



THE CHARTERED INSTITUTE  
OF LOSS ADJUSTERS

# Enhancing Insurer's Promise

## The Construction Adjuster's Role

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## **Project Risk Allocation and Insurance Responsibility**

The prudent investor, having secured the necessary funding to facilitate a development in whatever sector, must always retain a commercial view whilst being mindful of brand protection. The management of financial risk before and during the construction, as well as the subsequent defects liability periods, is essential to achieve this goal.

They will surround themselves with a team of professionals to ensure that the correct contractual relationships are established with both the upstream user, such as a funder or incoming lessee, and those downstream, particularly any design and build contractor. Throughout, the contractual matrix will dominate, and all should be aware of risk transfer mechanisms.

Allied to risk allocation is the requirement for appropriate insurance. Commonly, Owner Controlled Insurance Policies (OCIP) specific to the project are used. A tripartite of covers would be expected, involving Construction and/or Erection All Risks, Third Party Liability, plus Delay in Start Up (Business Interruption). Similar facilities can also be arranged via the Contractor (CCIP).

The benefits of a single project policy for all stakeholders are numerous; not limited to guaranteed cover throughout the project period and cost protection, but also cost effectiveness for all collaborating parties intended to benefit from the policy.

Operationally, under the umbrella of such policies, higher tier stakeholders can monitor and influence the outcome of insured events to ensure the delivery of the project with minimal or no delay, limiting or eradicating financial consequences.

Experienced and specialist Brokers are necessary to develop appropriate policy wordings and to place the risk in the insurance market. The policy wording is the Insurer's promise to the Insured Parties, often supplemented by well publicised Claims Codes of Practise.

With such arrangements in place, can the project team sit back and be assured of the right response to any given claim scenario?

## **The Construction Adjuster**

Project Insurers will mostly involve loss adjusters to investigate and settle claims on their behalf. Appreciating the need for specialist adjusters with a depth of technical knowledge and sector experience, and with Project Insurer's approval, Brokers have developed a practice of prenominating the adjuster to provide the claims response in the policy.

Having secured the nomination, should the adjuster merely be reactive or is there an argument for a proactive role?

## **Strategic Partners**

Whilst the loss adjuster will be remunerated by Project Insurers based solely upon their involvement in "live" claims, the Client and/or Insured Parties should expect front loading from the nominated adjuster to enhance the service provided by the Broker and the promise made by the Insurer.



## **Wording Development**

Understanding the risk and the relationships between project stakeholders is essential. To ensure the correct level of understanding is attained from the start, the adjuster should be brought into the project from the outset. This means that they can work with the Broker as wordings are developed, bringing an acquired knowledge of claim examples and wording issues on similar projects to ensure risk appreciation.

## **Contract is King**

A proactive review of procurement throughout the contractual matrix can be undertaken to ensure that the policy will operate to provide protection for all as intended.

The contract remains King and the suite of forms utilised need to reflect the full nature of the insurance cover intended to be cascaded down the contractual chain.

If, for example, a standard suite of JCT contracts is utilised, the Employer only contracts to provide limited cover to the main contractor. In such a case, the contractor would not benefit from the protection of the project policy for cover beyond Practical Completion, the enhanced cover derived from the exceptions to common Defects Exclusion clauses, or any indemnity under the Third-Party Liability section.

Equally, a sub-contractor under a standard JCT form would face similar restrictive access to the project policy. They may also find themselves retaining full responsibility for the cost of making good damage to the sub-contract works caused by anything other than the Specified Perils as defined.

The contract is not the sole arbiter, however, and if prior to any loss it can be demonstrated that lower tier parties had given authority for higher tier parties to insure on their behalf, access as intended can still be achieved. If, for some reason, contract terms cannot be amended, the use of side letters, publication of claims procedure manuals, or even minutes from pre-start meetings can assist.

## **Understanding an Insured Loss**

An early interaction with the Project team is desirable to ensure that appropriate claim notification and escalation procedures are put in place.

Allied to this is the need to explain to the contracting team how damage rectification costs and delay are treated if an insured event occurs. Is the event a change or variation? With whom does the cost of resultant delay rest?

Loss examples can be used to clarify how the policy functions and highlight what insurances may still be required by the contracting team.

Clarity retains cost control for the Employer by avoiding duplication of insurance charges in preliminary costs and, where there is any shortfall in the project policy, allowing the contracting team to make appropriate arrangements separately, either through annual arrangements or individual Difference in Conditions/Excess covers.

Commonly, there will still be a requirement for contractors to arrange separate covers for their own Constructional Plant and Equipment, plus policies for the Employer's Liability and Professional Indemnity risks.



The notification procedure should encourage the earliest reporting of any event that may, or is even only likely to, give rise to a claim. Initial triage allows the adjuster to provide general advice and, such as in the case of an onsite injury, to act as a repository for essential documents until a formal claim is made, which could be several years later. The practice also allows the adjuster to ensure a serious event, such as a fall from a height, is proactively investigated, protecting the Insured Parties' and Insurers' collective interests.

The requirement, if any, of stakeholders for management information should be agreed, with data to be transmitted to designated parties at agreed intervals, covering both notifications and live claims.

### **Trusting Relationships Bear Fruit**

It is not hard to imagine the indecision that can result from limited knowledge and improper understanding of the risk. The relationships and levels of understanding developed before any loss thus bear fruit when they are needed most, enabling the smooth process of any claim.

### **The Post Loss Roadmap**

At the end of the first post loss meeting, stakeholders should have a clear understanding of the claim process and any issues arising. A strategy to mitigate the financial exposures of both stakeholders and Insurers should have been developed, with agreed timescales and a roadmap for addressing all pertinent aspects of the claim, including milestones aimed at achieving the earliest possible resolution.

A proactive, transparent and collegiate approach to loss management, as well as contractual and policy interpretation, is key, as loss mitigation and innovative approaches to complex losses often require consents from all stakeholders. Where issues which may cause reputational harm are identified, adaptability can also be necessary.

Insurance cannot, however, remove risk in its entirety, or all the financial consequences of an event during the project. Communication between the parties is essential. Cover shortfalls or areas of doubt should therefore be identified immediately to manage the expectations of stakeholders across the contractual matrix. Stakeholders will need to make provision for both insurance recoveries and retained exposures in short order, hence the need for no surprises.

Early decisions can also assist in releasing other insurance markets, for example Professional Indemnity covers.

With a strategic partner properly in place, perhaps now all can sit back and be assured of the right response to any given claims scenario!