

SCSI & RICS Practice Standards

# Insurance for Property Managers

Guidance note

1st edition



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## SCSI / RICS guidance note

This is a guidance note and is not mandatory in its application. It provides advice to practitioners. Where procedures are recommended for specific professional tasks, these are intended to embody 'best practice'. In the opinion of the approving professional bodies, this represents best practice. Practitioners are not required to follow the advice and recommendations contained in the guidance note. They should however note the following points.

When an allegation of professional negligence is made against a practitioner, the court is likely to take account of the contents of any relevant guidance notes in deciding whether or not the practitioner acted with reasonable competence.

A practitioner conforming to the practices recommended in this paper is unlikely to be adjudged negligent on account of having followed these practices. However, practitioners have the responsibility of deciding when it is appropriate to follow the guidance. If it is followed in an appropriate case, the practitioner will not be exonerated merely because the recommendations were found in a guidance note. On the other hand, it does not follow that a practitioner will be adjudged negligent if he or she has not followed the practices recommended in this paper. It is for each individual practitioner to decide on the appropriate procedure to follow in any professional task. However, where practitioners depart from the practice recommended in this note, they should do so only for good reason. In the event of litigation, the court may require them to explain why they decided not to adopt the recommended practice.

In addition, guidance notes are relevant to professional competence in that each practitioner should be up to date and should have informed him or herself of guidance notes within a reasonable time of their promulgation.

## Document status defined

SCSI and RICS produce a range of standards products. These have been defined in the table below.

Document status defined		
Type of document	Definition	Status
<b>Standard</b> International standard	An international high level principle based standard developed in collaboration with other relevant bodies	Mandatory
<b>Practice statement</b> SCSI / RICS practice statement	Document that provides members with mandatory requirements under Rule 4 of the Rules of Conduct for members	Mandatory
<b>Guidance</b> SCSI / RICS code of practice	Document approved by SCSI / RICS, and endorsed by another professional body / stakeholder, that provides users with recommendations for accepted good practice as followed by conscientious practitioners	Mandatory or recommended good practice (will be confirmed in the document itself)
SCSI / RICS guidance note (GN)	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious practitioners	Recommended good practice
SCSI / RICS information paper (IP)	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

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# 1. Introduction

This guidance note is written for property managers and surveyors who are involved with the insurance covers required by commercial and residential property owners in multi-unit developments.

The majority of landlords expect or require property managers to keep their brokers or insurers advised of changes in the status of properties insured. It is best practice to advise on sales and acquisitions and changes in occupation, especially when properties become wholly or partially unoccupied or when a building undergoes upgrading or other works. Managers may be at risk if they fail to do so and a claim is subsequently turned down as a result.

Property owners' insurance is a unique class of business that has to reflect the nature of the property-owning industry and the insurance requirements of leases. The distinction of the class is partly derived from the fact that most leases require the landlord to insure and to be reimbursed by the lessee for the premiums paid. In consequence, the insurance programme is often driven by a demand for all embracing cover rather than price. Although lessees are paying for this, they do benefit from the wide cover.

It is recommended that residential property managers should ensure that they are fully acquainted with the requirements in relation to insurance as set out in the Multi-Unit Developments Act 2011.



## 2. Leases and insurance provisions

The principal insurance requirements of property owners flow from the lease between landlord and tenant. The insurance provisions within leases vary from one lease to another and depend, to a certain extent, on the age of the lease. The insurance provisions in modern leases tend to be more comprehensive than those in older leases.

For the most part, the lease requires insurance cover to be arranged for the buildings themselves, the rental and other income received by the landlord and the potential third party liabilities that go together with building ownership.

Whilst the obligations of both Landlord and Tenant are set out in the lease, when it comes to insurance, quite often the extent of what is or is not to be covered can be unclear. At the very least, the required level of insurance stated in the lease should be maintained by the landlord or tenant as appropriate - It is then at the discretion of the relevant party to procure an enhanced level of cover having regard to best practice / market trends.

In this section of the guidance note the insurance provisions usually found in leases are examined. The relationship between lease requirements and the actual policies available for property owners is also discussed. Lease requirements are not always consistent with basic policy cover, so some of the potential problems are explained.

### 2.1 Responsibility for arranging insurance

2.1.1 The Lease will stipulate the responsibility to insure - depending upon the terms of the lease, responsibility may rest with the landlord, the OMC (The Owners' Management Company established under the Multi-Unit Developments Act 2011 for the purposes of becoming the owner of the common areas of a multi-unit development), the tenant or, in some cases, a superior landlord.

2.1.2 The landlord / OMC will usually pay the premium to the insurer and be reimbursed by the tenant / OMC members.

### 2.2 Insured risks

2.2.1 In modern leases a definition of 'Insured Risks' usually appears among the definitions in the front section of the lease, while in older leases insured risks are usually shown only within the body of the lease.

2.2.2 Many leases refer to a requirement for specific perils plus 'such other risks as the landlord may reasonably decide from time to time'

2.2.3 Regardless of what the lease says, almost all policies for property owners are now arranged on an all-risks basis. The perils insured typically include fire, aircraft, explosion, earthquake, riot, malicious damage, storm, flood, burst pipes (escape of water), impact, subsidence, heave, landslip, glass breakage and other accidental damage.

2.2.4 Terrorism cover is often required particularly in high profile properties and properties owned or occupied by multinational high-profile companies.



- 2.2.5 Leases may apply an ‘if available at reasonable cost’ or “subject to cover being generally available” caveat to any insured risk. Flood insurance, for example, is becoming scarcer for an increasing number of properties and it is quite feasible that flood insurance will become impossible to secure or prohibitively expensive in certain areas in the future.
- 2.2.6 Public liability policies vary in respect of the cover they provide. Many offer the option of public liability, products liability, legionellosis and financial loss. The minimum insurance requirement should be Public/Property Owners Liability.
- 2.2.7 Plate Glass - modern all-risks insurance policies often include plate glass cover, however, tenants with their own glass improvements should ensure that the policy cover and wording is adequate for their needs.
- 2.2.8 It is common for tenants in retail units to be responsible for insuring plate glass.

### **2.3 Requirement for buildings (and tenants’ improvements) to be insured**

- 2.3.1 A typical insurance policy definition of ‘Buildings’ (shown in section 3) is very wide and includes tenants’ improvements for which the landlord is responsible. There is often confusion in individual cases about whether tenants’ improvements are covered. The solution is to refer to the policy definition, amend it if necessary and ensure allowance for the improvements is made in the sum insured.
- 2.3.2 All leases refer to the obligation for the demise / building to be insured. Whilst some do not specifically mention such items as professional fees, debris removal, local authority requirements and provision for inflation, it should be assumed that these should also be insured. The Building Sum Insured should reflect the building cost inclusive of Professional Fees, Debris Removal, Local Authority requirements and the provision of inflation.
- 2.3.3 The tenant should advise the landlord on the value of anything the tenant installs that will become a landlord fixture, and an appropriate allowance should then be made in the building sum insured.

### **2.4 Responsibility for determining the sum insured on buildings (Reinstatement Valuation)**

- 2.4.1 Not all leases are specific about who is responsible for determining the sum insured on the building and it is sensible to assume that whoever is responsible for arranging the insurance is also responsible for the sum insured being adequate and, therefore, for any consequent shortfall in the claim settlement.
- 2.4.2 Many leases make reference to the building sum insured being for full value – this represents the full reinstatement cost of the building, a figure designed to ensure that the insured is in the same financial position after an insured incident (ie fire or flood) as they were before the incident.
- 2.4.3 In line with best practice, reinstatement costs should be fully reassessed after any addition or alteration to a building, and at least once in every 3 years, coupled with an annual review of reinstatement costs.
- 2.4.4 The cost of the review of the reinstatement valuation should, in the absence of any lease provision to the contrary, be recoverable through service charge or as part of the insurance premium.

## 2.5 Responsibility for reinstatement

- 2.5.1 The lease will normally set out the party responsible for ensuring that any claims payments are expended on reinstatement of damage.
- 2.5.2 The lease will also normally provide that if the damage is not repaired (or repairs commenced) within a certain period, one or both parties may have the right to determine the lease.
- 2.5.3 Where there is a failure to obtain planning permission, referred to as 'frustration of rebuilding', the claim monies are usually deemed to belong to the landlord. Occasionally when a lessee's interest has a capital value, a proportion of the claim monies is granted to the lessee as recompense for losing the benefits of the lease.

## 2.6 Requirement for rent to be insured (Consequential Loss Insurance)

- 2.6.1 Standard leases will usually require rent cover to be arranged, although it is not always clear as to whether this should include service charges or insurance premiums. Most policies automatically include service charges and insurance within the rent cover, although this will be ineffective if no allowance is made in the sum insured.
- 2.6.2 Best practice is to advise insurers of any service charges to be insured rather than rely on it being included within the rent cover.
- 2.6.3 The rent sum insured should allow for rent reviews that may fall due during the indemnity period (usually 3 years) - this may best be calculated by showing a schedule of rents, review dates and estimated adjustments.
- 2.6.4 The detailed make-up of the sum insured should be agreed in advance with insurers.

## 2.7 Rent suspension clause

- 2.7.1 The rent suspension clause in a lease enables a lessee to cease paying rent (and possibly service charges and insurance premium rent), or an equitable part thereof should the premises be damaged or rendered inaccessible by way of any of the insured risks, until the premises are fit for occupation again. There is often a maximum rent suspension period specified in the lease, usually 3 years, and this is the minimum period for which rent should be insured (the indemnity period).
- 2.7.2 Without a rent suspension clause the lessee could be obliged to continue paying rent, even if their premises could not be used.

## 2.8 Insurance break clauses

- 2.8.1 A typical insurance (or casualty) break clause gives the lessee the option to determine the lease where substantial insured damage to the building is not repaired, or repairs are not commenced, within a certain period of time (usually the same as that specified in the rent suspension clause).
- 2.8.2 An insurance break clause may also be in favour of the landlord, where the necessary permissions cannot be obtained for reinstatement.

## 2.9 Engineering insurance (See section 7)

- 2.9.1 An appropriate and specific engineering insurance policy should be taken out on all landlord plant and equipment to cover, at a minimum, reinstatement, breakdown and inspection (in addition to any statutory inspections required).
- 2.9.2 Engineering insurance is a comprehensive insurance policy which provides covers against a wide range of related risks associated with landlord's plant and equipment.
- 2.9.3 Engineering equipment which forms part of the landlord's fixtures and fittings (as opposed to tenants own equipment) is normally identified within occupational leases, usually as part of the common areas of the building.

## 2.10 Status of Lessee

- 2.10.1 The landlord usually recoups the insurance premium from the lessees; however there is rarely a requirement in leases for the lessee's name to appear on the policy. This is generally because landlords wish to retain control of any claim. If a tenant or third party is (i) named as co-insured on the policy or (ii) interest noted via memorandum then they will have a right to be involved in the claim negotiations.

## 2.11 Subrogation rights under policies in the landlord's name

- 2.11.1 A waiver of subrogation is a provision whereby the insurer agrees not to step into the shoes of the insured (subrogate) to pursue a claim to recover money paid out in resolution of a claim, as a result of negligence of a tenant; as the tenant is contributing to the insurance premium.
- 2.11.2 Modern leases typically require landlords to use best endeavours to obtain a waiver of subrogation on behalf of the tenants. 2.11.3 Subrogation waivers always exclude damage caused by malicious, criminal or fraudulent acts of lessees.

## 2.12 Other References to insurance in leases

- 2.12.1 Both residential and commercial leases will normally oblige the lessee not to do anything that might void the property insurance or increase the premium. Where a claim is not paid due to an act of the leaseholder, he may be liable for repairing the damage.

## 2.13 Uninsurable Damage

- 2.13.1 The typical lease obliges the owner to insure the property against the defined Insured Risks subject to the availability of cover at reasonable cost. Insurance cover for damage by some risks, e.g. terrorism or flood, may no longer be available at reasonable cost and leases now need to address this possibility.
- 2.13.2 In the case of long residential leases it will be a matter for the directors of the Owners' Management Company (OMC) to decide how damage caused by an uninsured risk is to be repaired.
- 2.13.3 For commercial properties, damage caused by an uninsured risk could leave tenants with an obligation to repair the damage, whilst continuing to pay rent. The landlord may have no reinstatement obligation, as this is conditional on damage being caused by an insurable loss. This situation is not helpful to either party, so it is sensible for provision to be made in the lease between landlord and tenant.

## 3. The Insurance of Buildings

This section examines what constitutes a building for the purposes of insurance, the various measures of indemnity in the event of a claim and the basis on which the sum insured should be calculated.

### 3.1 Policy definition:

- 3.1.1
- the buildings themselves (including foundations);
  - landlord's fixtures and fittings (including all machinery, plant and consumables) and tenant's improvements for which the landlord is responsible in, or around the buildings;
  - building management and security systems;
  - furnishings and other contents of common parts of the buildings.
  - gangways, pedestrian malls and pedestrian access bridges;
  - walls, gates, fences, and services, including telephone, computer, fibre optic, television and electricity cables, gas piping, water mains, drains, sewers.
  - roads, pavements, car parks, hardstanding and street furniture;
  - landscaping and recreational features, including garden furniture, ornaments and statues; and
  - any other items for which allowance has been made in a written assessment of the 'Declared Value'.

### 3.2 The Principle of Indemnity

3.2.1 The principle of indemnity is one of the three basic principles of insurance.

3.2.2 The aim of indemnity is to leave the insured as close as possible to the same financial position post-loss as they were pre-loss.

### 3.2 Indemnity by Reinstatement

3.3.1 Most buildings are insured on a Day One Reinstatement basis. The essence of indemnity by reinstatement cover is that claims will be settled on the basis that damage to the building is repaired to a condition substantially the same as the condition of the building when new, and the insured will not have to contribute to this, other than the payment of the relevant policy excess.

3.3.2 Valuations should state clearly what allowance has been made for VAT on reinstatement costs. Residential OMCs will not normally be registered for VAT, so it is important for them to ensure this is taken into account.

### 3.4 Calculation of the sum insured for indemnity by reinstatement basis

3.4.1 The sum insured, made up of declared value and inflation, should be sufficient to represent the cost of reinstating the insured building should it be destroyed, calculated upon an assumption of total destruction the day before renewal the following year.

3.4.2 *Declared Value* - the total cost of rebuilding the premises including professional fees, debris removal and local authority levies, on the first day (Day One) of the period of insurance without any provision for inflation.

*Note – It is not recommended that the Consumer Price Index (CPI) be used as inflation in construction costs may vary substantially from general CPI inflation*

3.4.4 Whilst 'average' (see paragraphs in sections 5.1 and 5.2) will not be applied to any loss if the Declared Value on the first day of any period of insurance is adequate, that will be of little comfort if the inflation provision has been underestimated and the sum insured is simply not enough to pay for a serious loss at the end of the insurance year.

### 3.5 Professional fees

3.5.1 As previously mentioned, Insurers will generally pay for costs and fees that are necessary, and are reasonably incurred, in the reinstatement or repair of a building. These costs and fees typically include architects, engineers, surveyors, lawyers and other professionals whose services are required for the reinstatement to be carried out satisfactorily.

3.5.2 Professional fees incurred in the preparation and negotiation of claims settlements, as opposed to reinstatement of damage, are generally not covered under this heading.

3.5.3 Managing agents' fees are often recoverable provided that they are necessary and are reasonably incurred with the insurers' consent - insurers will usually pay for work that would have to be done by someone else if the managing agents did not do it.

### 3.6 Debris removal and associated costs

3.6.1 For valuation purposes it is wise to consider costs under the following four headings:

- Making the building secure and safe for others who may use or trespass upon it
- Dismantling, demolishing and removing debris
- Clearing, cleaning and repairing the services, including drains
- Clearing up pollution or contamination.

3.6.2 These costs can be much higher if access is restricted by proximity to busy or narrow roads and/or other buildings.

### 3.7 European Union and public authority stipulations

3.7.1 When permission to reinstate a building is sought, authorities may issue a permission only on the condition that certain work will be carried out, usually relating to legislative requirements such as providing disabled access and improved fire protection, such as fire doors, fire compartments and enclosed staircases.

3.7.2 Increasingly, green issues are becoming more important, and the authorities are using planning requests as an opportunity to make buildings more energy efficient. The requirements will reflect changes in practice since planning consent was originally granted.

3.7.3 Insurers may not pay for the cost of requirements that were imposed upon the insured before damage occurred.

### 3.8 Indemnity by reinstatement less wear and tear

3.8.1 This basis of indemnity is rarely applied in practice, but there are particular circumstances when it could be useful.

1. When a building is very old or not in a good state of repair, underwriters may decide that indemnity by reinstatement is too generous, as insurers would have to pay a great deal of betterment in the event of a claim.
2. An insured may not wish to choose indemnity by reinstatement if the building is not likely to be repaired following serious damage. In this case, indemnity by reinstatement less wear and tear, with its lower sum insured and consequently lower premium, may be a sensible option.

### 3.9 Indemnity by loss of market value

3.9.1 If repairs to a building insured on an indemnity by reinstatement basis are not carried out, the insured will not be entitled to an equivalent payment in cash, but instead, the claim will be based upon an 'indemnity by loss of market value' basis, provided that this does not exceed the cost of repairs.

3.9.2 If it is known in advance of the damage that repairs will not be carried out, the insured could opt for this basis of indemnity from the outset.

### 3.10 Indemnity following frustration of rebuilding

3.10.1 Planning authorities are not required to grant permission for a building to be reinstated to its previous size or use, and there is therefore a risk that permission will not be forthcoming or that the replacement building will be smaller or for a different purpose.

3.10.2 It is worth pointing out that indemnity by reinstatement cover may allow for reinstatement on another site, as long as it does not increase the cost to insurers.

3.10.3 Many policies offer protection against frustration, however, the insurers' limit of liability for frustration cover needs to be considered, as market values may be higher than reinstatement values. Therefore to receive further payment from insurers, there must be provision for the insurers' maximum liability to be increased beyond reinstatement costs.

### 3.11 Other basis of settlement

3.11.1 There are circumstances when a basis of indemnity other than the four mentioned previously would be more appropriate for particular buildings.

3.11.2 Before deciding this, consideration of what would happen in the event of partial or serious damage is advisable. Whilst it may not be the intention of the insured to reinstate serious damage, they should still seek to retain the right to claim the cost of repairing minor damage to comply with a lease or maintain rental income.



### ***Obsolete buildings***

- 3.11.3 Obsolete buildings cover may be suitable if in the event that a building is destroyed or seriously damaged, it would be demolished and rebuilt in a different and cheaper form. Partial damage would be repaired up to an agreed amount, but beyond that the building would be knocked down and replaced by a modern building providing the same function.
- 3.11.4 The premium would be calculated based on the demolition of the remains of the original building and the cost of the modern replacement.
- 3.11.5 This basis is particularly useful for both insured and insurers where the obsolete building is a poor risk carrying a high premium. The insured save on premium and insurers have a lower exposure.

### ***Buildings awaiting redevelopment***

- 3.11.6 As long as there is a possibility of planning permission being refused, a developer may have to continue to insure a building in its current unwanted state just in case it has to be repaired following damage. For example, if a facade is to be retained, then it, along with any other structures to be retained, might have to be insured anyway. The sum insured would be based on the extra cost of the development following destruction of the retained parts.
- 3.11.7 If any parts are occupied, there may be obligations to tenants that must be considered. Rather than repair a building for a short period until it is demolished, it may be possible to arrange a cover that pays for necessary repairs or rehousing the tenants, whichever is cheaper.

### ***Additional site clearance and 'making safe' costs only***

- 3.11.8 If a building is due for demolition, no material cover may be necessary if, when damage occurs, the date of demolition can be brought forward. However, the cost of demolition may be higher as a consequence of the damage. Also if demolition cannot be brought forward, additional costs may be incurred in making the building safe in the meantime. Such extra costs may be insured on their own.

### ***Second-hand value of building materials***

- 3.11.9 A building due for demolition, or even redevelopment, may have no value except from items that have a second-hand value, e.g. fireplaces, architectural features, roofing tiles, etc. If that second-hand value could be lost as a result of damage, then it can be insured on this basis.



## 4. Loss of rent

The objective of a loss of rent policy is to protect the revenue income and additional expenditure of a landlord against the consequences of insured damage by putting it in the same financial position as it would have been had the damage not occurred.

### 4.1 Sources of revenue and post loss expenditure

4.1.1 To begin with, it is necessary to consider both all the different sources of revenue that are at risk and post loss expenditure.

#### *Sources of revenue at risk*

4.1.2 Sources of revenue that may need protection are as follows:

- Loss of rent
- Turnover rent
- Rent from advertising space
- Loss of service charges
- Loss of insurance premiums
- Other sources of revenue from any landlord-run facilities (e.g. a car park).

4.1.3 It should be remembered that although insurance and service charges are not sources of revenue for a Landlord they are sums of money that are required to pay 3rd party suppliers and contractors.

#### *Sources of revenue coming on stream*

4.1.4 Sources of revenue at risk that will come on stream during the period of insurance could include:

- Increases in passing rent as a result of reviews (insurers to be advised of when this occurs)
- New rental income from premises ready for occupation but not yet leased at commencement of period
- New rental income from new buildings purchased or reaching practical completion, or from extensions to existing buildings reaching practical completion
- New rental income from existing premises not ready for occupation at commencement of period due to repair or refurbishment.
- Advanced rent (in place) for future developments

#### *Post loss expenditure*

4.1.5 Possible post loss expenditure could include:

- Cost of re-letting premises legitimately vacated as a result of damage
- Additional expenditure incurred in avoiding loss of rent
- Business rates now payable by the landlord because the tenant has legitimately vacated premises as a result of the damage
- Public relations expenditure
- Accelerated reinstatement expenditure
- Professional accountants and legal fees
- Increased cost of working
- Increased service charges costs.

## 4.2 Alternative loss of rent cover.

4.2.1 There are two means by which insurers seek to cover loss of rent:

- **'Day One Rent' basis and**
- **'Estimated Rent Receivable' basis.**

## 4.3 Day One Rent basis

4.3.1 The insured provides a single sum insured based on the passing rent on the first day of each period of insurance. If necessary an allowance is also made for any service charges and turnover rent.

4.3.2 The figure provided for the Day One Rent is then multiplied by the indemnity period to arrive at the sum insured.

4.3.3 The sum insured is then automatically increased by an amount, normally 100 per cent, from the first day of the period of insurance to calculate the limit of the insurers' liability.

example - a unit in a shopping centre has a passing rent on the first day of the period of insurance of €300,000. A further allowance of €50,000 is added for estimated service charges and turnover rent.

This total of €350,000 is multiplied by 3 years (the indemnity period) to arrive at a rent sum insured of €1,050,000.

The Rent sum insured is then increased by 100 per cent to €2,100,000 to arrive at the insurers' limit of liability. (this is the amount available to pay a claim for all sources of revenue and post loss expenditure (excluding additional cost of working cover, which will always require a separate sum insured). The rent must be specified and agreed.

The policy should be checked as the automatic increase can be more or less than 100 per cent

## 4.4 Estimated rent receivable basis

4.4.1 An amount is declared by the insured representing the 'Rent Receivable' anticipated to be earned during the indemnity period.

4.4.2 In the same way that the Day One Rent is automatically increased to arrive at the insurers' limit of liability, so usually is the estimated rent receivable (but similarly, the increase could be more or less, though 100 per cent is the figure commonly used), unless requested.

## 4.5 Differences between Day One Rent basis and Estimated rent receivable basis

4.5.1 Both basis set out to place the insured in the same financial position as it would have been in but for the damage.

4.5.2 One difference is the way in which the sums insured are calculated. The day one basis calls for precise figures, being the passing rent on the first day of each period of insurance. The estimated rent receivable basis in theory calls for some guesswork and probably takes longer to determine. The sum insured should represent the current rent and increased rent and rent related income for the indemnity period.

- 4.5.3 Any average or underinsurance condition in the policy will reflect the adequacy of the sums insured under each method, but the day one basis figure is less likely to be wrong.

#### 4.6 Indemnity period

- 4.6.1 The Indemnity period is the maximum period from the date of the loss for which the Insurers shall be liable to pay any loss.
- 4.6.2 From the insured's point of view, the indemnity period should be the maximum period after damage, during which the insured could suffer a reduction in the rent that would have been received had the damage not occurred.
- 4.6.3 As a general rule the indemnity period should be the longer of the following two outcomes:
1. the period mentioned in the rent cesser clause, or
  2. the period it would take to rebuild the property if it was totally destroyed allowing for demolition, planning, tendering and actual reconstruction, together with the time it would take beyond completion to find a new tenant if the original tenant was not obliged to return to the premises.
- 4.6.4 The indemnity period most commonly mentioned in the rent cesser clause is for three years, however different periods are not unusual - it is important that the indemnity periods stated in the lease are covered as a minimum.

#### 4.7 Requests for long indemnity periods

- 4.7.1 Requests for long indemnity periods of up to five or even seven years for large developments are often requested and are generally accepted by insurers.
- 4.7.2 A request for long indemnity periods may be sought where a tenant is paying a rent which is far in excess of the market rent where the tenant can determine its occupation after an insured loss.
- 4.7.3 Although another lessee may be found, the new lease may be at a much lower market rent. The loss of rental income could go on for many years until the market rent being paid by the new lessee catches up with the passing rent that would have been paid under the old lease.

#### 4.8 Elements to the basic loss of rent cover

- 4.8.1 **Loss of rent** - Covers loss of rent suffered as a result of damage, taking into account any rent reviews
- 4.8.2 **Cost of re-letting** - If as a direct result of damage a tenant determines the lease, the insurers will pay for the costs incurred towards finding a new tenant.
- 4.8.3 **Additional expenditure** - Covers costs incurred in reducing what insurers would otherwise pay in a loss of rent claim. For example, if a cost of €100,000 is incurred in paying a contractor to speed up repairs and this saves insurers €200,000 in loss of rent, the additional expenditure is covered.

The principle where any recovery is limited to the savings in other areas is known as 'the economic limit'.

- 4.8.4 **Business rates** - Insurers will pay for business rates that are normally payable by lessees but, solely due to insured damage, now have to be paid by the insured.
- 4.8.5 **Public relations expenditure** - Insurers will pay for expenditure necessarily and reasonably incurred with their consent in maintaining public relations whilst damage is being repaired.
- 4.8.6 **Professional accountants and legal fees** - Insurers will usually pay for professional accountant fees for producing the information required under the terms of the claim conditions and for certifying that it is in accordance with the insured's accounts.

Insurers may also pay legal fees for determining the insured's contractual rights under any rent cesser clause.

#### 4.9 Additional increased cost of working

- 4.9.1 For an insured that wants the option to spend more than is allowed under the items listed in section 4.8 in order to minimise the interruption to the business, it is possible to purchase further cover referred to as "additional increased cost of working".
- 4.9.2 Insurers must approve all expenditure, which must be necessary and reasonable.

#### 4.10 Other features

- 4.10.1 A policy may also include cover for loss of rent following denial of access, failure of utilities, diseases (as listed in the policy), vermin, defective sanitary arrangements, murder and suicide, as well as loss of attraction (including tenant bankruptcy traceable to loss of anchor tenants), loss of investment income, prevention of access and professional accountant and legal fees.
- 4.10.2 One needs to be mindful of inner limits that may apply for these covers.

#### 4.11 Untenanted buildings

- 4.11.1 Many insured prefer to play it safe by insuring for loss of rent on an untenanted building, just in case they overlook adding the cover when it is tenanted. They may not be able to recover loss of rent if the building is damaged, unless they can prove that, but for the damage, the premises would have been let.

#### 4.12 Rent-free periods

- 4.12.1 There is sometimes confusion over how rent-free periods should be accounted for - the simple solution is to ignore it altogether and arrange cover on the basis that there is no rent-free period using the future agreed rent in the calculation of the sum insured.

#### 4.13 Value added tax

- 4.13.1 Making allowance for VAT in any rent sum insured when the insured has exercised the option to tax is not necessary. This is because no VAT is chargeable on any rent recovered from the insurers, as no service has been given in exchange for it.

## 5. Average and underinsurance conditions

Where a building is underinsured, the 'Average' clause will apply to penalise the insured by reducing the claims payment in proportion to the degree of underinsurance, subject to any leeway given.

***In order to avoid a risk of underinsurance, and in line with best practice, reinstatement costs should be fully reassessed at least once in every 3 years and after any addition or alteration to a building, coupled with an annual indexation of reinstatement costs***

### 5.1 How average and underinsurance work

5.1.1 In simple terms if the sum insured under a policy is half of what it should be, an average or underinsurance condition means that the insured will only get half their claim paid even if the claim amount is less than the sum insured. However, there are different versions of average, which will be discussed in the following paragraphs.

5.1.2 Underinsurance is a term used to describe any situation whereby the maximum amount of money recoverable for a particular claim is not sufficient to meet the maximum loss that could arise.

The presence of underinsurance does not mean that average is automatically applied to a claim, as it depends on the precise wording of the relevant condition.

### 5.2 Underinsurance on buildings

5.2.1 Most buildings are insured on a Day One Reinstatement basis under which the sum insured is made up of a declared value and an inflation provision. The former represents the cost of rebuilding on the first day of each period of insurance, which should be obtainable with a good degree of accuracy.

5.2.2 As long as the declared value is correct there is no fear of average. It does not matter when the loss occurs, and this basis does not require the sum insured to be adequate at the date of damage, only on the first day of the period of insurance.

5.2.3 The availability of Day One Reinstatement cover diminishes the possibility of underinsurance for two reasons.

It bases average on a figure that is comparatively easy to estimate rather than a figure that includes an estimate of future inflation.

It also encourages full allowance for inflation within the sum insured as the inflation provision element of the sum insured is charged for at a far lower rate of premium than the declared value element.

5.2.4 An important issue in connection with average is how it is to be applied across a portfolio of properties, for which there are a number of possibilities. For the following options, it is assumed that the buildings are insured on a day one basis.

- Average could be applied to individual declared values.
- Average could be applied to the total of all the declared values, often referred to as 'blanket average'.
- Blanket average could be applied automatically under the policy provided that suitably qualified valuers assess the declared values at three yearly intervals, with annual desktop reviews in between.

### 5.3 Underinsurance on loss of rent

5.3.1 The loss of rent cover is often a factual figure based on passing rents that are easily determined. Nevertheless, there is scope for underinsurance and the following questions require to be considered.

- 1) On what basis does average apply? Is it individual sums insured, or the total sum insured (i.e. blanket average)?
- 2) On what basis should the sum insured be calculated? In most modern policies the passing rent is used, but some policies ask for the estimated rent during the period of insurance, so reviews have to be taken into account.
- 3) How are rent reviews provided for? In many modern policies the passing rent is increased by 100 per cent, so insurers' limit of liability for losses during the insurance year is double the passing rent at the commencement of the insurance period. This higher figure is available to pay for claims, so insurers only need to be advised of changes in the passing rent when the policy is renewed.
- 4) What is the definition of rent under the policy? If it includes service charges rent, what allowance has to be made in the sum insured on rent?
- 5) If there are turnover rents, how does the policy deal with them and what allowance has to be built into the sum insured?
- 6) Is the indemnity period adequate? Does it take into account break clauses, the possibility of tenants being able to determine their lease following damage, the differences between passing and market rents, and the time it would take to reconstruct the building following a total loss?



## 6. Property owners' public liability insurance

This section examines the public liability insurance usually required under the terms of the lease. The cover is typically taken out by the Property Owner to cover the liabilities that they could incur as owner of the building, and the premium is usually recoverable from the occupiers.

Each tenant has to take out a separate policy to protect its liabilities arising from its occupation of its demise within the building.

### 6.1 Extent of cover

- 6.1.1 A public liability policy provides an indemnity in respect of liability at law, for damages arising from accidental injury to third parties (other than employees), as well as accidental damage to the property.
- 6.1.2 A public liability policy should also cover liability for claims defence costs and for any nuisance or trespass committed by the insured or any interference with any easement, right of air, light, water or way.
- 6.1.3 A public liability policy does not cover liability for damages which arise from a deliberate act or omission or that is a natural consequence of the ordinary conduct of the insured's business, and which could reasonably have been expected by the insured.
- 6.1.4 A public liability policy is an important element of cover for property owners. Even when another party, such as the lessee or a service provider, is responsible for the injury or damage, it is not unusual for the owner to be enjoined in the action.

### 6.2 Restrictions in cover

- 6.2.1 All insurers have concerns about different aspects of liability cover, e.g. risks that are unknown when policies are effected (e.g. asbestosis).
- 6.2.2 Insurers seek to protect themselves by excluding claims from sources they regard as hazardous, so it is necessary to find out –
  - what these exclusions are
  - whether limited cover can be given, or
  - if any such exclusion can be removed by payment of extra premium.

### 6.3 Terrorism

- 6.3.1 All insurers exclude terrorism cover altogether under the basic wording. Those that do provide terrorism cover at an additional premium, may impose a limit.
- 6.3.2 In determining if terrorism cover is required, the property manager should have regard to the lease obligations and to the requirements of the property owner.



## 6.4 Other extensions

6.4.1 The following extensions of cover may also be covered under the policy when necessary:

- Pollution, contamination and clean-up costs
- Overseas personal liability
- Member to member liability
- Contingent motor liability
- Unauthorised movement of vehicles
- Excess motor liability
- Advertising liability
- Compensation for court attendance
- Acquisitions
- Cross liability.

## 6.5 Deductible / Excess

6.5.1 A deductible / excess (the insured's contribution) is the amount of any claim that the insured is expected to pay before insurers become liable.

6.5.2 As a general rule, the excess is imposed by insurers and is relatively low, but is often increased by the insured to save on the premium and reflect their risk philosophy.

## 6.6 Co-insurance

6.6.1 For financial loss cover insurers usually limit their liability to a percentage of any claims, usually 90 per cent, and often requires a minimum contribution.

6.6.2 In summary, this means that insurers agree to pay up to 90 per cent of any claim, leaving the insured to pay the other 10 per cent or the minimum figure.

6.6.3 Co-insurance could be applied to any element of the cover if insurers felt it is warranted by the risk or the loss experience.

## 6.7 Limits of liability

6.7.1 The limits of liability referred to in the policy can be for

- (i) any one occurrence or
- (ii) all occurrences in the aggregate during the period in question.

It is important to note that all limits stated should be appropriate for the cover which is required.

6.7.2 Whilst the limit of Public liability indemnity should technically reflect the worst potential loss, quite often the limit is selected, following consultation with insurers and /or brokers, at a level that is regarded as normal practice based on what is reasonable and affordable.

- 6.7.3 The indemnity limit selected largely reflects the nature of the risk owned. For a single tenanted building, the risk of a claim against the owner is low, particularly when the lessee is responsible for all repairs and maintenance under the terms of the lease.
- 6.7.4 However property owners are far more likely to be involved with the risk in a multi-tenanted property - shopping centres in particular face numerous 'slip and trip' incidents that lead to successful claims. Even though service providers or lessees may ultimately be responsible, the property owner may have incurred significant defence costs.
- 6.7.5 Layering can be used whenever a high limit of indemnity is required and is a good way of spreading risk between insurers and saving premium. The primary insurers may carry cover up to a limit, with a second layer of insurers paying for losses in excess of that amount and possibly a further layer of insurers providing protection up to a maximum limit.

## 6.8 'Occurrence' and 'claims made' basis

- 6.8.1 Standard public liability policies are issued on an 'occurrence' basis whereby the policy in force at the time of the injury or damage responds to the claim.
- 6.8.2 No cover is provided in respect of incidents occurring prior to the date that the insurers first went on risk (usually the inception date of the policy).

## 6.9 Protecting Property Managers' interests under the landlord's public liability policy

- 6.9.1 When a Public liability insurance policy is initially being put in place, it is with the clear understanding of the property owner and the property manager that, unless the property manager were shown to be negligent, liability claims arising will be dealt with under the policy.
- 6.9.2 Problems arise when a third party is injured and seeks to join all parties involved with the property into the claim, including the property owner, the property manager, contractors and sometimes tenants, without any evidence of negligence, with the objective of increasing their chances of being successful in securing compensation.

Clearly, this is unsatisfactory as it involves all parties in considerable costs.

- 6.9.3 One solution is for the property manager to take out a separate public liability policy (as distinct to a professional indemnity policy) to cover their potential liability to third parties in premises under their management. The premium would normally be recoverable from the occupiers. 6.9.4 An alternative solution is to name the property manager on the property owner's policy. Whilst on the face of it the two parties have completely separate interests, insurers are usually prepared to insure both under one liability policy if asked. In theory there should be a saving in the insurance premiums to the benefit of the landlord, as the cost of any separate policy taken out by the property manager would normally be charged back to the landlord.
- 6.9.4 The property management contract between the property owner and the property manager should set out clearly their respective responsibilities in relation to the management of the site. The property owner, for example, would normally provide a full indemnity to the managing agent for injury to third parties unless the property manager has been negligent.

6.9.5 The property manager should seek to have subrogation rights waiver against the property manager - the benefit to the property manager of insurers waiving subrogation rights is that the insurers cannot then seek to bring the property manager into an action by a third party against the insured.

## 6.10 Protecting other parties' interest under the landlord's public liability policy

6.10.1 Insurers are sometimes asked to note the interest of another party (e.g. a tenant or a bank) under a public liability policy, but this has no legal significance - the only party entitled to indemnity is the insured and noting an interest provides no protection to the third party concerned, except that it cannot be enjoined in any action.

6.10.2 Insurers are generally prepared to add the names of subsidiary and group companies of the insured to the policy (as defined in the Companies Act).

6.10.3 The term 'associated companies' cannot be used in a policy as the word 'associated' has no legal meaning and would leave too much room for argument. If the name of such a company is to be added to the policy it must appear in full.

# 7. Engineering insurance and inspection

In this section, engineering insurance is examined and the need for it is explained.

Engineering equipment forming part of the landlord's fixtures and fittings is insured as part of the building and against the usual fire and other perils selected by the landlord.

In the context of this guidance note engineering insurance refers to breakdown and inspection cover, which is the basic element of this type of cover.

## 7.1 Engineering insurance

7.1.1 In modern, air-conditioned properties the value of equipment represents a significant percentage of the value of the building. Failures of boilers, lifts and air conditioning equipment are surprisingly common, and the increasing complexity of building services has seen costs escalating significantly in recent years.

7.1.2 Space and access to undertake major repairs or replace damaged equipment can sometimes add considerable costs to breakdown claims - Key machinery is often located in basements, so specialist lifting and access equipment is often needed to undertake the repair or replacement.

## 7.2 Items covered under an engineering policy

7.2.1 Traditional engineering insurance policies offer cover on specified schedules of equipment. However, many engineering insurers also offer a blanket basis option to cover all of the landlord's plant & equipment at the property.

7.2.2 The basis of most engineering insurance policies is 'sudden and unforeseen damage' cover. This is basically an enhanced breakdown policy providing cover against failure of the equipment, operator error and an element of accidental damage cover.

7.2.3 For boilers and pressure equipment, the policy usually also provides protection against explosion or collapse and the resultant damage to surrounding property.

7.2.4 In addition to the basic cover, a number of extensions are commonly provided, such as:

- Debris removal costs
- Repair investigation costs
- Cost incurred in expediting a repair
- Costs incurred to lessen or mitigate a claim.

## 7.3 Responsibility for arranging engineering cover

7.3.1 For a single tenanted property that is subject to a full repairing and insuring (FRI) lease, the responsibility to maintain and repair engineering equipment is generally placed upon the tenant.

- 7.3.2 Where a property is let to multiple tenants, the responsibility for arranging inspections and engineering cover generally lies with the landlord.
- 7.3.3 When the landlord is obliged to arrange cover, the lease usually gives the landlord the right to recover that cost from the tenants.
- 7.3.4 Vacant properties - It is a common misconception that vacant properties do not require statutory examinations. However, as maintenance staff and potential tenants use the lifts and services, statutory examinations need to be maintained. Only when the equipment and machinery is formally decommissioned can examinations cease.

#### 7.4 Engineering inspections – statutory requirements

- 7.4.1 Engineering inspections are carried out for two reasons. Firstly, some types of equipment require examinations to be performed periodically as a result of statutory legislation. Secondly, engineering insurers usually require equipment to be examined in order to provide insurance cover on them.
- 7.4.2 The majority of statutory examinations required of property owners are driven by Safety, Health and Welfare at Work Act 2005 as updated, which are discussed in the following paragraphs.

##### ***Lifts and Lifting Equipment - Safety, Health and Welfare at Work (General Application) Regulations 2007***

- 7.4.3 Equipment covered under the Regulations include:
- Passenger lifts
  - Goods lifts
  - Window cleaning cradles
  - Access platforms
  - Dock levellers in distribution warehouses
  - Lifting beams
  - Escalators
  - Fork Lifts and Lifting Equipment
  - Coffee Making Machinery/Steamers
- 7.4.4 The regulations require lifting equipment to be subjected to a periodic ‘thorough examination’ by a ‘competent person’.
- 7.4.5 The competent person can also request supplementary tests (usually carried out by maintenance companies) at his or her discretion.
- 7.4.6 The frequency of examinations is usually six monthly for equipment that lifts persons and annually for all other items. These reports are issued to the HSA to comply with legislation.

##### ***Pressure Systems - Safety, Health and Welfare at Work (General Application) (Amendment) Regulations 2012***

- 7.4.6 These regulations define a Pressure System as “a system comprising one or more pressure vessels of rigid construction, any associated pipework and protective devices”, and they require a “written scheme of examination” to be drawn up by a “competent person”.

7.4.7 The regulations detail how, and at what frequency, the pressure system should be examined.

7.4.8 Examples of Pressure Systems Include:

- Steam boilers and system heating systems
- Pressurised process plant and piping
- Refrigeration systems

## 7.5 What is not covered

7.5.1 As with all insurance cover, there are a number of exclusions that apply, which typically include:

- Fire, lightning, explosion and any other perils normally covered under a standard fire policy
- Damage to machinery during installation, dismantling and re-siting
- Damage to safety or protective devices (such as fuses) due to their functioning
- Consequential losses of any kind (except as specifically insured)
- Theft or attempted theft
- Loss or damage caused by computer virus
- Wear and tear
- Losses due to an intentional act or wilful omission
- Acts of terrorism or war
- Nuclear or radioactive contamination.

## 7.6 Explosion of steam pressure equipment

7.6.1 All-risks policies include explosion cover, but it is normal to exclude damage caused by the bursting of any boiler or other equipment which belongs to, or is under the control of, the insured.

7.6.2 However, there is often an extension to the policy that does cover the excluded risk for a specified amount – usually €4 million in excess of €1 million – provided that a separate engineering policy is in force covering losses up to that €1 million and that the equipment is inspected in accordance with statutory requirements.

## 8. Protection of third party interests

In theory it is possible to add the names of third parties to any insurance policy, provided that they have an insurable interest, and the party taking out the policy and the insurers agree.

### 8.1 Level of protection

8.1.1 Generally speaking, third parties will be looking for one or more of the following:

- Confirmation that the policy will not be lapsed without them being advised
- The right to have some say in the settlement of claims so that the claim monies are not spent in a way that is contrary to their rights and/or interests
- The right to make a claim in their own name and recover under the policy to the extent of their financial interest

8.1.2 To achieve the first objective, the third party usually relies on an undertaking from the insurers. This is generally restricted to a promise to write to the third party's last known address to inform it that the policy is being lapsed.

8.1.3 To achieve the second and/or third objective the third party may rely on the 'general interest' clause (see below) that appears in most policies or alternatively may require its name to be noted on the policy via memorandum.

8.1.4 The safest solution to achieve the third objective is to add the third party name to the policy schedule alongside the names of other insured so that it becomes a co-insured.

### 8.2 General interest clause

8.2.1 This appears in most policies and generally reads as follows:

*The interests of freeholders, lessees, under-lessees, assignees and/or mortgagees of property insured by this policy are noted in the insurance provided by the policy subject to their names being disclosed to the insurers by the insured in the event of any claim arising.*

8.2.2 long as the insured do advise the third party names to insurers, the latter will consult with those parties before any claims payment is made.

### 8.3 Noting interests by memorandum

8.3.1 A typical memorandum is usually very short and merely reads as follows: 'The interest of [third party name] is noted in the insurance by this policy'.

8.3.2 This offers more certainty than relying on the general interest clause, as insurers have the names in advance of a claim.

8.3.3 Insurers will also consult any named third parties over the settlement of any claim.



## 8.4 Adding a name to the schedule

- 8.4.1 This method of recording an interest does not require a memorandum, although as mentioned earlier, the third party often seeks a non-invalidation clause as well (8.7).

## 8.5 Degree of protection

- 8.5.1 Third parties relying on the *general interest clause* or a *separate memorandum* do not have a separate contract with the insurers. This means that they have no right to make a claim in their own name or any greater rights of recovery under the policy than the actual insured. If the insured under the policy does not have a valid claim because they have contravened the terms of the policy, the third party noted by memorandum or general interest clause does not have a claim either.

- 8.5.2 On the other hand, *co-insured* are in the same position as if they had taken out a separate policy in their own name.

- 8.5.3 From insurers' point of view the creation of four contracts for only one premium is contrary to their best interests. However, they have to accept the reality of the markets, so their main concerns are the extent to which the possibility of a claim is increased and whether any extra premium is warranted.

- 8.5.4 There are two different circumstances to examine: direct risk and indirect risk.

**Direct risk** is when greater risk is obvious - for example, where a landlord takes out a public liability policy protecting the interest of a property management agent.

**Indirect risk** - best illustrated by considering what happens when a bank lends money on the security of a building and wants to make sure its interest in that building is properly protected. It is doubtful if naming a lender as a co-insured actually increases the risk of damage by an insured peril. Instead, the indirect risk to insurers is that they might have to indemnify the bank up to the amount of the outstanding loan in circumstances where they would not have had to indemnify the borrower because there has been a breach of policy conditions.

## 8.6 Breach of policy conditions

The following paragraphs explain how policy conditions might be breached and what different versions of non-invalidation clauses achieve.

- 8.6.1 There are numerous policy conditions that any insured must comply with, although it is not always clear whether non-observance of any condition will render the policy void or voidable. In order to appreciate the different non-invalidation clauses used in the market, the following headings describe different conditions to consider.

- 8.6.2 **Change in risk** - requires the insured to advise insurers of any activity that increases the risk of damage.

- 8.6.3 **Misrepresentation, misdescription or nondisclosure** - Such a condition will render the policy voidable in the event of misrepresentation, misdescription or nondisclosure. A co-insured will be protected if any other insured breaches this condition, but a third party relying on the general interest clause or a separate memorandum recording its interest will have no such protection without a suitable non-invalidation clause.

- 8.6.4 **Fraud** - This condition states that all benefit under the policy will be forfeit if a claim is in any respect fraudulent. This will also apply if fraudulent means or devices are used to obtain any benefit under the policy, or if any damage is occasioned by the wilful act or with the connivance of the insured. As with the previous condition (in paragraph 8.6.3), only a co-insured is protected against a breach and other third parties need a suitable non-invalidation clause.
- 8.6.5 **Any other conditions or warranties** - Numerous other conditions requiring compliance may be present - the most relevant are the 'reasonable precautions' clauses, which require the insured to maintain buildings in good condition and do what is reasonable to avoid claims, and 'claims procedure' clauses, which set out the action to be taken after damage.

## 8.7 Non-invalidation clauses

- 8.7.1 The clauses that attempt to protect third parties against a breach of any or all of the policy conditions given in paragraphs 8.6.2–8.6.5 belong to a family of so-called non-invalidation clauses. Included within this category are: *non-vitiation, freeholders', mortgagees', composite insured, multiple insured, lenders' protection and severability clauses.*
- 8.7.2 These clauses set out to protect interested parties against a breach of policy conditions by any named insured or co-insured.
- 8.7.3 It is recommended that any non-invalidation clause should be closely examined to see who it protects and against what.

## 8.8 Protection of bank interests

When money is lent on the security of a building, naturally lenders want to make certain the insurance is in order - their requirements generally fall under the headings below

**Breadth of cover** - The lender will normally require the borrower to take out adequate cover. The usual risks are those covered by an all-risks policy and comprise: fire, aircraft, explosion, earthquake, riot, malicious damage, storm, flood, escape of water or oil, impact, subsidence, heave, landslip and other accidental damage, including terrorism.

**Security of insurer** - The banks' will require the insurance to be placed with a reputable insurer with an agreed security rating.

**Status** - Lenders will usually seek the status of co-insured in the loan agreement, which they become once their name appears in the schedule to the policy.

**Subrogation waivers** - Whilst lenders often request subrogation waivers in their favour, these are unnecessary if they are co-insured, as insurers cannot exercise subrogation rights against an insured or co-insured.

**Non-invalidation clauses** – the lenders often seek a clause protecting the bank against the possibility that the insurance will be invalidated by acts of the insured.

**Payment of claims monies** – When insurers have more than one insured or 'interest noted', they make sure everyone is in agreement before paying the claim.

**Non-cancellation** - If a third party achieves co-insured status, insurers usually undertake not to cancel or lapse the cover without giving it notice.

## 8.9 Property portfolios with limited third party interest

- 8.9.1 Where a single policy covers a number of properties but the interest of a lender does not extend to them all, insurers should still be prepared to name the lender as a co-insured as the absence of any insurable interest in any particular property automatically means the lender has no rights under the policy in relation to that property.

## 9. Subrogation and waivers of subrogation

In insurance terms, subrogation is the right of the insurer to stand in the place of an insured on payment of a claim, in order to exercise the rights and remedies that the insured has against third parties for the partial or full recovery of the claim. Some policies allow the insurer to ask the insured to pursue their rights against third parties before the insurer pays the claim.

This section examines subrogation rights under property owners' policies in relation to lessees, property managers and parent or subsidiary companies

### 9.1 Subrogation clause

9.1.1 The subrogation clause usually appears as one of the claims conditions. A typical policy wording for this clause is:

*Any claimant under this insurance shall at the request and at the expense of the Insurers take and permit to be taken all necessary steps in the name of the Insured for enforcing rights against any other party before or after any payment is made by the Insurers.*

*The Insurers shall not enforce any rights against*

- (a) a tenant or lessee in respect of Damage to the part of the Buildings in the demise of that tenant or lessee or to common parts of the Buildings unless the Damage arises out of a criminal fraudulent or malicious act by the tenant or lessee*
- (b) any Company being a Parent of or Subsidiary to the Insured or any Company which is a Subsidiary of a Parent Company of which the Insured are themselves a Subsidiary*

9.1.2 The intention of the first paragraph is to give insurers the right to pursue rights of recovery before settling the relevant claim.

9.1.3 The final paragraph (b) is self-explanatory. Waivers are freely available to parent and subsidiary companies.

9.1.4 It is paragraph (a) that causes problems, and it is recommended that those with a responsibility for arranging insurance should consider a common misunderstanding concerning the breadth of the waiver). If the waiver applies to a building in single occupancy, there should not be a problem as the whole of the building is in the demise of that tenant. If it is destroyed as a result of a negligent act by the tenant the insurers will pay for its reinstatement, subject to any other policy conditions. The tenant does not have to pay for the consequences of its negligence. (If any damage is caused by a criminal, fraudulent or malicious act of the tenant, however, the waiver does not apply).

9.1.5 However, a multi let building comprises three parts: the portion occupied by a particular tenant; the common parts; and other tenants' portions.

- 9.1.6 If a particular tenant's negligence causes a fire and, as a result, the building is badly damaged throughout, the insurers would be able to exercise subrogation rights against that tenant for the cost of the damage to the other tenants' portions - the subrogation waiver would prevent the insurers from seeking to recover the cost of the damage to the tenant's own portion or the common parts, unless the tenant had behaved criminally, fraudulently or maliciously.

## 9.2 Alternative waivers

- 9.2.1 It is possible to remove the reference to other tenants' parts so that paragraph (a) in paragraph 9.1.1 reads as follows:
- (a) *a tenant or lessee in respect of Damage to the Buildings unless the Damage arises out of a criminal fraudulent or malicious act by the tenant or lessee, subject to Insurers agreement.*
- 9.2.2 A compromise may be to amend the waiver so that the tenant can be held responsible for losses up to, say, €1 million for damage to other tenants' portions, but not beyond this. For example, a fire due to the negligence of a tenant causes damage to the tenant's own unit for €1 million, to the common parts for €1.5 million and to remainder for €6 million. The insurers would meet the total cost of €8.5 million, but would be able to subrogate against the negligent tenant or its public liability insurers for the first €1 million of the damage to other tenants' parts.
- 9.2.3 Some policies seek to restrict the benefit of subrogation waivers by including provisos that the waiver will not apply if:
- (a) the loss destruction or damage results from a breach of the terms of the lease by the tenant or lessee
- (b) there has been a breach of a policy condition.

## 10. Policy extensions to cover for buildings and loss of rent

The competition between insurers and brokers for property owners' business has led to the insurance cover available becoming increasingly wider over the years. This section examines some of the extensions found and those currently being requested of insurers. It should be noted that this is a specialist area and advice should always be sought from an insurance broker.

If any of the more unusual clauses are required, it is recommended that reasonable limits in line with actual needs be sought as underwriters are more likely to agree to their inclusion. Where there is a material increase in risk for the insurers, an additional premium may be charged.

**10.1.1 Adjacent property damage** - intended to protect against a reduction in value directly attributable to uninsured damage to adjoining buildings in which they have no interest. The cover might pay for the cost of restoring or making good the structural integrity and weatherproofing envelope of the insured's property. If the building was in the course of being sold at the time, it may cover the reduction in market value. There may also be compensation for any loss of rent suffered.

**10.1.2 Contract works** - This is a policy extension that insures contract works up to an agreed amount.

**10.1.3 Diminution in value** - seeks to indemnify an insured when a property must be sold for a lower amount due to damage to buildings in its vicinity.

**10.1.4 Eviction costs** - This extension covers legal expenses an insured incurs while securing the eviction of squatters from buildings or development sites. No physical damage by an insured peril is required, so its inclusion means that the insurer carries an expense traditionally borne by the property owner.

**10.1.5 Fly tipping** - Insurers pay for the cost of removing rubbish but there will often be excesses, low limits for each claim and an aggregate limit for losses during the period of insurance.

**10.1.6 Frustrated legal costs** - where the sale of a property is aborted solely due to damage by an insured peril, the insurers would pay the actual loss sustained by the insured in respect of legal costs and expenses subsequently incurred solely because of the cancellation of the sale.

*Reinstatement cash in lieu.*

**10.1.7** One of the fundamentals of indemnity by reinstatement cover is that insurers will only pay for reinstatement after the cost has been incurred.

**10.1.8** They are prepared for the building to be rebuilt on another site, as long as it serves the same purpose for the insured and does not increase the size of the claim. This refusal to countenance an equivalent cash payment in lieu has been upheld in law. If an insured does not wish to rebuild a property, the basis of settlement becomes the reduction in market value, subject to it not exceeding the cost of repairs.

**10.1.9 Buildings awaiting sale** - This provision, which is sometimes called loss of use of sale proceeds, is only applicable if the insured has contracted to sell the building at the time of any damage.

- 10.1.9 *Buildings awaiting sale* - This provision, which is sometimes called loss of use of sale proceeds, is only applicable if the insured has contracted to sell the building at the time of any damage.
- 10.1.10 If the insured had intended to use the sale proceeds to purchase another building, they may be able to recover the cost of arranging alternative finance including the interest charges. If the sale proceeds would have been banked, the settlement will be based on the interest lost.
- 10.1.11 Denial of access – This provides cover where non-damage incidents restrict access to a premises e.g. by unlawful occupation, bomb alerts or on the instructions of police or other statutory bodies. Flooding in the area without any physical damage is another possible cause, while the collapse of a nearby bridge may lead to losses for a shopping centre because the only other access involves a 20 mile detour.
- 10.1.12 *Loss of attraction* - Loss of attraction covers losses arising from the possibility of the landlord's rental income or turnover rents being reduced as a result of prospective tenants not signing up, when the damage is to premises not covered by the policy, e.g. damage to a department store nearby that leads to a decline in footfall and rental income.
- 10.1.13 *Loss of attraction – anchor tenants* - This cover seeks to indemnify the insured against loss of income arising from lessees that go bankrupt as a result of an anchor tenant leaving the premises because of the damage.
- 10.1.14 *Stepped rent* – this provision allows the insured to recover rent which is due to rise during the indemnity period eg stepped rents or rent reviews.
- 10.1.15 *Turnover rent* – This provides cover where the rent that could be charged following a rent review is dependent upon the turnover in the previous year.



# 11. Premium calculation and apportionment systems

The calculation of premiums for multi tenure buildings can become a daunting logistical exercise, where different premiums payable for a variety of insurance covers have to be calculated and then apportioned equitably between the tenants. This section outlines the issues involved in calculating the insurance apportionment for multi-tenure properties.

## 11.1 Premiums to be collected

11.1.1 The premiums collected from tenants basically fall into two categories

1. The premium payable for the insurance of the building(s), loss of rent and the property owners' public liability cover
2. The premium payable for engineering breakdown and/or inspection, motor, money, personal accident, excess public liability and employer's liability.

The premiums for these are often collected as part of the service charges.

11.1.2 The same means of apportionment might not be used for both categories.

11.1.3 The key to getting the apportionment right is proper communication between the insured, the property manager and the insurer so that each has a clear understanding of what information is required and how it is to be presented.

## 11.2 Buildings

11.2.1 When there are multiple occupancies within a building, the total premium is apportioned according to individual declared values or by floor area or by some other appropriate means.

## 11.3 Contents

11.3.1 The definition of 'Buildings' under most policies is very wide, so having a separate policy item for contents is often unnecessary.

11.3.2 However where separate contents cover is provided, the total premium is apportioned by floor area or by some other appropriate means.

11.3.3 Where contents are specific to a particular tenant(s) the tenant will be charged the contents premium.

## 11.4 Loss of rent

11.4.1 The recommended method of calculating the loss of rent sum is to prepare a cash flow showing the total passing rents during the indemnity period taking account of stepped rents, rent abatements, rent reviews, turnover rents and new lettings.

11.4.2 It is important that the insurer is fully aware of the basis of calculation of the loss of rent amount.

11.4.3 The total premium for loss of rent should then be apportioned between the tenants in the same proportions as the sum insured was calculated.

## 11.5 Service charges

11.5.1 Loss of Service charge cover is often included in the loss of rent cover as many policies define “rent” as being inclusive of service charge. It is recommended that provision is made for Loss of Service charges, either through the Loss of rent policy or separately, as service charge expenditure will continue to accrue particularly in a partial loss situation.

11.5.2 The loss of service charge premium should be apportioned on the same basis as the service charge itself is apportioned.

11.5.3 It is recommended that in calculating the loss of service charge sum that regard is had to the estimated service charge for the indemnity period incorporating anticipated annual increases.

## 11.6 Terrorism

11.6.1 Terrorism cover is often required in respect of high profile buildings or buildings in the ownership of foreign high profile clients. Terrorism cover is not normally provided for within a standard building insurance policy.

11.6.2 When there are multiple occupancies within a building, the total premium is apportioned according to individual declared values or by floor area or by some other appropriate means.

## 11.7 Property owners’ public liability

11.7.1 Property owners’ public liability premium is normally allocated between tenants using the same basis as that for the buildings, but sometimes insurers charge flat rate premiums for each unit.

## 11.8 Excess property owners’ public liability

11.8.1 Landlords commonly take out public liability cover for an agreed limit under the buildings and loss of rent policy, and then top this up with a separate excess of loss policy or policies.

11.8.2 Excess property owners’ public liability premium is normally allocated between tenants using the same basis as that for the original public liability public liability premium.

## 11.9 Engineering breakdown and inspection covers

11.9.1 Engineering insurance premiums are normally apportioned on a floor area basis.

# 12. Business continuity planning

In this section the importance of business continuity planning is explained and the essential features of the plan are outlined.

## 12.1 Introduction

- 12.1.1 Disaster strikes quickly, usually with little or no warning, and creates major problems that need to be addressed without delay if subsequent interruption is to be kept to a minimum.
- 12.1.2 Inevitably in any emergency, severe pressure is placed on individuals to make decisions and take action under stressful conditions, often when normal communication systems are disrupted or unavailable. Decisions taken at such times can have far reaching effects on an organisation, therefore those decisions ideally should be based on a written plan, which has not only considered the consequences of emergencies and the options available, but has also appointed individuals who can make those decisions.
- 12.1.3 Business continuity planning is the concept of asking the question 'what if'. It involves thinking ahead by considering what threats the organisation may face, and whether and how these can be reduced or eliminated. Finally it looks at the steps to be taken in an emergency situation to ensure the business recovery plans, also known as Disaster Recovery Plans, are quickly and efficiently implemented.
- 12.1.4 Insurance is not the complete answer as all losses involve hidden costs not recoverable from an insurance policy, e.g. permanent loss of markets or damage to public image. Business continuity planning should therefore embrace both insurable and uninsurable threats to the business.
- 12.1.5 It is an established fact that more than 50 per cent (with some sources putting the figure as high as 60 per cent) of businesses that suffer major damage never recover. For example, out of the 280 businesses occupying the twin towers in New York at the time of the attacks in 2001, about 160 failed to ever trade again.

## 12.2 Continuity planning for commercial property owners

- 12.2.1 In terms of business continuity planning, the landlord should be aware of possible alternative accommodation within its own portfolio to maintain rental income and to satisfy any responsibility to the tenant.
- 12.2.2 An important consideration for property owners is the terms of individual leases and the extent to which tenants may be able to determine them in the event of severe damage or the loss of an anchor tenant. The potential consequences of a loss will have an impact not just on the insurance cover that should be arranged, but also on the business continuity plan.

## 12.3 Identifying the risks

- 12.3.1 For a large property the major risks will include fire, water damage (particularly flooding), and failure of services.

12.3.2 Each risk will need to be evaluated in terms of probability and likely impact on individual occupiers, the property as a whole and the public. They should be categorised in order of severity in the short and long term. Each contingency may require separate actions and solutions. The action to be taken in preventing or reacting to various loss scenarios should be considered in detail, and realistic time scales for business recovery should be assessed together with an estimate of the anticipated direct and indirect financial costs.

# 13. Assessment of risk – the common hazards

By understanding the causes of losses and what features make matters worse, property managers will have a better idea of how they can improve risk management to make the risk more acceptable to insurers.

## 13.1 Common hazards

13.1.1 The common hazards fall into four groups: inception hazards, contributory hazards, consequential hazards and moral hazards.

### ***Inception hazards***

13.1.2 Inception hazards are features that could cause a fire or make it easy to start one or for one to start. e.g.

- Smoking – carelessly discarded cigarettes
- Poor electrics
- Unsafe heating – e.g. an inadequately maintained oil fired heater
- Weak security – making it easier for an arsonist to break into premises
- Inadequate waste disposal arrangements – giving a useful source of combustible material for an arsonist
- Severe exposure to neighbouring buildings
- Hazardous processes employed in the business itself or by visiting contractors – e.g. welding or other hot-work, particularly in roof areas
- Storage of hazardous goods – e.g. petrol
- Outside storage – providing useful material for arsonists
- Site huts – depending on where they are sited, a fire starting in them can quickly spread.

### ***Contributory hazards***

13.1.3 These features help a fire to spread or delay discovery of or putting out a fire. e.g.

- Significant amounts of combustible material in the walls, floors or roof
- Combustible stock
- Inflammable liquids
- Absence of internal divisions
- Inaccessible or uninspected areas
- Combustible waste
- Distance from fire brigade
- Remoteness of location
- Absence of fire extinguishers.

**Consequential hazards**

13.1.4 These features can increase the size of a loss by being susceptible to damage by heat smoke water or pollution released during the fire e.g.

- Decorations
- Furnishings
- Sensitive equipment – e.g. computers
- Sensitive stock – e.g. electrical goods.

**Moral hazards**

13.1.5 These are hazards that come from the insured themselves and, in the case of property owners, their tenants e.g.

- Poor housekeeping
- Carelessness
- Wrong attitude to risk improvement measures
- Lack of training in or understanding of the causes of fires or fire prevention
- Dishonesty
- Arson
- Inflated claims
- Non-disclosure or misrepresentation
- Circumstances such as shortage of money for risk improvements.

**13.2 Property owners' insurance**

13.2.1 Property owners' insurance recognises that many of the risks described in the previous paragraphs are determined by the occupation of the buildings and the moral hazard of the tenants. Whilst the landlord and property manager can have a positive influence, as can the terms of a lease, insurers have to accept that the landlord is mostly absent from the premises and may have limited knowledge of what goes on there. The policy conditions and the usual absence of warranties are a reflection of this.

**13.3 Difficult risks**

13.3.1 Even the best-managed portfolios will occasionally have a building with some hazardous features present.

13.3.2 The best way for property managers to deal with buildings where hazardous features are present is to work with their brokers, insurers and lessees to improve the risks as much as possible.

# 14. Unoccupied properties

The risk to insurers is generally higher when a building is unoccupied, but much depends on the precise circumstances and each case is different. For example, an empty office block with concrete floors and 24 hour security is a low fire risk. In contrast, an unoccupied warehouse full of rubbish and other combustible contents and in an area prone to vandalism with no security presents a much greater risk.

In this section advice is given on the action that may need to be taken when a building becomes partly or completely unoccupied.

## 14.1 Definition of an unoccupied building

14.1.1 Insurers have attempted the difficult task of defining when a building is unoccupied, using various terms such as 'empty', 'disused' and 'untenanted'. However, none really clarify when a particular risk moves from one that is acceptable as it stands, to one that gives cause for concern and requires special attention. If the lack of an occupant in any building increases the risk of damage by any peril, insurers should be advised and efforts to reduce the additional risk should be made.

Removal of as many hazards referred to in the preceding sections 13.1–13.3 as possible would be an excellent way to do this.

## 14.2 Policy conditions

### ***Perils insured***

14.2.1 Many policies do not cover escape of water, malicious damage or theft when buildings are unoccupied, but it may be possible to reinstate these perils if adequate precautions are being taken.

### ***Notice of unoccupancy***

14.2.2 There will be a 'change in risk' or similar condition in a policy that will require notification of any increase in the risk of damage.

### ***Reasonable precautions***

14.2.3 There will always be a condition that reads along the following lines: 'The Insured shall take all reasonable precautions to prevent Damage as insured by this Policy'. What is reasonable is a matter of judgment, but it is always wise to take some action when the risk of damage is increased.

### ***Fire protection equipment***

14.2.4 A policy condition about fire protection equipment will almost certainly be present and will continue to apply whilst premises are unoccupied, unless anything to the contrary is agreed with insurers.



## 14.3 Recommendations

### 14.3.1 The best advice is to:

- Refer to the policy wording to check out points mentioned in this section
- Instigate immediately any measures necessary to comply with policy conditions and advise insurers on what is being done
- Ask for advice or clarification on anything that is unclear
- Follow up to make sure that action has been taken and constantly review the situation
- Ensure someone with authority is present when any insurance surveyor pays a visit
- Discuss and agree action required and prepare a schedule detailing timescales within which compliance is required.

# 15. The implications of contractors working on the premises

In this section, advice is given on the action that may need to be taken when contractors are being employed to carry out work in a building. Specific attention is drawn to the additional problems that may be encountered when it is the lessee having the work done.

## 15.1 Relevant policy conditions and precautions

- 15.1.1 Relevant policy conditions that require compliance will include the change of risk and reasonable precautions referred to paragraphs 14.2.2 and 14.2.3. Similarly compliance with the fire protection equipment clause is necessary, and any unoccupancy conditions or guidelines in the policy may also be relevant.
- 15.1.2 If there is hot work, e.g. work that involves using welding equipment or blow torches, insurers may require an additional premium and/or risk improvements.
- 15.1.3 Premises should always be inspected at the end of each working day by a competent person. This way potential hazards can be spotted and the source of danger removed.

# 16. Property damage claims, reinstatement of damage and the role of loss adjusters

In this section the claims process is examined. The extent of the property manager's involvement and precise duties in any claim will be dictated by the management agreement with the landlord.

The responsibility for VAT in the eventual repairs and the party responsible for meeting this cost will form part of the settlement strategy for the claim.

Whilst reference is made to fire damage, the guidance in this section is also appropriate for any other damage by an insured peril.

Fire damage claims can be more complex because of the possibility of damage by smoke, water and heat, along with the added complication of pollution and contamination.

## 16.1 Before the claim

**16.1.1** The first action to take when damage occurs is to examine the policy. The property manager should make sure that the damaged items fall within the definitions of property insured and the damage itself is covered by an insured peril. Although definitions of 'Buildings' tend to be very wide, confusion may arise when it is not clear whether some tenants' fixtures and fittings form part of the buildings, or if they are considered the responsibility of the tenant to insure. It may be necessary to examine the lease or building reinstatement valuation for clues.

**16.1.2** The next action is to examine the policy for claims conditions and, in particular, the procedures and timescales involved, as claims must be notified and details submitted within defined time limits.

## 16.2 Investigation and repair

### ***Immediate measures***

**16.2.1** All incidents of damage are different and therefore each will require its own investigation routine. It may involve just the property manager and/or surveyor acting on behalf of the insured to investigate or assist with the claim and, if the claim is large enough, a loss adjuster as well.

### ***Safety precautions***

**16.2.2** A damaged building can be a dangerous working environment. There is a risk of structural collapse and continued shedding of debris. Access routes are difficult, and the environment is monochromatic (subtle shades of black), dark and wet. In addition, control of substances hazardous to health (COSHH) problems may occur following the possible release of deleterious substances (either original or as products of combustion) and other forms of contamination, e.g. asbestos fibres and air conditioning coolant gases. However, a preliminary inspection is important, and any surveyor must make a judgment on how far to go before instigating works to make the building safe.

**Site inspection**

- 16.2.3 The initial inspection should include a sketch plan, photographs and brief schedules of construction and condition.
- 16.2.4 When a loss adjuster is appointed it is important that the adjuster meets with the property managers as soon as possible. Information passing both ways at these early meetings will set the tone for subsequent negotiations and may give early warning of any insurance problems.

**Desk study**

- 16.2.5 In addition to direct site investigation, a desktop study can be invaluable. Any plans, drawings (however old) or photographs of the building before the fire will aid in orientation and in the design of the reinstatement of destroyed parts.

**Emergency works**

- 16.2.6 First aid work is that which is carried out immediately after the loss and has two distinct aims:
- ensuring the building is made safe to protect the public, passers-by and trespassers;
  - protecting the building from excessive deterioration during the investigation and design phase, and before permanent reinstatement commences.
- 16.2.7 First aid works are often carried out on a day-work basis or under a negotiated contract, in the interests of speed. As a result, such work should be kept to a minimum, reserving the bulk of demolition, etc., for the permanent reinstatement work.

**16.3 Lease considerations/co-insured issues**

- 16.3.1 By the time the reinstatement is about to begin, it is likely that the other interested parties have been contacted and consulted, and that lease considerations and the provisions in loan agreements have been taken into account.
- 16.3.2 Even so, a final check is warranted. It is almost certain that the reinstatement of damage to allow the lessee to carry on its business will satisfy all interested parties. However, any risk that insurers could be faced with a further claim from a dissatisfied co-insured should be eliminated.

**16.4 Loss adjusting****The loss adjuster**

- 16.4.1 The loss adjuster's role is to agree with the insured and/or their appointed representatives the extent of the insurers' financial liability within the terms and conditions of the policy. The insurers appoint the loss adjuster.
- 16.4.2 If circumstances warrant it, the loss adjuster will advise the insurers of the prospects of recovering their eventual outlays, either in whole or in part, and will secure all necessary evidence to achieve this. Any rights of recovery the insured has against a third party are subrogated to insurers.

- 16.4.3 The loss adjuster will, amongst other activities, advise on coverage, sums insured, excesses, deductibles, franchises or whether average is likely to apply. The adjuster, whose approval is required for the expenditure of any moneys, will also advise as to whether such moneys will be the subject of contribution, either in whole or in part, from the insured.
- 16.4.4 *The loss assessor* - A loss assessor is sometimes appointed (usually on larger or more complex cases) by the insured to present claim details to the loss adjuster, advise the client on the process, the options and obligations, and negotiate the best possible settlement on the client's behalf. Payment of the loss assessor's fee is the responsibility of the insured.

## 16.5 VAT position

- 16.5.1 Insurance is a VAT exempt supply. As insurance companies cannot recover any money paid out as VAT, they will try to avoid such payments where possible.

## 16.6 Contract variations

- 16.6.1 The loss adjuster must be kept informed of variations to the contract which can significantly alter the liability of insurers and insured. They need to be agreed and approved by the loss adjuster whether they are to be included in the claim in whole, in part or not at all.

## 16.7 Formalising the claim and settlement

- 16.7.1 The loss adjuster must be kept informed of variations to the contract which can significantly alter the liability of insurers and insured. They need to be agreed and approved by the loss adjuster whether they are to be included in the claim in whole, in part or not at all.

Phase 1 - Debris removal and making the premises safe

Phase 2 - Providing alternative accommodation

Phase 3 - Testing and ascertaining the extent of damage, with a view to preparing a repair specification / bill of quantities prior to obtaining tenders for the permanent reinstatement

Phase 4 - The Reinstatement of the building

Phase 5 - The property owner may wish to have additional works, not resulting from the insured event, carried out. These elements of betterment should be identified and agreed.

- 16.7.2 The claim is agreed as it progresses through a series of meetings between the insured, their professional team, the loss adjuster and possibly other interested parties or their representatives. This is necessary for two reasons:

Firstly, the insured require reimbursement of their outgoings, and on a large claim substantial sums will be involved.

Secondly, it is easier to settle the claim this way as it avoids unnecessary arguments by leaving matters to the very end, by which time there may have been changes in personnel on both sides of the claim. The onus of providing claim details lies with the insured, and if this action is adopted, quicker interim payments and settlement of claims are achieved.

- 16.7.3 The purpose of the final meeting is to bring together all documentation for the various phases and check if any items have been overlooked. The valid items of claim are totalled against the relevant cover for buildings and loss of rent. Average is applied (if appropriate) and excesses are deducted, thus producing the total cost of the claim. Previous payments are deducted to leave a balance payable to the insured.
- 16.7.4 Once these figures are known, the loss adjuster issues an acceptance form to all the insured and other interested parties entitled to a say in the destination of the claims monies. These forms have to be signed and returned. The loss adjuster then submits the final report to the insurers recommending payment.
- 16.7.5 Insurers then issue a cheque to conclude matters.



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