

Legal Indemnity guide

This Legal indemnity insurance guide outlines the range of standard covers and the requirements and information needed in order for Clear to obtain quotations.



Introduction

Time is money. So with the added pressures that businesses face today finding the most efficient and cost effective way of trading is critical to both you and your clients. It is unsurprising therefore that knowing where you add value and where it is better to bring in specialists is often cited as a sensible approach. So whether you are dealing with a routine matter or experience a problem with a property transaction which threatens to hold up a sale or a development, you need it to be solved straightaway.

At Clear Insurance our staff have been placing Legal Indemnity insurances for more than 20 years, so we understand your problems and know how to come up with solutions fast. As one of the leading specialists in the sector, we can respond to all but the most complex enquiries within 24 hours and as an independent broker have access to all the major insurers in the market.

As well as the standard range of covers, demand is increasing for policies covering Judicial Review, Rights of Light and Town or Village Green, along with those required on a pre-planning basis. With limits available in excess of £150m we can accommodate even the largest contracts.

Being a specialist we have strong relationships with the leading insurers in this sector and in many cases can provide solicitors with cover at lower premiums than if they were to approach a provider direct. As we are not tied to any one insurer, unlike many of our competitors, both you and your client have the comfort of knowing that we offer an independent view of the marketplace.

The following guide outlines the range of standard covers and the requirements and information we need in order to obtain quotations on your behalf. Please do not hesitate to contact us as even if the product is not outlined we may still be able to source cover on your behalf.

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Legal Indemnity - Products

1. Absence of Easement / Access Indemnity

Cover:

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

Information required:

1. A plan showing the route of the easement, the nearest adopted highway and the location of the property
2. A draft statutory declaration setting out the use of easement
3. The existing use of the property, whether the use of the property will change and/ or be developed
4. If change of use/ development – whether planning permission has been obtained and if so the letters of objection/ planning officer's report
5. Index map search
6. Title to the property
7. Details of any contact with servient owner
8. Limit of Indemnity required

2. Absent Landlord Indemnity

Cover:

Protection against forfeiture of the lease of the property for non-compliance with covenants in this lease (and loss caused by an inability to enforce other parties' maintenance obligations contained in this lease – this is typically maisonette indemnity).

Information required:

1. Details of the attempts to trace the landlord
2. Last known whereabouts of the landlord
3. Details of any alterations/ additions to the property (or proposed)
4. Whether there have been complaints/ objections to the above
5. Limit of Indemnity required

3. Adverse Possession Indemnity

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

Information required:

1. Title to the property
2. Index map search and any information as to the probable ownership of the land
3. If the deeds were lost details of how/ in whose possession
4. Draft stat declaration
5. If the use of the property is to change/ be developed – planning permission and letters of objections
6. Whether the land is to be built upon/ used as access
7. Limit of Indemnity required

4. After The Event Insurance and Third Party Funding

Cover:

Protection for claimants against a potential adverse costs order in the event of an unsuccessful outcome in their litigation.

Funding can also be sourced for own legal costs and disbursements.

Information required:

1. Please contact us for a proposal form
2. Case summary
3. Copy correspondence
4. Expert reports (if available)
5. Counsel's Advice (if available)

5. Breach of Planning / Building Regulations / Listed Buildings Consent Indemnity

Cover:

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

Information required:

1. Use of the property, the nature of the works to be insured
2. How long the works have been in existence
3. If listed building – a copy of the listing
4. Whether there has been any contact with the local authority
5. Limit of Indemnity required

6. Breach of Restrictive Covenants Indemnity

Cover:

Protection against the enforcement of covenants

Information required:

1. Title to the property
2. Current use of the property – whether this is going to change
3. If going to change whether there is planning permission in place – if so letters of objection and planning officer's report
4. Which covenants are to be insured and how they have been/ will be breached
5. Whether there has been any contact with anyone thought to benefit from the covenants
6. If leasehold – details of the landlord, copy of the lease,
7. Limit of Indemnity required

Legal Indemnity - Products



7. Building over Sewer Indemnity

Cover:

Increased costs of works under build over agreement. Sewer Authority require demolition/ alteration of the building

Information required:

1. Water search showing line of sewer and building location
2. Details of structure over sewer and when it was constructed
3. Whether there is a build over agreement
4. Details of any inspection of the sewer to confirm it is in good repair
5. Details of any contact with water authority
6. Limit of Indemnity required

8. Chancel Repair Indemnity

Cover:

Protection against a liability to contribute towards the repair of the Chancel of a church

Information required:

1. Title and filed plan to property
2. Details of any searches carried out
3. Use of the property
4. Limit of Indemnity required

9. Contaminated Land / Environmental Indemnity

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)

Information required:

Please contact us to discuss available options

10. Contingent Buildings Indemnity

Cover:

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

Information required:

1. Use of the property
2. Who is responsible in the lease for insurance
3. How the buildings insurance is dealt with in practice if this is different
4. Use of adjoining premises of which the property forms part
5. Why the insurance provisions in the lease are thought to be defective
6. Limit of Indemnity required

11. Defective Title Indemnity

Cover:

Protection in the event of a third party attempting to:

- Enforce an estate right or interest adverse to or in derogation of the Insured's title to the property
- Prevent the Insured's use of any right of way or easement necessary for the enjoyment of the property

Information required:

1. Copies of any Statutory Declarations available
2. Any relevant Index Map Searches or Land Registry Office copies
3. Any relevant plans

12. Enforcement of (Known / Unknown) Adverse Third Party Rights Indemnity

Cover:

Protection against the exercise of rights or easements over or under the property. Coverage can depend on whether development or continued use is proposed.

Information required:

1. Title and filed plan to the property
2. Use of the property- planning permission and letters of objections if this is to change/ be developed
3. Details of the rights to be insured and how they will/ have been interfered with
4. Whether an alternative route will be provided
5. Whether the rights are currently being exercised, by who, when
6. Title and filed plan to the dominant land
7. Details of the boundary features
8. Limit of Indemnity required

Legal Indemnity - Products

13. Enlargement of Lease (Residential) (O/s) Indemnity

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:

1. Title and filed plan to the property
2. 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
3. Whether third party rights are currently being exercised over the Property, by who, when
4. Limit of indemnity required

14. Flat / Maisonette Indemnity (Residential) Indemnity

Cover:

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

Information required:

1. Title and filed plan to the property
2. Confirmation of the defect in the lease or a full copy of the lease
3. Limit of Indemnity required

15. Flying/ Creeping Freehold Indemnity

Cover:

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

Information required:

1. Use of the property and adjoining premises of which the property flies/ creeps
2. Whether the adjoining premises are occupied
3. Disclosure of any survey/ works required to the property
4. Title and filed plan to the property
5. Limit of Indemnity required

16. Forfeiture of Lease – Bankruptcy / Insolvency Indemnity

Cover:

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

Information required:

1. Title and filed plan to the property
2. Clear bankruptcy search against proposer's
3. Details of whether borrower is self-employed or director as guarantor
4. Limit of Indemnity required

17. Forfeiture of Lease - Breach of Covenant Indemnity

Cover:

Protection for a mortgagee against forfeiture of their borrower's lease due to breach of covenant

Information required:

1. Title and filed plan to the property
2. Full details of any known breaches of the lease
3. Confirmation that all ground rents and service charges, and any other payments under the lease, are paid up to date
4. Limit of Indemnity required

18. Freehold Rent Charge Coverage Indemnity

Cover:

Protection against re-entry by a rent charge holder due to non-payment of a rent-charge

Information required:

1. Use of the property
2. 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.
3. Whether the rent charge is registered – index map search
4. Title and filed plan to the property
5. Limit of Indemnity required

Legal Indemnity - Products



19. Good Leasehold Indemnity

Cover:

Protection against a challenge to the Property's title and unknown covenants

Information required:

1. Title to the property
2. Use of the property
3. Whether there is to be any development and if so full details
4. Limit of Indemnity required

20. Insolvency Act Indemnity

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

Information required:

1. Loan amount
2. Market value of property
3. Use of the property
4. Whether any of the parties are related
5. Identity of the parties and details of the transaction taking place
6. Bankruptcy search valid at the time of the transaction taking place
7. Sale price
8. Limit of Indemnity required

21. Japanese Knotweed

Cover:

The concern of future discovery of Japanese Knotweed or Japanese Knotweed reoccurring, following works currently being undertaken, or simply the current owner discovering Japanese Knotweed during their day-to-day ownership, and arranging specialist treatment.

Information required:

1. Use of the property
2. Limit of Indemnity required
3. Is the property affected by Japanese Knotweed?
4. Has a mortgage valuation survey, home buyer's report or building survey been carried out?
5. Has any previous treatment or remediation works for Japanese Knotweed been undertaken at the property?
6. Has there been contact with any enforcing authorities regarding Japanese Knotweed at the property or nearby?
7. Has there been contact with any other property owners regarding the presence of Japanese Knotweed?

22. Judicial Review Indemnity

Cover:

Protection in the event that a planning permission is quashed

Information required:

1. What losses are to be insured
2. Planning officer's report, minutes of the committee meeting and letters of objection
3. Limit of Indemnity required

23. Lack of NHBC & Architect Certificate

Cover:

Where the property is constructed or converted without a valid NHBC or Architects Completion Certificate

Information required:

1. Use of the property
2. Title documents
3. Limit of indemnity
4. Has the land has been owned and occupied for at least 2 years since the date of its practical completion?
5. Was the land built under a self-build scheme?
6. No structural defects are disclosed in a structural survey, homebuyers report or mortgage valuation report.

24. Lost / Missing Share Certificate

Cover:

In the event that the Lost Document is discovered and fraudulently used to obtain monies from the Insured.

Information required:

1. Please contact us for a proposal form

25. Mining / Mineral Rights Indemnity

Cover:

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

Information required:

1. Title and filed plan to the property
2. Use of the property
3. Whether the property is to be developed
4. Mining search
5. If development – possible designation in local plan
6. Limit of Indemnity required

Legal Indemnity - Products

26. Missing Beneficiary Indemnity

Cover:

The policy indemnifies the personal representatives of a deceased's estate in the event of any person(s) claiming a share in the estate whose identity or whereabouts was unknown both at the inception of the policy and the distribution of the estate

Information required:

1. Name of Proposer in full
2. Limit of Indemnity required (i.e. the amount due to all missing beneficiaries)
3. Name of Deceased
4. Date of Birth and Death of Deceased
5. Total value of Estate for distribution
6. Names of Executors, Administrators or Trustees
7. Relationship of Proposer to Deceased
8. If the Deceased left a will, please supply a copy.
9. Details of Missing Beneficiaries incl. name, last known address, Date of Birth, names and ages of any children
10. If a Family Tree is available, please supply a copy.
11. What enquiries have been made to trace the missing Beneficiary/ies?
12. If advertisements have been placed, please supply a copy and advise the name of newspapers and date of insertions.
13. Have all traced Beneficiaries been approached for information on the missing beneficiary/ies and the accuracy of the Family Tree?
14. If so, can they confirm they have had no contact with the missing beneficiary/ies for at least the last 10 years and have no knowledge of their present whereabouts?
15. Have any enquiries been made to any third party organisations (eg genealogists)

27. Missing Deeds Indemnity

Cover:

Protection in the event that ownership of the property is challenged and cannot be substantiated by reference to original title deeds

Information required:

1. Title and filed plan to the property.
 2. Copies of the statutory declaration/ documentation in support of your claim to ownership of the Property
 3. Clear SIM of property
 4. Limit of Indemnity required
- We may require further information, so please contact us to discuss.

28. Possessory Title (Residential) Indemnity

Cover:

Protection against a challenge to the Property's Title

Information required:

1. Title to the property
2. The current use of the property and whether the use of the property will change/ property be developed
3. Stat declaration on first registration
4. If development – letters of objection/ planning officer's report
5. Limit of Indemnity required

29. Property Dispute

Cover:

Defendant's ongoing own legal costs and disbursements, potential adverse cost order and an award in the event of an unsuccessful outcome in a "live" issue that is property related.

Information required:

1. Summary of the case, legal strategy to deal with the issue and any supporting documentation such as expert report or Counsel's advice

30. Right of Light Indemnity

Cover:

- Damages and compensation awarded as a result of an enforcement action
- Costs of alteration or demolition necessarily incurred to comply with that action
- Diminution of market value
- Costs incurred prior to the action which render the development abortive
- In addition, a policy can be tailored to cover other potential costs such as increased interest payments incurred by the developer following a temporary injunction.

Information required:

Please contact us to obtain a proposal form

Legal Indemnity - Products



31. Right to buy

Cover:

No Deed of Postponement for a charge in favour of a Local Authority relating to discount repayable under the Housing Act 2004, where the Property has been purchased under 'right to buy' legislation.

Information required:

1. Has there been any communication with the local authority regarding the lack of the Deed of Postponement or in relation to any monies to which they may be entitled
2. The full address of the property
3. The limit of indemnity required
4. Title to the property

32. Search Indemnity

Cover:

Protection against financial loss caused by a matter that would have been revealed to the owner of a property by a search in form local authority, mining, drainage, village green

Information required:

1. Use of property
2. When a search was last carried out
3. No parties to the transaction are aware of any matters that would be an adverse entry
4. Enquiries before contract have been raised and the replies do not reveal any matter that could lead to a claim
5. Limit of Indemnity required

33. Section 52/106 Agreement

Cover:

Lack of evidence of compliance with or failure to comply with condition(s) contained in a section 52 or 106 Agreement relating to the Property.

Information required:

1. Title to the property
2. Current / future use of the property
3. Limit of Indemnity
4. Is the section 52/106 Agreement at least 5 years old?
5. Was the property completed at least 4 years ago?
6. Are you aware of the local authority indicating any intention to pursue individual plot owners in relation to the Agreement?

34. Town and Village Green Indemnity

Cover:

Standard cover would include damages or compensation, costs of altering/ demolishing, diminution in value, abortive costs, where any third party (including any corporation) applies to the relevant statutory authority for the registration of the Property or any part thereof as a Town or Village Green after the Policy Date.

Information required:

1. Title and filed plan to the property
2. Planning officer's report and letters of objection
3. Whether there has been any attempts to register the land
4. Previous and proposed use of the property
5. Fully developed value of the site
6. Limit of Indemnity required

35. Trustee (Breach of Trust) Indemnity

Cover:

The policy will indemnify the trustees and their successors in title, agents and professional representatives in respect of all loss, damages, costs and expenses sustained, suffered or incurred which are directly attributable to the distribution or winding up of the trust.

Information required:

1. Explanation as to what action the trustees are taking and why, and what they see as the risk
2. Copy of any relevant documentation such as the will, trust deed or club/ society rules
3. If missing Beneficiaries are involved we will need full details of what steps have been made to trace them
4. Limit of Indemnity required (this will need to reflect the risk the trustees believe they are running and, depending on the circumstances, may mean the full amount of distribution).

36. Warranty and Indemnity

Cover:

Risks arising from breaches of warranties and indemnities in the Share Purchase Agreement relating to a corporate property transactions. Cover can be for both the buyer or seller and can be taken out pre or post-sale/purchase.

Information required:

1. Draft of the Share Purchase Agreement, any due diligence carried out such as expert reports, access to the virtual data room

Legal Indemnity - Q&As

Q. Do policies cover lenders, tenants and successors in title?

A. Yes, to arrange cover you must either be a firm authorised by the Financial Conduct Authority (FCA) directly, or exempt from authorisation, such as through a designated professional body, and listed on the FCA's Exempt Professional Firms register. Our compliance department is available for guidance should you be in any doubt.

Q. Can we tell others about it?

A. Legal Indemnity policies often contain a condition stating that if others are notified of the policy or situation then coverage could be invalidated. We would advise not to make any notification without talking to the insurance company.

Q. Does the policy cover loss of developers profit?

A. Legal Indemnity policies are designed to offer Indemnity only i.e to put the insured back in the position they were prior to the loss occurring. Loss of developers profit is therefore not covered as standard, but can be requested as an extension.

Q. Is the premium payable annually?

A. No, for legal indemnity policies, unlike other insurance policies, the payment is one off at inception of the policy.

Q. What is the Policy Term

A. A large proportion of legal indemnity policies are in perpetuity unless specifically stated.

Q. Can I insure before the planning application has been submitted?

A. Yes, both pre and post planning covers are available in certain circumstances.

Q. Will the standard policy satisfy my need?

A. Bespoke policies can be written specifically for the individual transaction.

Q. How quickly can I obtain a quotation?

A. We can respond to all but the most complex enquiries within 24 hours and many of the straightforward cases only take a few hours. We would advise our Solicitors to use this guide for assistance in collating the information at the outset to speed the process up.

Q. How soon can I place the risk on cover?

A. Once we have provided a quotation, we need to ensure that any of the insurer's subjectivities have been provided. When this has been completed, and if you are satisfied with the quotation and draft wording, we just need instructions to place the risk on cover (email is preferable) and we can proceed immediately. We will then provide you with written confirmation along with an Invoice outlining the premium due. Payment will then be required within 14 days of inception and full documentation will follow on.

Q. Can I buy online?

A. Yes, you can now buy online via Clear's website. We have arranged a facility with Stewart Title and would be happy to set you up with online access. See the back cover for details of how to contact us or visit <http://www.thecleargroup.com/legalindemnities>

Legal Indemnity - Q&As



Q. Are there any regulations governing who can arrange legal indemnity insurance?

A. Yes, to arrange cover you must either be a firm authorised by the Financial Conduct Authority (FCA) directly, or authorised and regulated by the FCA's Exempt Professional Firms register. Our compliance department is available for guidance should you be in any doubt.

Q. How do I update my client's policy or make sure it remains adequate?

A. Underwriters will consider cover changes or amendments upon request.

Q. If my client is a successor in title how do I make sure the policy is adequate?

A. A copy of the original submission is normally available from underwriters. They will consider any cover changes or amendments upon request.

Q. Can a legal indemnity policy be protected from inflation?

A. Many underwriters will add an 'Escalator Clause' which will increase the indemnity limit by an agreed percentage over an agreed number of years.

Q. What is an adequate Limit of Indemnity?

A. There is no a set formula for calculating the limit of indemnity, but most lenders will require a sum to that of the property / development full value. If your client wishes to obtain varied limits for due consideration we would be happy to accommodate this request.

Who to contact

The next time you face a problem with a property transaction where insurance could be required call one of the team.

Lianne Bayne: 020 8329 4963 lianne.bayne@thecleargroup.com

Nick Mace: 020 8329 4964 nick.mace@thecleargroup.com

Nisa Leach: 020 8329 4940 nisa.leach@thecleargroup.com

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Here are just a few of the Insurers we have relationships with;



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