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## About CLEAR

CLEAR is a Chartered Broker and proud to be a Top 10 Independent Insurance Broker in the UK.

Our considerable experience in the property sector gives us the capacity to design bespoke and exclusive insurance solutions for the whole property market.

# Contractors All Risks (CAR) Insurance

## Are you covered?

There are broadly two types of construction risks insurance. The first covers damage to property, such as damage to buildings and other structures being constructed (i.e. the Works) or to the existing building in which the construction is being carried out. The second covers liability for third party claims for injury and death or damage to third party property. Modern forms of contractors' all risks policies cover both.

However, in addition to the above, there are various extensions that are either not provided by a standard 'Contractors All Risks' Policy and/or are not available from the Insurer providing the cover.

Examples of extensions to cover that contractors/developers should be aware of are explained below.

### Defective Design Exclusions

In recent years it has become commonplace for contractors to incur a design liability, either by offering a design service as part of an overall building package or through a design and build contract where the design work is sub-contracted.

When you undertake contracts on a Design & Construct basis, you will almost certainly be the client's first port of call in the event of a design related problem. Even if a claim is ultimately the responsibility of another party, the costs of redirecting liability can be high and success is far from guaranteed.

There are 5 design exclusions relating to CAR Policies defined as follows with DE3 being the most common within the Insurance industry:

**DE1: Outright Defect Exclusion**  
Excludes any and all damages due to property in a defective condition.

**DE2: Extended Defective Condition Exclusion**  
Excludes damages to (a) property that is in a defective condition, or (b) property that relies on (a) for support. Consequential damage to any other property free of defective conditions, however, is covered.

**DE3: Limited Defective Condition Exclusion**  
Excludes damages to property that is in a defective condition, in whole or in part; covers consequential damage to any other property free of defective condition.

**DE4: Defective Part Exclusion**  
Excludes damage to only that constituent part of the property that is deemed defective (the "faulty part"); covers consequential damage to any other property free of defective condition.

**DE5: Design Improvement Exclusion**  
Covers all damages excluding only the additional costs of improvements to the original design, materials, etc.

Using the example that a concrete column fails because its inner steel supporting rod (the faulty part) is defective in design or material and the roof collapses, causing extensive damage to the floor below, what is covered under each of the above exclusions:

**DE1:** No cover would be provided.

**DE2:** Cover would be provided for the floor only NOT the column, roof and supporting rod.

**DE3:** Cover would be provided for the floor and roof NOT the column and supporting rod.

**DE4:** Cover would be provided for

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the floor, roof and column NOT the supporting rod.

**DE5:** Cover would be provided for all the above however would not include betterment in respect of the supporting rods.

In view of the above serious consideration should be given to upgrading standard cover from DE3 to either DE4 or DE5. Increased premiums are a possibility and the DE5 extension normally attracts a much increased excess however bearing in mind the increased cover available the policy benefits outweigh any increase in premiums or excesses.

## Contractors All Risk (CAR) vs Professional Indemnity (PI)

It can be a common misconception that a Contractors All Risks Policy will provide the adequate cover in respect of defective design. This will not always be the case and in some cases a Design & Build Professional Indemnity Policy should be obtained.

### Contractors All Risks Policy:

- Covers defects but only where there is physical damage to the works and the extent of cover available will be subject to the operative DE clause as noted above.
- Provides coverage during the construction and maintenance period.
- Does not cover consequential losses.
- Contractors All Risks is on a claims occurring basis.

### Professional Indemnity Policy:

- Indemnifies against liability to third parties.
- Provides cover resulting from professional acts, errors and omissions.
- Covers the costs to rectify damage.
- Covers the costs to rectify defective property.
- Covers consequential losses.
- Professional Indemnity Insurance is on a claims made basis which may be bought at any time for previous works undertaken.

The following provides an example of how the different covers are applied:

The Insured design and build a steel framed building, roof completed, cladding partially completed and the dwarf brick wall completed. The nuts & bolts used in the construction of the steel framework proved to be inadequate (due to the Insured's error). One entire wall collapses (frame, cladding & brick wall) and the roof is damaged beyond repair.

### What is covered under the CAR DE clauses?

**DE1:** All damage excluded.

**DE2:** All damage excluded other than dwarf brick wall.

**DE3:** Steel framework excluded. Cladding & roof is covered.

**DE4:** Only the nuts & bolts are excluded.

**DE5:** All damage covered (but not costs of improving the nuts & bolts).

However, what happens if the rest of the building is defective, but not damaged?

A PI policy would cover the Insured's liability to third parties for:

- Rectifying the defective parts, even if they are not damaged.
- Consequential losses incurred by their client due to delays.

What would have happened if the steelwork had failed after completion of the project and after the maintenance period? At this point the CAR cover ceases and consequential losses are no longer covered. The addition of a PI Policy provides peace of mind and continuing cover for previous works.

## Non-Negligence 6.5.1 (Previously known as 21.2.1)

However, what happens if their work damages neighbouring property and the contractor was not negligent? Has a party wall agreement been signed?

Non-Negligent Party Wall cover provides protection for the client (property owner) during the instance when there is damage to a third party property as a result of renovation works – and no one person/professional can be found to be at fault.

Non-Negligence cover can be arranged for specific contracts. Terms are agreed for each individual contract and is usually placed with the Public Liability Insurer however in certain circumstances cover can be arranged in isolation.

An example would be where work was being carried out on a property that involved a basement dig out. There was a party wall consideration with a neighbour on the right. Towards the end of the works, the neighbour discovered a large crack in their living room. Upon further investigation, it became apparent that the property was suffering from cracking and movement as a result of the works. The neighbour approached the property owner, responsible for the works, to pay the damages to their property. After checking that nothing was done incorrectly, it was established that no one working on the project was negligent, including the architect, surveyor or contractor.

## Contact Us

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In this circumstance, it would still fall on the property owner to pay for the third party property damage to be remedied. In the case of subsidence, this can be particularly expensive. This policy provides additional protection when undertaking works on your property and there are party wall considerations in place. Whilst this provides cover for all types of property damage, we would especially recommend it when there are basement works underway and digging, piling or driving are involved as there is an increased risk (such as vibrations). If the problem is found to be the fault of the architect for example, then it would be up to them to pay for the damages to the third party property.

The JCT (Joint Contracts Tribunal) contract, which is the standardised contract form used in the construction industry, would stipulate who is responsible for arranging this cover. Either the Contractor or Employer will be responsible for arranging this specific policy. Cover is usually arranged in the joint names of the Contractor and Employer (but only indemnifies the Employer) and covers specified perils: Collapse, Subsidence, Heave, Vibration, Weakening or removal of support and lowering of ground water. To provide cover Insurers would require the following information:

- Contract Value
- Duration of contract
- Distance to surrounding property
- Details of risk:
  - Piling – type of piles
  - Demolition – method
  - Ground stabilisation, de-watering, removal of trees
  - Underpinning of adjacent property
  - Condition, construction and use of neighbouring property
  - Ground conditions, ie clay
- Site plans
- Schedule of Condition report

Should the above information not be fully available prior to the start of the works most Public Liability Policies include an automatic hold covered extension for a certain period.

## Collateral Warranties

On a construction or engineering project, a collateral warranty is a contract under which a professional consultant, a building contractor or a sub-contractor warrants to a third party (such as a funder, tenant or purchaser) that it has complied with its professional appointment, building contract or sub-contract. It is important to be aware that professional indemnity insurance policies often exclude cover for collateral warranties which provide a greater or longer lasting benefit to the beneficiary than is provided under the underlying contract.

Collateral warranties often contain obligations that affect the consultant or contractor, such as using materials of an appropriate quality, and carrying out work in a professional, workmanlike manner. It can also provide the third-party contractual rights enabling it to claim for losses which would not otherwise be recoverable.

If you take a policy out with one of our insurers they can provide a collateral warranty checking service to ensure that you are not signing up to anything too onerous on your part, saving you time and a hefty legal bill.

It is also important for Property Owners and Developers to ensure that Collateral Warranties are taken out by Contractors in order to aid the sale of the development to third parties.

## How Can We Help

Clear Insurance Management Ltd are specialists in the property market and are able to advise on and place all of the aforementioned covers. Some projects can be fairly straightforward and others can be extremely bespoke and complex. Clear have experience with all different types of constructions projects and are able to provide a tailor made solution to ensure that your assets and business are properly protected. If you'd like further information contact us today or visit [www.thecleargroup.com/property](http://www.thecleargroup.com/property)

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