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The law as stated during this webinar is as at **9 December 2015**



Property insurance: how to avoid changes in policy terms impacting on service charges

Nicholas Kissen
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9th December 2015



Overview

- i. Financial Conduct Authority: *Who can transact insurance?*
- ii. "Like for like" Quotations: A Myth!
- iii. Policy Wording Changes: Impact on Service Charges
- iv. New Exclusions and Conditions: *Ignore Them at Your Peril*
- v. Terrorism: Pool Re Changes and Alternative Options
- vi. Insurance Premium Tax Increase



Who Can Transact Insurance?

Must have in place the following:

- Direct Authorisation with FCA
- RICS DPB (Designated Professional Body)
- Appointed Representative (AR)
- Introducer Appointed Representative (IAR) *
* Does NOT allow transaction of Insurance : "Introducer" only
- OR Managing Agent is Appointed as Company Secretary



**IF NOT COMPLIANT IT IS A CRIMINAL OFFENCE
TO TRANSACT INSURANCE !**

**(PROFESSIONAL INDEMNITY INSURANCE DOES
NOT COVER ILLEGAL ACTIVITY)**

“Like for Like” Quotations : A Myth!

- No two policy wordings are the same
- Some Insurers have several Variations on Property Owners Wordings
- Renewal: Not always “like for like” to previous year

Read Policy Wording & Renewal Notices Very Carefully: Ask Questions



Annotations:

- Buildings Sum Insured
- Buildings Declared Value
- Rent/ Alt Accom %/ Indemnity Period
- Policy Excesses
- Property Owners Liability LOI
- PREMIUM

Particulars	Premium	Insurance Premium	Total inc. IPT
Annual	£2,100.00	£126.00	£2,226.00
Annual Terrorism	£12.00	£18.75	£30.75
Total Annual Premium	£2,212.00	£144.75	£2,356.75
Total re-insured	£108.48	£2.77	£111.25

Obtaining a Quote is Simple!

Information sent to Broker for Quotation:

- Construction Details / Claims Experience / Occupancy info
- “Heads of Cover” Sums Insured / Limit of Indemnity etc





Obtaining a Quote is Simple!

Receive Information from Broker with Quote:

- Schedule / Summary showing all the Sums Insured / Limits of Indemnity
- Terms of Business / Key Facts / Full Policy Wording / Demands & Needs
- The Premium / With or Without Terrorism Cover

Recommend to client – take up cover/ documents issued/ job done

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Reminder “Like for Like” Myth

Have the full terms and conditions of the policy been checked?

Were comparisons made to the previous policy?

Have all exclusions been considered?

Have all subjectivities been reviewed and implemented?

REVISIONS TO EXISTING POLICY WORDING (OR RENEWAL TERMS) OR LESSER COVER ON A NEW POLICY INCREASES THE RISK OF UNINSURED LOSSES!

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Claims Notification!

Example – domestic dispute in leasehold apartments above parade of shops

Damage to windows / kitchen fittings by occupant

Cost of claim **£9,000**

Claim repudiated... why?

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Buildings section continued

Cases

1. Fire, lightning or earthquake.

2. Explosion excluding damage caused by or consisting of the bursting by steam pressure of a boiler or other vessel, machine or apparatus where internal pressure is due to steam only that belongs to you or is under your control unless it is used for domestic purposes only.

3. Riot, civil commotion, strikers, locked out workers, labour or political disturbances, vandals or malicious persons excluding:

- a. damage caused by confiscation, destruction or requisition by order of the Government or any Public Authority
- b. damage arising from stoppage of work
- c. damage caused by your employees, tenants or any other person lawfully on your property

a. damage to movable property in the open, walls, fences, posts, hedges and gates

d. the excess detailed in your schedule.

5. Escape of water from any tank, apparatus, pipe, or fountain installation excluding:

- a. damage to property caused by frost other than internal plumbing installations not in any outbuilding
- b. damage to any building which is empty
- c. the excess detailed in your schedule.

6. Impact by any aircraft or other aerial device, vehicle or any article falling from them on the premises excluding the excess detailed in your schedule.

7. Leakage of fuel oil, used solely for domestic purposes, used in connection with the buildings excluding:

- a. damage to any portion of the building which is empty
- b. the excess detailed in your schedule.

8. Theft or attempted theft but excluding:

- a. damage to any building which is empty
- b. damage caused by your employees, tenants or any other person lawfully on your property
- c. the excess detailed in your schedule.

12. Defined terms are highlighted in bold black in page 6 and the start of each section of cover for their meanings.

Claims Notification!

Example – water damage to ceilings, decorations, electrics and fixtures

Investigation: cause due to inadequate sealant around the bath / shower

Cost of claim £15,000

Claim repudiated... why?

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What is not covered

- Loss or damage to solid floors caused by infill materials settling, swelling or shrinking as a result of water escaping in the Property
- Subsidence, Heave or Landslip caused by water escaping from the Property
- Loss or damage caused by the failure, or lack of grout and/or sealant
- Loss or damage arising from frost damage within garages or outbuildings
- Loss or damage caused by gradual emission.

9. Escape of oil from any fixed oil or heating installation, or from any domestic appliance

10. Theft or attempted theft

- Loss or damage to solid floors caused by self-heating, swelling or shrinking as a result of oil escaping in the Property
- Subsidence, Heave or Landslip caused by water escaping from the Property
- Loss or damage whilst the Buildings are Unoccupied
- Loss or damage caused by any tenant or person lawfully on the premises (unless shown or covered on Your Policy Schedule)

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Claims Notification!

Example – vacant flat within a block damaged due to leaking water pipe

Investigation: flat vacant for over 30 days, not inspected, no heating left on, pipes not drained

Cost of claim £25,000

Claim repudiated... why?

Pollution: the discharge, dispersal, release or escape of smoke vapours, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other noxious contaminants or pollutants into or upon the atmosphere (and including Buildings) or other structures thereon) or any water course or body of water.

Premises: those premises stated in the Schedule.

Schedule/Specification(s): those parts of the Policy that detail information provided to the Company that forms the basis of this contract and that shows(s) the coverage and limits selected.

Section(s): the part(s) of the Policy that detail(s) the insurance cover provided.

Terrorism: an act including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political religious ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

United Kingdom: England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man.

Unoccupied: any Building(s) or part of any Building(s) which is empty or not in use by the Policyholder or any tenant of the Policyholder or in which the Policyholder does not nor intends to have authorised person(s) present during Business hours.

Terrorism: (not applicable to the Terrorism, Employers' and Property Owners' Liability Sections)

- This Policy does not cover:
 - Damage to property
 - any Business interruption loss
 - any liability
 - any bodily injury of whatsoever nature cost or expense resulting from or arising directly or indirectly from Terrorism
- If the Company alleges that by reason of this exclusion any loss Damage cost expense or liability is not covered by this insurance the burden of proving the contrary shall be upon the Policyholder
- In respect of Property and Business Interruption covers only:
 - This Policy does not cover Damage to property or any Business interruption loss resulting therefrom of whatsoever nature directly or indirectly caused by occurring from or in connection with any action taken in controlling preventing suppressing or in any way relating to any act of Terrorism
 - In the event that any portion of the Terrorism exclusion is found to be invalid or unenforceable the remainder shall remain in full force and effect.

Unoccupied Building(s): This Policy does not cover Damage:

- caused by the escape of water or fuel oil from water or oil tanks
- caused by malicious persons not acting on behalf of or in conjunction with any political organisation
- caused to fixed glass
- caused by theft or any attempt thereof
- the first GBP1,000 of each and every claim where the Building(s) or any part has been Unoccupied for more than 30 days and results in Damage other than by fire or explosion

War & kindred risks: (not applicable to the Employers' Liability Section) This Policy does not cover Damage or bodily injury directly or indirectly occasioned by or in consequence of or arising out of war invasion act of foreign enemy hostilities or warfare operations (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power or nationalisation confiscation requisition seizure or destruction by order of the Government or any Public Authority except destruction by the order of any Public Authority at the time of and for the purpose of preventing the spread of fire or explosion.

Unoccupancy: It is understood that as soon as the Policyholder or their Managing Agent becomes aware that the Building(s) or part thereof is Unoccupied notice shall be given to the Company and that

1. ~~the mains services shall be switched off and the water system drained~~ whenever the Building(s) are vacated unless
 - (a) electricity is needed to maintain any fire or intruder alarm system in operation
 - (b) mains services are needed to maintain any sprinkler system in full working order. In these circumstances heating must be maintained at a minimum temperature of 5 degrees centigrade
2. ~~the Building(s) shall be inspected thoroughly both internally and externally at least weekly by the Policyholder and~~
 - (a) A record maintained of such inspections
 - (b) All defects in security and maintenance are rectified immediately
- 3 all letter boxes must be sealed up and steps taken to prevent accumulations of mail
- 4 accumulations of combustible materials shall be removed during inspection
- 5 the Building(s) shall be secured against unlawful entry including the setting of all security locking and other security mechanisms in operation

The Company shall also have the right to vary the terms or cancel cover where appropriate.

Claims Notification!

Example – damage to flat / tenant disappeared / cannabis farm discovered

Investigation: damage to electrics / water damage / forced entry by gang stealing crop

Cost of claim **£40,000**

Claim repudiated... why?

Buildings section continued

arising from the failure of equipment (including hardware and software) to correctly recognise any given date or to prevent data on its storage property due to failure to recognise any given date. But we will cover subsequent damage resulting from one of the insured causes 1 to 8, which is not excluded elsewhere in this policy.

Errors of data exclusion
We will not cover damage arising directly or indirectly from:
1. errors, loss, distortion or corruption of information on computer systems or other records, programs or software deliberately caused by hackers, viruses, lock-out workers, persons taking part in labour disturbances or civil commotion or malicious persons
2. other errors, loss, distortion or corruption of information on computer systems or other records, programs or software unless resulting from causes 1 to 8 and it is not excluded elsewhere in this policy.

Excess exclusion
We will not cover the excesses detailed in your schedule.
Where a claim is covered under both the Buildings and Landlords contents sections you will only be responsible for one of the excess amounts detailed in your schedule.

Fraud and dishonesty exclusion
We will not cover damage which results from acts of fraud or dishonesty by you, your employees or any other person.

22 Defined terms are highlighted in bold italic. See page 6 and the start of each section of cover for their meanings.

who is responsible for the property or results from voluntarily parting with title or possession of any property as a result of a fraudulent scheme, trick, device or false claim, but we will cover subsequent damage which itself results from an insured cause covered elsewhere in this policy.

Illegal activities exclusion
We will not cover damage caused by property being used, by you or any occupants, for illegal activities.

More specific insurance exclusion
We will not cover you for any property not specifically insured by you or on your behalf.

Pollution or contamination exclusion
We will not cover damage caused by pollution or contamination (except terms excluded elsewhere) damage to property caused by:
a. pollution or contamination which itself results from causes 1 to 8
b. any of causes 1 to 8 which itself results from pollution or contamination.

Radioactive contamination exclusion
We will not cover damage, or any other loss or expense resulting or arising from damage to any property, or any consequential loss directly or indirectly caused by or consequent to by or arising from:
1. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

Illegal activities exclusion
We will not cover damage caused by property being used, by you or any occupants, for illegal activities.

R3 Illegal Cultivation of Drugs
 In the event of any DAMAGE or CONSEQUENTIAL LOSS as insured hereby resulting from the illegal cultivation of drugs in a Residential Building or a residential portion of a Commercial Building by a tenant, lessee or licensee of the Insured it is a condition precedent to any liability of the Insurers to make payment under this Policy that the Insured have:

- a) carried out comprehensive internal and external surveys of the premises at least every 3 months prior to the DAMAGE and maintained a written log of such inspections
- b) obtained written references for the tenant prior to the letting proceeding
- c) recorded details of the tenant's bank account details and verified same by collecting at least one payment via such means.

Prohibited Always that the Insured:

- a) will not be liable for more than the amount stated in the Schedule any one claim
- b) will not be liable for the cost of removing nests or infestations already in the Buildings before the inception of this Insurance

The following classes apply to Sections A and B1:

R3 Illegal Cultivation of Drugs
 In the event of any DAMAGE or CONSEQUENTIAL LOSS as insured hereby resulting from the illegal cultivation of drugs in a Residential Building or a residential portion of a Commercial Building by a tenant, lessee or licensee of the Insured it is a condition precedent to any liability of the Insurers to make payment under this Policy that the Insured have:

- a) carried out comprehensive internal and external surveys of the premises at least every 3 months prior to the DAMAGE and maintained a written log of such inspections
- b) obtained written references for the tenant prior to the letting proceeding
- c) recorded details of the tenant's bank account details and verified same by collecting at least one payment via such means.

R4 Persons Lawfully on the Premises
 In respect of Residential Premises or residential portions of Commercial Premises DAMAGE or CONSEQUENTIAL LOSS resulting from the Covers of:

- a) Theft
- b) Riot and Malignant Persons

caused or perpetrated by persons lawfully on the Premises is excluded.

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The Aftermath!

Consider Impact on Services Charges where damage is uninsured!

Would the damage have been covered on the previous policy?

Was new policy wording compared thoroughly?

What action will be taken by the freeholder / leaseholder?

What are the implications of your advice/ recommendations?

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Forewarned is Forearmed

Use a Specialist Property Insurance Broker

Don't accept "standard" insurer policy wordings

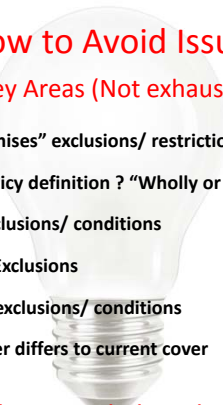
Compare Policy Wordings


Ask the Broker Specific Questions

Use a "check list" to check specific points

Useful information handouts are available on request

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How to Avoid Issues :

Key Areas (Not exhaustive)

- “Lawfully on Premises” exclusions/ restrictions/ excess levels
- “Unoccupied” policy definition ? “Wholly or partially”
- “Unoccupied” exclusions/ conditions
- Escape of Water Exclusions
- Illegal Activities: exclusions/ conditions
- Check where cover differs to current cover

Place onus on broker to do the job !

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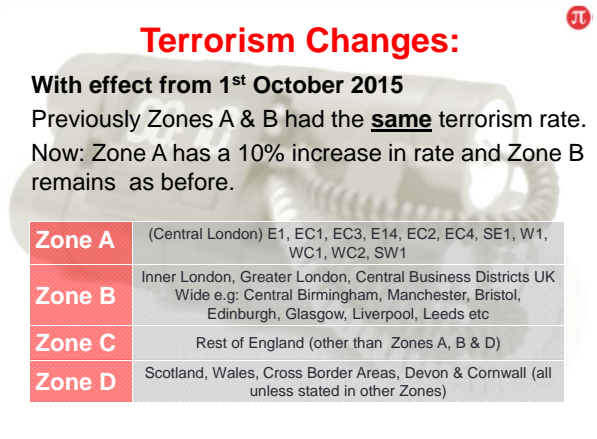



How to Avoid Issues:

Consider a Portfolio Solution

Individual v Block Portfolio

- Benefits to client (bulk buy / strength in numbers)
- Access to enhanced policy wording
- Create “uniformed” policy wording, terms and conditions
- Potential to remove / reduce policy excesses
- Benefit from increased limits of indemnity at competitive rates





Terrorism Changes:

With effect from 1st October 2015

Previously Zones A & B had the same terrorism rate.
 Now: Zone A has a 10% increase in rate and Zone B remains as before.

Zone A	(Central London) E1, EC1, EC3, E14, EC2, EC4, SE1, W1, WC1, WC2, SW1
Zone B	Inner London, Greater London, Central Business Districts UK Wide e.g: Central Birmingham, Manchester, Bristol, Edinburgh, Glasgow, Liverpool, Leeds etc
Zone C	Rest of England (other than Zones A, B & D)
Zone D	Scotland, Wales, Cross Border Areas, Devon & Cornwall (all unless stated in other Zones)

Terrorism Changes:



With effect from 1st October 2015

	Before Changes	After Changes
Zone A	£367 + IPT*	£403 + IPT*
Zone B	£367 + IPT*	£367 + IPT*
Zones C & D	£74 + IPT*	£74 + IPT*

Based on Terrorism Cost per £1,000,000 BDV

* Note: Premiums vary slightly between Pool Re Insurers/
Commission Level assumed at 10%

IPT & Terrorism Changes:



Example:

Residential Leasehold Block ZONE A – BDV £10,000,000

IPT 6%/Terrorism Changes:

	Before IPT / Terrorism Changes
Premium Underlying	£15,900
Premium Terrorism	£3,890
TOTAL	£19,790

IPT & Terrorism Changes:



Example:

Residential Leasehold Block ZONE A – BDV £10,000,000

IPT 9.5%/Terrorism Changes:

	After IPT / Terrorism Changes
Premium Underlying	£17,995 (↑ £2095)
Premium Terrorism	£4,590 (↑ £700)
TOTAL	£22,580 (↑ £2790)

Also incorporates: Market Rate (5%) Index Linking (4%)

Terrorism Pool Re: JT

Premium Discount Considerations

- SME potential discount of 40% : Material Damage sum at Risk less than £2,000,000..
- Large Risk Discount: Loss limits are greater than £500m.
- Deductible Discount: Where a voluntary deductible taken greater than £ 500,000

NOTE: ALL Zones – Premium rates for Loss of Rent cover has reduced by 10%

Terrorism Cover Alternatives to Pool Re JT

	Pool Re	Various Alternatives
Choice of Properties	No Selection Against	No Restriction
Definition of 'Act of Terrorism'	H M Treasury to declare event as 'Act of Terrorism'	Generally No Requirement
Chemical, Biological, Bio-Chemical, 'Dirty Bombs'	Included	Generally Excluded
Government Financial Backing	Yes	No
Available in Higher Rated Zones	Yes	Various According to Insurer

Minimising the Impact JT

Appease Tenant/ Leaseholder Concerns:

- Consider a review of the market
 - Look to secure a "Long Term Agreement" +
 - Consider a "Rating Stability Clause" +
 - Consider Alternative Terrorism Cover
- + Neither will protect against further IPT rate increases.

*Havenbridge v Boston Dyers Ltd [1994]
49 EG 111*



- Landlord limited to recovering sums paid or expended "properly"
- Does not mean reasonably
- No implied term that insurance charged must be fair and reasonable
- No obligation to shop around for best buy

*Berrycroft Man Co Ltd v Sinclair Gardens Investments
(Kensington) Ltd (1997) 29 HLR 444*



- Landlord obliged to take out insurance with an "insurer of repute"



*Avon Estates (London) Ltd v Sinclair Gardens
Investments (Kensington) Ltd [2013] UKUT 264 (LC)*



- Landlord not obliged to shop around to find the cheapest insurance
- So long adequate market testing to justify reasonable to go with quote

The facts



- Victorian terraced property converted into three flats
- Insurance obtained by the landlord was at a cost of £4,154.25
- Initially upheld by the LVT
- The leaseholder appealed the LVT's Decision
- Evidence submitted of an alternative quote of £1,011.60

The result



- Landlord had a very wide discretion with respect to insurance
- Landlord had obtained comparable evidence to support the level of insurance premium

Qdime v Bath Building (Swindon) Management Company [2014] UKUT 0261 (LC)



- Leases did not include an express obligation to insure against the risks posed by terrorism
- Leases required Qdime to insure in accordance with the Council of Mortgage Lenders recommendations
- Terrorism insurance cost recovery allowed



The terms of the lease



- "...keep the building including the demised premises insured to its full reinstatement value against loss or damage by fire and the usual comprehensive risks in accordance with the [Council of Mortgage Lenders] recommendations in that respect from time to time and such other risks as the Landlord may in its reasonable discretion think fit to insure against..."

The issues



- Policy included insurance against damage caused by acts of terrorism
- Terrorism element disputed as considered unreasonable
- LVT found
 - no contractual obligation to obtain terrorism insurance
 - landlord had not exercised any discretion
 - Even if they had decision to obtain terrorism insurance was unreasonable

Outcome of the appeal



- Recommendations of CML included "explosives"
- Terrorism clearly capable of giving rise to explosions
- Obligation to insure against the outcome and not any particular method by which an explosion might happen
- If that view was incorrect....

Outcome of the appeal



- Freeholder had made a conscious decision to take out terrorism insurance
- This decision was a reasonable one
- RICS supported taking out terrorism insurance
- Afford the Code great respect
 - Departures should be well-reasoned and justified

Williams v Southwark BC (2001) 33 HLR 224



- Landlord taking income available from arranging insurance
- Landlord first insured under block policy
- Discount/commission entitlement of 36.5% of gross premium
- Later insured under another block policy under which was entitled to 25% discount
 - 5% attributable to loyalty bonus
 - Remaining 20% for providing certain services

What did the court decide?



- Landlord need only account for 5%
- Remaining 20% not a rebate/reduction from premium but held on facts to be remuneration for services

Sadeh and others v Mirhan and Azzniv Bowring
[2015] UKUT 0428 (LC)



Dealing with the proportion of the insurance premium attributable to

- (i) the risk from the commercial premises and
- (ii) the property owners liability cover under the service charge provisions



Questions?

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Next webinar: 14 January 2016



- On the House – 1967 Act case law (non-valuation)
 - What is a house?
 - Contents of the initial notice
 - Restrictive covenants
