Marsh

Refurbishment guidance 2025

“It is crucial that project owners and developers undertaking construction works in existing structures identify, understand, and address the key insurance considerations and complications.

CRAIG CHARLES
Head of the UK Owners & Developers team
at Marsh Specialty Construction

Rise of the refurb

What is the coverage problem?

Often, contractors are unwilling to hold the risk of loss or damage to existing structures during construction works. Most contractors will push for joint names coverage (where insurers have no recourse available for loss or damage caused by the contractor). This protects the contractor from subrogated action in the event that they cause damage to the existing structure and are legally liable.

Historically, joint names cover for existing structures has been common and easily granted by property insurers, as is the default position under option C of the Joint Contracts Tribunal (JCT). However, this is not as straightforward for large refurbishments and in the current property insurance market, where property owners should evaluate the risks, such as:

For the property owner:

- Property policies are typically subject to annual renewal, a positive for well-performing portfolios with few claims. However, by not allowing insurers to subrogate against the potential responsible party, such as contractors, leaves you — and potentially your tenants — at risk of losses that may impact future coverage and, importantly, future premiums.
- There can also be strict conditions from property insurers that contractors must follow to be granted joint names status, which can be burdensome.

Can owner-controlled insurance policies help?

Owner-controlled insurance programmes (OCIP) can insure existing structures during construction works. An OCIP approach is generally the preferred position for all parties when possible as it keeps cover separate from the existing annual property policy, reduces potential claims disputes, and includes collapse cover, which is widely excluded under property insurances.

An OCIP insurance structure can provide cover during the construction works for:

- Existing structures
- New works (contract works)
- Terrorism
- Delay in start-up
- Third-party liability, also referred to as public liability
- Non-negligence JCT clause 6.5.1

Alternative ways of insuring existing structures using the JCT

The following three scenarios focus on the alternative ways of insuring existing structures away from exposing property insurance in whole under unamended Option C for the reasons outlined above. Contract works insurance is readily available through policies taken out by either the project owner or contractor.

When can (and should) an existing structure be transferred to an OCIP during a construction project?

1

When there are large contracts for structural works that affect the frame, core, or façade of the existing structure.

2

When the reinstatement value of the existing structure is lower than the contract value of new works to the building, including large a fit-out.

3

When external finance parties (lenders) are involved, who may insist on delay in startup (DSU) insurance that responds to delays arising from loss/ damage to new development works and/or the existing structure.

What are the potential contractual solutions?

SCENARIO ONE: EXISTING STRUCTURE RISK-TRANSFERRED INSURANCE MARKET

Owner holds the risk of damage to the existing structure

Solution 1

An OCIP construction policy insures the full reinstatement value of the building in the joint names of the employer, contractor, and any other interested parties.

Considerations

The project owner meets its contractual obligation for joint names cover, but, importantly, is also able to protect its property insurance.

- The employer is more easily able to insure its loss of anticipated rental income due to damage to either new works and/or an existing structure.
- The ratio of reinstatement value versus new contract value will dictate construction insurers' appetites, and thus the ability to explore this approach within the market.
- A limited appetite from construction insurers for listed structures or structures incorporating mass timber.

Solution 2

1. The OCIP construction policy insures a percentage (for example, half) of the reinstatement value of the building via a loss limit, capping insurers' liability to a maximum value.
2. Loss or damage above this amount is insured via "excess of loss" property insurance, up to the building's full reinstatement value.

Considerations

Similarly to the above, between the policies, the employer still meets its contractual obligation for joint names cover, but, importantly, is able to protect its property insurance.

- The employer is still more easily able to insure its loss of anticipated rental income, due to damage to either new works and/or existing structures.
- Can be expensive, owner/employer having to take out standalone policies.

Potential application

Structure value is lower than the value of new works, delay in start-up is important for the employer to procure.

- Solution 2 – The existing structure value is higher than the value of new works, delay in start-up is important for the employer to procure.

Building value: £100m property insurance and construction insurance

Joint Names

SCENARIO TWO: BOTH PARTIES COMPROMISE

Large-scale landlord works, some tenant works

Solution

1. The first risk of loss or damage is held by the contractor up to a monetary limit. The contractor protects its own balance sheet through public liability insurance.
2. The owner and property insurer grants joint names cover for specified peril losses to the contractor for any amounts over the agreed level of public liability, up to the building's overall reinstatement value.

Contract drafting: Amended Option C, with replacement schedule needed.

Considerations

The owner's property insurance is not completely exposed.

- Property insurers might try to charge an additional premium and insert additional conditions for the duration of the works. For example, they might charge extra related to the following issues:
  - Heightened excesses
  - "Hot works" not permitted to take place simultaneously on consecutive floors
  - Bona-fide subcontractors' conditions
- This is more appropriate for smaller fit-out contracts and contractors that have a suitable level of annual public liability insurance (as this will more than likely be charged back to the employer).
- At least two differing insurance policies could be in place, with differing claims processes (damage to works, existing structure, and the subrogation to the public liability)
- As liability claims are not fast moving, recovery actions are slow. Additionally, as some contractors' policies have strict claim reporting periods, it is important that a project owner makes sure that claims are lodged with the contractor and its insurers in a timely manner. This is relevant for all options where the contractor's public liability insurance is in place to respond to damage to the existing structure.

Potential application

- Value of the existing structure is more than 50% of the new works value.
- Owner/landlord driven significant contract works, which include works within an occupied building.
- Listed or significant "risky" buildings:
  - Similar to scenario three, for instances where property insurance is already stretched, buildings including mass timber or Grade 1-listed status where insurers cannot allow joint names status, or where the cost would be too great for the owner to bear.

Example

Taking a building with a reinstatement value of £100 million and contract works totalling £50 million;

- A total loss to the building during works occurs due to the contractor's negligence. It is, for the purposes of the JCT, considered to be a specified peril loss.
- Loss or damage to the building up to £20 million is held by the contractor whose Public Liability insurance steps in if property insurers acquire subrogation rights.

The repair costs – £80 million – above this are still paid by the property insurer, but with no recourse back to the contractor.

Building value: £100m property insurance

£80m joint names

£20 million PL

SCENARIO THREE: THE CONTRACTOR HOLDS THE RISK FOR THE EXISTING STRUCTURE

Smaller scale fit-outs and refurbishments

Solution

1. The existing structure remains insured, but full right of subrogation is maintained for the benefit of the property insurer.
2. The risk of the existing structure is largely transferred to the contractor, who can insure it via its own PL insurance up to a chosen level, with a minimum level often dictated by the owner's property insurers.

Contract drafting: JCT Option A, B, or C — with correct amendments - can all be used.

Considerations

For low value works, this can be economical.

- Property insurance is exposed, but insurers have the comfort of potential recourse in the event of loss.
- As liability claims are not fast moving, recovery actions are slow.

Additionally, as some contractor policies have strict claim reporting periods, it is important that a project owner lodges claims with the contractor and its insurers in a timely manner. This is relevant for all options where the contractor's PL insurance is in place to respond to damage to the existing structure.

See: Checking your contractor's public liability insurance on Page 9.

Potential application

- The value of the existing structure is more than 50% of the new works value.
- The building is partially occupied during works.
- Tenants of buildings who do not hold significant commercial standing with the landlord, or whose landlord/owner is protective of its loss record under its property policy.
- Listed or significantly "risky" buildings:
  - For instances where property insurance is already stretched, CLT or mass timber and Grade I listed structures that do not wish to allow joint names status, or whose cost would be too great for the employer/tenant to bear.

Building value: £100m property insurance

Contractor/sub-contractor's balance sheet

£5 million PL

Contract drafting

NEC

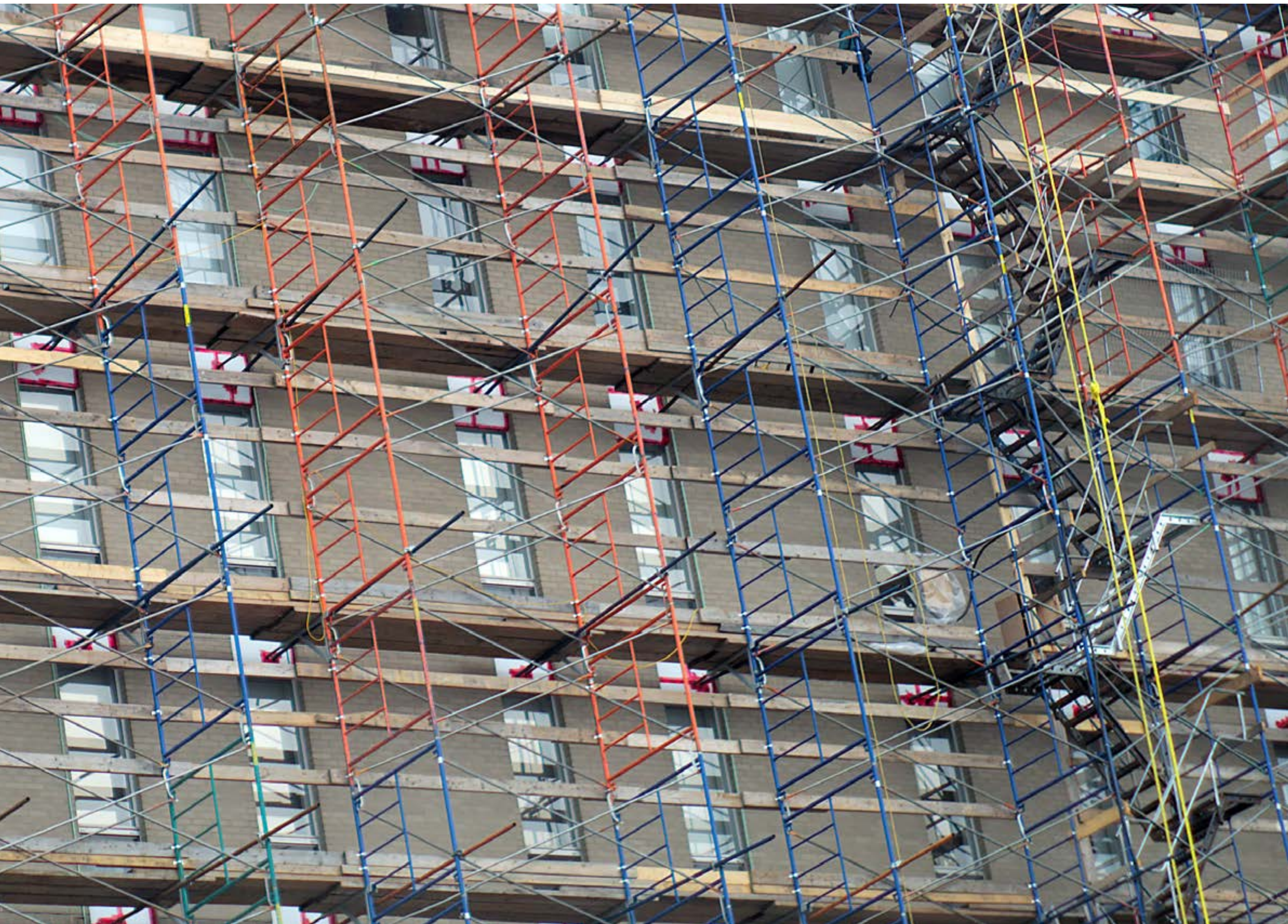
The default position is that the contractor will need to rely on their third-party liability policy to protect against any damage caused to the existing structure (that does not form part of the works) which arises from their works. Using this contract form will lend to scenario three, stated above.

JCT

Legal advice, as well as specialist insurance advice, must be considered where contracts are amended from the standard JCT drafting (granting the contractor joint names in respect of specified perils).

In particular, give note to the indemnities owed to the project owner under 6.1 and 6.2, as these must be carefully considered with any replacement schedule drafting.

Early engagement with your construction insurance service team is advisable for discussions surrounding your construction project and exposure to the existing structure risk. This will enable the most appropriate insurance solution to be identified and cover provided, allowing works to start punctually.



Conclusion

Existing structures can often be a key risk consideration for refurbishment/extension projects due to the high values involved, particularly where this far outweighs the value of the works.

Care should be taken to ensure the correct form of contract is selected: One that deals with existing structure risks in an appropriate and reasonable manner from the contractor's perspective.

Whatever form of contract and option is chosen, the project owner and their insurance broker should review the amended contact to ensure that the amendments are appropriate.

Do engage with both your broker, and legal representatives before contracts are finalised to ensure existing structure exposures are properly considered and apportioned.

Do not assume that concerns regarding existing structure exposures will be easily, quickly, or cheaply solved and therefore suitable to be left until the end of negotiations.

Insurance checklist: What to ask your contractor when requiring their own PL insurance

- Provide evidence of required insurances
- Confirm the insured's business description of said policies
- Confirm if there any specific conditions and/or exclusions that impact the work they are being employed to do
- Confirm whether the policy provides an automatic indemnity to principal or joint names

See also: *Marsh Specialty Construction's publication* Refurbishing existing buildings: Increased interest for latent defects insurance (LDI).

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