



Rights of Light market update...

The niche area of Rights of Light indemnity insurance has always had a shifting landscape – from contradictory case law, uncertain legal remedies and changing legislation – and there continues to be a need for experienced, specialist advice to ensure a comprehensive and robust solution for the developer.

In recent months, there has been a noticeable change within the Rights of Light arena driven by a number of factors which have resulted in a hardening of the market; geographical trends and a number of significant claims paired with an overall increase in claim volume have led to a tightening around underwriting and an increase in premiums.

Of particular concern to some insurers is the transition of the starting point compensation assessment from claimants, away from traditional book value and into developers' profit. This has resulted in an increase in excess levels being set to a minimum of the upper budget figures or possibly much higher in line with developers' profit. This is combined with an increased incidence of reactive agreed conduct included within policy structure.

Claims

The emergence of No Win – No Fee claims companies within Rights of Light has also had an impact on the suitability of policy cover, particularly for developments where there are a number of properties identified as having borderline actionable injury or de-minimis losses.

Whilst there may be very limited legal bases on which those properties can enforce their rights, it does not prevent a claim notification being lodged against the developer, resulting in legal costs necessary to see off the claimant.

We would recommend seeking insurance for all properties analysed within the Right to Light report in order to indemnify against the losses that arise from nuisance claims. The premium applied to such properties is usually much lower than those with an actionable injury and often the small additional premium required is negligible compared to the legal costs in seeing off un-actionable or spurious claims which are then taken care of by the insurer.

Whilst a portion of the insurer market has become more cautious toward Right to Light risks, there remains some flexibility amongst insurers where a strong risk presentation has been provided backed by expert industry knowledge; the key is to obtain as much relevant risk information as possible and to understand the transaction to a greater degree in order to offer the best possible advice and secure the most suitable indemnity terms from the market.

Our Rights of Light guide provides a comprehensive overview of the underwriting information that is required to obtain market terms which includes:

- Right to Light report, including compensation budgets, EFZ figures and contours
- Title official copies or Report on Title
- Planning permission with relevant objections (if applicable) or pre-application details if planning has not been submitted
- Required Limit of Indemnity
- Details of neighbourly matters (party wall agreements, crane oversail etc.) and timetable tracker

Additional information

However, in light of the current environment it is becoming increasingly important to also provide the following:

- **Cutback analysis** – used to assess the level of profit attributable to the reduction of scaling and massing following a Court Order
- **Developers' profit** – as mentioned above, developers' profit is often becoming the minimum benchmark in claimant negotiations, with some initial starting figures being over and above developers' profit dependent on the risk circumstances
- **Consequential losses** – Delay Costs, Loss of Profit/Rent and alternative accommodation can form a substantial proportion of total losses following an interim Order, so it is important to quantify those losses early on
- **Construction Timeline** – essential to understanding the impact that existing neighbouring properties would have upon the risk should they acquire prescribed rights prior to practical completion, a timeline also helps form a Light Obstruction Notice strategy where required for properties which have not accrued rights at the time of the Right to Light report but may do so prior to construction of the property.

By engaging with an experienced Chartered broker like Mason Owen with access to the main insurers in the market and over 30 years' experience in complex title indemnity and Right to Light matters, we can still ensure that we obtain the most favourable terms from the market at the best value for our clients across the UK.

Should you require advice on any of the above points please contact us:

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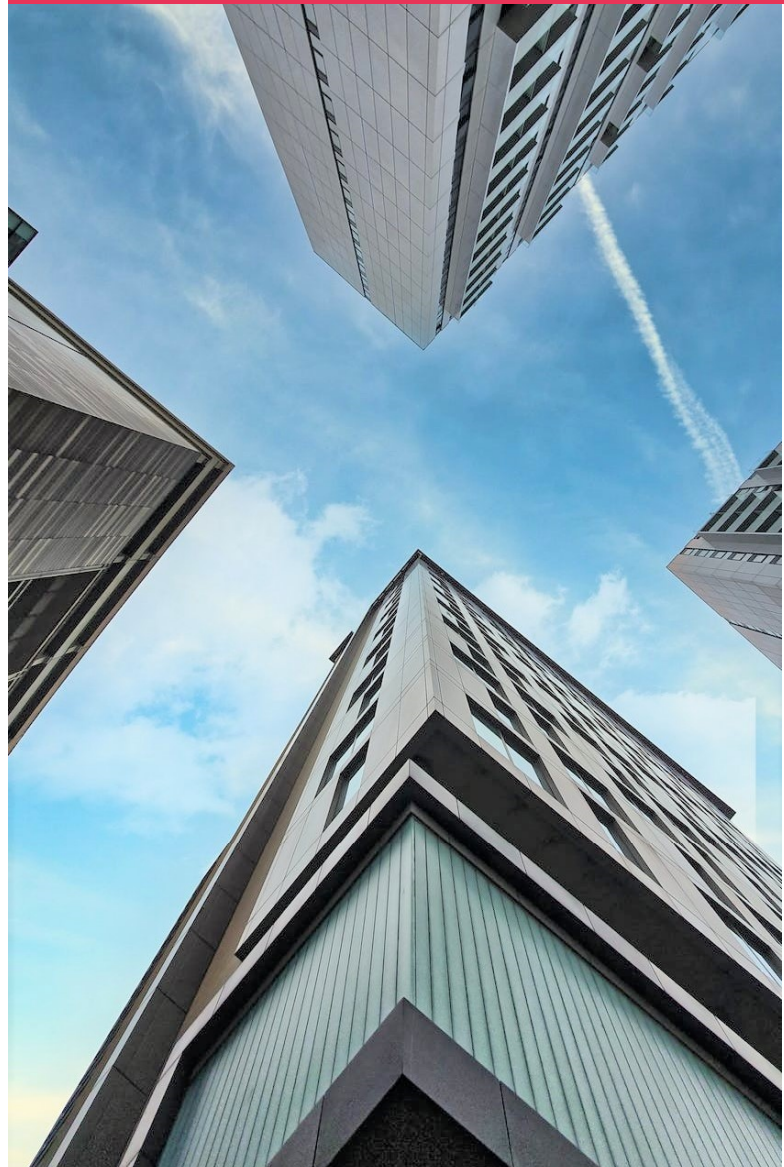
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Our full Rights of Light brochure can be found [here](#).



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