



24.10.2024

CLC STATEMENT ON STANDARD APPOINTMENT TERMS

The Construction Leadership Council (CLC) wishes to voice its concerns about the ongoing practice within the construction sector, of industry-approved forms of contract being amended by clients and their solicitors to introduce terms that are onerous and/or difficult to insure.

It is the view of the CLC, that standard form building and engineering contracts and professional services contracts issued by contract-producing bodies, should be used by clients with no amendments, except where necessary in the context of project-specific risks and relationships.

The CLC believes that onerous amendments make contracts unviable, reduce competition, increase risk and lead to unnecessary legal costs required to review legal liabilities created by the amendments.

The CLC also believes that a simpler approach to contractual liabilities and a clarification of roles and responsibilities, particularly around fire safety design, will contribute to meeting the recommendations of The Grenfell Tower Inquiry: Phase 2 Report Overview. It may also protect contractors and consultants from having to pay more than their "fair share", in the event of a professional indemnity claim involving a contractor or consultant that has gone into administration or has inadequate Professional Indemnity Insurance (PII) cover.

Clients and their solicitors must recognise that most contractors and consultants rely on the scope and limit of cover provided by their PII policy to pay civil liability claims brought by clients and other stakeholders.

Many PII policies only cover claims for contractual liabilities to the extent that those liabilities would exist in the absence of the contract. Factor in the increasing limits of indemnity being required, and there is a growing disconnect between the liability exposures faced by contractors and consultants and the insurance protection that can be secured to meet them at an affordable cost. Clients have no control over whether contracting parties can secure PII cover that will respond when the client suffers a loss and wants to recover that loss.

The CLC's PII Working Group has identified that too often standard form contract terms are being amended, to include liabilities and obligations that are disproportionately onerous for the nature of the work and of the contracting party and its sub-consultants/sub-contractors, and/or do not fall within the scope of the contracting party's PII cover. This means that if a client seeks to claim for loss or damage, it cannot be relied upon that it will be settled by the PII insurers, and the consultant/contractor potentially faces financial ruin, and the client left with a claim that cannot be recovered. This is not in the best interest of any party.

The CLC PII Working Group recommends that all clients, when issuing building or engineering contracts and professional services contracts should routinely start with the unamended template. There should be explicit responsibility for the client and its lawyers to explain any amendments needed for a particular scheme. These amendments should be clearly highlighted within the contract documentation so that both client and contractor are clear on the variations being made to the standard terms. The original text of a clause should be typed with any deletions struck through, and any additional text highlighted. Also, a schedule should be

prepared which explains why the amendments are required. This will help remove confusion, ensure all parties understand their risk profile in the context of their insurance provision and help contractors by significantly reducing the amount of time and additional cost they incur in considering the effect of the amendments. This should be a priority when dealing with SME contracting parties, recognising that they do not have in-house resources to consider amendments.

Risk transfer through the supply chain should be proportionate and should only be transferred to those that are competent and properly resourced to undertake the work, using a Design Responsibility Matrix.

“A sensible approach will simplify risk allocation, give clarity to the project team and their PII providers, and address the concerns for which the CLC PII Working Group was originally formed, namely, to address concerns about cost and efficacy of Professional Indemnity Insurance in Construction. It will also support the focus on accountability, competence and the need for better information management called for by Dame Judith Hackitt and enshrined within the Building Safety Act and the wider reform of the Building Regulations.” *Samantha Peat, Chair of the CLC PII Working Group*

This guidance reflects, supports and complements the following guidance previously published:

[Construction Leadership Council – Business Models and Fair Practices Workstream](#)

[Build UK – Contract Terms Recommendation](#)

[Get It Right Initiative – Insurance Guide](#)

[Office of Government Procurement – Guidance Note GN2.3.5](#)

Any queries can be directed to Sam Peat, Chair of the CLC PI Insurance Group – Samantha.Peat@meridiangroupholdings.co.uk

Notes to Editor

About the Construction Leadership Council

The CLC is a collaboration between government and industry. Its mission is to provide sector leadership to the construction industry. The expanded CLC has twelve workstreams that operate collaboratively to address the biggest issues facing the sector. Workstreams include skills and inclusion, building safety, Net Zero and business models.

The CLC is co-chaired by Minister of State at the Department for Business and Trade and the Department for Energy Security and Net Zero, Sarah Jones MP and Mark Reynolds, Mace Group Chairman and Chief Executive. The Deputy Co-Chair is Richard Robinson, AtkinsRéalis President UK & Ireland.

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