



The Legal Indemnity Guide

clear
insurance management



What is Legal Indemnity Insurance?

Legal Indemnity Insurance protects those with a financial interest in a property, such as owners, developers, or lenders, from a wide range of title defects and other associated risks. Whether the issue cannot be resolved, or doing so would be costly and/or time-consuming, an indemnity policy can be obtained to transfer the risk to an insurer.

With cover available for transactions ranging from a single residential property to large-scale developments, indemnity insurance can be obtained for peace of mind, giving certainty of exposure or simply saving time and money.

Indemnity risks can arise at any stage during a property's life cycle, often threatening to hold up a sale or a development. If you need a quick turnaround and a cost effective solution, Clear can assist you.

Introduction to Clear

Our staff have been placing legal indemnity policies for over 25 years. As an independent broker, we have access to more than ten insurance markets. With limits available in excess of £2bn, we can accommodate even the largest development.

As well as the standard range of covers, demand is increasing for policies with agreed conduct, pre-planning, and cover for risks where a potential loss has already arisen.

This legal indemnity insurance guide outlines some of the covers available and the standard information we need to obtain quotations. Even if the risk is not outlined here, please do get in touch, as we will endeavour to source appropriate cover, specific to your requirements.

Clear is an independent Chartered insurance broker. We're not tied to a single provider and look to secure terms from the most appropriate market, ensuring our clients have more than one insurer to choose from. We seek to build lasting relationships based on trust and customer experience.

In addition to providing legal indemnity solutions, we offer specialisms across a wide range of industry sectors, including real estate, construction, industrial services, finance services and consumer services, to name but a few.

Legal Indemnity Products

Insurance cover and information required.

- [Absence of Easement – Access and/or Services](#)
- [Absent Landlord](#)
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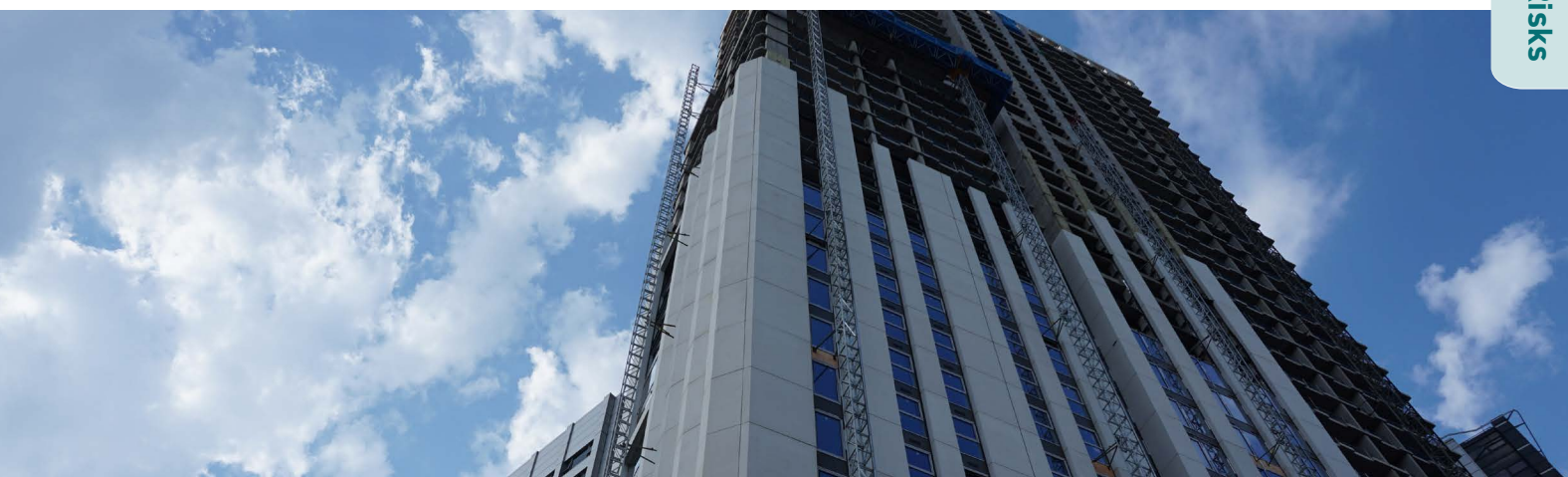
- [Missing/Uncoloured Plan](#)
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Additional Considerations

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- [Types of Conduct Strategy](#)

Other Specialist Risks

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Legal Indemnity Products

Absence of Easement - Access and/or Services

Insurance cover:

Protection against interference with the use of the property due to a lack of legal grant for access and/or services to the property.

Did you know?

In some circumstances, cover can be made available even if the land is registered or there are existing rights in place that are not adequate for the intended use.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- A plan showing the route of the easement and the location of the property
- Details of any communication with servient owner
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

If available:

- A draft statutory declaration or statement of truth setting out the use of easement
- Index map search

Absent Landlord

Insurance cover:

Protection against forfeiture of the lease of the property for non-compliance with covenants contained within the lease and/or lack of payment of ground rent where a landlord is missing or insolvent.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Details of the attempts to trace the landlord
- Last known whereabouts of the landlord
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Gross development value

Adoption of Road - Historical Private/No Section 38 Agreement

Insurance cover:

Protection in the event that the relevant statutory authority makes a demand for payment towards the cost of adopting the roads and/or footpaths.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- A plan showing the route of the easement and the location of the property
- Images of the road
- Limit of indemnity

Whilst cover is not always available for developments, in some circumstance bespoke solutions can be obtained. Please provide details of the intended development to enable us to advise further.

Adoption of Sewer - No Section 104 Agreement

Insurance cover:

Protection in the event that the relevant statutory authority makes a demand for payment towards the cost of adopting the sewer.

Information required:

On all enquiries:

- Title to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Drainage search
- Limit of indemnity



Adverse Possession

Insurance cover:

Protection against a challenge to occupation of land that forms part of the property but is not included in the documentary title to the property.

Did you know?

In specific circumstances, cover can be sought on an **agreed conduct** basis where an approach to the Land Registry is allowed with the indemnity switching over to Possessory Title automatically if the application is successful.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Index map search
- Details of any structures on the land in question
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

If available:

- Evidence that the land in question is enclosed within the boundary of the property
- Evidence of prolonged use of the land as part of the property
- A Statutory Declaration or Statement of Truth

Archaeological Dig

Insurance cover:

Protection in the event that a development is prevented, delayed, or incurs additional unexpected costs as a result of the discovery of unexpected archaeological finds.

Information required:

A questionnaire is available upon request.

Balcony Rights

Insurance cover:

Protection against third party challenges to the exclusive right to use a balcony forming part of the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Details of the historic use of the balcony
- Details of accessibility to the balcony
- Limit of indemnity

Breach/Lack of Planning/ Building Regulations/Listed Building/Conservation Area

Insurance cover:

Protection against enforcement action by the local authority in respect of lack of appropriate consents for alteration/use of the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- If planning permission was obtained please provide a copy
- Details of the works to be insured and when they were carried out
- Details of the listing if applicable
- Confirmation whether the property is within a conservation area
- Details of any communication with the local authority
- Limit of indemnity

Whilst cover is not always available for developments, in some circumstance bespoke solutions can be obtained. Please provide details of the intended development to enable us to advise further.

Breach of Section 106 or 52 Agreement

Insurance cover:

Protection against enforcement action by the local authority because the property was developed/is being used without evidence of discharge of condition(s) contained within a Section 106 or 52 agreement.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copy of the Section 106/52 as available
- Details of any known breach(es)
- Limit of indemnity

While cover is not always available for developments, in some circumstance bespoke solutions can be obtained. Please provide details of the intended development to enable us to advise further.

Build Over Sewer

Insurance cover:

Protection against the costs of works, whether or not there is a formal build over agreement, whereby a water authority require the demolition/alteration of the building.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Water search showing line of sewer and building location
- Details of structure over sewer and when it was constructed
- Whether there is a build over agreement
- Details of any inspection of the sewer to confirm it is in good condition
- Details of any communication with the water authority
- Limit of indemnity

Building Standards – Lack of NHBC or similar

Insurance cover:

Protection where the property is constructed, or converted without a valid NHBC, or such other equivalent new home warranty, or completion certificate.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copy of the planning permission for the works
- When the works were completed
- Whether the property has been owned and occupied since the date of completion
- Whether the property was built under a self-build scheme
- Confirmation that no structural defects have been disclosed in a structural survey, homebuyers report or mortgage valuation report
- Limit of indemnity

Chancel Repair

Insurance cover:

Protection against a liability to contribute towards the repair of the chancel of a church.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Details of any searches carried out
- Whether there is reference to chancel repair on the title
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Contaminated Land/Failed Environmental

Insurance cover:

Protection in the event a remediation notice is issued by the enforcing authority in accordance with the Environmental Protection Act 1990 (relating to the property or insured in respect of the property).

Did you know?

Cover is available for third party property damage and third-party bodily injury.

Information required:

A questionnaire is available upon request.



Contingent Buildings Insurance

Insurance cover:

Protection against uncertain or inadequate insurance arrangements for the building of which the property forms part.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Why the insurance provisions in the lease are thought to be defective
- Who is responsible in the lease for the arrangement of building insurance
- Use of adjoining premises of which the property forms part
- Limit of indemnity

Defective Lease

Insurance cover:

Protection against potential defects existing in the lease, including rights to repair and/or maintenance, and rights over common parts.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- A copy of the lease
- Details of the defect(s) of concern within the lease
- Limit of indemnity

Enforcement of Third-Party Rights

Insurance cover:

Protection against the exercise of known or unknown rights or easements over or under the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Details of the rights to be insured and how they will/have been interfered with
- Whether the rights are currently being exercised, by whom and when
- Details of any communication with anyone thought to benefit from third-party rights
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

If available:

- Any alternative access routes
- Title and filed plan to the dominant land
- Information regarding historic common ownership of surrounding titles resulting in unity of seisin

Enlargement of Lease

Insurance cover:

Protection against the exercise of historic rights, easements or other interests over the property contained or reserved in the original lease of the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Confirmation no approach has been made to any party who may reasonably be entitled to exercise a right or interest over the property on the basis of the lease in question
- Whether third party rights are currently being exercised over the property, by whom and when
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Flat/Maisonette

Insurance cover:

Protection against uncertain or inadequate arrangements for maintenance of the building of which the property forms part.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity

Flying/Creeping Freehold

Insurance cover:

Protection against uncertain or inadequate arrangements for maintenance of a flying/creeping freehold element of the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity

If available:

- Copy of property survey report
- The use of the adjoining premises of which the property flies/creeps
- Confirmation whether the adjoining premises are occupied

Forfeiture of Lease – Bankruptcy and Insolvency

Insurance cover:

Protection for a mortgagee against forfeiture of their borrower's lease due to borrower's bankruptcy.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Clear bankruptcy search for borrower
- Details of whether borrower is self-employed or director as guarantor. If so, please provide three years of accounts.
- Confirmation whether cover is required for a head or sub lease
- Limit of indemnity



Forfeiture of Lease – Breach of Covenant/Leasehold Restrictive Covenants

Insurance cover:

Protection in respect of forfeiture of the lease as a result of a breach, by the lessee, of any of the covenants in the lease.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Full details of any known breaches of the lease
- Confirmation that all ground rents, service charges, and any other payments under the lease are paid up to date
- Confirmation whether cover is required for a head or sub lease
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Forfeiture of Lease – Housing Act 1998

Insurance cover:

Protection for the mortgagee should the landlord issue proceedings for possession against a tenant under Section 8 Ground 8 of the Housing Act 1988 where the tenant's lease could be construed as an assured shorthold tenancy as a result of outstanding ground rent.

Did you know?

Cover is often required by the lender if the ground rent is escalating.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity



Freehold Rent Charge

Insurance cover:

Protection where the property is, or may be, subject to one or more rent charges which have not been paid.

Did you know?

Cover is available for both historic pre Rentcharges Act 1977 and modern estate rent charges. Modern rent charges have stricter subjectivities, as these are higher risk.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Where the rent charge is noted on the title
- Whether there has been any contact with or from the party who benefits from the rent charge
- Whether any payments have been made or demanded
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Gross development value

Good Leasehold Title

Insurance cover:

Protection against a challenge to the property's title, including cover for any unknown covenants, rights and easements.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value



Insolvency Act 1986

- Transfer at an Undervalue

Insurance cover:

Protection for a mortgagee or successor in title to the transfer in the event the transfer of the property is set aside pursuant to the Insolvency Act 1986.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Loan amount
- Market value of the property and sale price
- Identity of the parties and details of the transaction taking place
- Whether the parties are related
- Clear bankruptcy search
- Details of whether purchaser is self-employed or director as guarantor. If so, please provide three years of accounts.
- Limit of indemnity

Japanese Knotweed

Insurance cover:

Protection against the future discovery of Japanese Knotweed, which may result in remediation works for the treatment and removal of the knotweed.

Did you know?

Cover is also now available for other invasive species, including Giant & Bohemian Knotweeds and bamboo.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Whether the property is affected by Japanese Knotweed
- Whether a mortgage valuation survey, homebuyers report or building survey has been carried out
- Whether any previous treatment or remediation works for Japanese Knotweed has been undertaken at the property
- If there has been communication with any enforcing authorities regarding Japanese Knotweed at the property or nearby
- If there has been communication with any other property owners regarding the presence of Japanese Knotweed
- Limit of indemnity

Judicial Review

Insurance cover:

Protection in the event that a planning permission is quashed.

Did you know?

We can provide bespoke **agreed conduct** cover whereby a third party has already threatened a judicial review. Subject to underwriting, insurers may agree an excess under the policy and provide cover should an agreement not be reached within the excess.

Information required:

On all enquiries:

- Title and plan to the property
- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Confirmation of what stage the development is at
- Gross development value
- Limit of indemnity

Lack of Mortgagee Protection

Insurance cover:

Protection for the mortgagee when the mortgagee protection clause within the lease is either missing or defective.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copy of the lease
- Reason why the clause is deemed to be defective
- Limit of indemnity

Lack of Party Wall

Insurance cover:

Protection when there is a lack of evidence of a Party Wall Agreement for historical alterations.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copy of the planning permission for the works
- Copies of any material objections
- When the works were completed
- Whether there are any identified problems with the structure of the property or any adjoining building
- Limit of indemnity

Whilst cover is not always available for developments, in some circumstance bespoke solutions can be obtained. Please provide details of the intended development to enable us to advise further.

Limited or No Title Guarantee

Insurance cover:

Protection against a third-party challenging property ownership because full title guarantee has not been provided.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Nature of the transaction
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value



Lost Title Deeds

Insurance cover:

Protection against a challenge of the property's ownership as the original title deeds have been lost, misplaced, stolen or destroyed, including cover for any unknown covenants, rights and easements.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copies of the statutory declaration/documentation in support of your claim to ownership of the property
- Clear SIM of property
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Manorial Rights

Insurance cover:

Protection in the event that the Lords of the Manor attempt to enforce manorial rights over the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Copy of Unilateral Notice if one has been issued
- Details of any communication with the Lords of the Manor
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Mining/Mineral Rights

Insurance cover:

Protection against financial loss as a result of the future exercise of rights to extract mineral reserves beneath the property.

Did you know?

Development wordings automatically include cover for trespass risk.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Mining search
- Details of any communication with any potential mining/mineral rights owner
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

If available:

- A minerals survey/intrusive ground condition report of the property

Missing Particulars/Information

Insurance cover:

Protection if another person attempts to enforce or enforces unknown restrictive covenants, rights or easements, which affect the property.

Did you know?

This cover is not appropriate where title documents are not readily available, i.e. in the post or awaiting updates from the Land Registry.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- How we know about the missing document i.e. where it is referenced on the title
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Missing/Uncoloured Plan

Insurance cover:

Protection against challenges to ownership, occupation and enjoyment of the property or access/services to the property directly attributable to a missing or defective plan.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Title entry referring to plan or plan itself if available
- Perceived risks associated with not having/having an uncoloured plan
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value



Overage

Insurance cover:

Protection in the event that a claim is made against a historic overage over the property.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Details of any communication with anyone thought to benefit from the overage
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Petroleum Exploration and Development Licenses

Insurance cover:

Protection in the event that a third party attempts to exercise their rights to explore for, or produce, oil and gas.

Information required:

A questionnaire is available upon request.

Possessory Title

Insurance cover:

Protection against a challenge to the property's title.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Statutory Declaration provided on first registration
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Restrictive Covenants

Insurance cover:

Protection against the enforcement of covenants.

Did you know?

Agreed conduct can be applied to Restrictive Covenant Indemnity policies, to allow developers to actively engage with third parties to negotiate a release.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Which covenants are to be insured and how they have been/will be breached
- Details of any communication with anyone thought to benefit from the covenants
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

If available:

- Copies of adjoining titles
- Information regarding historic common ownership of surrounding titles resulting in unity of seisin
- History of similar developments nearby

Right to Park

Insurance cover:

Protection against a third-party challenge as a result of the property's title/lease purporting to grant a right to park in a designated space.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- The plan clearly identifying without permission from, or payment to, a third no search, search delay and search validation
- Whether there has been any complaints/objections
- Limit of indemnity

If available:

- Statutory Declaration/Statement of Truth detailing the prolonged use from, or payment to, a third party.

Search

Insurance cover:

Protection against financial loss caused by a matter that would have been revealed to the owner of a property by a search. The following options are available: no search, search delay and search validation.

Did you know?

A policy covers local authority, drainage & water and coal as standard, but on a bespoke basis, cover can be available for many other searches including chancel, highways, utilities, environmental.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Confirmation that the transaction is taking place i.e. purchase or refinance
- Confirmation which searches require cover
- When the last searches were carried out
- Limit of indemnity

Pre-planning:

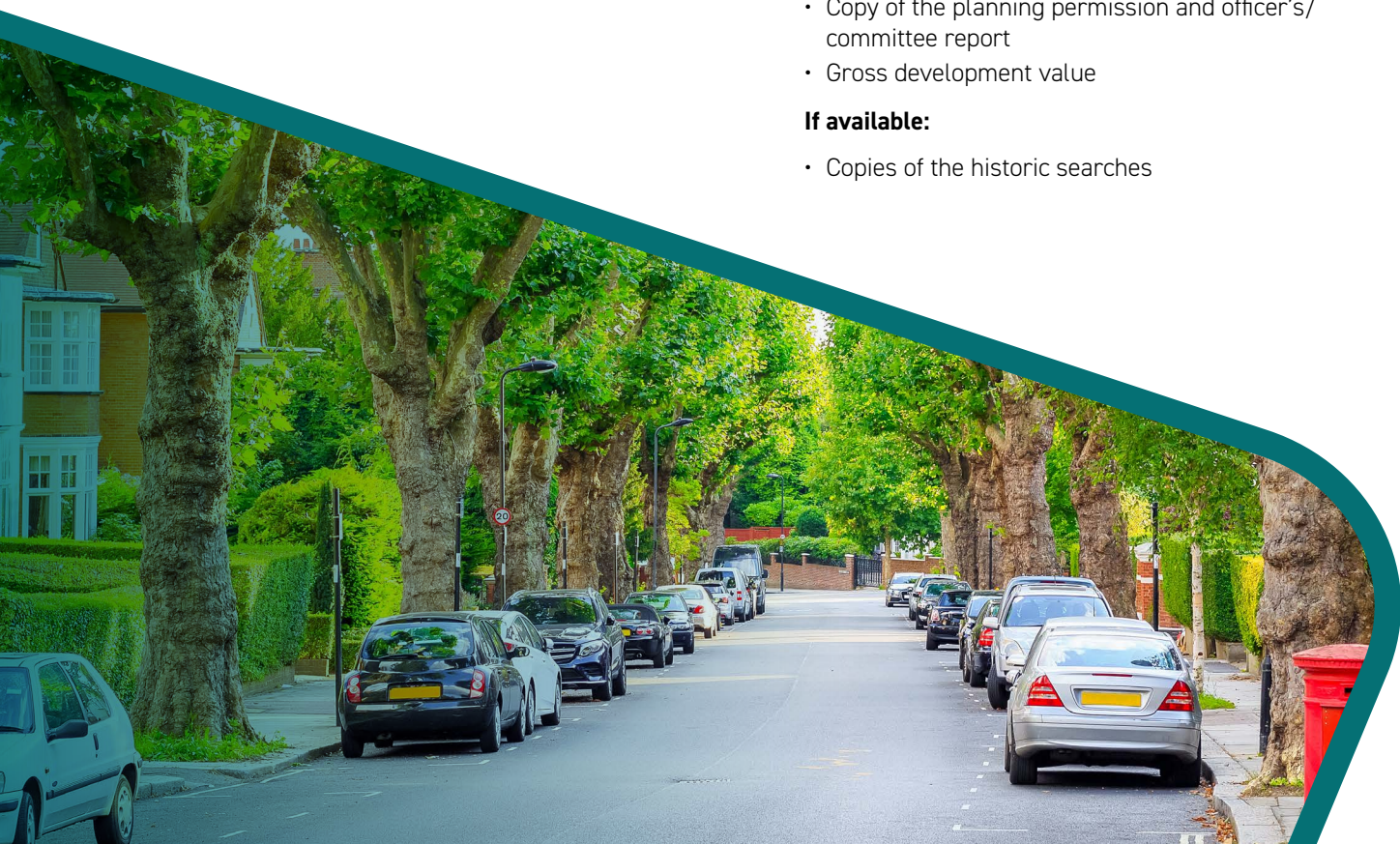
- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Gross development value

If available:

- Copies of the historic searches



Title Certificate Top Up (CoT)

Insurance cover:

Protection against transactions whereby the Asset Value exceeds a law firm's Professional Indemnity (PI) cover.

The cover mirrors the statements the solicitor makes in the Certificate of Title, wrapper for report on title or report on title itself. The policy then sits above the PI limit.

Information required:

- The nature of the transaction
- Whether cover is required lender only or for the purchaser too
- Copy of the Certificate of Title
- Whether there are any lease interests
- Confirmation how the loan is being secured
- Whether the lender has sole charge over the property
- What the Loan to Value is
- Confirmation of the current Professional Indemnity limit under the CoT.
- Asset amount

Town and Village Green

Insurance cover:

Protection where any third party applies to the relevant statutory authority for the registration of the property or any part thereof as a town or village green.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Tree Preservation Order

Insurance cover:

Protection for breaches of conditions within a Tree Preservation Order (TPO), including historic removal of trees.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Limit of indemnity
- Copy of the TPO
- Reason for breach i.e. if it was due to health and safety or disease
- Whether the tree is visible to third parties

Pre-planning:

- Proposed site layout plan
- Pre-application information
- Gross development value

Post-planning:

- Copy of the planning permission and officer's/committee report
- Copies of any material objections
- Gross development value

Visibility Splay

Insurance cover:

Protection against a third party obstructing and/or proposing to obstruct the required sight lines by interfering with the insured's use of the visibility splay.

Information required:

On all enquiries:

- Title and plan to the property
- The existing use of the property, whether the use of the property will change and/or be developed
- Confirmation whether the land that falls within the visibility splay is registered
- Confirmation whether the land that falls within the visibility splay, or intends to, has practical use
- Limit of indemnity

Additional Considerations

Legal Indemnity within a property lifecycle

Property title and plan

Use

Limit of indemnity

Risk details - refer to specific risk requirements within the guide

Continued Use

Property title and plan

Current and intended use with proposed site layout plan

Limit of indemnity and gross development value

Pre-application information

Risk details - refer to specific risk requirements within the guide

Pre-planning

Property Lifecycle

New Build (Under 12 months)

Property title and plan

Limit of indemnity

Planning link or permission copy along with copies of officer's/committee report and any objections

Confirmation when the works were completed

Risk details - refer to specific risk requirements within the guide

Post-planning

Property title and plan

Limit of indemnity and gross development value

Planning link or permission copy along with copies of officer's/committee report and any objections

Risk details - refer to specific risk requirements within the guide

Cover and Limit of Indemnity

The key losses covered by a legal indemnity cover are:

- Diminution of market value
- Settlement costs
- Remediation, alteration, demolition and reinstatement works
- Damages, compensation and costs awarded
- Legal fees and other reasonable expenses

Additional losses

- Delay costs (including interest charges and contract penalties)
- Business interruption:
 - Loss of profit
 - Loss of rent receivable
 - Rent payable
 - Alternative accommodation
 - Re-location costs and expenses (including staffing costs)

When establishing what limit of indemnity is required, it is important that the losses covered are considered. Often, for a continued-use property, clients will go with the market value to ensure they have adequate cover.

For development risks, the gross development value should be taken into consideration, as the cover will continue once the development is complete, to prevent underinsurance.

For [Judicial Review](#) Insurance, it is not a requirement to cover the total gross development value, as losses will likely be limited to planning costs, abortive costs and defence costs.

The limit would usually be the difference of the value of the land with and without planning, with an allowance for additional costs and expenses. We would also recommend including delay cover for Judicial Review risks.

Whatever you feel exposed to when considering the losses covered, consideration should be made, with Clear's help, to ensure that the right level of cover is being obtained. Cover is available in excess of £2bn with the use of excess layers.

Who is covered by the policy?

If the indemnity cover is in perpetuity, then as well as the property owner, the policy will also cover their tenants, lenders and successors as standard. It is important, however, to check that this is the cover being offered as certain policies are restricted to Lender Only.

Types of Conduct Strategy

Agreed Conduct

This originated from Rights of Light insurance, where court judgements highlighted the importance of good developer conduct.

These judgements made it clear that failing to engage with neighbouring properties with significant injuries was simply no longer appropriate. Introducing an agreed conduct structure into the policy allows for third-party discussions to take place without prejudicing the cover, retaining the comfort of an insurance policy that caps the client's exposure should negotiations exceed the agreed excess/deductible, or an injunction be threatened.

Agreed Conduct has further developed as knowledge of [Rights of Light](#) has increased, and insurers now offer hybrid solutions with properties being designated Wait and See or Agreed Conduct strategies.

Wait and See

This means there is no action for you to take once the indemnity is on cover. In the event of a notification, all professional fees will be picked up by the insurer.

Proactive Agreed Conduct

An approach must be made to the third party within an agreed set time, which may differ for each insurer. Any costs and expenses of negotiating the settlement are borne by the client during the Agreed Conduct phase until a claim is triggered.

A claim will be triggered when discussions reach a value nearing the excess/deductible or there has been a material threat of injunction.

Reactive Agreed Conduct

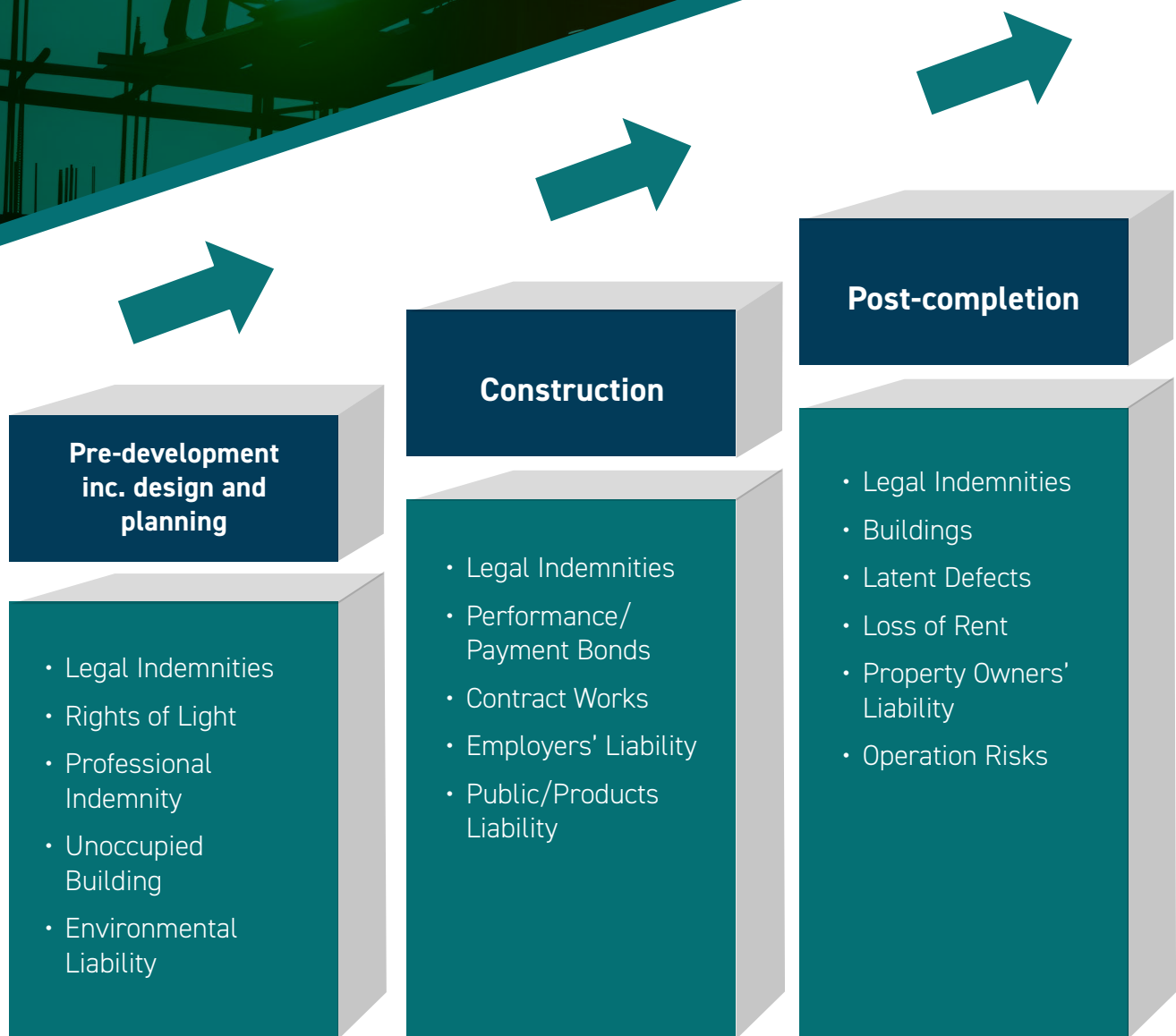
The client is not required to make any approach to the third party. However, if there is a notification, any costs and expenses of negotiating the settlement are borne by the client during the Agreed Conduct phase until a claim is triggered. Again, the claim trigger is when discussions reach a value nearing the excess/deductible or there has been a material threat of injunction.

Elective Agreed Conduct

This gives the client flexibility to decide whether to proactively approach a third party to negotiate or wait and react should they come forward.



Clear can assist you at every stage of the property development lifecycle



clear
insurance management

Specialist Risks

Rights of Light

Rights of Light Insurance is a type of legal indemnity risk, specifically an easement. This insurance product has evolved over the past decade, seeing a departure from standardised wordings. It has the ability to build a more robust product that is specific for each individual site.

As specialists in the procurement of Rights of Light Insurance, we're nationally recognised, having worked with developers, surveyors, and law firms on a number of major developments in central London and throughout the UK.

How does Rights of Light Insurance work?

The insurance product is a risk transfer mechanism that allows you to draw a financial line with cost exposure (excluding professional fees) in relation to Rights of Light. The heads of loss within the policy range from compensation settlements to loss in market value of the site, in the event of an injunction.

This product puts developers in an advantageous position in the property market, from obtaining funding to disposing of the site. At this current juncture, Rights of Light Insurance is a requirement by most funders on developments.

Once a Rights of Light report has been obtained, providing EFZ and contour data, then insurance can be sought as a risk transfer mechanism to cover all the affected properties highlighted. We then collate the information provided by the surveyor, developer and solicitor, and present the risk to the market.

Once we hear back from insurers, we compare the terms offered and provide our recommendation on which is the most suitable for you and your requirements. Not only do we take the competitiveness of premium into consideration, but also the proposed strategy for each individual property and whether this suits your intentions.

The policy

Who is insured?

Freehold owners of the land, building or site, any leaseholders as well as sub-interested parties such as funders or banks, plus successors in title.

What is the period of Insurance?

Cover is usually provided in perpetuity.

What should my limit of indemnity be?

Whatever you feel exposed to when considering the losses covered, consideration should be made, with Clear's help, to ensure that the right level of cover is being obtained.

Types of Coverage?

With Rights of Light becoming increasingly recognised, hybrid solutions are growing in popularity with properties being designated [Wait and See](#) or [Agreed Conduct](#) strategies. Under all of the strategies, each property can be allocated a deductible or excess.

[Wait and See](#) means there is no action for you to take once the indemnity is on cover. In the event of a notification, all professional fees will be picked up by the insurer.

The [Agreed Conduct](#) strategies available are detailed within the Agreed Conduct section of our guide. Excesses associated with agreed conduct properties are only in relation to the settlement itself and all professional fees (such as legal expenses and surveyor fees) are covered by the insured.

Portfolios and Refinances

Portfolio, no/limited due diligence, and no search indemnities are becoming more commonplace particularly when acquiring, transferring, or refinancing a portfolio of properties.

There are now several variations on the market of the 'good and marketable title' wrapper, which include protection against unknown title defects, charges, encumbrances, or third-party rights & ownership. Some insurers will also include fraud, building regulations, planning, 106 agreements and rent charge.

Who is insured?

Lender only or current owner/purchaser and lender, depending on the nature of the transaction.

Cover is not available on a successor basis as these policies are designed to cover the current transaction only, i.e. they do not extend to future owners – insurers can possibly look to cover immediate successors, i.e. plot purchasers subject to underwriting.

What information do we need for Portfolio Search Indemnity?

- Nature of the transaction
- Schedule of properties including use, addresses and titles
- If it is a development or new build, a copy of the planning permission
- If applicable, current stage of each development
- Limit of indemnity and/or gross development value, per property if multiple sites
- Which searches cover is required for
- When the last searches were carried out and copies of the same if available

What information do we need for No/Limited Title Due Diligence?

- Nature of transaction
- How many units?
- Schedule of properties noting the uses and values
- If it is a development or new build, a copy of the planning permission
- Limit of indemnity
- How much due diligence is being carried out?
- What risks are you looking to insure against?

Environmental Liability (Impairment Liability)

Insurance Cover:

Insurance programme providing bodily injury, property damage and clean-up costs resulting from a release of pollutants from, at, under, or migrating through or from property owned, managed by, leased or rented to the insured.

Information required:

A questionnaire is available upon request.

Some of the other covers available include:

- Contractors' Pollution Liability
- Contractors' Professional, Protective and Pollution Liability
- Transportation Pollution Liability

Renewables

Cover has evolved to consider this specialist area and bespoke wordings are now available for windfarms, solar farms and electric vehicle charging. These provide protection against losses resulting from the enforcement of specified title defects and encumbrances, which impact an existing or proposed site.

Insurable defects include restrictive covenants, third-party rights, inadequate rights of access and other defects, which are identified by legal due diligence.

Recommended cover extensions include lift and shift and business interruption.

A questionnaire is available upon request.

Warranty & Indemnity

Insurance cover:

Protection against financial loss arising from breach of warranties and certain indemnities given by a seller to a buyer under a sale and purchase agreement (SPA).

Information required:

- Draft acquisition agreement (SPA)
- Information memorandum
- Executive overview, including:
 - Reason for sale/purchase
 - Details of buyer/seller
 - Details of advisors
- Enterprise value
- Limit of indemnity

Lost/Missing Share Certificate Indemnity

Insurance cover:

Protection in the event that the lost document is discovered and fraudulently used to obtain monies.

A questionnaire is available upon request.

Tax Liability

Insurance cover:

Protection against a multitude of scenarios relating to historic tax position and challenge by a tax authority (for example lack of certainty of the VAT election for a property or liabilities arising under tax deed given on a company sale).

Information required:

- Full details of the tax risk to be covered
- Expert advice and defence position
- Details of any contact with the relevant authorities
- Quantum of liability
- Limit of liability

Title to Share/Property

Insurance cover:

Protection against challenges to valid legal and beneficial title to shares and/or property, including authority, registration or fraud.

Information required:

- Information memorandum
- Draft acquisition agreement (SPA)
- Due diligence, including corporate, financial and real estate
- Details of any Warranty & Indemnity (W&I) insurance
- Transaction value or gross developed value

Wills & Probate

When an individual dies someone has responsibility for the administration and distribution of their estate. In the event that the deceased left a will (a 'testate' estate), the document will appoint executors. In the event that there is no will (intestacy), an administrator will be appointed.

In either case, the responsibilities are onerous and a number of problems can arise from an inability to trace beneficiaries to a will being discovered after distribution.

Clear has a specialist team that are able to assist you with obtaining indemnity products that support estate administration and distribution.

Some of the covers available include:

- Bond of Caution
- Executor Insurance
- Genealogy Service
- Lost Share Certificates
- Missing Beneficiary Insurance
- Missing Will Insurance
- Unoccupied & Probate Property Insurance
- Early Distribution Insurance





Construction

Construction projects, by their nature, require rigorous planning and management. The same is true of the insurance associated with them. Appointing an insurance specialist at the outset will help with the nuances and complexities involved.

Clear has a specialist team that can assist you by arranging insurance that reflects your respective rights and interests, avoids costly duplication, and prevents perilous gaps in cover.

Home builders and developers insurance facility

Established by our specialists and the Home Builders Federation (HBF) in 1995, and underpinned by our high-quality service and underwriting, our facility provides a site insurance policy tailored and dedicated to home builders and developers.

The facility features a bespoke policy wording containing many relevant cover enhancements and extensions, providing you with optimum protection for your project.

Our scheme policy is tailored specifically for house builders & developers in the United Kingdom, who are mainly involved in new build residential and private dwelling construction.

Some of the other covers available include:

- Public Liability and Employers' Liability Insurance
- Contractors all Risks Insurance
- Non Negligent (6.5.1) Insurance
- Building Warranty/Latent Defects Insurance
- Machinery Inherent Defects Insurance
- Specialist Single Project Insurance
- Professional Indemnity Insurance
- Performance Bonds including contract, road & sewer, advance/stage payment bonds.



Real Estate

Clear has a specialist property team who are able to place insurance for clients across the real estate industry.

We work with the following:

- Property owners
- Property investors and managers
- Freeholders
- Residents associations and RTM companies
- Leaseholders of blocks of flats
- Asset managers and investment managers
- Property developers, builders, contractors, service providers
- Professionals such as surveyors, lawyers, architects and estate agents

In addition to our standard UK composite agencies and relationships, we also have specialist delegated authorities with multiple insurers.

Due to our size and specialism within the Real Estate Insurance marketplace, we are able to negotiate the best programme, premium level and cover for our clients in the standard UK composite markets, London niche insurers and Lloyd's.

We have both portfolios and one-off locations in excess of £1b asset placements and are proud to consistently deliver competitive and advantageous options to all of our client partners.

While making the most of technology, including a claims system that allows online reporting and review, our service is still unashamedly traditional, personal and professional, focused on quality and attention to detail.

The definitive guide to legal
indemnity insurance, highlighting
a range of covers and information
required to manage your risk.



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www.clearinsurancemanagement.com

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