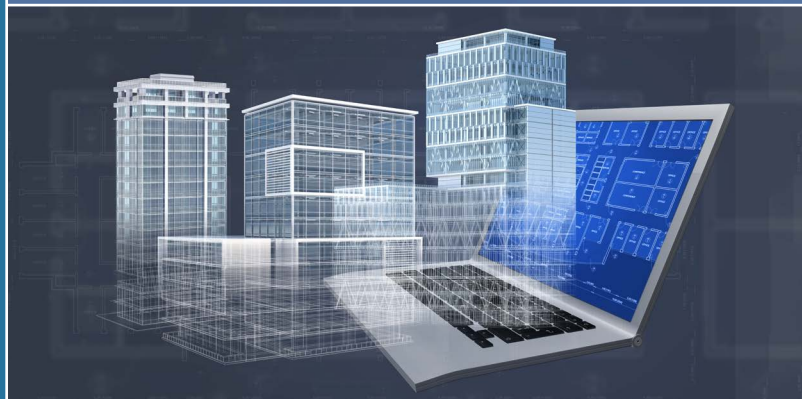


Building a Safer Future

Independent Review of Building
Regulations and Fire Safety:
Final Report



A BRAVE NEW WORLD
NAVIGATING FUTURE CHALLENGES

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1. INTRODUCTION

This publication provides some insight on a range of issues that are either already affecting those who work within our construction client base or are on the threshold of doing so. These are our 'challenges' for the Brave New World that lie ahead.

Within the context of each challenge, we both signpost the problems that we foresee and, where we can, provide practical solutions to those problems.

However, there are significant areas, particularly around technology, where practical answers are thin on the ground. In these cases, highlighting the potential problems that the technology of the future might cause your insurance arrangements is as much as we can currently do.

This is not to say that we agree with Aldous Huxley's reasons for writing Brave New World; we do not write this as a rebuke to technological optimism. In the round, we probably view the upcoming technological changes with positivity and enthusiasm, despite the important questions that will need to be addressed.

This report examines the future of the Professional Indemnity ('PI') insurance market, the trends and potential pinch points for the next twelve months. With PI insurance renewals taking longer and causing more concern than at any point since the dawn of the new millennium, we provide advice and outline some steps to take to help you to secure quality and value from your renewal.

Key challenges include recent problems caused by the lack of quality in certain sections of the construction industry. Here there is no script to follow to aid success, but the work of Dame Judith Hackitt certainly might stimulate conversations which would otherwise not have taken place. Similarly, we consider how procurement reform might help the often overlooked SME businesses working in the built environment.



On a related theme and following the Grenfell Tower fire tragedy, we review the latest position for our clients involved in the world of cladding and fire safety and report on where the insurance industry might be heading in this complex and evolving arena.

With Brexit discussions now turning to trade and market access, we also flag issues to be aware of as the transition period marches towards its conclusion at the end of the year. No one knows what the future holds here, but there are some simple steps that can be taken to prepare for a range of eventualities.

Finally, there is climate change. This has rapidly developed in the public's attention and the net-zero emissions challenge is now rightly front and centre of global attention. Our views on this are suitably narrow and modest, but it will mean significant change in the simple mechanics of how buildings are constructed, and perhaps to the very liability models that might attach to a project's delivery.





2. BACKGROUND TO THE REPORT

In the Spring of 2016, we published a whitepaper *“Macroeconomic and Construction/Property Market Trends”*. The paper was published to support our series of round table events for that year where many of our clients had the opportunity to discuss and explore matters of mutual interest.

The paper hit the press before Brexit was a reality, and before Donald J. Trump became the 45th President of the United States. These two binary electoral processes were identified for their huge significance, yet no-one predicted we would now be facing the challenges – and opportunities – of both.

Since then, the world has not stood still. We continue to claw our way back to pre-banking crisis economic prosperity, although there have been – and will continue to be – significant bumps in the road. In China, we have a slowing market but one with which we appear desperate to trade post-Brexit; the need for pragmatism is evidenced in the recent decision over access to our communication networks. Meanwhile, the US administration continues to create uncertainties on several fronts and the upcoming trade negotiations could radically alter market access.

However, in many ways, the single most significant event since our last paper was the tragic fire at Grenfell Tower on 14 June 2017. The harrowing events that took place profoundly shocked the nation and the individual stories have moved us all. Many in the insurance and construction spheres have been grappling with the consequences and wider implications of Grenfell Tower, which rightly continue to drive the agenda from the top of Government down.



Industry change is inevitable, not just as a result of Grenfell but also after the rash of corporate failures at the beginning of 2018. These saw the spectacular collapse of Carillion, a profits warning at Capita and restructure of Interserve, and highlighted fundamental flaws in the industry's structure, in particular the use of the PFI model of contracting.

The purpose of this report is not to look at any individual corporate event in isolation but to raise questions if we see potential trends. We cast an eye to the horizon and look to identify challenges, issues and opportunities that may lie ahead. The scope we have chosen to consider is broad, and whilst there are insurance aspects to all of them, the subjects often go far beyond simple insurance. Our hope is that this document serves to start a much wider debate on core issues, which ultimately then affect insurance – both coverage and pricing.

That said, we start by looking at the 'insurance market'. How can we not, given that we are now experiencing the most difficult PI insurance market conditions for almost two decades? Our intent is not to delve too deeply into questions such as "how did we get here?" but to look at how we can best prepare to deal with the obstacles ahead and consider more broadly what the next five or ten years might hold.

In doing so, it is perhaps inevitable that technology is one topic which features highly, specifically how the threads that bring together 'digital engineering' are becoming increasingly interwoven. 3D modelling is becoming the norm and collaborative working will drive this to become increasingly sophisticated and 'real time' – bringing huge benefits but, of course, also absorbing an increasing proportion of annual budgets.

Technology brings new problems for the insurance market, linked directly to the very core of its usefulness and ability to automate processes, facilitate more collaboration, enable more sophisticated design, and promote greater innovation. We explore some of the issues around how the insurance market might adapt in response to these changes.

And adapt it will. The insurance industry's strength is its ability to change to meet new challenges from its insureds and there are numerous examples over the years of us delivering products, policy amendments and cover where none previously existed. Its weakness, however, is that the industry's response to these novel threats will be reactive. Do not expect the insurance industry necessarily to offer solutions unless it is asked by many to solve a genuine problem; and that solution brings a scale of demand that creates potential for a commercial return.

Looking at our world in the round, it's difficult not to conclude that we are at the beginning of substantial change within construction which could destabilise and disrupt. Whilst we hope that the dystopian vision of Huxley's original Brave New World can be avoided, one aspect of Huxley's world rings true: stability isn't nearly so spectacular as instability.

3. PROFESSIONAL INDEMNITY INSURANCE - THE MARKET CONTEXT

Before considering what the future holds for the PI market, we must first pick up on a number of alarming trends that have given rise to disproportionate losses in the market over the last ten years. It is in the context of these that our predictions must be read.

These trends form many of the reasons why PI costs have sharply increased for some over the last 12-18 months and why continued market contraction and increased cost is certain. In short, for too long the market has suffered from too little premium and too much claims cost.

The component parts of this statement are as complicated as we'd like to make them, but having regard to the first we contend that most purchasers of PI have at some point in the last three or four years enjoyed the lowest relative PI cost in their history. The reduction in cost, relative to fees and in absolute terms, is a general trend which has been developing for 15 or more years and which only in the last two years or so has started to turn.

This is a generalisation of course and there are those for whom this statement does not hold true, owing to factors particular to them. For the majority though, it does.

The other aspect which makes the equation much more costly for insurers is the claims costs that they face. Rather than talk in general industry terms about the claims profile, we consider the general trends of our own facilities and pick out some metrics which are causes for genuine concern:

The number of multi-million pound 'catastrophic' claim payments by PI insurers is rising

The value of the very largest claims paid out under our facilities has increased by over three times in the last few years to many tens of millions of pounds. It is clear that insurers are having to reserve some 55% more for their 20 highest value claims than they were five or six years ago. There is no reason to think this trend will slow down, let alone reverse.

This does not reflect a deterioration in the standards to which construction professionals perform. Rather, we suggest that the following factors are more pertinent:

- The largest projects are continuing to grow in size and with that the simple economics are that the claims costs grow too;
- Contractors are taking on more risk not only in contractual and financial terms but also in terms of the suitability of the project to their resources and experience;
- Contractor insolvency is an ongoing phenomenon, not confined to periods of recession. A recent article in Building outlined that Begbies Traynor (an insolvency specialist) reported a 13% increase in construction firms in financial distress between the third quarter of 2018 and 2019. The almost inevitable corollary here is that consultants end up picking up the bill;
- There has been a growth in amateur developers running ambitious 'one off' projects which they barely understand.

The frequency of high value claims is increasing

In addition to a growth in catastrophe loss, it is also clear that an increased number of losses at between £100k and £1m have contributed to a significant overall deterioration in insurers' loss ratios.

Since October 2013, the total value of these 'attritional' claims under our UK facilities has increased by 50%. This increase has been derived from the fact that the mean value of claims within those parameters increased steadily by 10% over the same period, but the remainder of the trend is due to increased frequency of claims. So not only are the value of attritional losses increasing, but the number of them is too.

A larger number of claims in excess of liability caps and/or policy limits are being seen.

The fact that a consultant might have agreed a liability cap, let alone an amount of PI insurance in his appointment agreement, never stops claimants pleading losses in excess of that figure and challenging the relevant provision.

Claimants have nothing at all to lose by pleading the full value of their loss even if privately they acknowledge that they stand a limited chance of recovering that sum. In other words, the existence of a cap does not override the normal dynamics of bargaining – claimants start as high as possible so that they can appear later on to have ceded ground that was never theirs.

Given that the average life of a claim in excess of £1m is around five years from the date of notification, we often find ourselves negotiating settlement of claims using insured funds which are limited by a decision taken by the consultant five years previously about how much cover to buy. The ordinary effects of inflation within that period mean that the policy is worth less as time moves on.

POTENTIAL ACTIONS

- ✓ One crucial lesson we can draw from all this is that, despite the bad timing, you need to consider if your PI limit is still sufficient to meet the risks to which you're exposed. An alarming threat for the future is that whilst claims have increased markedly, insured limits have not. Whilst we are already seeing indemnity limits being tested at the extreme end, we believe it is only a matter of time before there are many more cases of insufficient insurance leading to significant problems.
- ✓ For companies with an external shareholding and given the duties imposed on Directors under the Companies Acts to protect shareholders' assets, this might be even more important given that in certain circumstances those shareholders could have a right of action against the individual Directors. Keeping limits under review as well as considering other protections, such as Directors' and Officers' Liability insurances is recommended.
- ✓ There still seems to be confusion that if a PI limit has been agreed in contract, it is the same as agreeing a financial cap on liability. It is not the same at all. Insureds should continue to actively negotiate a limit on the amount of PI insurance to be offered and separately agree a financial cap on liability. It would be usual for the two limits to be equal. Standard wordings for a robust limit of liability are included in the ACE forms of contract and we will happily provide a form of words to Griffiths & Armour clients.

**55% INCREASE
INSURER
RESERVES**

**20 HIGHEST
VALUE
CLAIMS**

4. INDUSTRY CHALLENGES

INDUSTRY CHALLENGE 1: NAVIGATING THE PI MARKET

The simple message is that professionals exposed to the construction insurance environment should be prepared for harder market conditions in the coming year. Those conditions are likely to last into 2021 and perhaps beyond.

For answers to the question of “How did we get here?”, we recommend our publication “The Supermarket Revisited”. Here we simply outline what we believe is coming next and what those renewing policies might do to mitigate these predictions.

WHAT'S COMING NEXT?

(a) Rating

Given what we have said about the PI market's performance over the last ten years, it will come as no surprise to hear that further rating increases are expected throughout 2020/21. Individual situations will, of course, depend on many factors but as a general guide, anyone involved in purchasing PI insurance should prepare themselves for double-digit percentage increases.

We are aware of significant changes in the wider marketplace where more significant action has been taken on the back of insurer withdrawal, or particular market difficulty. We have written before of the challenges in the design and construction sector, those involved with cladding, fire safety and Approved Inspectors where firms are suffering more than most and there can be no denying that some aspects of the market are considerably more challenging than others.

(b) Excess requirements

For many years now, the rule of thumb has been that in order to offer a 'neutral' price from an underwriting point of view, a firm's excess should be around 1% of insured fee income. A firm with £100,000 of insured fees should expect an excess of about £1,000. The theory was that this would attract neither an underwriting penalty, nor a discount.

This rule of thumb has, for many, been a rule more honoured in the breach than in the observance, with many benefitting from a lower excess without any premium penalty. That is likely to change for many and careful consideration should be given before trading away this benefit. As with pricing, we expect a 'steady as she goes' approach from our insurance partners, but we're hearing of some huge changes in the wider market.

(c) Capacity shrinkage

One of the key drivers behind insurance availability is the amount of market capacity available to underwrite business. Although there has already been a significant reduction in available capacity during 2019, that trend is likely to continue throughout 2020. Whilst the market is still reasonably fluid and all our facilities have secured the necessary capacity to write business for the forthcoming year, there is no doubt that this situation is going to become more difficult as the year progresses.

For most, this will manifest itself in increased cost, though for those placing particularly large limits, or for those looking to increase their limits significantly, it's possible that the market might not be able to meet those requirements. Whilst this is likely to impact on those insureds looking to place limits in excess of £30m or more, it is something that needs to be borne in mind by those seeking to renew (or incept) particularly high levels of cover.

(d) Market consolidation

We are likely to see further market consolidation in the next few years, resulting in a further shrinkage in insurer capacity. For the UK based consultant buying PI this principally means two things:

- (i)** Niche providers of PI and their specialist teams will become subsumed into much larger organisations with a much broader focus. This can result in teams jumping ship to find better homes with an employer (and an insurance provider) more in line with their thinking. Having a specialist broker who has built up trusted, long-term relationships with individual underwriters is becoming increasingly vital.
- (ii)** As markets consolidate, there is an obvious reduction in choice, leading to a potentially smaller market. Aside from the obvious, this problem is exacerbated because of the fact that insurers allocate capital to individual classes of insurance. Where PI might previously have been the sole focus of that capital allocation, it is now one class amongst many.

We will of course continue to monitor our own insurance markets for signs of trouble in order that our clients' cover continues to operate with minimum disruption.

(e) Increasing information requirements

There was a time when a simple three page proposal form was enough to see you through your renewal. Whilst in some cases that's still possible – and we're certainly championing making our clients' lives easier where that's appropriate – for most there will be more complication around the information required by insurers for renewal.

Insurers are getting more astute and are digging into the detail in a way that is historically unprecedented. At the time of the last hard market in 2001, the internet, and with it the huge volume of information it brings, was not really an underwriting tool. Today it is. Whatever size you are, expect insurers to scrutinise your website looking for trouble and expect questions from your broker related to information you have put out there.

For larger risks, insurers will look at the details of projects posted on websites, social media posts, and other readily available information such as found via Google Maps and Street View, and they will also be interested in board level changes and financial statements. They routinely cross reference information received against that held on their databases and third-party reference agencies.

Whilst securing this data can be difficult and time-consuming, correctly sourced and presented, it can mean the difference between securing renewal terms, or not.

(f) Digital transformation

As part of our own digital transformation project, we are moving towards a system which will dynamically produce relevant question sets based on your responses to secure the required amount of information from you, without bombarding you with unnecessary question sets. Equally, we will have a system which doesn't ask you questions to which we already know the answers. This will be rolled out to clients on a trial basis through 2020 and most (if not all) clients will have access to an online proposal form, coupled with their own space for disclosure certificates and other documentation within the next year or so.

RENEWING YOUR POLICY IN 2020? A GUIDE TO SUCCESS

Whilst the next 12-months will see some heavy weather come our way, we are confident we can steer a course through the worst of what's ahead.

Part of the uniqueness of our facilities is the way in which we go about assisting clients with risk management advice, from contract review, to claims avoidance advice, to presentations and 'lessons learned'.

All of this contributes to a portfolio of clients who not only benefit from that risk management advice, but who also collectively bring to the market a 'safer' bet for insurers than A.N.Other consultant.

It's for that reason that despite the market turmoil, we continue to benefit from adequate capacity, relatively 'spike-free' renewals and the ability to provide solutions to clients – current and future – that others can't. Whilst we can't get away from the fact that consultants are going to pay more, there are steps you can take to mitigate these impacts:

- 1. PLAN EARLY**
- 2. EXPECT GREATER INFORMATION REQUIREMENTS**
- 3. UNDERSTAND YOUR CONTRACT RISK**
- 4. BE PREPARED**
- 5. PRESENT YOURSELF PROPERLY**

1. PLAN EARLY

Start – and expect to be prompted to start – discussions early. Renewals are taking longer to finalise than at any other point in the last two decades. Even ‘straightforward’ smaller and medium sized risks (say with fees under £1m and undertaking ‘plain vanilla’ activity) should expect to be engaging with their broker at least two months ahead of renewal. For complex risks buying large limits, unusual risks, or firms impacted by claims, more time will be required. Meaningful engagement can be required six months or more ahead of renewal date.

2. EXPECT GREATER INFORMATION REQUIREMENTS

Insurers are demanding more data to provide renewal terms. If you are undertaking any ‘higher risk’ work, then they will have further questions and perhaps separate forms. Higher risk is an ill-defined phrase, but if we were to come up with a list of the usual suspects this includes:

- Basements
- Façade engineering
- Any involvement in cladding
- Any risk with pollution exposures
- Any work involving surveying or valuation of residential or commercial property
- Asbestos
- Swimming pools
- Stadia
- Any large or complex projects, particularly where this is out of your normal scope

Importantly, don’t regard it as necessarily a bad thing that you’re providing substantial detail to describe these activities. Insurers will (unless told otherwise) think the worst, so if all they know is that you undertake basements, they will infer that these are the multi-storey kind built in the leafier parts of London. If we can demonstrate otherwise, this can unlock significant underwriting differentials, and even discounts by properly explaining what it is you do – or don’t do.

3. UNDERSTAND YOUR CONTRACT RISK

Contract risk management is always a topic of interest and insurers will ask how you go about selling your services. Do you use your own standard forms or those of the institutions (ACE, RIBA, RICS etc.)? If bespoke contracts are used (and we all know they are the overwhelming majority) what do you do about contract vetting them for acceptability? Is your broker involved? Do you routinely include appropriate limitations and exclusions? Can you provide any statistics to support any of this?

4. BE PREPARED

If you’ve had claims, a post-claim review may be required and, indeed, it could be beneficial if drawing insurers’ attention to the particular characteristics of the claim and the remedial measures taken to prevent them occurring again.

5. PRESENT YOURSELF PROPERLY

Your broker should be helping you understand the particular risks that your business presents to the market and be helping you construct a narrative around why those risks have been identified, understood and mitigated.

Do not underestimate the value of such a written narrative or indeed a general overview of the way in which your business operates. If you can tell a good story about how you run your business, you need to make sure that your insurer hears it.

At the end of the day, costs are going up, so the more preparation and detail you can put into understanding insurers’ concerns and, more importantly, addressing those concerns, the better.

Building a Safer Future

Independent Review of Building Regulations and Fire Safety: Final Report

INDUSTRY CHALLENGE 2: QUALITY IN THE CONSTRUCTION INDUSTRY

“The mind-set of doing things as cheaply as possible and passing on responsibility for problems to others must stop.”

So said Dame Judith Hackitt in her interim report on the review of the Building Regulations. The message was as strong as it was stark, and was amplified by her final report, published in May 2018, which described the industry as being:

- Ignorant of regulations and guidance;
- Indifferent towards quality and interested in cheapness and speed;
- Lacking clarity on roles and responsibility; and,
- Suffering from inadequate regulatory oversight and punishment.

In short, Dame Judith said, the industry is stuck in a race to the bottom.

While it is not a race in which all involved in the industry are willing participants, sadly, the focus on price as opposed to quality and value is a motif that has been all too prevalent. Most will know from first-hand knowledge the pressures faced on today's construction projects: the razor thin margins; the incredibly tight schedules; the pressure to root out costs from conception to practical completion; and the consequences, in both money terms and to relationships, of not doing so.

These pressures inevitably take their toll on the quality of construction, the claims profiles of the professions and ultimately people's lives. The events at Grenfell serve as a stark reminder of the most extreme consequences.

Although Dame Judith's report is only part of the work that needs to be done, the recommendations contained within her final report are welcomed, but must be energetically followed up by everyone with a stake in our built environment. Industry must be ready and willing to heed the letter and the spirit of her recommendations, and it must be supported to do so.

Dame Judith's proposals, which contain more than 50 recommendations, detail plans for a new regulatory body and enshrine transparency of information through the life cycle of a building, supported by digital records and a requirement for robust product testing. The vision Dame Judith has set out will be welcomed by all.

However, regulatory change needs to go hand in hand with a step change in how industry delivers construction projects and the wider culture in which we work. This cannot be done by the supply side of the industry in isolation. Clients need to be persuaded that reduced cost alone is not nirvana. That persuasion must surely start with Government, taking the opportunity to reset its procurement strategy to enhance the role of value for money and quality. Only by instilling these goals at the heart of how Government procures construction can it support the desire to be a better client and take a positive lead with the wider industry armed with lessons from the recent past. The lone actions of Government would clearly not be a panacea. They would be a start and that must be a good thing.

The recommendations that Dame Judith has set out address the root and branch failings in the industry; she has aimed for a cure, not a palliative. As the BESA note in their response to the final Hackitt report, treating fire safety by being required to tick a box satisfying a criterion that a building has been sealed does not address the whole issue. Indeed, as the BESA rightly point out, in 'solving' the problem in this fashion, without at least trying to address the broader cultural problems, the most likely result will be severe problems with breathability and damp.

Dame Judith's 'cure' stems from the report's emphasis on an 'outcomes' based approach and treating buildings as systems; systems which first need designing, and only when that design has been settled and completed, can construction be allowed to take place and 'operation' follow.

This can only be achieved by following through on the full set of proposals, by ensuring that the gateways that are established are satisfied before moving onto the next stage, thereby ensuring that a design has been settled before it is built. These processes need accurate documentation, or as the report states a 'golden thread' of good quality information to provide building owners with an accurate record of what has been built.

The repudiation of the cart before the horse approach that gives us the inefficiency and danger of the 'Build & Design' process could be within the industry's grasp. If this can be delivered upon, then there is the potential to bring about a once in a generation blow to the underlying cause of a considerable number of PI claims that we see on a day to day basis.

POTENTIAL ACTIONS

The Hackitt report echoed similar comments from a range of previous studies in relation to the culture of compromising quality in order to satisfy short-term cost constraints. Consultants must remember that they take full responsibility for acquiescing to any revisions to their advice, even where those revisions were instigated by others. 'Collaboration' can quickly morph into working under duress; consultants may be lulled into feeling when decisions are taken that the team is sharing responsibility for developing a design, but in reality, the designers remain primarily responsible for any inadequacies.

The courts have set a consistently high bar for professionals and usually have little sympathy for the argument that a designer knowingly compromised his professional standards because he thought that was what his client wanted.

The culture within the construction industry is too deeply rooted for consultants to be able to change it on their own. Whether or not employers and contractors are also prepared to engage in a cultural shift now remains to be seen.





INDUSTRY CHALLENGE 3: POST GRENFELL – A NEW APPROACH TO CLADDING

The immediate aftermath of the Grenfell Tower fire highlighted once again concerns relating to cladding and fire safety in general. No-one should have needed this situation to be highlighted further. Cladding fires on high rise buildings are not new and there are reported cases going back to the 90s. Whilst the shock at the loss of life at Grenfell Tower continues to resonate throughout the industry, the grim reality of Grenfell is that it is unique only in the number of people who lost their lives.

It is also not just a problem confined to the UK. Cladding fires have occurred on tower blocks around the world; from Mermoz Tower in France to the Lacrosse building in Melbourne via the Marina Torch and The Address in the UAE, there are around a dozen reported fires of a similar type. Despite many of these being very significant fires often on very tall buildings, none caused the number of fatalities as we saw at Grenfell. Press reports indicate that these four fires caused two deaths.

Whilst two deaths are two too many, a key question will be: what was different about Grenfell that led to such an unprecedented number of fatalities? It can be hoped that the inquiry, led by Sir Martin Moore-Bick, will answer this question and many more.

From what we know, it is unlikely that any single failure gave rise to Grenfell. As Moore-Bick's terms of reference recognise, the failures which resulted not only in the rapid development of the fire, but also the large loss of life, were likely caused by the systemic failures of more than one system. These failures are likely to include problems with design and construction, yes, but it will very probably go beyond that.

One such area that is likely to come under scrutiny again will be the way in which projects are procured. Our dialogue with clients shows that the procurement of a façade is a microcosm of the wider problems in the construction industry. The fragmentation of design and construction responsibility is all too apparent in this small sector. ‘Interface risk’ is rife.

But the problems go beyond interface risk. In the aftermath of the tragedy, insurers’ focus was mainly driven by a desire to understand the potential exposures sitting within their portfolios and support their insureds and the broader population by assisting with the cost of remediating problem projects. This is work that has started, but as Robert Jenrick, the Housing Secretary, noted in his statement to Parliament on 20 January 2020, it is work that has been too slow to complete.

So far, consultants will have been faced with requirements from insurers to collate significant amounts of additional underwriting information as PI policies come up for renewal. Whilst this was initially targeted at social housing and other ‘high rise’ buildings clad in ACM materials, the net is being cast much more broadly and insurers are taking a significantly wider interest in the broader ‘fire safety’ of the building as a whole, including other external cladding systems and the internal mechanics of fire safety too. In addition to questions relating the specification, selection, design, installation and certification of cladding or cladding systems, we can expect insurers to turn their attention to other aspects of fire safety, such as considering whether the specification of fire doors is ‘compliant’.

In the wider marketplace, the spectrum of insurer information requirements is highly variable and despite Grenfell having occurred some three years ago, the amount and type of information is still fluid. That will not change as the second part of the Grenfell inquiry gets underway and by the time it completes in mid-2021, we may be asking far more reaching questions on fire safety than we do now.

Various insurers are expressing concern that safety audits have highlighted serious issues with the fabric of older buildings, which have been changed beyond recognition by decades of retrofitting cables, conduits, windows and access points. This has fundamentally changed both the fire safety cases of such buildings, which is a life threatening problem itself, but it has also exposed broader issues of the absence of anyone taking a holistic approach to building maintenance and safety. The extent to which that information might be required for renewals going forward will be a topic of some debate in the years ahead.

At the moment, whilst investigations are still underway, there is a high volume of ‘cladding’ PI notifications in this area albeit that relatively few are being pursued with vigour pending the outcome of the public inquiry. Many are currently subject to standstill agreements. In addition to the financial costs of Grenfell, there are likely to be significant sums spent elsewhere in remediating problem buildings which will ultimately in part at least fall to the insurance market to bear. The largest volume of notifications giving rise to this concern has been made by Approved Inspectors and Architects in circumstances where cladding used on a high-rise building is now alleged to be non-compliant.

For most we have seen, those consultants' involvement in the selection of relevant products may have been peripheral and relatively passive at the relevant time. However, the professional team are potentially exposed on a joint and several basis with relevant contractors if they 'approved' (or even merely reviewed without comment) products that were non-compliant.

Obviously, each case turns on its facts in this regard. More worrying is the fact that so many cladding subcontractors who should be the principal defendants are insolvent, uninsured or inadequately insured for the magnitude of loss now faced by claimant building owners.

POTENTIAL ACTIONS

To date, insurers have wanted to understand the extent to which construction consultants are accepting responsibility for the specification, selection, design, installation and certification of cladding or cladding systems. They have been particularly focused on multiple occupancy residential, mixed use developments and public buildings, especially if above 18m in height and are asking more specific questions in relation to any projects involving Aluminium Composite Material ('ACM') panels. That relatively narrow interest is starting to widen, and the same questions are being asked of other cladding systems, not just ACM.

With that in mind, and if you have not already done so, it would be prudent to review any underwriting submission you have made in previous years and consider as part of your renewal whether your insurers' requirements have changed since that information was collated. Likely areas of change include the nature of the cladding system, where insurers may want to know about other types of system and broader questions relating to fire safety.

From the perspective of considering claims, or potential circumstances which might give rise to a claim, the fact that your firm has been involved in the design or specification does not automatically require you to notify your PI insurers of a circumstance that might subsequently give rise to a claim.

Of course, if an internal review highlights any concerns about a specific project, you should talk to your broker to determine whether a precautionary notification to your PI insurers is appropriate in those specific circumstances.

The vast majority of consultants who can demonstrate little or no exposure are renewing without the need for insurers to apply any cover restrictions. As always, good records and clear contractual documentation are proving to be great assets.



**We are considerate
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INDUSTRY CHALLENGE 4: OUTSOURCING AND PROCUREMENT — LIFE AFTER CARILLION

Carillion got into trouble in mid-2017, when inside a five-month period it lost both its chief executive and finance director, issued three profits warnings and ultimately saw its share price drop by 90%. Despite these apparent signs of trouble, it won significant contracts, including a major slice of HS2, MoD work and another major rail project.

Although the post-mortem will perhaps never reveal the true causes of failure, Carillion's problems seem to go further than problems with corporate governance. The underlying business is reported to have been struggling with three huge contracts where problems were brewing.

As widely reported in the trade press, the £350m Royal Liverpool Hospital was scheduled to open in March 2017 yet remains a building site. A similar story was seen at the £335m Midland Metropolitan Hospital where the cost of getting the contract back on track is likely to be £60m or more. In Scotland, the Carillion backed consortium constructing the £745m Aberdeen Western Peripheral Route has run into significant difficulties and costs have spiralled.

At this scale, one badly performing project would be a significant drain on resource and management time, but three major projects in trouble at the same time was always going to be difficult to manage.

When a £5bn revenue company, responsible for the delivery of strategically important UK assets fails, questions need to be asked about how it found itself in that position; not least as it has now been confirmed that on the day it liquidated Carillion was the main contractor on 57 construction projects worth a total of £5.7bn.

Feedback from our clients consistently tells us that the procurement teams of large corporates or Government departments are insufficiently skilled, trained and resourced to deal with their project allocations. Complaints about the inability of the procurement teams to recognise a 'good value' submission are not new – but the volume of those complaints is rising.

This is problematic for all sorts of reasons but given that tenders for large projects can take months and cost firms tens, if not hundreds of thousands of pounds, ensuring that as many firms as possible are involved in the process, and that those responses are accurately assessed, is crucial.

POTENTIAL ACTIONS

Fundamental overhaul of the way that projects are procured is needed to not only avoid another Carillion, but also to stimulate the SME marketplace, drive effective competition and engage a more diverse range of firms in Government backed work.

This requires Government and others to recognise that placing huge, long-term contracts, with suppliers as a result of a single competition, places them and the taxpayer at significant risk. Risk of corporate failure; risk of poorly framed contracts giving rise to runaway costs; and the risk that by investing so much in so few firms, the market will be stifled, undermining the very innovation that Government seeks from the private sector.

The starting point must be that Government, along with any business procuring professional services, need to make it easier for firms to get involved and participate. That means encouraging procurement teams to 'lot' projects in smaller and more discrete packages – perhaps at the same time looking to stimulate the local regional economies.

The benefits could be very substantial, not only lowering firms 'risk pricing' contingency, but also encouraging more SME involvement. This in turn would boost competition, stimulate innovation and potentially make delivery more cost effective.

Similarly, buyers need to get 'smarter'. This is not only a case of them being encouraged to develop and expand vital e-procurement systems, but it involves them being educated as to what makes the lives of SMEs more straightforward and creating the space for these firms to innovate.

Equally, customers need to be reminded of the costs of doing business with them. Bespoke legal agreements and huge tender packages do nothing for most businesses other than put them off. A standardised set of contracts will save vast amounts of time in reviewing, vetting and commenting compared to bespoke contracts. It is a model utilised readily in other European territories – for example, the Nordics where the standard ABK form remains widely utilised.

A recognition that a good design team isn't necessarily a function of a 'big name' is worthy of discussion. If procurement teams were given the time and resources, they might look beyond the headline name and recognise and value the individuals involved, with their own qualifications and experiences. Tenders that effectively exclude firms of a certain size, or trading experience, might inadvertently exclude a team of consultants with a wealth of experience and talent.



INDUSTRY CHALLENGE 5: NAVIGATING A NEW WORLD OF DATA

According to IBM, more data has been created and stored in the last two years than in the entire previous history of the human race – that's some 17MB of data being created every second for every person on the planet. With technologies just around the corner that will allow data capture, communication and storage on a scale and orders of magnitude greater than now, all industries – be it construction or insurance – are going to need a plan.

Sadly IBM also tells us that we are currently doing 'largely nothing' with this data. They estimate that less than 1% of companies' data is analysed and that 80% is stored in an unstructured and analytically useless way.

The inability to use the data that we all gather through our business undertakings is shaping up to be a critical problem, either because we will lose competitive edge against a nimbler conventional – or new – adversary, or because we become unable to cooperate and collaborate with our peers. Whether it is the business of insurance broking or engineering, until very recently the ways that we have collected and stored data has held back our ability to analyse and use this asset.

For example, as part of our claims analysis we can look at the incidence of civil engineering claims as a proportion of the total number of notifications. We can also say, for all the use it is, what the mean average civil engineering claim might cost. What if, long before the ink had dried on the cheque, we could accurately estimate what a claim might cost by comparing its progression against historical averages of the type and value of the claim, the nature of the project, the scope of services and the client involved?

What about providing a risk index of professional activity, generated by using the frequency and value of known claims against the overall value of fees generated? Might all this knowledge and assistance influence which clients you work for and what element of 'risk pricing' you would want to factor in? Might it allow you to tailor management and in-house legal time on the projects most likely to cause problems? At best it could give rise to a series of hugely valuable risk management tools.

For the complex world of construction and engineering, the potential gain from a 'digital transformation' is huge. Of course, the idea that consulting engineers and architects are sitting on reams of useful data is not particularly new, nor is the fact that they use that data to help solve a client's problems. Increasingly however, we are seeing insureds utilise multiple data sources generated by infrastructure, people and clients to offer sophisticated digital services.

Early examples of the deployment of these principles have included some fascinating demonstrations of what might be achievable. What if a system could reduce the time taken for an engineer to review and validate a piling rig operator's work from a couple of hours per pile to seconds for all the piles on the project?

We have already heard of some firms leading in this area describe systems which, through the analysis of millions of piles, databases on soils and access to some clever software, can do precisely that. It's clear that this is already the state of the art, albeit that it exists only at some firms and on some projects.

POTENTIAL ACTIONS

It is difficult to believe that every consulting engineer will have the resources, in terms of money, time, staff, and knowledge, to warrant investment in such digital transformation or have the framework to scale up sufficiently to exploit it.

The very large practices might well have all of the pre-requisites to do this for all fields in which they work, and 'niche' practices might harvest data and create models relevant to their own specialisms. But the typical SME 'generalist' engineer will have to consider carefully how they access this data economy and, in fact, to what extent they will benefit at all.

One challenge is understanding where the raw data will come from. It could simply be generated from work undertaken but not every business will have enough activities to produce data. This leaves open the possibility that some firms will sell the raw data on for exploitation by others and raises the question on how to assess its efficacy: Could this perhaps foreshadow a world where a 'data market' evolves and the chief asset of consultants becomes the data that they generate?

Aside from the commercial market, the other massive repository of data of all kinds will be Government. Serious questions need to be asked now as to how and under what terms HMG data will be licensed and whether there will be open – and free – access for all.



INDUSTRY CHALLENGE 6: DIGITAL ENGINEERING — LIFE BEYOND BIM

Data is of course only a part of the overall proposition. A software environment is needed to provide the analytical tools and enable the creation of any design consequent upon that analysis.

Six years ago, we talked of Building Information Modelling ('BIM') changing the way that clients viewed their built assets by using 3D models and providing readily and easily exploitable data. Although the 3D representation of the structure that is inherent with BIM has of itself brought benefits for clients, architects and engineers, it is the data which sits behind that model which is of greater value. Used properly, it was apparent that the adoption of BIM could drive both efficiency and quality.

A BIM is more than a 3D representation. It contains a wealth of information in the form of 'smart' objects relating to the physical and functional characteristics of the building and also project life cycle information. A smart object for, say, a water pump, usually contains data about its supplier, its operation and maintenance, flow rates and dimensional clearance requirements, which is light years ahead of a 3D CAD drawing.

This concept can be taken further and so-called 'families of objects' can be created. This involves the creation of a set of closely related digital assets – so the water pump might be part of a larger family of objects relating to an industrial heating system.

Having the ability to create such a 'family' was a major step forward, but it did bring risks. The chief concerns with such families were ensuring that they were properly designed, populated with information, catalogued and quality assured. The benefits they bring – cost and time saving – are derived in part from the fact that they can be used repeatedly on different projects with relatively little further development. However, if that original information was wrong, trouble lay ahead.

POTENTIAL ACTIONS

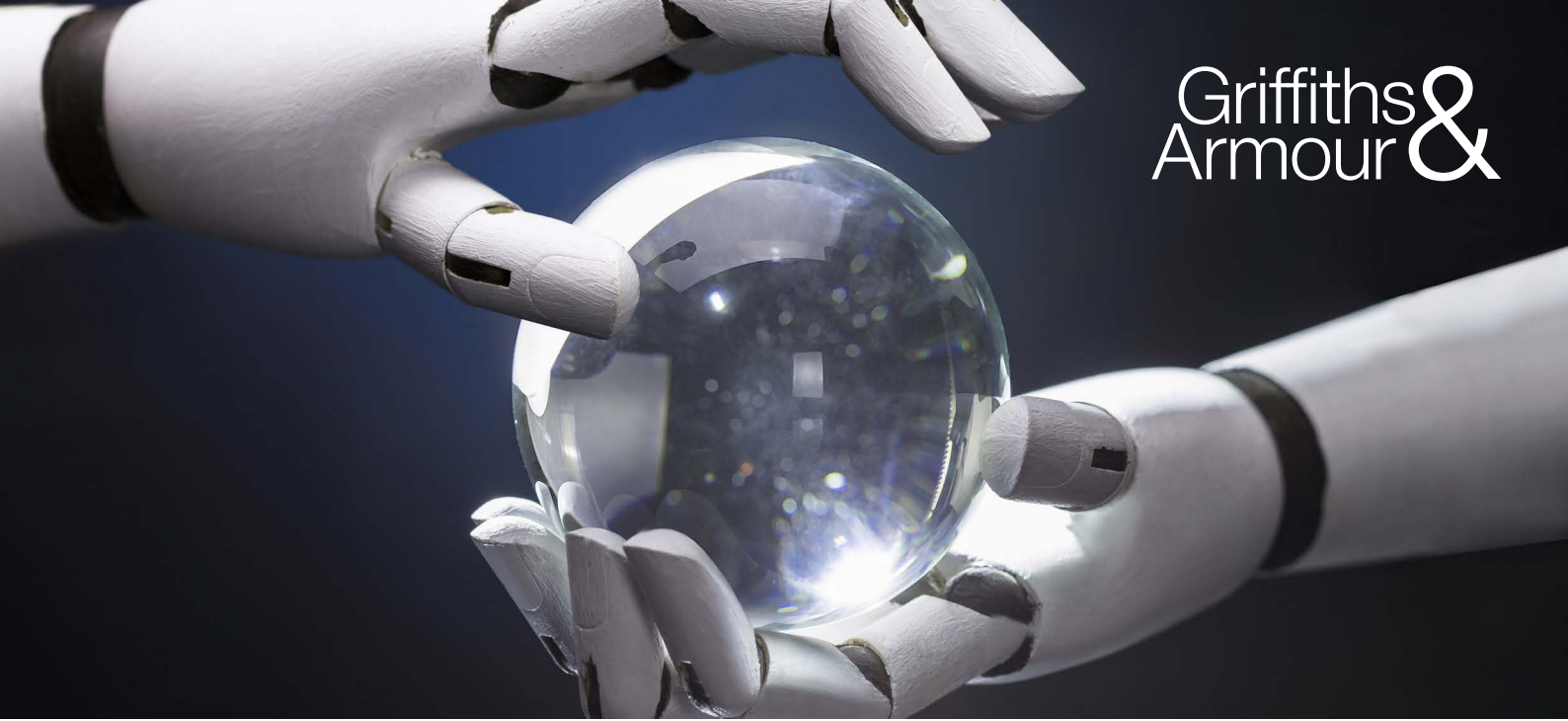
Today, the deployment of such families of objects in a BIM environment is but one thread amongst the many that are being woven together to create digital engineering. As with BIM back in 2012, quite what this means in practice is still somewhat nebulous, but the accepted view seems to be that it means a blend of the characteristics defining the Third and Fourth Industrial revolutions.

Which is to say that it will be based on advances in 'traditional' digital technologies such as computers and the internet and new emergent technologies such as robotics, artificial intelligence, machine learning, the internet of things and remote sensing.

Against this backdrop it seems that the progression of digital engineering will, at least for the next few years, be patchy. Much as with BIM, we will see some firms streaking ahead, utilising digital engineering in the broadest sense, while others develop their digital skills and methodologies in slower, more iterative steps. Others won't do anything – yet the one sure risk of standing still is to be left behind.

How this rapidly developing basket of technologies will ultimately define digital engineering will make for an interesting few years. Part of its promise, though, is a transformational shift in the way projects are procured, liabilities assessed and ultimately how those involved in the built environment make money.





INDUSTRY CHALLENGE 7: PREPARING FOR A DISRUPTED FUTURE — NEW BUSINESS MODELS

Read any report that gazes into the crystal ball, and in ten years' time we can expect a whole host of new technologies to come on-stream to fundamentally change the way we work, earn our money and ultimately live our lives.

Automation and robotics will drive significant developments in artificial intelligence and autonomous vehicles, which will radically alter urban spaces and infrastructure development.

Connectivity and data harvesting will be transformed by 5G and 'smart dust' technologies. The materials we'll use tomorrow will have radically different properties and range, from programmable materials to nanomaterials; they'll be capable of things unthinkable today. All this will profoundly impact engineers and designers, allowing them to make better decisions more quickly, and open doors to increasingly complex projects.

There are dozens of technologies in the pipeline which are certain to disrupt construction in the years ahead, ranging from new high-performance materials, through to fusion reactors, quantum computers, foam batteries and pollution digesters. Any one of these could be transformational and does imply that tomorrow is set to be a very different world.

POTENTIAL ACTIONS

Considering the above 'piling' example, it's the concept of a transformation which is fundamental. The change goes beyond the promise of an iterative improvement to shrink the time taken to analyse piles. Rather, it promises to revolutionise the whole business model around undertaking, resourcing, delivering and pricing those services.

At the most basic level, can we still charge the equivalent of hundreds or thousands of hours of an engineer's time for a computer to do a second's work? The value to the client is the same – he gets a pile design which works – but the input cost has changed from an engineer's time to the cost of the model and the associated software and computer power.

This example raises a number of interesting questions for the industry based around cost versus value, whether companies of the future win or lose on how cheaply they can produce and model data or, for that matter, whether the data itself becomes more valuable as a commodity. If it does, how will this impact those firms who are reliant on others for their data inputs because they don't generate enough of their own? In turn, this surely must affect the historic risk versus reward equations, and established risk pricing mechanisms.

With the construction industry likely to address the myriad of these issues at radically different paces and in different ways, the marketplace has to find a way to deal with these different speeds.

There are fundamental questions to answer. The Association for Consultancy and Engineering has made a start and their 'Future of Consultancy' campaign outlines several business models for the future which go beyond measuring and rewarding inputs and cater for a future where outcomes might be the service being provided.



INDUSTRY CHALLENGE 8: A NEW LIABILITY MODEL FOR A DISRUPTED FUTURE

Given the scale of likely disruption, it is unsurprising that there are differing interpretations as to what digital engineering might mean for firms looking to exploit it. For those at the cutting edge who are already utilising aspects of digital engineering on projects, they are gearing up for potential transformation to their business models.

Whether those changes are considered good or ill depends on who you ask, but we can't help believing that progress in this area will inevitably be a force for good. Whatever it looks like, building in the future will involve connected systems of sensors, intelligent machines, mobile devices and new software applications integrated on a central platform of BIM.

The obvious result is that tomorrow's built environment is going to be subject to more scrutiny, in a far more 'granular' way and in real time.

In this version of a digitally engineered future, clients have access to real time data on their assets. Be it energy performance, the number of customers through a shop door or the time taken to pick parcels in a warehouse, clients will be able to interrogate a range of metrics; all of which opens up new avenues of opportunity and risk for consultants working in the built environment and creates some interesting questions against which future performance might be measured.

Does the technology of tomorrow mean that the customer might have a contract that imposes liabilities around how the project addresses the following questions:

1. Has the design delivered the client's project life cycle targets on environmental impact?
2. Did the bypass reduce commuting times on X, Y and Z roads by 10% during peak times?
3. Is the model delivering £x savings per annum by allowing predictive facilities management to take place?
4. Did the design of the warehouse reduce picking times by 20%?
5. How closely does the finished building match its 'digital twin'?
6. Has the budget of £10m been met and, if not, can we have a cheque for the difference?
7. How will the collaborative team of consultants and contractors fund this?

POTENTIAL ACTIONS

The extent to which clients use technology to monitor and report on assets and impose liabilities is an area to watch as digitisation of built assets becomes commonplace. At the moment, an obligation to meet 'performance specifications' is capable of being covered by most PI policies. The conceptual difficulty here is what work does the firm of tomorrow actually do to meet that specification?

Traditionally, today's engineer would produce a design based on client requirements, use their skill, knowledge and experience and utilise computer aids to help him produce a scheme that discharged their liability. However, it is possible that the engineer of the 2030s might actually be exposing his PI insurer to a failure of their software, data sets, or his cyber security systems and processes. The question then is whether this matters?

Potentially this change will fundamentally alter the underwriting criteria that insurers of the future adopt. Whilst tomorrow's engineer will undoubtedly have very many of the skills required today, it is certain that much of what is undertaken overtly by an engineer now, will be done by a computer system, calling upon internal and external data sets, artificial intelligence and analysis from remote sensing technologies.

The technological paraphernalia will undertake calculations which are impossible to check. This might – and indeed should – reduce the chance of human error, notwithstanding the points we've made for decades about checking computer calculations.

However, an insurer will rightly want to know not so much who you are, what your qualifications are and what is your experience, but what software do you use, what data sets do you use and how do you ensure the integrity of your data.

Finally, going back to our piling example, the effect of the change in the business model might drive a coach and horses through existing rating models used by insurers to generate premiums. If suddenly a big piling job only generates a few hundred thousand in fees, rather than several million, it will not take long for insurers to consider whether their technical rates stand up to the new 'efficient' way of working.



INDUSTRY CHALLENGE 9: COLLABORATION – MAKING IT WORK IN PRACTICE

Digital engineering will mean far greater collaboration – between the consultants working on the project, the contractors building the project, data providers, software houses and even collaboration with the client who will own the project.

Collaboration, of course, is not and should never be the enemy of effective risk management. If done properly, it generally means a happier client, a more engaged project delivery team and fewer claims.

We are already seeing projects being undertaken where the firms delivering the design are working together in ‘integrated teams’. These teams typically are staffed by consultants from all those involved, who work together for the good of the project. Supervision might come from different firms at different points, decisions are made collaboratively and, where necessary, ratified by everyone.

This harmonious world is fine until there is the suggestion from the client that the design isn’t working quite as expected, and/or that it was delivered late. Here, in our narrow view of the world, problems arise unless this has been considered at the start.

Problems such as: “Who is responsible for the design issue?”; “Which elements of the project are on the critical path and which are falling behind?”; “Who signed off on decisions made?”; and, “Is there someone we can join in the action to reduce our exposure?”.

Identifying where blame lies is usually tricky, and often expensive. With heavily integrated teams, however, this becomes virtually impossible. Given that design changes and developments are made and based upon inputs from the whole design team, with amendments, tweaks, suggestions and changes made collaboratively, accounting blame to one team member – or one firm – is technically difficult and philosophically unwelcome.

It is technically difficult because of the myriad of decisions, suggestions and ideas that led to the design change or changes that cause problems. It is philosophically unwelcome because doing so would destroy the collaboration and promote ‘back-covering’ as the chief goal.

POTENTIAL ACTIONS

This integrated, collaborative environment is at the moment the exception, not the rule. Where it occurs it invariably requires a special insurance solution to be developed. This solution can take several forms, depending on the nature of the relationships between the parties, the scope of each partner’s work, the extent of client involvement in the project, the project’s size and complexity ... the list goes on.

The common thread amongst the solutions that tend to work is the idea that, amongst the team delivering the project, it is recognised that there is no blame. No litigation. No fault. Whilst outside third parties may claim against the team, either individually or collectively, as between the team members there is no finger pointing.

The claim is settled on its merits and whatever insurance solution has been put in place responds. If it’s a project policy, the policy pays accordingly and the excess is met. The excess is often paid in line with the individual firm’s share of the revenue on the project.

More novel insurance solutions can be concocted, such as each firm’s PI responding in line with a pre-agreed loss mechanism. Here, each firm’s PI pays its share of the claim irrespective of fault based on a pre-agreed percentage.

Again, the percentage figure usually equates to the firm’s financial take from the project, or some other equitable measure. It goes without saying that these arrangements all require special arrangements with insurers and, ideally, an agreement between the insurers of the various parties dealing with claims handling, for example. Whilst these options are available, they are not straightforward arrangements and take time to put into place effectively.

In such compromise scenarios, there are winners and losers – and thereby careful selection of collaboration partners can be the difference between profit and loss on any individual project.



INDUSTRY CHALLENGE 10: INSURING THE FUTURE

If, as we expect, there are versions of a digitally engineered future that provide for intense collaboration amongst the teams, either physically integrated, or in the virtual world of BIM level 3, then we need to think about how insurance can support a liability framework. This means understanding where responsibility is not clear cut and where, irrespective of clarity, and for the reasons outlined above, it may be in no-one's long-term interests for the usual blame game to unfold anyway.

The extent to which we need to change future PI policies to meet the demands of a digitally engineered world depends on how much it looks like the past. With the past becoming a different country faster than ever, trying to understand to what extent the goals of such a future would be different from now and how the insurance and legal landscape needs to change to support those goals are profoundly difficult questions.

For the foreseeable future, buildings will still need to be designed, the ground will still need to be investigated and understood, and work will still need to be supervised. The basic framework of liabilities which exists around these activities will still be largely insured by good providers of PI as it is now. Most projects will be capable of being insured using traditional insurance models. In an industry slow to change, it should be no surprise that there will be large pockets where nothing much will be different.

Where change comes, these basic tenets of legal responsibility will still exist, but this is to overlook some fundamental changes that could take place, both in the contractual liability models which may be adopted and in the nature of the service consultants might ultimately end

up offering. If we are facing a future which is predicated on the use of 'big data' and remote sensing technologies, coupled with enhanced collaboration, this does unearth a number of additional areas of liability that most consultants will be unfamiliar with and that a traditional PI policy is not well equipped to help with.

When we talk of insuring the future, are we talking of insuring a consultant's digital designs, or is it the data he produces and sells or a software platform on which others rely? Equally, as warned back in 2012, in moving to a truly collaborative level 3 BIM world, with all the problems for the traditional model of allocating responsibility that it brings, are we any closer to either collaboration nirvana or an insurance product to support it?

Unsurprisingly, given the number of firms working at this level, there is no silver bullet to the potential insurance issues surrounding either large scale collaborative working, or consultants fundamentally changing what it is that they do. There are, however, the seeds of what the future might look like in some of our current solutions to these challenges. For some years, Griffiths & Armour supported and led the insurance industry contribution to the model of Integrated Project Insurance ('IPI') and whilst this has been the subject of a small number of successful trials, it has yet to gain significant traction.

Despite this, IPI, or a variant of it, must be the answer to the long-term trajectory that the industry is on and it is worth setting out a little about the IPI model which is ultimately there to solve the problems of collaboration by allowing the team to collaborate in a spirit of 'no blame'.

In essence IPI is designed to insure the client and the other partners, be they consultants, manufacturers or construction managers, under the same collective umbrella, and removes the requirement for traditional adversarial based PI arrangements. It does this by blending a number of traditional covers (Contractors All Risks, Public Liability and Latent Defects) with a financial loss extension, which covers the team for costs incurred above the target cost of the project, minus any 'pain-share'. Rather than having to sue each other, the project participants pay their agreed pain share (equal to their take of the 'gain') and the insurance product picks up the rest.

The contractual and insurance backdrops to IPI are complex and novel and there is a long road ahead of it before it becomes a commercial reality, if it ever does. We have a product in IPI that is at the extreme fringe of insurers' appetite and bluntly answers a question few of our clients are asking. For some projects, with some clients with the right professional team, IPI might provide a solution and the scope of its applicability will become clearer in time.

PRACTICAL STEPS THAT EVERY CONSULTANT CAN TAKE TODAY

1. SEEK CLARITY OVER COLLABORATION

Clients who are seeking proper collaboration amongst their teams are likely to need something different from the norm, both in the sense of the contractual agreements they are looking to use and how these support the way in which the team works. Requiring collaboration on the one hand, whilst promoting an adversarial approach on the other, is inconsistent. We would certainly recommend referring any contractual documentation to your broker. For despite the obviously positive aim of such contracts, ensuring they are right is important and they do raise issues of their own which may not be familiar territory for the unwary.

These structures often mean that a traditional approach to insuring the team's PI risks is not appropriate and alternative arrangements ought to be considered. In the past, this has meant that a new standalone 'project' PI policy is sourced, though this is generally the preserve of larger projects and comes with its own problems, principally run-off and the often significant up-front cost.

Where a project policy is not viable, the PI policies of the team can still be adapted to make collaboration more straightforward by agreeing 'no fault' mechanisms, such as structures that provide that each party's PI responds to a pre-agreed proportion of a claim, irrespective of who was at fault. Again, there are pitfalls with this approach, particularly if the range of activities being insured is diverse with obvious pockets of significant exposure amidst more benign activity undertaken by others. And yet whilst mechanisms such as these are not always appropriate, they can do much to foster inter-firm collaboration, by reducing tensions between firms in the event of a claim.

2. UNDERSTAND YOUR DATA AND IP RIGHTS

Although this is more a question for legal advisers, it will be important to ensure that you have sufficient rights, both to your own data and that of third parties. In relation to your own data, it is obviously important to ensure that you retain sufficient IP rights in it to allow you to continue to use the data for the project you are working on and perhaps for future projects. Being able to use data on other projects is likely to become increasingly critical as we move towards a world where our data becomes key to the services we deliver. For data belonging to third parties, again we would recommend that you ensure that you have sufficient rights to access it for as long as you need to in order to complete the work.

3. ADOPT APPROPRIATE PROTOCOLS WHEN USING BIM LEVEL 2

Consider using the increasingly accepted CIC protocol on projects where appropriate. Whilst the industry has done much in the last few years to develop such protocols, the CIC version must still be regarded as the best standard form document.

Where using bespoke forms, you should check for appropriate limitations on data security, data corruption and that, as with any other document, no unusually onerous conditions are imposed upon you. Contrasting it with the protections afforded by the CIC document is a sensible starting point.

From a PI perspective, no significant problems should be created by working in a level 2 BIM environment. See our previous 'Best Practice Guide' for more information.

4. BE AWARE OF RESPONSIBILITIES WHEN USING BIM LEVEL 3 OR A NON-FEDERATED MODEL

If you have not already done so, speak to us before committing to the project. Inevitably, projects using non-federated models blur lines of responsibility and we will need to satisfy your insurers as to the measures that have been put into place to mitigate the risks arising from this fact.

It is expected that few (if any) projects are currently planned which utilise level 3 BIM, so it is not likely to become a mainstream problem for several years.

5. CONSIDER A CYBER PRODUCT

The world of cyber insurance is one of the most rapidly changing in our industry and it is no wonder. The increasingly accepted reality that anyone can fall victim to a cyber-attack is borne out by statistics – 43% of UK businesses have fallen victim to cyber security breaches, rising to 72% for larger businesses in the last 12 months. The scale and scope of the problem and the ‘innovation’ shown by those responsible is remarkable.

The insurance industry has not stood idle. The first cyber policy was underwritten in 1997 and, whilst innovative at the time, it provided essentially only a third-party liability policy (basically a hacking policy). Today, a typical cyber policy might cover:

- Investigation costs of a cyber breach (including investigating the cause of the breach, how to rectify the breach and how to prevent another occurrence in the future)
- Business losses associated with the cyber breach, network downtime and data loss
- Costs incurred in notifying others of any breaches of private information
- Costs associated with any lawsuits arising from a cyber breach
- Cyber extortion costs
- Digital asset replacement expenses
- Media liability

Such policies are far more likely to cater for the types of losses that consultants might face in the event of ‘cyber’ exposures from using BIM. Perhaps more importantly for the near future, they’ll help firms deal with the now commonplace cyber-attack.





INDUSTRY CHALLENGE 11: THE IMPACT OF BREXIT

The only certainty about our future is that it remains uncertain for insurers, brokers and insureds alike. The obvious uncertainty ought to have meant that all brokers and insurers set up subsidiaries within EU countries to cater for whatever version of future trading relationship Brexit might bring. We are happy to report that in Griffiths & Armour Europe, we have established mechanisms where our clients' interests can be covered whatever the eventual outcome. Not all brokers do and that will be an increasingly difficult problem to address as we march inexorably towards the end of the transition period on the 31 December 2020.

Rather than try to guess what might happen, we have a few pointers to convey to any prudent insured with EU exposures...

Relax

Firstly, the fact that you undertake work on projects in other EU countries does not, of itself, mean that you will be impacted. It is likely that your UK policy will be more than adequate to cover services provided to overseas clients even if the worst case scenarios were to come about.

For firms with legal entities and offices in the EU, more care is required. Here, it's possible that your UK 'global' policy might require modification in order to meet the (as yet unconfirmed) requirements of the future. That said, it's in no-one's interests for the UK and EU insurance markets to separate without a deal.

Some form of an extended equivalence regime is likely, but failing that major UK insurers, including Lloyd's will have established EU subsidiaries through which business can be placed. Whether this is by utilising 'substantive' local policies, or through 'fronting' arrangements remain to be seen. Even in the worst case scenario, Griffiths & Armour insureds should anticipate continuing to enjoy the broadest protection available.

Consider a broker with a European footprint

As members of the Assurex broking network, Griffiths & Armour have close partners in all EU countries with whom we currently work to provide insurance solutions for clients. It has always been our philosophy to connect international clients with our local partners, to provide tailored, knowledgeable and timely services wherever in the world they are based. The Brexit uncertainties of the future will mean that the network will be even more important in the next ten years as it has been in the past.

As we have already mentioned, we have our separate entity in Dublin, which will allow us to continue to offer unfettered services to EU markets and to ensure that our clients continue to benefit from our advice and the peace of mind we offer whatever the dawning of 1 January 2021 brings.

Opening an EU office?

Suffice it to say for the present that there is quite a bit of chatter amongst our client base on this subject, with many firms making tangible changes in response to the ongoing negotiations.

Should you be considering opening up either a branch office or registering a local entity in another EU country, then do please get in touch with your usual Griffiths & Armour contact. Whether this is just general advice on the insurance requirements (both PI and general insurance requirements) or putting you in touch with one of our partners, we'd be delighted to help.

Consider your HR strategy

Anecdotally, we are hearing of significant numbers of EU nationals working in UK firms looking to relocate back to their home countries. Whilst directly addressing this is obviously beyond the means of many practices, some have come to more formalised 'home' working arrangements with overseas staff, or at the larger end, have set up EU-based design houses.

If keeping the staff involved remotely is not practicable, then consideration obviously needs to be given to their replacement in what will likely be a smaller pool of consultants, with all the concomitant problems of salary expectations and lack of skills that might mean.

Firms who can offer flexibility, good career paths and working environments (in addition to interesting work and a good salary) are likely to do better than the average. Consultancies do exist who can assist with analysing staff demands and offer help to organisations to maximise their appeal to current and potential employees.



INDUSTRY CHALLENGE 12: CLIMATE CHANGE

In July 2019 the UK Government committed to new legally binding targets that will see the UK reduce its greenhouse gas emissions to net zero by 2050.

In order that the Government meets these targets, much must change and the construction sector has a significant part to play. With construction activities making up a substantial proportion of the UK's carbon emissions, parts of the industry are rightly recognising their pivotal roles in seeking to reduce that contribution.

This will require new delivery models to be developed and utilised on projects which are based on environmental and social outcomes and around the concept of 'natural value', plus the widespread adoption of tools and databases to accurately measure success or failure.

Along with others, the ACE have started to do some work to create complementary (and perhaps completely alternative) models under which consultants' work can be rewarded as part of their 'five capitals' models in their 'Future of Consultancy' campaign. We are aware of many firms who are embracing the concept of 'natural value' and 'societal value' and sitting these value models alongside the pure financial value models within projects.

Technology will help with the tools and we can expect systems to arise that allow clients and consultants to accurately model the long-term sustainability of their built assets and what subtle changes to design or materials would have to the natural value model of the project.

Just as importantly, we will see new materials and manufacturing processes coming on stream that will all help with reducing CO₂ emissions. From finding replacements for cement to complex off-site manufacture and modular construction, creating less carbon intensive solutions will be a vital part of the future.

POTENTIAL ACTIONS

As a rule, the insurance market generally dislikes novelty. The maxim of 'tried and tested design' is one which underwriters hold dear and which appears in those very terms in many construction proposal forms. Those of you who undertake design work for housebuilders will know of insurers' particular interest in any design methods that are 'non-traditional' and their need to understand in detail any schemes which are using modular construction, or other non-conventional methods, such as timber frame.

We can expect insurers to take their time accepting the new methods of construction and much will depend on the claims profile associated with these new activities as and when they develop. The market is not immune to argument and if we can demonstrate an obvious lessening of the risk (as seems likely) then the market might move faster than we think.

For now, if you are involved in any projects where atypical or non-traditional methods are being used and you are responsible for some element of that, it would be prudent to liaise with your broker to determine if this is something that your insurers would consider to be material and they would thereby require to know more about.

There is a much bigger question here around what a shift to a 'natural value' model will mean and what liability looks like in that model. Is the failure to deliver the natural value one which translates into a financial liability and, if so, how is that articulated in the contract? On the face of it, that is a risk which would be insurable. Or is it something else? Does the failure mean a reduction or an end to repeat business? Does it mean a financial penalty...payable to the client?...the Government?...or require firms to take measures to offset the excess environmental impact? There are interesting times ahead.

CONCLUSIONS

In compiling this publication, and as surprising as it seems, it is hard not to agree with the phrase “everything is connected to everything else”. For in looking at one aspect of the challenges ahead, we are inevitably drawn to link it to others. The interdependency of the discretely identified challenges is stark.

If we consider problems with quality in construction, they are inevitably linked to the mind set of those procuring those projects in first place:

- If our goal is solely cost saving, was it surprising that we had a Carillion and that it failed?
- In an industry where the contractual documentation isn't often agreed until after the work is complete, is it a surprise that the scope and obligations were contractually unclear?
- In light of all the issues that we are seeing insureds face and the significant increase in claims costs, is it surprising that the insurance market is looking for considerably more information in order to process renewals, coupled with double digit rate growth?

Perhaps it speaks to the optimist in us, but it's hard to avoid looking at the technological challenges of the future and, rather than seeing them as challenges, we view them as being part of the timely solution; solutions to the problems of quality, solutions to the problems of changing the way projects are procured and delivered and solutions to the increasingly urgent problem of climate change.

The more cynical part of us might take the view that technological change won't come, or that it won't fundamentally change anything at all and that irrespective of the trappings of the 21st century, human nature will still lead us searching for the lowest common denominator, which in most cases is 'the cheapest', 'the easiest' or 'what we've done before'.

We can't help but feel that however tempting some of the familiarity of those approaches are, there is at least sufficient potential in industry and 'goodwill' within Government at the moment, for the future to look radically different. If we consider the scope for technological change that will come in the years ahead then, however cynical our view of the real changes that might bring, the potential is there for disruption of a most positive kind.

As to the insurance market, the cycle will continue to develop. We expect the more challenging conditions that prevail at the moment to continue into 2021 at the least. Beyond that, it's foolish to speculate where the market might go. Everything will depend how the claims profile of the insurers develops, how 'hard' the market gets in the next year or so and how many insurers want to return to writing this line of business.

We conclude what is a fairly weighty read with a few pointers for a more secure and risk aware future...

✓ **PI RENEWAL**

This year, renewal needs to be treated a bit differently. Going through the motions of completing the proposal form might not be enough to secure the very best terms available. Whilst we can assist with positioning your business in the best possible light, any additional information that you can provide us with beyond the proposal form question that can positively differentiate your business really counts. If you have good things to say about your business, be it mitigating factors in relation to larger projects, improved aspects as to the way you review your contracts, or anything else that helps set you apart, you need to communicate them.

✓ **REVIEW PI LIMITS**

Although some may argue “you would say that, wouldn’t you”, we think that insureds need to think about whether their PI limits are sufficient. We are seeing claims test the limits purchased much more often and if a recent review of your exposures hasn’t been undertaken, we’d certainly recommend and assist with a review.

✓ **CLADDING AND FIRE SAFETY**

There is not yet a settled position from the insurance market on what cover is or should be made available in respect of these types of exposures / potential claims. Whilst we have to date sought to maximise the insurance protection available, there is likely to be further tightening on cover going forward. Insurers’ scrutiny is not complete and simply because you have previously completed a cladding questionnaire does not mean that you’ll not need to update the information at renewal. If the facts change, insurers’ response might too.

✓ **TECHNOLOGICAL CHANGE**

The future is exciting and we look forward to supporting our clients to deliver real technological change. If you are a trailblazer here, bear in mind that with novelty comes unforeseen exposure, so do please get in touch if you are in doubt about your insurance protection. Now could be the time to consider a cyber liability product and if you’re really ahead of the game, the basis of your PI policy might need considering too.

✓ **BREXIT**

We’re not finished with this yet and before the scramble towards the end of the year, we’d encourage all firms to ensure that their insurance programmes are prepared for the worst come 1 January 2021. Our current clients need have few fears in this regard, but we do know that there are many out there who are still to put in place their plans for how they will trade in Europe next year.

OUR VALUES:

SUPPORTIVE

PERSONAL

PROACTIVE

RELIABLE

& that's the difference