into an Asset Protection Agreement (APA) with these parties. The APA requires the developer to indemnify the beneficiary for losses associated with any disruption or delay caused to the network, even where this occurs in the absence of physical damage for example a tower crane teetering in the wind, or smoke across the line.

In these circumstances, it is only right that the infrastructure owner is reimbursed for their loss of use and they will have their own contractual responsibility to compensate the train operating companies for unplanned disruption to the network. From a Network Rail perspective, this is governed by schedule 8 of the track access contract.

The developer may retain the risk imposed by the APA themselves or seek to pass it down, in part or in its entirety, to their main contractor. Either way, without careful consideration the APA can impose a significant exposure on these parties. Under a typical Third Party Liability policy, cover is limited to liability arising from third party property damage and the consequential financial losses which flow directly from that damage. However, the policy will not usually cover pure financial loss, i.e. contractually assumed liability for loss of use of a train line or station because of unsafe conditions adjacent to that property.

Insurance solution

In recent years, the construction insurance market has responded to this coverage gap by developing a product known as Contractual Financial Loss (CFL) insurance. The Australian insurer, QBE, have been leading the way in this area, having produced their own Rail CFL wording:

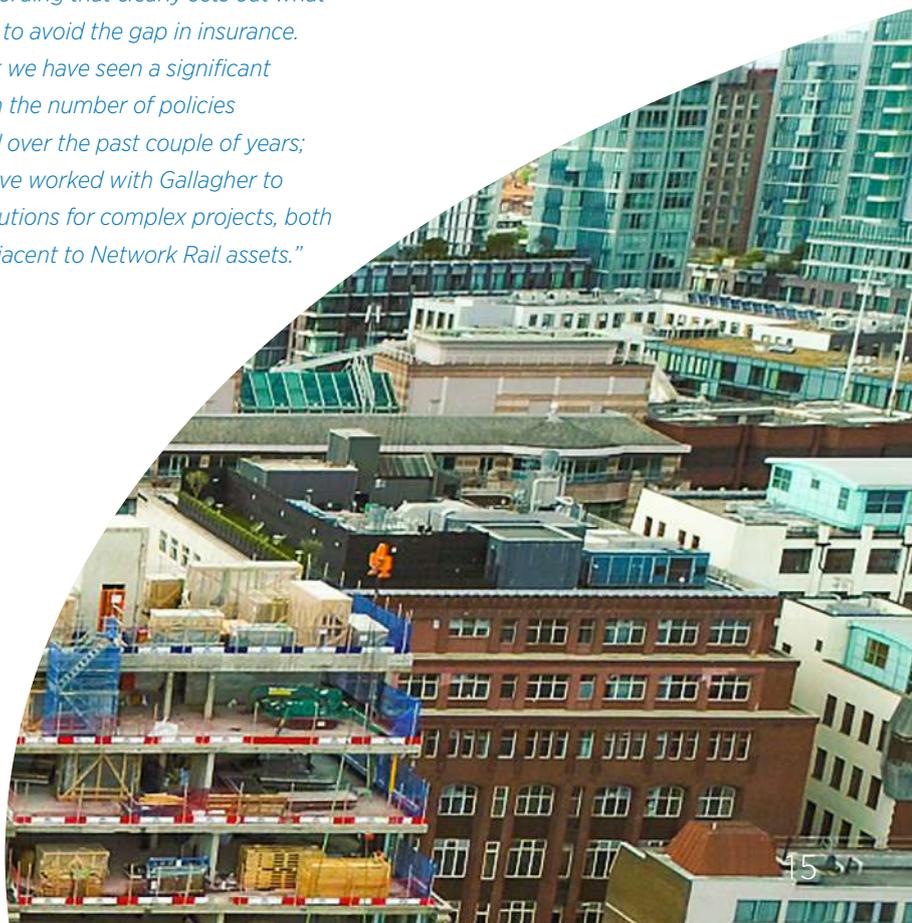
"QBE saw this as a key area of uninsured exposure for our clients, so we developed our CFL wording that clearly sets out what is covered to avoid the gap in insurance. As a result we have seen a significant increase in the number of policies purchased over the past couple of years; and we have worked with Gallagher to deliver solutions for complex projects, both on and adjacent to Network Rail assets."

While this coverage can be effective in meeting the policyholder's liability for non-damage losses, a comprehensive insurance solution can only be achieved following a review of the contractual documentation by a qualified broker. In circumstances where an APA applies, Gallagher therefore recommends consulting your insurance advisor at the earliest possible opportunity.

TO FIND OUT MORE >

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05.IS MODULAR CONSTRUCTION THE FUTURE OF THE CONSTRUCTION INDUSTRY?

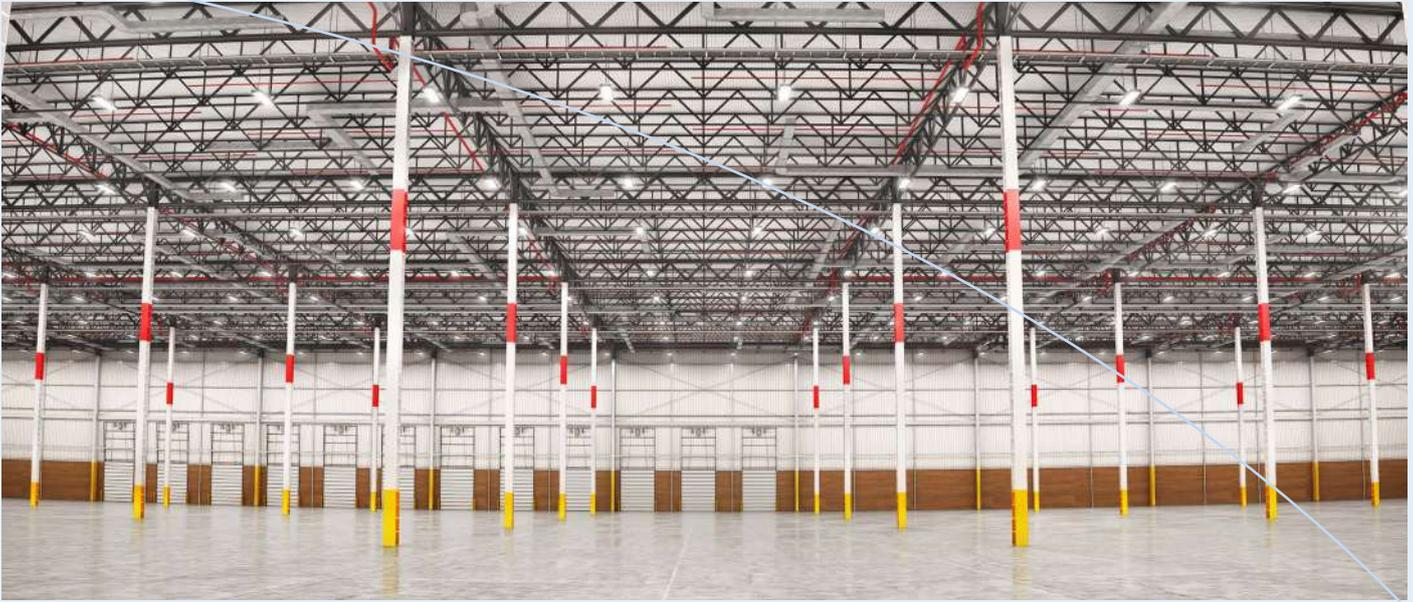
As various pressures such as efficiency, labour shortages and environmental impact continue to increase on the construction industry, there is an ever increasing move away from traditional methods of construction and towards Modern Methods of Construction (MMC) to find the solutions. Whilst MMC is used to encapsulate a great number of different methodologies, undoubtedly one at the forefront in this area is Modular Construction.

Background

Modular construction is the term generally used to describe a method of construction whereby a significant proportion of the assembly of the parts of a building is moved off-site, usually to a manufacturing-style, factory-based environment. Once assembled, these “modules” or “pods” are transported to site and connected together, usually attaching to a frame or podium that has been constructed on-site in a traditional manner.

Whilst not necessarily new to the UK, the uptake in modular construction has been significantly slower than in areas such as Asia-Pacific, where modular construction is being adopted and pushed to its limits with increasing regularity. Investment by entities such as Goldman Sachs, who have put GBP75m into becoming the majority shareholder of modular construction specialist TopHat, has accelerated the growth and exposure in recent years in the UK, and looks set to bring it into the mainstream.





What are the benefits?

As a major contractor with significant experience in modular construction recently summarised, it should be 'faster, better, cheaper, greener and safer;'

- ✓ **Faster** – Estimates vary, but it is generally considered that modular construction should lead to anywhere from a 30-50% reduction in total build time, due to; efficiency gains made by the factory, the ability to build construction modules simultaneously with the groundworks and frame being constructed on-site, the ability to deliver modules as and when they are ready to be installed, and reduced weather impact than on-site.
- ✓ **Better** – This is clearly a subjective point, however the level of quality control achievable in a factory environment far outweighs what is reachable on-site. Modules can also be constructed to be more energy efficient, and detailing can be more precise when using machines to cut and shape materials to degrees of accuracy not achievable by the human hand.
- ✓ **Cheaper** – Whilst typically cost-neutral from an overall construction value perspective, the reduction in total build

time generally results in cost-savings, along with the ability of a client to begin earning revenue from their completed asset more quickly.

- ✓ **Greener** – As well as being able to deliver greener buildings, modular construction usually results in a significant reduction in the levels of site traffic and deliveries, alongside a drop in fossil-fuel powered machinery on-site.
- ✓ **Safer** – With significant proportions of the build programme being undertaken in a clean, controlled, well-lit and heavily monitored environment, and with less manual labour on-site, modular construction should be significantly safer.

How about key challenges?

Like any new methodology, it is not without its challenges;

- Building design has to be finalised (and fully locked down) much earlier than with traditional methods of construction in order for it to work with the foundations and superstructure.
- The agreement of ownership, and issuance of vesting certificates, can be a significant challenge if large volumes of materials/modules are either being stored off-site, or being transported significant distances in order to reach the site. Deciding at which point ownership transfers from modular manufacturer to developer can be challenging.
- The above challenge requires financiers/funders of the development to be far more hands-on and involved in the production process in order to facilitate smooth issuance of vesting certificates and payment, otherwise efficiency gains can be quickly eradicated due to financial hold-ups.
- The ability to move between modular manufacturers on a given project is currently extremely limited due to the large variance in systems and data being used across the industry.
- Traditional forms of contract require bespoke amendments, guided by the eye of a lawyer experienced in the world of modular construction, in order to allow for elements such as testing being incorporated within the scope of works.



What does this mean for insurance?

Whilst not new to the UK construction market, insurers are still wary of modular construction, as generally they have not yet built up enough of an experience in how these buildings perform over time to have reliable actuarial models upon which to base their underwriting. As a result, there are pockets of expertise within the market, but the general attitude is one of nervousness, usually resulting in higher rates.

Key considerations to be aware of are linked to Professional Indemnity (PI) insurance;

- **The aggregation/series of claims clause** – Due to the significant potential for multiple, identical and repetitive defects in a modular design, it is vital for the manufacturer/contractor to have an appropriate clause in their PI insurance policy wording. This should allow for only one policy excess to be applied in such a scenario where each defect has arisen out of the same proximate cause, rather than each defect and claim having its own excess applied, as this could result in a huge variance in what is paid out in the event of a claim. With the rise in PI excesses in recent years, it could even be the difference between a claim breaching the excess at all, or not.

- **Fitness for purpose** – Partly a contractual issue, partly an insurance issue – employers tend to push for a fitness for purpose obligation in modular construction due to the increased reliance on the modular manufacturer for the design and performance of the building. This should be avoided wherever possible as insurers are extremely reluctant to offer protection against fitness for purpose clauses; and where unavoidable, please consult your broker as early as possible in the process to see what options you have available to you.

This is growth market, and one of the many directions in which our industry is adopting in order to achieve the aggressive government housing and emissions targets. Therefore, modular construction is likely here to stay – how far the boundaries are pushed and how quickly it is adopted, however, remains to be seen. Mark Farmer's recent appointment as the government's champion for MMC indicates the accelerator may be about to be engaged.

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06. CLADDING RISKS: ISSUES FOR CONTRACTORS AND THE IMPACT ON PROFESSIONAL INDEMNITY (PI) INSURANCE

In this article, Alex Rosenfeld, Senior Associate at specialist insurance law firm Fenchurch Law, reviews the cladding exposures faced by contractors and the impacts on PI insurance.

Professional indemnity insurance provides cover to professionals who incur civil liabilities to third parties arising out of a negligent act or omission in their professional capacities. That poses a vexed question in relation to unsafe cladding, and in particular unsafe Aluminium Composite Material (ACM) cladding. Although the dangers associated with unsafe cladding are now widely known following the tragic fire at Grenfell Tower, different considerations will apply to the pre-Grenfell landscape.

This article examines some of the key cladding issues facing Design and Construct contractors and other construction professionals in relation to PI policies.

The duty of fair presentation

As with all insurance, professionals must disclose every material circumstance which they know, or ought to know, in a manner which would be reasonably clear and accessible.

The Insurance Act provides examples of things which may be material; namely, special or unusual facts relating to the risk, any particular concerns which led the insured to seek cover, or *“anything which those concerned with the class of insurance and field of activity in question would generally understand as being something that should be dealt with in a fair presentation of risks of the type in question.”*

As concerns about cladding have intensified, professionals can now expect to face scrutiny at policy inception and renewal regarding their involvement in cladding activities. Typically, proposals will ask specific questions about cladding, often with a focus on apartment blocks and student accommodation. This may require professionals to carry out onerous and time-consuming searches of old records, sometimes spanning many years.

In the author’s view, there is a real risk that, following the fire and the resulting investigations, a professional that carried out work using similar products in the past now ought to know this constitutes a ‘material’ piece of information which therefore must be disclosed to insurers.



It is clear, however, that given the current PI insurance market conditions, those with cladding exposure clearly articulated to insurers will see significant premium uplifts, higher excesses and further cover restrictions. Those who are unable or unwilling to articulate their exposure may be in the position of having cover withdrawn completely.

An additional trap for the unwary is an exclusion which provides that there will be no cover *“relating to goods or products ... supplied [or] installed”*. An exclusion in these terms may also mean that there is no liability under the policy for the supply and installation of cladding.

Notification of circumstances

In PI policies, professionals are usually required to give notice of circumstances which ‘may’ or ‘might’, or alternatively which is ‘likely to’ give rise to a claim.

A claim will be ‘likely’ if there is a greater than 50% chance that it will be made. Conversely, where a policyholder is required to notify that a claim might be made, the threshold is much lower.

In those cases, the courts have held that there only need be more than a fanciful or speculative chance of claim. In either case, the professional must be aware of something which, considered objectively, indicates the possibility of a claim being made against it.

Professionals would be well advised to review their role on cladding projects, to determine whether they have notifiable circumstances. This exercise is likely to include such considerations as whether the professional had responsibility for the design, specification or installation of cladding, and whether the specific materials were thought to be safe, by reference to what was known and acceptable practice at the time.

Allegations of negligence – did the materials breach Building Regulations 2010?

When faced with a negligence allegation, one of the main considerations will be whether the materials complied with the building regulations in force at the time. If they did, then, irrespective of what is *now* known, that may mean that the professional was not negligent.

The principle requirement under the building regulations, as far as cladding is concerned, is Requirement B4(1). This provides that *“the external walls of the building shall adequately resist the spread of fire over the walls and from one building to another, having regard to the height, use and position of the building.”* Statutory guidance for how Requirement B4(1) can be complied with is found in Approved Document B.

In her Independent Review of the Building Regulations in May 2018, Dame Judith Hackitt found that *“the package of regulations and guidance (in the form of the approved documents) can be ambiguous and inconsistent.”*

By way of example, previous versions of Approved Document B stipulated that any “filler material” should be of limited combustibility. Many construction professionals understood “filler material” to refer solely to foam which was used to fill voids. Therefore, on that interpretation, this stipulation did not apply to ACM cladding.

The government has now clarified, in the latest iteration of Approved Document B, that “filler materials” include the core of metal composite panels. Nevertheless, the question remains as to whether professionals breached their professional duties “at the time”, if they relied on guidance which was poorly drafted and ambiguous. That question is far from straightforward, and the answer is likely to be fact-sensitive in each case.



Cladding remediation scheme

In 2019, the government introduced a cladding remediation scheme to speed up the removal and replacement of unsafe ACM cladding on privately owned, high-rise buildings. One of the pre-requisites to funding is that eligible applicants must actively pursue “all reasonable claims against those involved in the original cladding installations.”

The guidance issued by the government does not specify what would constitute a “reasonable” claim, and, as such, we may see an increasing focus on building owners claiming against main contractors, architects, and specialist cladding subcontractors. The consequence, potentially, is that PI insurance premiums are driven even higher, and that more insurers introduce cladding exclusions.

Summary

There has been a paradigm shift in attitudes towards cladding risks since Grenfell, no more noticeably than in the PI insurance market. Although the legislative and regulatory changes have largely been propelled by concerns about unsafe ACM cladding on tall, residential blocks, PI insurers understandably remain concerned about all cladding exposures.

The implications are twofold. Firstly, it is expected that insurers will continue to restrict their exposure for cladding risks. The changes in the PI market have been rapid and severe in terms of premiums, excess levels and cover, so it is important that the insured and brokers work with insurers to address these issues. Secondly, professionals should continuously review and consider their involvement in cladding projects, taking into account the latest documentation issued by the government, including Advice Note 14 and Advice Note 22 regarding High Pressure Laminate (HPL) materials. It is also critical that duties of fair presentation are adhered to, and that circumstances and claims are notified promptly and prior to expiration of their policies.

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07. A BEFIRST CASE STUDY: ACCELERATING REGENERATION IN THE BOROUGH USING INSURANCE INNOVATION

Who are BeFirst and why were they created?

BeFirst is a development company owned by Barking and Dagenham council primarily focused on delivering social housing for the borough.

What are BeFirst planning to deliver?

The development pipeline is estimated at GBP1bn with an estimated 40 projects over the next five years, the vast majority of which are residential developments, ranging from more traditional homes through to high-rise apartment blocks. BeFirst have set up a Contractor framework to deliver their programme with seven contractors appointed to their panel.

How did Gallagher engage with BeFirst?

Gallagher engaged with BeFirst promptly upon its incorporation. BeFirst's senior management made it clear from the outset that they had four key objectives to achieve when looking at insurance procurement, these were:

- Driving value
- Maintaining control
- Achieving best-in-class and consistent coverage
- De-risking the programme.

The process began by undertaking a strategic review of BeFirst's plans, allowing Gallagher to interpret and understand BeFirst's risks.

From here, Gallagher presented three main ways in which BeFirst could design their construction insurances, alongside an in-depth paper discussing the numerous other ancillary risk exposures such as environmental exposures (a big consideration in Barking) and housing warranty/latent defect solutions.

Subsequently, BeFirst presented their plans to a panel of some of the leading construction, liability and latent defects insurance underwriters in the London market. This undoubtedly engaged the insurers in what was a tough period of transition for a number of the construction insurers, and allowed them to ask any questions to BeFirst.

The coverage – a “projects attaching” facility

The “projects-attaching” facility allows BeFirst to manage cash flow, as premiums are only payable as and when each project attaches, typically works commencement. Furthermore, this approach secured the rating and coverage, meaning certainty of cost, whilst maintaining flexibility around timings and coverage extensions.

With so many interested parties across such a large programme, undoubtedly the projects attaching approach found the right balance between certainty and flexibility.

How does it actually work?

Effectively there are two parts; the shell and the attachments. Once the shell coverage and rating has been agreed, each project is “declared” as it is about to start on-site. This is reviewed by the Gallagher team in conjunction with BeFirst, and then assuming all is well, it is attached to the facility, with project-specific documentation being issued to all parties.

Who else could a “projects attaching” approach suit?

In reality, this way of approaching insurance could work for any owner, developer or employer as long as there is a clear and obvious pipeline of construction work that carries with it a “critical mass” of construction spend, such that insurers are willing to offer this type of coverage. Unfortunately, defining that critical mass is not an exact science, but with a growing number of councils looking to take an active role in the regeneration/development of their land, Gallagher expect to see a significant increase in the use of this type of facility.

TO FIND OUT MORE >

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08. NEW PERMITTED DEVELOPMENT RULES- WHAT DO THEY MEAN FOR HOMEOWNERS?

The recent shake up of planning permission by the Housing Secretary has been a welcome change for homeowners around the country.

The new planning law allows homeowners to add up to two storeys to their home under permitted development⁶. The usual building regulations (including Fenestration Self-Assessment Scheme) will have to be complied with but neighbours will no longer be able to object to the development. Prior to the new law being introduced, many homeowners were ordered to demolish illegal extensions with many also receiving fines. This was the case

for a resident of Hillingdon, who added a two storey extension to their house, increasing the value by approximately GBP100,000. Yet since they did not obtain planning permission, they were fined GBP8,000 and ordered to demolish the extension within six months⁷. Ironically, the extension would likely have fallen within the new permitted development rules.



The new law would effectively remove the need for insurance where extensions that fall within permitted development are built. This may result in the need for additional building regulations and FENSA policies as homeowners may not require planning permission for their extension, they do need to abide by building regulations.

The option to extend a property without the need for planning permission may encourage families to remain in their homes where they may otherwise outgrow. As plans are no longer required to be approved by the local authority neighbouring properties may experience issues with encroachment and easements; for example, extensions could be built up to, or over boundary lines. This may result in either access issues or a reduction in light to the neighbour with a serious lack of ability to object. An insurance solution can be provided for both of these likely scenarios.

Conservation areas, areas of outstanding natural beauty and listed buildings may still be subject to the prior permitted development laws as have a responsibility to maintain the aesthetic character of these areas. Homeowners should consider that any property planning applications within these areas could be subject to additional planning or building consents, for example one Barnet resident in a conservation area was fined more than GBP50,000 and ordered to demolish both a one and two storey extension which they had added to a property without the correct consents⁸.

⁶ <https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>

⁷ <https://www.mylondon.news/news/west-london-news/hayes-man-fined-8k-building-12183348>

⁸ <https://www.barnet.gov.uk/news/resident-fined-more-ps50000-illegal-extensions>

Why Gallagher?

We can obtain bespoke policies to accommodate various scenarios which could arise due to the change in permitted development.

In order to provide a quote we will require the following information:

- Title register/plan
- Limit of indemnity
- Confirmation of when works were completed.

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09. THE CONSTRUCTION REVOLUTION – WHEN TECHNOLOGY, MANUFACTURING AND CONSTRUCTION COLLIDE

The construction industry is changing. New technologies are transforming the industry for the better by making sites safer and more profitable.

This new technology brings new risk and contractors will need to adapt in fear of being left behind. In this article Gallagher discusses the impact of new technologies on the construction industry and how insurance can help to respond to these risks.

Risk and reward

The introduction of new technologies to the construction industry has not occurred in a single revolution, instead over time various new materials and machines have begun to enter the industry. With so much change happening, new risks can occur from unexpected places and these require an experienced broker, specialising in the construction sector to help mitigate them.

One example of this is the increase in drone technology, with on-site drones helping to survey sites and generate maps faster than on-the-ground technology can. According to a survey by ProDroneWorx¹, the use of digital/reality capture information from drone technology continues to increase in UK and Irish construction industries, with 52% of respondents now using the technology compared with only 33% in 2017.¹ Be aware however, that you must notify your broker when using drones as they are unlikely to be automatically included in your business description and may be detailed as an exclusion in your Public Liability policy terms. This means that if they cause injury to the public or property then your insurer may decline your claim. Furthermore, companies should be aware that employees using their own drones on site, with or without formal permission of the company, could give rise to a liability on them which is potentially uninsured.

The challenges around Building Information Modelling (BIM)

BIM is the technological star player in the construction industry. The technology has been around for over a decade; however, a lot of buzz has been created about Building Information Modelling (BIM) in the field in more recent years.

Government mandating has been a major contributor to its popularity. It is a process for creating and managing information on construction projects, across the entire project lifecycle. It can assist with sequencing and ordering, with onsite engineers able to upload job status notes so that the system can order materials for the next stage of the project, so in theory may speed up the process.

As it relies on web stored information, it could however be an open invitation for cyber criminals and you need to ensure that each party accessing the system

maintains the same security standards that you do to help avoid this. The future of BIM is likely to result in models which can control machines and people on-site, so having the correct cyber procedure before this happens is essential to help protect your business against a data breach. Not all cyber policies are created equal, so it is important to notify your broker to the extent of any BIM-related work you do so that the correct cover limits can be placed.

This automation of machines is becoming increasingly more prominent in the transportation, agricultural and mining sectors. These industries are using telemetry, mapping and visual processing to assist heavy earthmoving equipment in construction. This automation has had a significant boost in productivity that the construction industry should take note of. McKinsey estimate that if the construction industry took up this automated technology then they could improve productivity by up to 60%².

Off-site is the new on-site

More and more contractors and construction firms are opting to prefabricate in a factory site. This helps to reduce wastage as well as protecting materials and equipment from theft and damage. According to a study by the McKinsey & Company Global Institute¹, construction firms can expect to boost productivity by five or even ten times by doing so.

The side-effect of this is longer lead times, the increased cost of transporting the materials and space constraints. Large models will also need specialist lifting equipment.



A shift in liability?

These changing methods of operation could also lead to a shift in liability. No longer are construction firms solely in control of all that happens on site. Frequently, responsibility also lies with manufacturers and logistics firms and any failure on their part can have a huge impact on the success of a project. For example, if a firm does choose to prefabricate parts of the build, then a fire in the manufacturing facility could stall the project, leading to delays and potential liquidated and ascertained damages (LADs) and significant reputational harm for the contractor. It is also important to consider that the contract includes offsite manufacturers and logistics companies. Under Joint Contracts Tribunal (JCT) and New Engineering Contract (NEC), the Principal Contractor would still be liable for these risks. Would the manufacturer's commercial combined policy extend to include liability assumed under contract? It is therefore extremely important that you take advice from both your broker and legal advisor to ensure that all parties are taken into account when drawing up new contracts.

Augmented reality and worker safety

The Augmented Reality (AR) technology no longer solely belongs to video games; it is helping to make sites safer. AR technology when integrated with personal protective equipment (PPE) can report on sleep and fatigue data in real-time and help to reduce the risk of tiredness

induced accidents and injuries. According to the HSE, fatigue is said to cost the UK GBP115 - GBP240m per year in terms of work accidents alone.⁹

Another use of AR is the use of holographic data to allow workers mobile access to information which could previously only be viewed on a laptop or in an office at a desktop. This is especially useful when working in tunnel construction as support can be provided through AR glasses. Crossrail have also utilised this technology by overlaying 3D plans over the actual site using a camera. Aggregate industries have also announced the introduction of two-way radio headsets into safety helmets so that workers can remain in contact with each other while carrying out dangerous mobile plant or demolition works.

The future of employment

With technology allowing remote access and offering the ability to fabricate materials off-site, what does this mean to employment numbers in the sector? While there are substantial automation opportunities across industries, employment in construction will probably suffer less than in industries where activities are more repetitive, such as manufacturing. According to McKinsey & Co the overall number of jobs in construction may actually grow rather than shrink, with up to 200 million additional jobs by 2030 if countries fill global infrastructure gaps and boost affordable housing.¹⁰

So while it is likely that the death knell may be sounded for some basic manual labour jobs, it is more likely that training will need to take place, and tools like AR wearables and the use of drones could complement existing skill sets allowing workers to assist with different aspects of the construction process.

No matter how you look at it, new technology can mean that construction workers may need re-training over the coming decade. High risk jobs are likely to be replaced by machines, improving site safety, while basic, monotonous roles can also be completed by robots. Instead, specialist technicians, software engineers and machine controllers would therefore be the roles that form the lifeblood of the industry, to result in a safer, more productive construction for all.

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⁹ <https://www.prodroneworx.co.uk/drone-technology-survey>

¹⁰ <https://www.mckinsey.com/industries/capital-projects-and-infrastructure/our-insights/the-impact-and-opportunities-of-automation-in-construction>



10. BROKER Q&A: SURETY BONDING IN THE CONSTRUCTION INDUSTRY

Building Blocks asks Paul Smith, Director in Gallagher's specialist Surety practice, about contractual performance bonds and bonding in the current economic climate.

Q. What is a Surety Bond?

A. A Surety Bond is a guarantee, provided by a financial institution, guaranteeing that contractual obligations will be met. If these obligations are not met, then there is a sum of money available to the employer to ensure the contract is completed.

Unlike an insurance policy, a bond is an agreement between three parties – the contractor, the employer (who is the beneficiary of the bond) and the bondsman. Also, insurance policies can be cancelled whereas most bonds cannot. It is there to provide certainty and a protection to the employer. Bonds are prevalent in the construction industry due to the costs involved in replacing a contractor if the original contractor fails to perform, most typically because of insolvency.

Q. What types of bond are there?

A. The most common type of bond is the 'Performance Bond' which, in the UK, is typically for 10% of the contract amount and is used to guarantee completion of the contract. Other bonds in the industry are 'Advance Payment Bonds' which are used when a large sum of money is paid up front to help mobilise the contract and will provide the employer with the comfort that this money will be used appropriately as per the contractual terms. These bonds are typically anywhere from 10-30% depending on the sum advanced. A 'Retention Bond' is also often used as a way to release the monies held on retention until the contract is completed. The bond enables the employer to release the retentions thereby freeing up valuable working capital to the contractor.

Larger contractors, typically in the FTSE250, can also access other forms of bonds to replace letters of credit which may be used to guarantee pension deficit contributions or insurance deductibles.

Q. How are surety bonds underwritten?

A. This is really a two-stage process. First and foremost a bond 'facility' must be set up. This is an uncommitted line of credit that contractors can then utilise to apply for their individual bond requirements. To set a facility up and then to keep it live, the surety underwriters will need to undertake a full financial assessment and due diligence of the contractor (and the group which it may belong to). Underwriters will need to review the latest annual and management accounts, cash flow forecast, work in progress reports, bank facility and they are also likely to require a meeting at least once a year with the group FD or Head of Treasury.

Once the facility is set up and the counter indemnity is in place (more about that later), the underwriters will need to assess each and every new bond application. Underwriters are looking to see that the new contract fits within the contractors 'sweet spot' and that they are not taking on something they won't be able to handle. Size of the contract, estimated duration and the bond wording are key. They will also often want to review the contract to check there is nothing too onerous or obligations that should be excluded under the bond.

Q. What are the benefits of using the insurance market for bonds as opposed to a bank?

- A. Bonds offered by the bank are usually fully secured against the company assets and have a direct impact on a contractors' working capital facility. The wordings can be onerous, on-demand, with no room for negotiation leaving the contractor potentially exposed in the event of a claim with little defence regardless of how the contract is performing. By contrast, a bond from the insurance market is 'off balance sheet' and is usually not secured beyond a group counter indemnity.

The bond wording issued by an insurance company is usually 'conditional' whereby the employer needs to demonstrate that it has suffered damages as a result of contractor default before a claim is successful, ensuring the contractor retains the benefit of the contractual terms and conditions that it negotiated before signing the contract.

Pricing is surprisingly similar with insurance companies being very competitive even though they often do not have the same security as the banks.

Q. What is a 'counter indemnity'?

- A. The counter indemnity is the form of security required by the insurance company which enables them to issue bonds for the contractor. Essentially, this is a document issued by the contractor (or the group of companies the contractor belongs to), promising to hold the bondsman harmless in the event of a claim or potential claim. The aim of the bondsman is to ensure that it ranks alongside other unsecured creditors in the event of contractor default and has a right to recourse in the event of a claim. As mentioned previously, banks have a much stronger indemnity by having charges over group assets and the ability to pay claims with immediate recourse.

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Q. Why should I utilise the services of a specialist broker rather than just going direct?

- A. Going direct to an insurance company can work if they provide plenty of capacity and if the contractor is sure they are offering the best price whilst also being commercial with decisions around bond wording. However, utilising a specialist surety broker such as Gallagher's provides market oversight and a view of the entire regulated surety market. Gallagher's surety team has a vast and in-depth knowledge of the surety market plus relationships with key underwriters and decision makers to ensure our clients have the necessary capacity and suitable terms available, to help clients when tendering for contracts. We also help our clients manage their capacity effectively and provide assistance and advice on bond and indemnity wordings.

Q. How are surety companies being affected by the Coronavirus crisis?

- A. It is certainly not an easy time to be a surety underwriter. The Coronavirus crisis could not have come at a worse time for many sureties on the back of a dismal 2019 and will fuel uncertainty for months ahead. Additional questions are being asked around order book, project delays and the resulting impact on cash flow. Underwriters had still been feeling the effects from Carillion's demise in 2018 and the resulting struggles of contractors in the supply chain. Sureties (and banks) have also been hit hard by several large travel bond claims, in particular Thomas Cook, as companies across all sectors struggle with cash flow and liquidity. On a more positive note, there have been some new entrants to the surety market which should help provide some much needed capacity. As banks tighten their belts and restrict credit limits there has never been a better time to appoint a specialist surety broker to ensure adequate bonding capacity is available when tendering or negotiating new contracts.



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