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# PROFESSIONAL RISK ASSOCIATED WITH PROPERTY PROFESSIONALS

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## Introduction

Lonsdale Insurance Brokers Ltd are Lloyd's brokers specialising in servicing the insurance needs of property professionals. The following paper provides an update on the modern day risks associated with UK property professionals and how the current UK professional indemnity insurance (PI) market is responding.

## Business Closures And Run Off Cover

Since our [report](#) of 12 months ago we have seen the industry press consumed with articles concerning stamp duty reform and the impending rules on letting agency fees.

Many of our policy holders are expressing concerns about the challenging times ahead and this appears to be evident in that 20% of our policy renewals for property professionals in December and January lapsed compared to 0% in the same period last year.

For those policy holders we managed to obtain feed-back from, the main reason for not renewing was financial difficulty and therefore they were closing the business or focusing the business in a different direction where PI is no longer required.

Agents who decide to close or sell their business should be aware of the risks that still may apply in respect of historical liability. One crucial factor to identify is who is responsible for prior acts. There are two scenarios, either the buyer assumes responsibility in which case their PI insurance should be extended accordingly. Alternatively, the sale agreement may state that the buyer is only responsible for forward acts post completion, in which case the seller should purchase run off

cover. It would be prudent to ensure that it is a condition within the sale and purchase agreement that the seller purchases run off cover for a set period. Most regulated sectors insist upon run off cover upon ceasing to trade. RICS require six years.

Too often we have seen scenarios where a deal has been rushed through and the buyer has not considered the historical liability attached to the purchase and post completion. They find themselves stuck with high additional PI costs due to the seller's poor claims record.

PI insurance is a 'claims made' policy which means cover for forward and prior acts is only in place whilst a policy is live, therefore if a business closes and the PI is allowed to lapse, there shall be no cover in place for prior acts should a claim ever be brought regardless of whether a policy was in place at the time of the wrongful act.

Whilst we are seeing an increase in the number of agents closing or selling, we are, interestingly, still seeing a steady number of new start up agents who appear to be mainly focused on residential lettings and management.



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## Claims And New Threats

The frequency of claims remains largely consistent with circa 1 in 15 notifications resulting in a paid claim. This suggests 14 in 15 notifications results in no pay out which is often due to the initial claim having no merit. It is important to note that costs and expenses would still be incurred by insurers whilst defending the claim and often these costs can outweigh the value of the initial claim being made.

Insurers are seeing a spike in new claims from the following areas:

- Failure to lodge deposits and issue accurate prescribed information within the required time frame.
- Theft during viewings. This is particularly noticeable in London and the outskirts of London and mostly in connection with high value properties in exclusive areas.

- Bogus buyers<sup>1</sup>
- Fraud and Cyber Liability<sup>2</sup>
- Trading Standards fines - The Consumer Rights Act 2015 requires letting agents to publicise prominently in their office and on their website which redress scheme they form part of and whether they do or do not have client money protection. [http://www.legislation.gov.uk/ukxi/2015/951/pdfs/ukxiem\\_20150951\\_en.pdf](http://www.legislation.gov.uk/ukxi/2015/951/pdfs/ukxiem_20150951_en.pdf). Please note PI policies do not cover fines of this nature.
- Personal injury claims or “slip and trip” claims continue to be a nuisance and often take a long time to conclude with high costs and expenses incurred.

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<http://www.propertyindustryeye.com/mother-and-daughter-await-sentencing-for-property-fraud-where-they-fooled-estate-agents/>

<http://www.propertyindustryeye.com/fraud-plot-only-foiled-when-owners-daughter-saw-property-listed-on-rightmove/>

<http://www.propertyindustryeye.com/33768-2/>

<http://www.propertyindustryeye.com/estate-agent-who-sold-home-on-behalf-of-fraudster-ruled-not-liable-for-buyers-losses/>

<http://www.propertyindustryeye.com/agents-warned-after-growth-of-cases-involving-identity-theft-in-property-sales/>

<https://estateagentnetworking.co.uk/reduce-risk-property-fraud/>

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<http://www.propertyindustryeye.com/agents-across-the-uk-urged-to-be-aware-of-new-scam-as-fraudsters-target-buyers/>

<http://www.propertyindustryeye.com/agents-beware-property-fraudsters-increasingly-hacking-into-emails-in-both-sales-and-lettings/>



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## Risk Management Tips

Whilst most claims can be prevented through the sound management of one's business, not all claims can be easily avoided.

The increase in theft during viewings and bogus buyers should be alarming for agents and home owners. We recommend some simple steps that agents can easily implement.

- Do not leave viewers unattended and be especially vigilant on open days.
- Where necessary it is sensible to perform an ID check including proof of address. Agents should be aware of a new Anti-Money Laundering Directive due to become law from June 26 2017. Home owners can also sign up to the Land Registry's free Property Alert service.<sup>3</sup>
- Cross referencing the name and address given on the land registry.
- Google searches can reveal information on the buyer or tenant that a referencing company might not pick up. A simple Google search early on in the sales or lettings process is a useful tool which could reveal sensitive information that might influence a seller or landlord's judgement.
- Be conscious of the Health & Safety risks.<sup>4</sup>

Nobody is immune to the threat of cyber-crime. It is important to ensure basic controls are in place:

- Regular password updates on all devices.
- Staff training to be aware of phishing emails and the damage they represent.
- Software updates.
- Ensure files are encrypted.
- Monitoring of mobile and home working procedures

### - Cyber Liability Insurance

The most common reason for an insurer to refuse a claim is nondisclosure. Ahead of the policy renewal, check with all staff if they are aware of a circumstance that may give rise to a claim. One of the biggest problems brokers face is having to manage a situation where non-disclosure has occurred. As referred to above, PI is a 'claims made' policy with claims handling conditions that require the policy holder to notify the insurer as soon as they are aware of a possible circumstance that may result in a claim. This is typically three weeks. If a claim is made to insurers more than 1 month after the matter first came to light, insurers are likely to reserve their rights and potentially avoid providing cover. This would leave the policy holder incurring defence costs along with damages should the claim be successful.

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<http://www.propertyindustryeye.com/agents-warned-that-new-anti-money-laundering-requirements-drawing-nearer/>

<https://estateagentnetworking.co.uk/reduce-risk-property-fraud>

4

<http://www.propertyindustryeye.com/guidance-for-agents-likely-on-safety-of-viewings-following-200000-court-case/>



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## Conclusion

Challenging market conditions always influences an increase in claims frequency. The reason being businesses become busier and are under more pressure to perform with the net result often being errors are made and claims are brought by clients for losses suffered. In addition to valid claims being brought as a result of negligence or wrongful acts, challenging market conditions typically contributes to an increase in spurious claims against professional advisors.

The consumer is better protected than ever before and with legislation constantly evolving, property professionals are finding

themselves more and more exposed to negligence claims. No Win No Fee law firms only serve to exacerbate the problem and increase the duration of the claim and the costs incurred.

Property professionals need to be more aware of their duty of care to the consumer and the negative impact on their business as a result of poor risk management.

Should you have any queries in relation to the content included in this paper, please do not hesitate to contact us.

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