



Marsh Specialty

Latent defects insurance solutions

Construction practice

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Marsh Specialty have designed specific latent defects solutions for owners and developers of all types of property projects including commercial, mixed-use, and residential.

With latent defects normally excluded outright from a standard property policy and the Council of Mortgage Lenders (now incorporated within UK Finance) stipulating that the mortgagee of a new home will need to ensure they have a “new home warranty” or insurance backed product before they will agree to lend, latent defects insurance (LDI) has become a primary driver in the marketability of developments.

Further, tenants taking on long term leases (especially full repair and insure leases) are increasingly insisting that developers have a latent defects policy in place which they can benefit from.

With our wide-reaching LDI solutions we can provide a number of important benefits for existing purchasers and new purchasers alike.





What is LDI?

LDI provides cover for the cost of remedying and rectifying damage arising out of latent or inherent defect, whether it is in a commercial, residential or mixed use development. Latent defects are normally defined as faults in the design, workmanship, materials, supervision, construction, installation, or site preparation of a new building that remain undiscovered at the date of practical completion, but come to light afterwards by virtue of physical damage.

Latent defects can be extremely problematic. They can cause considerable disruption to a variety of parties, and can be highly expensive to correct.

A latent defects policy can reduce the concerns and fears of owners, developers and tenants alike by providing them with a first party insurance solution.

LDI is an area that has gained significant momentum over the last few years in the UK, although its use is by no means as universal as in France and some other areas of the world. There is still quite a limited market place but the product can provide valuable risk transfer and is a key commercial issue for many developments.



What is covered?

The typical policy periods run between 10-12 years from the date of practical completion and should normally be procured prior to the commencement of construction. Some recently completed projects have had cover arranged for both part completed and completed schemes, applying to developers, tenants, lenders with the policy being freely assignable.

Key areas of cover include*:

- Full reinstatement including professional fees, debris removal, costs to comply with public authority requirements, external walls, or roof.
- Structural defects.
- Ingress of water (excluded for first 12 months).
- Subsidence landslip or heave.
- Threat of imminent collapse requiring remedial works to prevent damage caused by a defect in design, workmanship or materials but not discovered before inception of cover.
- Resultant damage to non-structural elements.

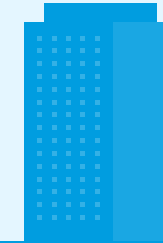
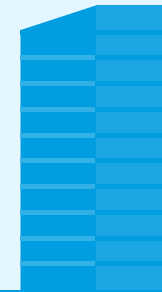
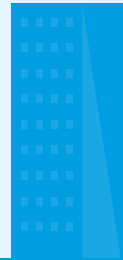
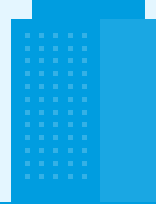
* All policies are subject to terms, conditions and exclusions.





Why buy LDI?

There are a number of significant benefits in purchasing LDI, some of the key reasons are summarised here:



NO REQUIREMENT TO PROVE NEGLIGENCE

An LDI policy can mitigate the concerns and fears of owners, developers and tenants alike by providing them with a first party insurance solution that can be called upon to remedy a defect and minimise disruption. Importantly to claim under an LDI policy, unlike the case with collateral warranties and professional indemnity (PI) cover, an insured party does not need to prove negligence. Further, a first party cover removes the associated time delays and legal costs in proving fault or negligence.

WIDER COVERAGE THAN PI INSURANCE

PI cover would only cover the relevant contractor's professional liability – for example negligence in designing the works, but would not cover their liability for inadequate workmanship or materials. LDI provides assurance should they suffer from damage caused by a defect in design, workmanship or materials, they will have first party insurance to reinstate such damage. Note that LDI does not respond to nondamage issues.

ENHANCED COMPETITIVE EDGE

Tenants taking on longterm leases (especially full repair and insure leases) are increasingly insisting on having a latent defects policy in place from which they can benefit as well as it being within lenders' expectations. In the current competitive environment developers are responding by ensuring they tick all of the boxes they can for prospective tenants to increase unit marketability. As the policy is also freely assignable to future tenants or purchasers it can help to smooth the process of a sale or tenancy agreement.

CERTAINTY OF COST AND COVERAGE

The LDI policy is incepted at the start of the project and does not need to be renewed, the cost being agreed upfront, prior to the start of construction. The majority of the premium (85-90%) is also paid upon practical completion in one instalment.

UNAFFECTED BY CONTRACTOR INSOLVENCY

Rights of recourse cannot be effectively pursued against a contractor that has become insolvent, nor will the contractor's PI insurance normally respond. Increased risk of contractor insolvency has also influenced tenants' and funders' views of collateral warranties with a more risk-averse position being adopted and long-term security against defects being sought. As LDI is a nonrenewable upfront cost, its efficacy is unaffected by the subsequent insolvency of any member of the construction or professional project team.

'OFF BALANCE SHEET' CAPITAL BOOST

An additional benefit for many of our developer clients, who would have traditionally provided an 'on balance sheet' "Developer-Backed Warranty", is that LDI offers an 'off balance sheet' alternative option which can free significant amounts of capital.

PROPERTY EXCLUSION

Latent defects are normally excluded outright from standard property policies, and this LDI product fills that gap in coverage for our clients. It is important to note that although the majority of policies have an outright exclusion, some policies are wider in that only the defect itself is excluded but not the consequential damage and losses. However, even with the broadest policy there is potentially a significant gap in coverage.

LOSS OF DEPOSIT COVER

Recent high-profile contractor insolvencies have highlighted the value of including loss of deposit cover as security against contractor/developer insolvency and this is also one of the key requirements for a product to be viewed as an effective alternative to NHBC cover. This cover can be considered by some LDI providers.



What additional covers can be purchased?

The following types of cover can also be arranged for landlords or tenants of buildings and work alongside the LDI cover:

Loss of rent

Damage to mechanical and electrical services

Alternative accommodation

Loss of gross profit or revenue*

Increased cost of working from alternative premises

Mechanical/component failure cover

* (Business interruption arising out of an indemnifiable event).

175+

experts making us the largest UK construction team

£2bn+

overall Marsh Specialty construction premium to the market



Largest London based specialist construction claims team

£20bn+

of developments insured from 2015 to 2020

40%+

Broker to over 40% of the top 50 contractors in the UK

Why Marsh Specialty

With more than 175 dedicated construction experts, the Marsh Specialty construction, infrastructure, and surety practice, is the largest team of construction broking specialists in the UK.

For more than 30 years, we have worked in close partnership with a wide variety of clients in the construction, infrastructure, and engineering sectors. From multi-million turnover family businesses to multi-billion multinationals, we tailor our broad range of services to meet our clients' needs, so that they secure the benefits of our market leading insurance placement facilities.

Our size enables us to offer a very broad range of placement services from within our own dedicated practice and in-house broking teams. Supplementing our core insurance broking capabilities, our risk consulting and advisory practice is available to help our clients understand their level of risk tolerance, associated risk appetite, and optimal programme design.

Being the largest construction insurance broker gives us a unique position in a market that is facing very challenging conditions that are unlikely to improve in the near term. Our construction specialists work seamlessly across all classes of insurance, offering single point of contact solutions for all the construction related classes of insurance including construction all risks, professional indemnity, latent defects, employers liability, public liability, and surety bonds, amongst others.



Latent defects insurance

We are able to advise on and arrange bespoke insurance packages, including advising on cover for refurbishment projects, and in some instances where projects have already commenced.

Our key relationships with leading latent defects insurers, allow us to offer competitive premiums and arrange robust programmes for our clients.

£2.5bn+

in contract values for which we have placed LDI cover



Contacts

For further information, please contact your local Marsh office or visit our website at [marsh.com](https://www.marsh.com)

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