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Professional Risk Associated with Property Professionals

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Mint operate in the London and Lloyd's market specialising in servicing the insurance needs of property professionals. The following paper provides an insight to the professional risks associated with UK property professionals and how the current UK professional indemnity insurance (PI) market is responding.

The last few years have seen some of the most challenging trading conditions for UK property professionals. With continued uncertainty and turbulent times ahead, we discuss the ever-evolving risks faced by property professionals and how to best anticipate and mitigate risk going forward.

Increased claims frequency

We know from previous experience that during an economic downturn claims frequency increases. With the introduction of new legislation and looming regulation of property agents (RoPA) the consumer will enjoy added protection and therefore more rights to pursue property professionals.

Charlie Bending, partner at DAC Beachcroft LLP, who specialises in defending claims against property professionals and their insurers acknowledged saying that, *"In addition to lender claims against valuers, particularly by short term lenders, we do anticipate claims by aggrieved landlords against property managers increasing over the next 6-24 months; these are likely to flow from rental default caused by anything from a failure by the property manager to take steps on behalf of the landlord to address maintenance issues to (more likely) tenants being unable to pay rent / refusing to pay rent due to their adverse financial situation."*

Having protection from eviction (residential) or protection from forfeiture (business) due to the Coronavirus Act 2020 will only increase landlords' losses, potentially leading to claims that the property manager failed to vet tenants appropriately. Once the protection ends, property managers will also need to have the capacity to act swiftly in order to kick-start the process; taking care to adhere to time limits and prescribed steps to avoid making a potential bad situation worse."



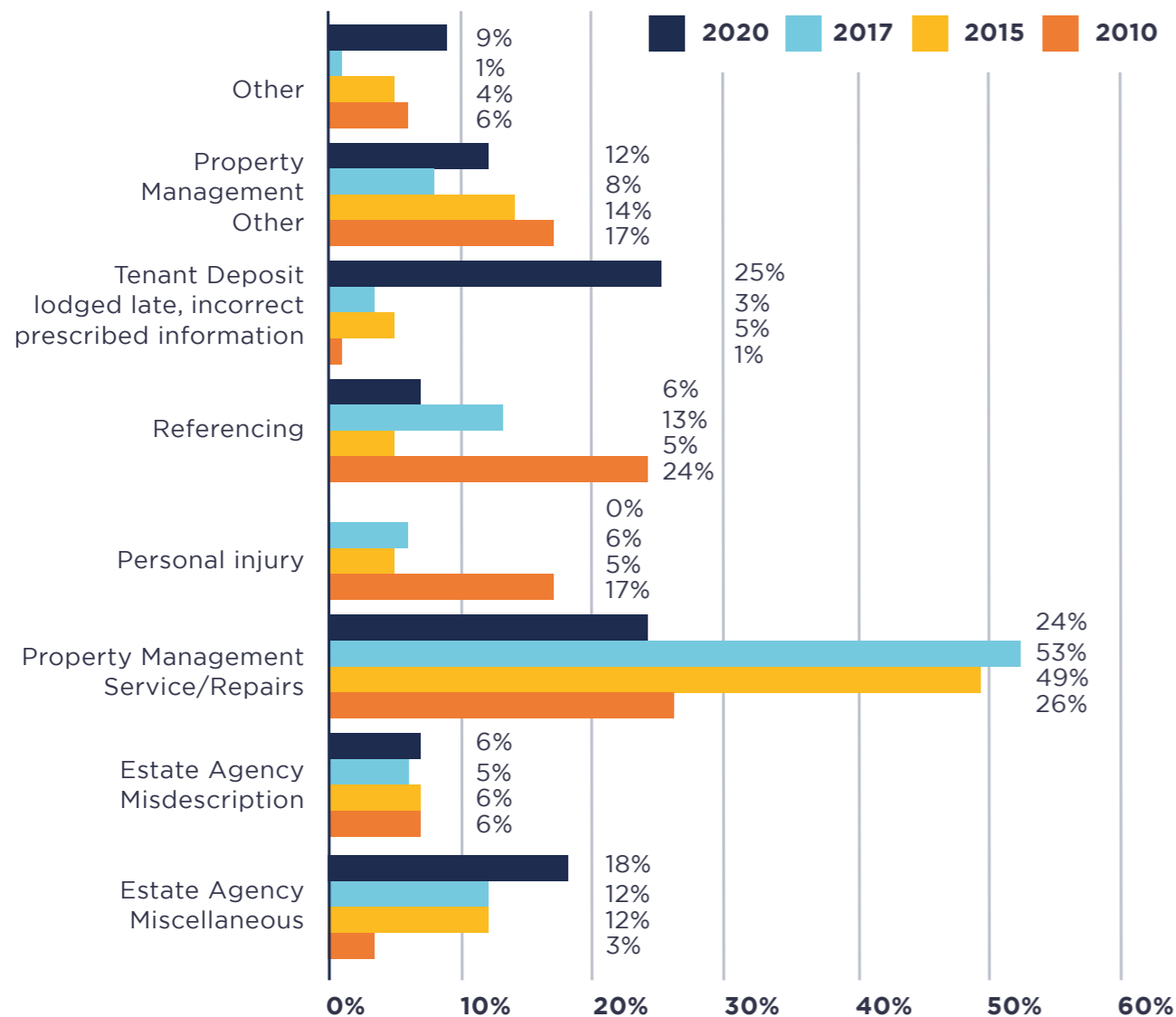
**The Property Ombudsman
recorded a 20% increase in
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Claims and new threats

There is no doubt we live in a society where there is an ever-increasing claims culture. Extensive choice coupled with advanced technology, social media, online claim centres, chat rooms, blogging, No Win No Fee law firms have all served to educate the consumer of their rights who in turn have become increasingly demanding and litigious.

With the use of online platforms and the wide variety of communication mediums available, maintaining customer service levels has become increasingly challenging. The Property Ombudsman recorded a 20% increase in complaints for 2019 and have advised the last two years has seen a 2.5 x increase in customer service related tweets on twitter and a huge 60% of consumers will expect a response back within the hour.

The below chart shows interesting changes in claims frequency since 2010 categorised in to different activities.



Claims data provided by DAC Beachcroft in conjunction with Mint. DAC Beachcroft are an international Law Firm who act on behalf of numerous insurers specialising in managing claims.

Property management claims continue to show consistent frequency, however the most notable development in the last 18 months comes from the surge in claims due to tenants deposits not being lodged on time and prescribed information being issued incorrectly.

It has been well documented that the courts can award up to three times the value of the deposit where a deposit has not been lodged on time, therefore tenants are being much more attentive and especially if prompted by a No Win No Fee law firm.

We have seen a marked increase in employee fraud and dishonesty claims since 2020 and mainly through client money misappropriation. Due to the volume of claims proportionate to claims under other categories being low, there is no allocated category for fraud and dishonesty, however you can see on the 'other' category how the frequency has increased from 1% to 9%. This also includes a rise in DSS discrimination claims building momentum following recent success.¹

Cyber Crime

Our chart does not include cyber claims as cyber liability is not typically included under a PI policy, however it is important to note the increasing threat of cyber liability and especially now GDPR has come in to force.



During the pandemic, data from Interpol shows that ransomware incidents have increased by more than 1/3 and Phishing/Scam/Fraud claims have increased by 59%. This has triggered a substantial correction in cyber insurance premium rates being charged and insurers are asking for more data and demanding much tighter risk management procedures.

- Europol – the government agency responsible for monitoring crime across Europe announced that cyber-crime was the biggest threat facing computer users.
- The PwC’s Global Economic Crime Survey (GECS) revealed that cyber-crime is now the most common type of fraud for businesses in the UK.
- Up to 88% of UK companies have suffered breaches in the last 12 months.²
- One small business in the UK is successfully hacked every 19 seconds.

Around 65,000 attempts to hack small- to medium-sized businesses (SMBs) occur in the UK every day, around 4,500 of which are successful. That equates to around 1.6 million of the 5.7 million SMBs in the UK per year.³

Nobody is immune to the threat of cyber-crime. It is imperative to ensure basic controls are in place:

- Regular password updates on all devices.
- Password complexity – Strict password rules should be implemented. Keep variety eg different passwords for different accounts.
- Do not share your password.
- Two Factor Authentication where appropriate.
- Staff training to be aware of phishing emails and the damage they represent. One in every 3,722 emails in the UK is a phishing attempt. Around half of cyber attacks in the UK involve phishing.⁴
- Software updates.
- Ensure files are encrypted.
- Monitoring of mobile and home working procedures
- Never, under any circumstances, should a payment be made to a new bank account without verbal confirmation that the account details are genuine.
- Cyber Liability Insurance

1: Tenants taking to social media to pressure agents into paying out in ‘No DSS cases’ – Property Industry Eye
2: Carbon Black reports
3: UK cybersecurity statistics you need to know | CSO Online
4: pwc-global-economic-crime-survey-2018-uk.pdf UK cybersecurity statistics you need to know | CSO Online
5: UK cybersecurity statistics you need to know | CSO Online



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Risk management guidance

Consumer protection is important and should be encouraged, however we are seeing an increasingly worrying trend where claimants are pursuing agents regardless of whether there is any substance to the claim, in the hope insurers shall settle. Typically, the claim values are low eg £2,500 - £5,000 where going to court would cost the insurers more in defence costs therefore they settle out of court.

Record Keeping

The importance of keeping up to date and accurate records is imperative when running any business, however when faced with a claim and especially a spurious claim it can be very difficult not to take it personally. To help defend your position, it is absolutely essential to always have accurate records in place including dated and timed phone notes. If insurers cannot mount a robust defence with good written evidence due to poor record keeping, this may result in a settlement regardless of whether the insured is at fault.

Colin Spain of Tokio Marine HCC Claims says, *“Over 50% of claims notified are capable of being successfully defended, and it is therefore extremely important to maintain and retain good record keeping. Lack of documentation/evidence very often means that claims with a potential for being defended end up being paid.”*

Terms Of Business

Review your terms of business (with a solicitor) to ensure they are as thorough as possible. Recently we have seen claims brought under PI policies that could have been avoided had the terms of business been more robust.

Example 1 – Agents should protect their position as much as possible where market appraisals are provided. A market appraisal is an estimate only and not to be relied upon as an accurate assessment of value in place of a professional valuation. It should not be relied upon by a third party nor should it be used for loan purposes.

Example 2 – Property owners insurance is taken out by a landlord to protect their rental property and the tenant that occupies it. A property manager has a duty of care to ensure the property they manage is suitably insured, however they cannot always rely upon the landlord to take out the correct policy, therefore it is sensible to clarify in the terms of business that the onus is on the landlord to ensure the correct insurance is in place for a rental property and that the property manager cannot be held responsible.

Lodging Deposits

We have already highlighted above the increased frequency of claims being brought against agents for failure to lodge deposits on time. Letting agents should have written and documented controls and procedures in place which are followed by all staff responsible for collecting deposits to ensure deposits are lodged and prescribed information issued within the required thirty day timeframe.

Check what system you have in place for lodging deposits. Can you improve your system through better diary systems, introducing internal audits, client account reconciliation?

We are seeing many agents choose to remove the risk entirely by outsourcing their client accounting functions to third party client account service providers.

Do's

- Notify a circumstance as soon as you are made aware of it.
- Disclose your business activities fully when applying and renewing your policy.
- Pay the premium before the settlement due date.
- Check with staff ahead of renewal to make sure there are no notifiable circumstances.
- Check your policy is accurate and reflects the instructions given to the broker.
- Review data processing and security procedures to ensure GDPR compliant.

Don'ts

- Leave the renewal exercise until the last minute.
- Admit liability or agree to a settlement without insurers authority.
- Disclose insurers involvement when dealing with a claimant unless authorised to do so.
- Hide information regarding historical claims.
- Leave viewers unattended and be especially vigilant on open days.

Conclusion

The consumer is better protected than ever before. With the increasingly litigious society we operate in and legislation constantly evolving, property professionals are finding themselves more and more exposed to negligence claims.

It is critical that property professionals become more conscious of their duty of care to the consumer and the negative impact poor risk management can have on their business.

Whilst it is impossible to entirely remove the risk of a claim being brought, there are measures and controls that can be implemented to help mitigate potential threats and we hope the above paper provides some useful guidance.

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2024



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