

Autumn 2023



# Covernotes

Explaining issues that affect insurance

## In this issue

- Start Your 'Martyn's Law' Terror Security Planning Right Now!
- Make Contract and Intention Identical to Avoid a Co-Insurance Claim Battle
- Can You Afford the Luxury of Underinsurance?
- The Dark Side of Cyber Crime for SMEs
- Is it Covered?





## Start Your 'Martyn's Law' Terror Security Planning Right Now!

Thousands of businesses will be required to have terror-security and terror-attack response measures in place under UK law, and have been urged to act sooner rather than later.

May 2023 saw the publication of the draft Terrorism (Protection of Premises) Bill, (Martyn's Law)<sup>1</sup> – the result of passionate campaigning by the mother of Manchester Arena attack victim, Martyn Hett.

The draft Bill will undergo scrutiny by a Home Affairs Select Committee before Parliament examines the content.<sup>2</sup> The exact timing is unknown, but the Bill is anticipated to be referenced in the King's Speech in autumn 2023, with a view to being introduced in Spring 2024.

The need for public-facing venues and events to engage in terror planning is of high importance, with 15 terror attacks witnessed in the UK since 2017. Martyn's Law will apply in England, Scotland, Wales and Northern Ireland, with a uniform response being regarded as fundamental to UK national security.

There is also a strong belief that legislation, with accompanying fines imposed for non-compliance, is the only way to enhance public terrorism security. The Manchester Arena Inquiry Volume One Report strongly recommended legal compulsion.

Compliance will be required of businesses from many sectors.

### Which businesses will be affected?

Qualifying activities will be found in entertainment, leisure, retail, food and drink provision, visitor experience delivery at a visitor or heritage attraction, sports matches and events, temporary events, worship, health care and education, but this list is not exhaustive.

The law will affect many hospitality-sector venues, from pubs to restaurants and hotels to nightclubs, as well as sports clubs and stadia, the tourism sector, theatres, cinemas, health centres, schools and a wide variety of events, whether festivals or county shows.

The degree of a business or event's legal responsibility will be determined by its capacity. Those with a capacity of under 100 will be encouraged to participate on a voluntary basis, to enhance citizens' and staff protection, and increase terrorism preparedness.

Premises with a capacity of 100-800 will be in a Standard Tier, and required to complete a full terrorism evaluation. Businesses must ensure staff are adequately trained and aware of terror threats, understand terrorists' attack methods and can respond appropriately. There should also be a lockdown plan, evacuation strategy and the right first aid equipment in place. Annual updates – or mid-term updates following changes to situations – will be expected.

An Enhanced Tier will cover those with high-capacity venues and events, catering for over 800 people at any one time. Here, planning and preparation for a terror attack should be greater than that required of the Standard Tier, with rehearsals, a dedicated Security Plan, measures to reduce the terror risk, terrorism protection training for workers, and the designation of a Senior Officer in charge of Martyn's Law requirements all expected.

### Implications of not complying

Regulatory inspections will commence once businesses have had sufficient time to comply. An indication of fines has already been provided. For Standard Tier premises, the maximum proposed fixed penalty is

£10,000. With an Enhanced Tier business or event, it is the higher of either £18m or 5% of qualifying worldwide revenue.

The Government also highlights that a conviction or indictment for failure to comply with the law could lead to a prison term. Both an individual and the 'body corporate' could be prosecuted if an offence is committed with consent, connivance or on the basis of neglect.

Businesses should get ahead with their planning by acting now. By signing up to the Protect UK website, free guidance and support tools are provided<sup>3</sup>, backed by the National Counter Terrorism Security Office (NACTSO) and the Home Office.

Businesses can also ensure staff are aware of anti-terror measures, such as See, Check and Notify (SCaN) and Run. Hide. Tell.<sup>4</sup>

Terrorism risk is also just another aspect of risk management, so your insurance broker should be utilised as a valuable source of knowledge and expertise, who can help to analyse your terrorism vulnerabilities and exposures, and advise on the appropriateness of dedicated terrorism insurance, too.

The intention behind Martyn's Law is to enhance protection, without overburdening businesses. If you require Terrorism Insurance cover, access help from a knowledgeable broker by contacting us.

<sup>1</sup><https://www.gov.uk/government/publications/terrorism-protection-of-premises-draft-bill-overarching-documents#:~:text=%27Martyn's%27Law%27%20will%20place%20a,the%20event%20of%20an%20attack>

<sup>2</sup><https://homeofficemedia.blog.gov.uk/2022/12/19/Martyns-law-factsheet/>

<sup>3</sup><https://www.protectuk.police.uk>

<sup>4</sup><https://www.gov.uk/government/publications/crowded-places-guidance/marauding-terrorist-attack-mta-run-hide-tell>



## Make Contract and Intention Identical to Avoid a Co-Insurance Claim Battle

A recent appeal against a High Court ruling has highlighted the complexities surrounding co-insurance agreements.

It has also shown that both verbal understandings and actual signed contract wordings need to match, in order for the terms of the co-insurance to apply in the manner to which the parties to the agreement might anticipate.

This was not the situation with regard to the case in question, where a construction contract's wording did not support the belief of the appellant that they were working on a project within which co-insurance applied to all aspects of the job.

In this particular case, ductwork for power cables was installed ahead of the 2015

Rugby World Cup at Twickenham by FM Conway Ltd.

FM Conway Ltd contracted with the client – the Rugby Football Union (RFU) – on the basis of a JCT Standard Building Contract without Quantities 2011, some of which, but not all, was then subject to agreed amendments.<sup>1</sup>

When the RFU suffered cable damage and replacement costs of over £3.3m, the insurance policy's DE3 standard form defects exclusion applied. Whilst the cost of consequential damage to the cables was covered for the RFU by the policy, the cost of addressing the defective ductwork was not.<sup>2</sup> So insurer RSA sought to recover these sums from FM Conway Ltd.

The contractor believed this to be impossible on the basis of co-insurance within the policy, which it said entitled it to the same insurance rights as the RFU. However, High Court and appeal judges both ruled that the contractor's insurance rights were no wider than those provided by the initial JCT. The contractor was not insured for existing structure damage caused by its own defective work.

Despite references to pre-contractual discussions about the insurance arrangements, the start and end point for the case was what was actually written in the contract, and any other 'intention' was not tenable in law.

The absence of amendments to the standard JCT, to demonstrate the alleged 'intention', was key. These would have potentially provided the cover FM Conway believed to have been in place. The contractor was actually under the

terms of the contract, and only entitled to cover for specific perils.

This case should act as a strong reminder to any contractor working on construction projects, to make sure the contractual arrangement in place accurately reflects the intention and authority of the party obtaining insurance cover for others.

Even if two parties are insured under the same policy, it does not necessarily mean both parties are covered for the same loss or that they cannot make claims against each other.

To avoid being in such a position, always work with an experienced broker in the construction sector who can advise on the situation relating to insurance cover within any project agreement. If you need such support for your future projects, or require a review of your existing arrangements, please get in touch.

<sup>1</sup><https://www.bailii.org/ew/cases/EWCA/Civ/2023/418.html>

<sup>2</sup><https://www.fenchurchlaw.co.uk/co-insurance-its-a-bit-of-a-scrum/>

## Can You Afford the Luxury of Underinsurance?

When you have worked hard to afford life's finer things, having theft, fire, flood or other types of damage take those away from you can be hugely distressing. Many high net-worth homeowners have a sentimental attachment to possessions and cannot put a value on this, and therein may lie a problem.

High net-worth homeowners show far too much reticence in assessing their property's real value and, whilst high net-worth underinsurance has always been an issue, the insurance industry now believes it is worse than ever.<sup>1</sup>

Global supply chain pressures have fuelled raw materials' price hikes, contributing to worrying inflation and subsequent increases in labour costs. Consequently, the cost of rebuilding a property has risen considerably.

Around 587,000 high net-worth homes were thought to be underinsured in 2022<sup>2</sup>, because the rebuild cost had not been correctly assessed.

Furthermore, many luxury homeowners made pandemic property enhancements,

such as extensions and new installations, but have not advised their insurer of these.<sup>3</sup>

Underinsurance also relates to contents, with many high net-worth homeowners failing to consider the value of carpets, curtains and furnishings, solely focusing on possessions. Casting an eye around the property, room by room, and assessing the value of absolutely everything, can make this very evident.

Other forces have been at play, too. The best returns on investment have been found via luxury good purchases – Rolex and Swiss watches, gold, diamonds and luxury handbags. The demand for such items has seen hikes in their value. The UK price of Rolex watches increased by up to 7% during 2022; Chanel bags have more than doubled in price since 2016; and the price of a Medium Chanel Classic Flap Bag rose from \$4,900 to \$10,200.<sup>4</sup>

The diamond price hit an all-time high in 2023, pushed up by a reported 29% increase in demand in 2021<sup>5</sup>, to a level 85% higher than in 1986.<sup>6</sup> Major jewellery brands saw considerable increases in

their range's value by as much as 15%. The average market value of designer jewellery has increased 200-300% since 2010, and even a 1oz gold chain doubled in value in the past 10 years.<sup>7</sup>

Despite such rises, many homeowners have not had items revalued in the past five or 10 years, leaving such possessions underinsured.

Underinsurance is a huge risk for any homeowner, as it can lead to a vastly reduced claims payout, when an insurer realises it exists and applies the rule of 'average'. This reduces any claims payout value – not just one for total loss – by the percentage equating to the policy's underinsurance. Therefore, if you were only insuring for 75% of the actual value of what you own, you would only have 75% of any claim paid. An insurer could also decline a claim completely.

Do not allow underinsurance to affect your luxury lifestyle. Contact your broker and ask for help in reviewing your sums insured for all your property and possessions. Get this in order today, and you should not be paying for your mistakes tomorrow.

<sup>1</sup><https://www.insuranceage.co.uk/insight/7953198/hnw-underinsurance-an-increasing-concern-for-brokers#:~:text=Research%20by%20Ecclesiastical%20has%20revealed,to%20022%2C%20reaching%2077%25>

<sup>2</sup><https://thejournal.cii.co.uk/2023/05/03/inflation-goes-high-we-go-low>

<sup>3</sup><https://www.insuranceage.co.uk/personal/7952871/education-and-client-conversations-key-to-reducing-underinsurance-in-the-hnw-space>

<sup>4</sup><https://www.sothebys.com/en/articles/understanding-the-latest-chanel-bag-price-hikes-and-the-resale-market>

<sup>5</sup><https://maj.co.uk/jewellery-news/expert-reveals-why-diamond-prices-are-going-to-increase-this-year>

<sup>6</sup><https://www.wearsoff.com/blogs/sott-talk/investing-in-jewellery-designer-jewellery-price-increases-the-best-pieces-to-buy-secondhand-now>

<sup>7</sup><https://www.dailyrecord.co.uk/lifestyle/money/value-of-gold-nearly-doubles-29214163#:~:text=Admiral%20Home%20Insurance%20has%20announced,potentially%20by%20thousands%20of%20pounds>

## The Dark Side of Cyber Crime for SMEs



A recent cyberattack on a major software provider for the payroll and pensions sectors has resulted in some of the UK corporate sector's biggest names having employees' data exposed, with names, addresses and banking details of over 100,000 people possibly in the hands of criminals threatening to publish these details on the dark web.<sup>1</sup>

This major attack on large corporate sector businesses should remind SMEs that they may also be vulnerable.

This breach exploited a system weakness and exposed a 'zero-day vulnerability' – one in which the attack exploited a

previously unknown flaw in a system which allowed hackers access to extract data without being detected.<sup>2</sup>

According to American cybersecurity experts, the attack appears to have been carried out by an experienced hacker gang. The many people impacted are being warned to update passwords and be extra-vigilant about unexpected emails and phone calls.

Stolen data is highly likely to be used for phishing activity and identity theft – scenarios where criminals send out devious requests for money transfers,

banking details or other information that facilitates financial fraud.

Burying one's head in the sand with regard to cybercrime is unwise. No business, of any size, is off the radar of cyber criminals. Selling consumer data into the dark web is profitable business, no matter where it has been harvested. If ransom money can also be earned from those seeking to prevent their data hitting the dark web, or wanting to have encrypted systems restored quickly, it's even better news for the cyber criminals. Breaches create numerous opportunities to 'earn'.

If the attention of online fraudsters falls upon your business, you would undoubtedly benefit from a combination of expert help from IT and cybercrime specialists, and may also need compensation for financial losses incurred. You might also have to defend a data protection case brought against you, if customer data is exposed.

Such situations leave some victims floundering, especially if businesses have no or limited cyber insurance cover, or have assumed that other types of insurance policy would pay out or step in, if an attack occurred. Some have no access to expert IT advice that can assist the minute a breach happens. As a result, they have no idea how to proceed, or how to source help, when they need urgent assistance.

This is why good quality cyber insurance is a must for all businesses, and why your broker welcomes the opportunity to discuss possible cyber chinks in your business armour. A broker can guide you through the various layers of cyber insurance protection and highlight what best suits your business, helping you make the right decision with regard to the cover you buy.

Before this happens to you, get in touch. We can help you get the right cover in place, so that your business can react as fast as possible, not go up in cyber smoke.

<sup>1</sup><https://www.cityam.com/cyber-hack-bbc-ba-and-boots-given-dark-web-ultimatum-by-russian-crime-gang/>

<sup>2</sup><https://www.theguardian.com/technology/2023/jun/07/ba-boots-bbc-cyber-attack-moveit-who-is-behind-it-and-what-happens-next>

## Is it Covered?

A contractor with Public Liability insurance is protected if their activities cause public damage or injury. They are not, however, covered for any faulty designs, specifications or poor advice, and for faults arising from designs they alter.

If a builder directly appoints an architect, they could also find claims relating from faulty designs are their responsibility.

All parties in the construction chain can find themselves involved when things go wrong. Even if not at fault, a builder can be dragged into a legal dispute, incurring significant legal defence costs.

Builders are typically well-advised to buy Professional Indemnity insurance. This will assist with a claim's defence and cover the legal costs. A good policy should also provide access to expert lawyers.

Larger contracts typically necessitate the holding of Professional Indemnity (PI) cover, and clients might prefer this to be in place from the outset. Professional Indemnity insurance communicates professionalism, but also bear in mind that arranging the right cover may not be an instant process.

Anyone involved in the property chain – from estate agents to surveyors – should have Professional Indemnity (PI) cover, as no business is immune to claims. If advised of one, tell your insurer, even if you question its validity. Your cover may have a time limit for claims' notifications and not meeting it could lead to a claim being declined.

Brokers can help provide the right Professional Indemnity cover for your needs, and can help to gain bespoke terms for specialist projects (where available). Contact your broker today, if you need help.





Daines Kapp Insurance Brokers Ltd  
Daines Kapp House, 4 Baldock Street  
Ware  
Herts  
SG12 9DZ

Tel: 01920 484844 Fax: 01920 484833

[www.daineskapp.co.uk](http://www.daineskapp.co.uk)  
[info@daineskapp.co.uk](mailto:info@daineskapp.co.uk)

Authorised and regulated by the Financial Conduct Authority

Willis Limited is a Lloyd's broker and is authorised and regulated by the Financial Conduct Authority, Jersey Financial Services Commission, Guernsey Financial Services Commission and Dubai Financial Services Authority. The registered office is 51 Lime Street, London, EC3M 7DQ and Willis Limited is registered in England and Wales under company number 181116.

The information given in this publication is believed to be accurate at the date of publication shown at the top of this document. This information may have subsequently changed or have been superseded and should not be relied upon to be accurate or suitable after this date.

This publication offers a general overview of its subject matter. It does not necessarily address every aspect of its subject or every product available in the market. It is not intended to be, and should not be, used to replace specific advice relating to individual situations and we do not offer, and this should not be seen as, legal, accounting or tax advice. If you intend to take any action or make any decision on the basis of the content of this publication you should first seek specific advice from an appropriate professional. Some of the information in this publication may be compiled from third party sources we consider to be reliable, however we do not guarantee and are not responsible for the accuracy of such. The views expressed are not necessarily those of WTW Networks. Copyright WTW Limited 2023. All rights reserved.