

Is the construction industry adequately insured to make the UK a safer place post-Grenfell?



The 14th June 2020 was the third anniversary of the Grenfell tragedy and we should all be concerned that, three years on, a major plank that supports the profession's ability to help clients design, plan and build safer solutions is missing. What is missing is the availability of professional indemnity insurance for fire safety and cladding services at reasonable commercial rates.

Facing unpredictable liabilities for historic cladding work and historical low returns, a significant number of underwriters are turning tail on our profession and either declining to cover historic or future fire safety and cladding work, or restricting cover and charging multiple increases in premiums (upwards of 3 times is not uncommon).

Underwriters are worried that they are exposed to significant payouts around fire safety and cladding with only the tip of the liability iceberg being exposed. They are struggling to quantify their exposure as the scope of potential liability keeps growing beyond the use of ACM cladding products, and it has begun to encompass other products and systems and design solutions. In addition, any changes to fire regulations creates further uncertainty in underwriter's minds as to whether remedial solutions being implemented today will be rendered obsolete tomorrow.



The nature of professional indemnity insurance cover has changed

Firms seeking renewals of their policies are discovering that the number of underwriters prepared to even look at this risk has dwindled to a small pool, and those within that group are very reluctant to provide the scope of cover. We have also seen the nature of the cover change, as follows:

1. "Each and every claim" cover for fire safety and cladding claims is NOT available. Only "Aggregate" cover is being offered. This has been the position for more than 12 months.
2. The value of cover each underwriter is prepared to offer towards the policy has been materially reduced. This makes it very difficult to get the level of cover previously enjoyed and generally required by our clients e.g. £10M. For example, underwriters who once were prepared to offer £5M towards making up £10M cover are now only offering to contribute much less to the cover. Therefore, more underwriters are needed to join a policy than before to have any chance of getting the overall level of cover historically achieved and demanded by our clients.
3. Premiums have risen as much as three times. Also, as more underwriters are needed to join the policy to achieve a certain level of cover, this further raises the overall premium, as they all add a separate premium for their element of cover. The aggregate premium being greater the more underwriters that are involved. In underwriting, 1+1+1 can equal 4.

All this adds up to the industry paying significantly more for each one pound of cover, on more limited terms.

Why we should all be concerned with the increase in costs

No profession is spared in this indiscriminate retreat and increase in costs: architects, surveyors, engineers, planners, employer's agents and more are all impacted. Each of these experts has a vital collaborative part to play in making our buildings safer as soon as possible.

No project is spared as all buildings have fire safety attributes and cladding/external wall systems.

Whether you are an occupier, owner, a financier, a builder or an advising consultant, we should all be concerned about this for five reasons:

1. Work will be done by firms that are inadequately insured or have no insurance to cover the work.
2. Fire Risk Assessments and other fire compliance related regulated work required by law will be caught up in the insurance industry's fire safety claim net.
3. The pool of professional expertise available to put the new solutions in place and do the regulated fire safety work will be significantly reduced as some firms will no longer be able to help their clients make buildings safe.
4. As the number of firms able to do this vital work reduces, this will delay implementation of the measures that need to be taken.
5. This will dent confidence in the safety and viability of buildings and the availability of development and mortgage financing.

None of this ensures the safety of the lives of people living and working in existing and new buildings in the UK. It does not help make sure that Grenfell can never happen again. It represents a material failure to come together to address the issue of fire safety in our built assets due to a lack of joined up thinking, communication and collaboration by all stakeholders.

The Frankham Consultancy Group is adequately insured but we need a workable industry wide solution to this insurance gap

The Frankham Consultancy Group have retained insurance for fire safety and cladding work in the value of £10 million in the aggregate. We are backed by market leading insurance to carry out the work, but we are only one chain in the industry end to end solution.

It does not help us getting to such a solution when it is rumoured that some firms are being made to sign NDAs preventing them discussing their renewal with other members of the industry.

We call on the industry bodies, in conjunction with the insurance industry and government, to show leadership and bring together the best minds to create a workable solution to this insurance gap, and provide clarity on the practical application of the new position taken by the insurance sector so we all know where we stand.

Are your professional partners adequately insured?

In the meantime, all clients should be mindful of the insurance cover provided by the professional partners helping them on fire safety and cladding related compliance advice, or remediation work, on existing properties and on new developments. Matters clients may want to consider around this include:

1. Identifying whether your provider has a total/blanket exclusion/limitation in their policy for Fire Safety and Cladding claims. Many providers may be reluctant to disclose such an exclusion and, historically, clients have not requested that level of detail on exclusions. It is advisable for clients to require providers to fully disclose their exclusions/

limitations and to see the definitions of the claims excluded.

When considering whether a claim is covered, underwriters are going to ask themselves whether the claim fits within the blanket exclusion definitions. It is not unreasonable to postulate that many may be sensitive to anything that looks like it has a fire safety or cladding element to it.

It is unclear how the blanket exclusions and definitions of what is a fire safety or cladding claim will be interpreted and applied by the underwriting community. We are not aware of a common insurance industry position on this. Each underwriter may adopt different policy wording and different interpretations, and as a result, different consequences for cover are a potential reality across providers. This increases the uncertainty over a provider's de facto cover. What are the boundaries of the exclusion? If applied widely, they have the potential to materially limit the situations in which a provider is covered.

2. If a provider does not have a blanket exclusion, examine in more detail the scope/nature of the cover and the quantum level of cover for Fire Safety and Cladding claims very carefully. Clients would be unwise to assume that there will be equivalent cover as with other claims. For example, providers may have £10M each claim cover for non-fire safety and non-cladding claims, but then only have £2M in the aggregate cover for fire safety and cladding claims. They may have only been offered or been able to afford cover for £2M.
3. Furthermore, if a provider claims to have each and every cover for fire safety and cladding claims, this should be treated with caution and written evidence obtained from their broker.
4. Think carefully about the required level of aggregate cover necessary to protect their operations. Practically, the higher the aggregate cover the better, as aggregate cover is a single pot of funds that must cover all claims that arise in that insurance year across all the provider's clients. It is exhausted on a first-come basis and once it is used up, then there is no cover left. It is not reinstated.
5. Be mindful of when the provider's current policy ends. For example, if it is due to end over the next 6 - 9 months, as there is continued risk of the insurance market hardening/getting tougher and risk that a provider will not be offered the same cover as they have now, or be able to afford the renewal premium levels for equivalent or even reduced cover. With frameworks that span a number of years, evidence of historic continuation of cover around fire safety and cladding may give comfort that the provider will be more likely to be able to continue to obtain equivalent cover over the remaining years of the framework.

If you would like to discuss any of the topics raised in this article or find out how we can help you achieve your built asset strategy, please do not hesitate to contact the Frankham Consultancy Group on enquire@frankham.com or 020 8309 7777.

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