



The Approved Inspector Market

INSURANCE COMPLEXITIES AND GOVERNMENT FAILINGS

JUNE 2019

Approved Inspector History

- ▶ Prior to 1984, all Building Control approval had to be given by the Local Authority Building Control Departments (LABC).
- ▶ Approved Inspectors (AIs) were created in 1984 under the Building Act 1984 with NHBC being the first to obtain a Licence.
- ▶ The CIC (Construction Industry Council) are the body given authority by the Government to manage the Approved Inspector Register (CICAIR).
- ▶ The CIC grant new licences and audit existing licence holders.
- ▶ Under the CIC Code of Conduct and the Building Act, AIs must hold suitable insurance to offer AI Services and that insurance must be from an insurer the Government has approved as providing a policy that complies with their requirements.
- ▶ LABC continue to offer a service directly from each Local Authority in competition with AIs.

The AI Insurance Market

- ▶ There are 3 Government approved insurers:
 - ▶ Griffiths and Armour (underwritten by RSA) – insured approximately 80% of the market.
 - ▶ Howdens (underwritten by Hamilton) – insured approximately 20% of the market.
 - ▶ NHBC – insured only NHBC
- ▶ As NHBC only underwrite NHBC instructions, that is not open to the rest of the AI market, leaving only 2 insurers.
- ▶ In spring 2019, Howdens confirmed their underwriter was pulling out of the market leaving them unable to offer policies to new or existing customers.
- ▶ Griffiths and Armour confirmed in May 2019 that RSA had told them they would not be taking on any new risk, i.e. insuring any customers of Howdens who have or will lose their insurance.

The Government Response

- ▶ The Government were made aware that one insurer was likely to pull out of the market in late 2018, but no update was provided to the industry.
- ▶ When Griffiths and Armour confirmed no new customers would be offered a policy, Act Building Control formed a working group as we were the first to lose insurance cover.
- ▶ Act Building Control arranged for face to face meetings with senior civil servants in the MHCLG for the working group, but despite assurances that this was being taken seriously, no action was ever taken and as far as we are aware no report has been given to ministers. Despite chasing for updates, the MHCLG have stopped corresponding with the working group.
- ▶ Despite Howdens putting a new underwriter forward to the Government for consideration they still have not provided an update on whether that underwriter will even be considered.

The Current Situation

- ▶ Griffiths and Armour have now agreed to consider insuring former Howdens customers on a case by case basis.
- ▶ Out of the 5 companies that were uninsured by the middle of June, only 2 have been offered policies, including Act Building Control.
- ▶ 3 out of the 5 companies have been refused by Griffiths and Armour and been told the decision is final and will not be reconsidered.
- ▶ We understand the decision is based upon:
 - ▶ Forms of agreement – anything more onerous than the ACAI standard form of appointment is considered too high risk.
 - ▶ Types of projects – over 18m buildings are considered high risk along with clad properties.
- ▶ Approximately another 15 companies will lose their insurance by Autumn this year and may not be offered a policy by Griffiths and Armour.

The Implications

- ▶ We estimate that currently (due to the 3 companies already uninsured) there are 30,000 projects without a functioning AI and if all others with Howdens aren't offered a new policy this could rise to hundreds of thousands; including schools, hospitals and affordable housing.
- ▶ Once an AI loses their insurance they cannot undertake the statutory role, therefore they cannot amend or cancel notices nor can they issue final certificates - they must notify the Local Authority they cannot act and all of their projects must revert to the LABC department (albeit, we at Act Building Control believe it can be transferred to another AI).
- ▶ The LABC will request new fees for Initial Notice reversions.
- ▶ The LABC are likely to request to review all the previous work undertaken and may ask the client to open up the completed works to inspect.
- ▶ The LABCs are already overstretched, under resourced and sometimes lack the relevant expertise for complex projects so major delays in approvals and inspections are likely to occur causing significant costs to clients and contractors.
- ▶ Even those companies with insurance risk losing their insurance at the next renewal if they are deemed as having worked on "high risk" projects. Therefore each company can only plan for the next year, and clients may be in this position more than once on their projects.

The Actual Risk

- ▶ No AI has ever been successfully sued and are unlikely to be. Recent cases have proven that the bar to sue an AI is very high.
 - ▶ <https://www.lexology.com/library/detail.aspx?g=a35aa75c-32da-4293-99c2-ff1736563911>
- ▶ AIs were not involved in the approvals of Lakeland House or Grenfell Tower – these were overseen by the LABC, however many think AIs cut corners for profit. The truth is, LABCs are not licenced by anyone and hold no insurance. AIs are held to a higher standard.

The Resolution

- ▶ The Government must listen to the industry and the insurers and amend the rules for a compliant policy to be in line with the industry norms (i.e. in line with RICS, RIBA guidelines).
- ▶ The Government must crack down on spurious claims, thereby reducing the insurers expenditure on defence costs which has seen the PI market lose £billions.
- ▶ The Government must actively encourage and seek new insurers to the market rather than simply asking the industry to resolve this issue itself.
- ▶ The Government should look to level market by requiring LABC to be licenced, audited and hold insurance.

About CHPK and Act

- ▶ CHPK was formed in 2004 and is a multidisciplinary practice of Property and Construction consultants. CHPK are regulated by RICS.
 - ▶ www.chpk.co.uk
- ▶ Act Building Control is a licenced and insured AI, having received their first licence in 2006 and have held the licence ever since.
 - ▶ www.actsurveyors.com
 - ▶ <https://www.cicair.org.uk/approved-inspectors-register/act-building-control-ltd/>
- ▶ CHPK and Act are part of the same group of companies and combine resources and share cross discipline best practice for the benefit of our clients. CHPK and Act have separate insurance policies and are separate legal entities with different directors.

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