

# PROFESSIONAL

## Legal, asset management, case news

**54-55** Refurbishment costs at lease expiry are far from simple, green funding scrapped



## Public sector

**56-57** New NHS white paper omits property plans, Barrow eyes regeneration in Birmingham

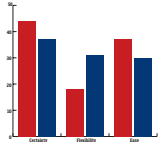


## Workplace

**59** How to avoid indemnity cover issues, property found most likely to complain about new regulation

**60** Who's moving where

**65-66** The latest office, industrial, retail, leisure and investment deals



## PROFESSIONAL OPINION Bill Gloyn

### Do not ignore insurance in the case of fit-out contracts

One of the worrying issues that emerged during my time as president of the City Property Association was just how segmented the property market is in the City. The top-quality, well-let offices and retail buildings are commanding increasing rents and higher market values: a subject of considerable rejoicing. However, there is also a substantial amount of far less desirable buildings that fall short of current requirements for carbon emissions and other green demands of prospective tenants.

There is little chance such properties will be let without substantial refurbishment and adaptation. It is good news for consultants and contractors in those areas – providing funding can be found.

This leads me to an insurance problem causing concern in property and legal circles: when a contract involves an extension or alteration to an existing underproperty, the standard Joint Contracts Tribunal contract – in schedule 3, option C in the 2005 version, and its equivalent in other forms. This requires the

employer to arrange joint names insurance against specified perils for the structure and contents, which are the responsibility of the employer. The clause also requires the employer to arrange all risks cover for the works.

This is not likely to pose a problem when the client is the owner of the property and arranges the building insurance.

However, when dealing with a property actually insured by a third party, an approach has to be made to that party at an early stage. It is important to assess their attitude towards providing some protection to the contractor, and the tenant, in respect of damage done

to the existing structure, because of the negligence of the contractor or others under the control of the client.

In those cases, it is highly unlikely that cover will be provided, following the terms of the Joint Contracts Tribunal clause. The owner, or other insuring party, will normally be anxious to avoid any potential claim that might prejudice their claims experience. This would possibly have detrimental knock-on effects on their entire property insurance portfolio. If approached early enough, the insuring party may be willing to obtain a waiver of the insurer's recovery rights against the offending party. This is usually subject to the maintenance of a stated amount of public liability insurance by the contractor.

That cover will need to be extended to include damage to the building – normally not a risk to the contractor because it is excluded from its indemnity obligations under the contract. Insurance is meant to be in force for that risk.

If it is not possible to obtain the waiver, the contract must be amended to reflect that the contractor has the same liability for damage to the existing property as it does to any other third-party property: the building. The only issue is the amount of the insurance needed to support the indemnity. Bearing in

mind the value of the property at risk, this may be a far higher sum than would normally be sought.

Any additional premium cost will obviously fall on the client but, in my experience, it is likely to be far less if dealt with at negotiation stage.

The problem basically arises when the client has not received appropriate professional advice before entering into the contract. If there is any suggestion of professional negligence, the consultant advising the client may find itself responsible for the premium – or an uninsured loss. The message is not to ignore insurance.

**Bill Gloyn is a partner in European real estate at Jardine Lloyd Thompson and immediate past-president of the City Property Association**

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