

Professional indemnity for chartered surveyors

Policy wording

The General terms and conditions and the following terms and conditions all apply to this section.

Please pay special attention to the Notification for adjudication section in the grey box at the end of this section.

Special definitions for this section

Business activity	Advice given and services performed in the course of your business arising from the activities shown in the schedule.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
You / your	Also includes: <ol style="list-style-type: none">any person who was, is or during the period of insurance becomes your partner or director or senior manager in actual control of your operations;past or present consultants named in the proposal and shown in the schedule acting for you or on your behalf in the conduct of your business activity;any employee of yours including any self-employed person acting for you or on your behalf in the conduct of your business activity.
Environmental audit	An investigation which is specifically intended to assess whether there is actual pollution or contamination present in the environment.

What is covered

Claims against you including matters referred to an Ombudsman	<p>If during the period of insurance, and as a result of your business activity within the geographical limits for clients, any party brings a claim against you for:</p> <ol style="list-style-type: none">any civil liability, including any civil liability for which you are responsible arising from the business activity of any business you acquired before the period of insurance,any matter referred to an Ombudsman, including the Ombudsman for Estate Agents, or refers a dispute arising directly from your breach of a duty of care to arbitration, including the Surveyors and Valuers Arbitration Scheme 1998, or to adjudication under the Housing Grants Construction and Regeneration Act 1996, <p>we will indemnify you against the sums you have to pay as compensation.</p>
Cyber claims	<p>If during the period of insurance, and as a result of your business activity within the geographical limits for clients transacted via the internet, extranet or your own website, internet site or web address or via the transmission of mail or documents by electronic means, any party brings a claim against you for:</p> <ol style="list-style-type: none">negligent advice, negligent misstatement or negligent misrepresentation,defamation,infringement of intellectual property rights,your misuse of any data which is either confidential or subject to statutory restrictions on its use,misuse by any employee of yours of your encrypted electronic signature or external email, <p>we will indemnify you against the sums you have to pay as compensation.</p>
Defence costs	<p>We will also pay defence costs. We will not pay costs for any part of a claim not covered by this section or for any claim referred to an Ombudsman.</p>

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Avoiding a potential claim against you

If **your** client has reasonable grounds for being dissatisfied with the work **you** have done, refuses to pay for any or all of it, including amounts **you** legally owe to subcontractors at the date of the refusal, and threatens to bring a claim against **you** for more than the amount owed, it may be possible to settle the dispute with the client by **your** agreeing not to press for the disputed amount. If so, **we** will pay **you** the amount owed to **you** at that time if **we** believe that this will avoid a legitimate claim for a greater amount and **we** have given **our** prior written approval to settling in this way and for this amount.

Alternatively, if it is not possible to reach agreement with the client on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** will pay the amount owed to **you** at that time. If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity shown in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt less **your** reasonable expenses.

Once **we** agree to make this payment **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any part of a claim not covered by this section.

Your own losses

Losses from dishonesty

If, in the performance of **your business activity** within the **geographical limits**, **you** suffer a loss, and inform **us** of it, during the **period of insurance** from the dishonesty of **your** past or present individual partners, directors or employees or self-employed subcontractors directly contracted to **you** and under **your** supervision, where there was a clear intention to cause **you** loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission, **we** will indemnify **you** against **your** direct financial loss.

Loss of documents

If during the **period of insurance** any document, information or data of **yours** which is necessary for the performance of **your business activity** is lost, damaged or destroyed while in **your** possession, **we** will cover **you** against the cost of restoring or replacing it.

Representation costs

We will pay for the cost of representing **you** at properly constituted hearings, tribunals or proceedings first instituted in respect of any occurrence first discovered during the **period of insurance** arising out of **your business activity** which may lead to indemnity under this section.

Breach of statutory obligations

If proceedings are brought against **you** during the **period of insurance** under the:

1. Property Misdescription Act 1991,
2. Estate Agents Act 1979,
3. Health and Safety at Work etc. Act 1974,
4. Health and Safety at Work (Northern Ireland) Order 1978,
5. Construction (Design and Management) Regulations 1994,

or any similar safety legislation, **we** will pay the reasonable costs incurred with **our** prior written consent to defend **you** if, in **our** opinion, a successful defence may avoid a claim being made against **you** based on the same facts.

Court attendance compensation

If any person within the definition of **you**, or any other relevant party chosen by **you** (except expert witnesses) has to attend Court as a witness in connection with a claim against **you** covered under this section, **we** will pay **you** compensation for each day that their attendance is required by **our** solicitor.

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What is not covered

Matters specific to your business

Collateral warranties

Undeclared partners previous business

Disputes referred to arbitration

Matters insurable elsewhere

- A. **We** will not make any payment for any claim or loss directly or indirectly due to:
1. any survey, inspection or valuation of real or leasehold property not carried out by a fellow or associate of the Royal Institution of Chartered Surveyors, the Incorporated Society of Valuers and Auctioneers, the Faculty of Architects and Surveyors, the Royal Institute of British Architects, the Royal Incorporation of Architects in Scotland, or by any person with more than five years' experience, or by any other person **you** nominate to do the work as part of their training under the supervision of someone who is a fellow or associate of one of the above professional associations.
 2. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves, unless **your** liability arises from **your** negligent structural design or specification or **your** failure to report any defect in the structure of any property, in which case **we** will indemnify **your** liability for the cost of remedying, re-specifying or rectifying a structure but not the cost of remedying or rectifying loss or damage to any land or the environment or any loss of value.
 3. transmission of a computer **virus**.
 4. overcharging of fees or commission by **you**.
 5. any **environmental audit**.
 6. **your** agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless:
 - a. **you** would be liable even if **you** had not given any such agreement, warranty, indemnity, waiver or guarantee; or
 - b. the liability arises from a Collateral Warranty or Duty of Care agreement, in which case **we** will not indemnify **you** for any liability arising from:
 - i. any fitness for purpose guarantee;
 - ii. any greater or longer lasting benefit than that given to the party with whom **you** originally contracted;
 - iii. any express guarantee, contractual penalty or liquidated damages;
 - iv. any assignment of the warranty or agreement to any purchaser or tenant after the first two assignments;
 - v. **your** agreement to exercise a standard of care greater than would normally be expected in **your** profession.
 7. any work carried out by any partner of **you** while they were a partner of another firm, which has not been declared to and expressly accepted by **us**.
 8. any dispute referred to arbitration under the Surveyors and Valuers Arbitration Scheme 1998 unless the law applied by the arbitrator is that of England and Wales, Scotland or Northern Ireland.
 9. the death or any bodily or mental injury or disease suffered by anyone, unless arising directly from **your** breach of a duty of care in the performance of a **business activity**.
 10. anyone's employment with or work for **you**, or any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment.
 11. **your** ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.
 12. the loss, damage or destruction of any tangible property:
 - a. other than documents in **your** care, custody or control in connection with a **business activity** for a client; or
 - b. unless arising directly from **your** breach of a duty of care in the performance of a **business activity**.

This clause does not apply to **your** own loss under the loss of documents cover in **What is covered**.

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Deliberate, reckless or dishonest acts	<p>13. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.</p> <p>14. any personal liability incurred by a director or officer of yours when acting in that capacity or as a trustee or while managing your business, other than when performing a business activity for a client.</p> <p>15. your supply, manufacture, sale, installation or maintenance of any product.</p> <p>16. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.</p> <p>This does not apply to:</p> <p>a. any claim arising from dishonesty, other than claims under the cyber claims cover in What is covered;</p> <p>b. your own loss under the dishonesty cover in What is covered.</p> <p>We will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.</p>
Pre-existing problems	<p>17. any claim or shortcoming in your work or your own loss which you knew about, or ought reasonably to have known about, before we agreed to insure you, and which does not fall within the terms of the Special Institution Conditions.</p>
Date recognition	<p>18. date recognition.</p>
War, terrorism and nuclear	<p>19. war, terrorism or nuclear risks.</p>
Asbestos	<p>20. asbestos risks.</p>
Claims brought by a related party	<p>B. We will not make any payment for:</p> <p>1. any claim brought by an insured within the definition of you or any party with a financial, executive or managerial interest in you, including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third party directly arising out of the performance of your business activity.</p>
Adjudication costs	<p>2. a claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996 where your contract with your client failed to provide that:</p> <p>a. the adjudicator is independent of the parties to the dispute;</p> <p>b. the decision of the adjudicator is not the final determination of the dispute;</p> <p>c. the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.</p>
Restricted recovery rights	<p>3. that part of any claim where your right of recovery is restricted by any contract.</p>
Computer data	<p>4. the loss or distortion of any data held electronically unless the data has been duplicated on magnetic or electrical media which is intended to be used as a basis for restoring such data.</p>
Consequential loss	<p>5. your lost profit, mark-up or liability for VAT or its equivalent.</p> <p>6. any trading loss or trading liability including those arising from the loss of any client, account or business.</p>
Non-compensatory payments	<p>7. fines and contractual penalties, liquidated, aggravated, punitive or exemplary damages and also additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section or damages of a similar nature imposed by the law of any country other than England and Wales.</p>

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Claims outside the applicable courts

8. any claim, including arbitration, brought outside the countries set out in the schedule under applicable courts.

This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts.

Related business in North America

9. any claims arising from the business of a parent, subsidiary, associated company or related partnership of **yours** whose principal place of business is in the United States of America or Canada.
10. any **business activity you** perform in the United States of America or Canada.

How much we will pay

We will pay up to the limit of indemnity shown in the schedule unless limited below. **We** will also pay for **defence costs**. However, if a payment greater than the limit of indemnity has to be made for a claim **our** liability for **defence costs** will be limited to the same proportion that the limit of indemnity bears to the amount paid. **You** must pay the relevant **excess** shown in the schedule.

All claims and losses which arise from the same original cause, a single source or a repeated or continuing shortcoming in **your** work will be regarded as one claim. This includes all claims which arise from a single appointment **you** have with a client or where more than one insured or claimant is involved. It includes such claims and losses arising after, as well as during, the **period of insurance**.

Special limits

Losses from dishonesty

1. For claims and **your** own losses arising from dishonesty, the most **we** will pay is a single limit of indemnity for the total of all such claims, their **defence costs** and **your** own losses. **You** must pay the relevant **excess** shown in the schedule.

When **we** settle **your** own losses from dishonesty, **we** will deduct any sums **you** owe or the value of any property **you** hold belonging to, or recover from, the perpetrator. As part of each loss **we** will pay up to the amount shown in the schedule for accountants' fees **you** incur in investigating **your** loss.

Cyber claims

2. For cyber claims, the most **we** will pay for the total of all such claims is the relevant amount shown in the schedule. **You** must pay the relevant **excess** shown in the schedule.

Lost, damaged or destroyed documents

3. For lost, damaged or destroyed documents, information or data, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing them. The most **we** will pay for the total of all such expenses is the relevant amount shown in the schedule. **You** must pay the relevant **excess** shown in the schedule.

Hearing, tribunal or proceedings costs

4. **We** will pay 80% of the cost:
- to represent **you** at hearings, tribunals or proceedings;
 - to defend proceedings relating to **your** breach of any statutory obligation.

We will not pay more than the relevant amount shown in the schedule for each such hearing, tribunal or proceeding.

Ombudsman's awards

5. **We** will pay up to the amount shown in the schedule for each Ombudsman's award provided that the Ombudsman has operated within any terms of reference or rules applicable to their appointment. **You** must pay the relevant **excess** shown in the schedule.

Court attendance

6. For Court attendances, **we** will pay the amount shown in the schedule for each day or part of a day. The most **we** will pay for the total of all Court attendances is the amount shown in the schedule.

Paying out the limit of indemnity

At any stage of a claim **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit. **We** will pay **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for that claim or its **defence costs**.

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Your obligations

If a problem arises

We will not make any payment under this section:

1. unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
 - a. **your** first awareness of a shortcoming in **your** work for a client which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.
If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance.
 - b. any claim or threatened claim against **you**, or any referral to arbitration or any complaint to an Ombudsman.
 - c. **your** first awareness of any actual or threatened hearing or tribunal.
 - d. **your** first awareness of any actual or threatened proceedings against **you** for breach of a statutory obligation.
 - e. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee or self-employed sub-contractor has acted dishonestly.
 - f. **your** discovery that any document, information or data of **yours** has been lost, damaged or destroyed.
2. if, when dealing with **your** client or a third party, **you** admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. **You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client or have **our** prior written agreement.

Dishonesty

We will not make any payment for claims or losses arising from dishonesty unless:

1. on discovery of any loss, **you** immediately take all reasonable steps to prevent further loss;
2. at **our** request, **you** take all reasonable steps to make a recovery from the perpetrator or from their personal representatives;
3. you require and obtain the signatures of at least two properly authorised officers or partners of **yours** as authorisation of any monetary transactions with a value greater than £1,000;
4. **your** annual accounts are prepared and/or certified by an independent and properly qualified accountant or auditor.

We will not make any payment for claims or losses arising from the dishonesty of any person after **you** have discovered any dishonesty by that person or have reasonable cause for suspicion of dishonesty.

Control of defence

We have the right, but not the obligation, to take control of and conduct in **your** name, the investigation, settlement or defence of any claim. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval. Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defence.

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Special condition

Mergers or change in partnership

You must tell **us** promptly if **you** take over or merge with another business or partnership or if any new partner joins **your** firm.

Special institution conditions

Under General condition 1 in the General terms and conditions, all facts and matters which might be relevant to **our** consideration of **your** proposal must be disclosed and all material representations made to **us** must be true, otherwise **we** are entitled to treat this insurance as if it had never existed. **We** will not do this if **you** satisfy **us** that the alleged misrepresentation or failure to disclose was innocent and not intended to mislead **us**.

Where the material matter is a claim or shortcoming in **your** work or a loss which should have been notified under an earlier insurance, **we** will cover **you** on the basis of either this insurance or that in force when the matter should have been notified, whichever gives the more restrictive cover.

If **you** have breached any of **your** obligations to **us** and as a result **you** have prejudiced the handling, settlement or investigation of any claim or loss, **we** will only pay as much as **we** would have paid under this insurance had the prejudice not taken place.

If there is any dispute regarding the application of these Special Institution Conditions it will be referred to the President of the Royal Institution of Chartered Surveyors (or the President's nominee) whose decision will be final.

These Special Institution Conditions will not apply, and **we** will not be liable to make any payment under this section, if someone has taken legal control of **your** business or affairs on **your** death, incapacity, insolvency or financial difficulty and has breached any of **your** obligations under this insurance and the breach is either intentional or shows a deliberate or reckless disregard for **our** interests. The Special Institution Conditions will also not apply to any claim which is referred to an Ombudsman or adjudication.

Notification for adjudication

In view of the strict timetable relating to an adjudication **you** must notify **us** by fax or electronic mail within two working days of **your** receipt of any notice of an intention to adjudicate, or of **your** intention to serve such a notice which may lead to a claim against **you** being dealt with by adjudication.

You should make this notification directly to **us**, and not through **your** insurance adviser, if **you** have one, as follows:

Claims Department
Hiscox Underwriting Ltd.
PO Box 420
Sittingbourne
Kent ME10 1WB

Fax: 020 7448 6923
Email: hicliability.claims@hiscox.com

We will not indemnify **you** under this insurance unless **you** comply with the above.