

Winter 2022

# Baxters

## Covernotes

Explaining issues that  
affect insurance

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April 2023





## 'Mind the Gap' in Property and Stock Valuations

Inflation is dominating this winter's headlines, adding to a perfect storm created by the Russia-Ukraine crisis, rising energy costs, Brexit, COVID-19 and supply-chain issues.

In the property sector, there are particular implications springing out of the economic and political turmoil and its impacts on goods and labour costs. Whether you are a landlord, own a commercial property from which you conduct your business, or are a construction-sector contractor, there are key things to consider, as a matter of urgency.

The first relates to property valuations. Many property valuations are out-of-date or incorrectly calculated - a serious situation when it comes to insuring them. Soaring costs of both materials and labour could mean the current rebuild values of many properties have made the policy limits on their insurance cover insufficient. Many property owners could be underinsured.

<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2022/30/contents/enacted>

<sup>2</sup> <https://www.architecture.com/knowledge-and-resources/knowledge-landing-page/the-building-safety-act-is-now-law>

<sup>3</sup> <https://www.newcivilengineer.com/latest/civils-project-starts-down-by-half-as-construction-material-inflation-continues-to-rise-26-07-2022/>

Skills shortages within the construction market have seen labour costs rise, due to supply and demand pressures and the loss of EU construction-sector workers.

Supply chain woes have led to the cost of materials, such as steel, cement and timber, going through the roof. Construction firms are having to try to compensate, through their pricing strategies, for eye-watering increases in the cost of Professional Indemnity cover. With the Building Safety Act 2022<sup>1</sup> extending the retrospective liability on projects from six years to 30 years, pricing is likely to remain high.<sup>2</sup>

'Day one' uplift clauses in commercial buildings insurance policies are intended to protect against the impacts of inflation, between the date the policy was taken out or renewed and that on which damage occurred. However, the rate of inflation is being outstripped by the increases in price of materials and hikes in labour costs, from which there is no protection. Construction material inflation alone is up 25%, year on

year.<sup>3</sup> Property owners must ensure their valuations are accurate, ideally using the services of a surveyor who is a member of RICS (Royal Institution of Chartered Surveyors).

### The financial risks of being underinsured

This situation would probably only become clear in the event of a claim – any claim, not just one for total or major loss. If any underinsurance is detected on a buildings insurance policy, it could lead to cover being cancelled, with no pay-out at all, if considered to have been a deliberate attempt to keep premiums lower. If it were not deliberate, the law of 'average' would be applied to the pay-out. The settlement sum would be reduced by the same percentage as the amount of underinsurance on the policy, potentially leaving the property owner many thousands of pounds out of pocket.

The same pressures on costs are impacting construction sector professionals, who price their jobs six to 12 months in advance, then entering fix-priced contracts. This can lead to significant under-pricing, shortfalls in anticipated income and construction supply chain pressures. This is particularly problematic for smaller firms, who rely on larger ones for on-time payment to keep their cash flow healthy.

Construction firms should work with a broker, to ensure they are fully insuring projects for which they are contractually responsible, to the right level. They should

also discuss Trade Credit Insurance, to protect their cash flow and ensure any failure of a customer's business, or delays in payment, do not lead to their own demise. Trade Credit Insurance can step in and pay invoices, even when a customer does not.

Businesses should make sure they have accurately calculated the value of their stock and have realistic insurance policy limits in place for that. Winter is a key time for stock losses, with both the impacts of weather and theft at their height.

Similarly, business interruption calculations need to be accurate. With all of the market's cost pressures, everything is rising in price, including rental of alternative accommodation, hire or purchase of new equipment and the labour costs associated with fitting out and getting the business back up and running. There is Business Interruption insurance that can cover risks and you can discuss how indemnity periods can be addressed within this cover too. It does become essential that you take the right advice and consult your insurance broker, so you can assess whether your calculations and cover are right for your business.

Be very aware of what is going on around you in the economy and remember there is often an impact on your insurance covers, especially if a 'sum insured' or 'declared value' is involved. Work closely with your broker and do not allow rising costs to impact your business through a failed or much-reduced insurance claim.





## Storm Damage? Make Sure You're Covered

Dark clouds will be gathering as winter rolls in, and some will hover over insurance claims, rather than announcing the arrival of the latest 'named' storm.

There is a stark bad-weather warning for all commercial property owners to heed: ensure your policy takes the same view of a storm claim as yourself, or your claim could be repudiated.

The definition of a 'storm' matters. Your policy may offer one, but if not, it leaves things open to interpretation – not necessarily advantageous. However, most insurers would apply the Insurance Ombudsman's definition.<sup>4</sup> That relates to not just wind, but also hail, torrential rainfall and snow.

Typically, for something to be a storm in insurance terms, it requires winds of around 55mph, torrential rainfall of at least 25mm per hour, snow of at least 12 inches falling within 24 hours and hail intense enough to break glass.<sup>5</sup>

In a storm claim, you may struggle to prove such conditions prevailed in your particular location, on the given date. You may have to access localised weather station reports. Just asserting there was a storm in the wider area may not suffice.

Take note. An insurer will typically not pay out if they believe damage was caused over time. Storm claims for damage, which actually emanate from poor maintenance and failure to address known property issues, will also not be paid.

Many policies contain a Reasonable Care clause, expecting the property owner

to keep their building in good condition and remedy any defects. They may also have a specific Flat Roof Condition, requiring regular flat roof inspections by a professional roofing contractor. A buildings insurance policy does not cover general wear and tear. Be cautious too about your liability to others. Fail to carry out repairs and then damage something, or injure someone, and it could lead to a liability claim against your business.

Evidence is often key to successful claims. When damage occurs, it should be collected in the form of photographs and videos, with a full list of damage provided. Keeping receipts, to prove maintenance has been carried out, is helpful. Similarly, take care not to throw away damaged items after a storm, unless they are a health risk.

Finally, storms could catch you out in another way – and not because you've forgotten to buy emergency batteries. If you are underinsured when the claim is analysed, the insurer could either turn it down entirely, if they felt the underinsurance a deliberate act, or apply 'average' to it, deducting from your payout a sum that reflects the percentage of underinsurance. That could be a hard financial lesson to learn.

Remember also that getting your sums right is vital for business interruption cover. If storms force you out of your premises, closing your business, the last thing you want is for your business interruption cover to be jeopardised, simply because you have got your sums wrong through incorrectly declaring your turnover requiring insurance protection.

Let a broker guide you through all of this and you should ride the storm well.

<sup>4</sup><https://www.financial-ombudsman.org.uk/businesses/complaints-deal/insurance/home-buildings-insurance/storm-damage>

<sup>5</sup><https://www.axaconnect.co.uk/siteassets/broker-documents/commercial-lines/product-support-documents/storm-damage.pdf>

## Brace your Business for Winter Conditions

Political and economic turmoil may be a talked-about threat this winter, but cold snaps could be just as big a foe.

Businesses often overlook the business continuity issues potentially accompanying burst pipes, accumulations of snow on their roof and escapes of water. Taking all necessary steps to prevent problems before they arise and having a plan in place for if they still do, makes sense.

The same measures you would take at home, apply in business premises. Keep heating serviced, maintain the heat at a temperature of around 4°C (40°F), use insulating materials to keep pipework protected and know where all stopcocks are located, so you can turn the water supply off quickly, if you suffer a burst pipe or leak.

Trying to save on heating bills, by switching off the heating overnight or in an unoccupied building, could be false economy if it leads to a pipe burst. Prevent cold air from entering buildings, by checking areas around doors, windows and skylights.

Sprinkler systems must also be up to the job in winter. Those protecting external facilities, or colder areas, are particularly at risk and will benefit from you keeping the heating on. You can also add approved

heat tracing, to at-risk protective system piping. Test any low-temperature alarm systems and ensure they work.

Don't let taps or overflow pipes continue to drip – that can easily lead to a burst pipe in a cold snap. Keep drains and gutters clear, so water does not build up externally and use salt around drains, to prevent ice build-up. If ice does accumulate, water could enter your building's foundations. It can also flow under the roof tiles, due to an ice dam forming and later melting. However, never attempt to reach for that blow-torch or other naked flame to try to thaw a pipe!

Inspect emergency generators and ensure they are ready for winter. Keep enough fuel supplies at hand for your main and emergency needs.

Make sure the area around your premises is clear and keep snow removal and gritting supplies at hand. Get a snow removal plan in place and make sure you know where any trip hazards are located. Blankets of snow can make these invisible. Have absorbent and non-slip mats or runners available at building entrances, so wet snow does not enter the building and become a slip hazard.

Try to safely remove accumulations of snow on roofs, to prevent roof collapse, trying to move snow off evenly, so you do not create overload on one part of the roof. Do not use ice picks and do not scrape right down to the roof's surface, or you could damage the membrane.

Keep a list of emergency numbers and contact details for plumbers, heating engineers and equipment suppliers at hand. Also ensure you could quickly contact all employees, if you needed to prevent them coming into work. Create a special weather 'taskforce' of key people who could take the necessary actions if emergencies occurred.

Above all, keep an eye and ear out for weather reports and brace yourself for the conditions. Being forewarned, as well as having taken steps to prevent loss, could prevent negative impacts on your business.





## Be Aware of April's Commercial Buildings Energy Efficiency Regulations

Landlords with commercial properties with an EPC energy rate of 'F' or lower in their portfolio need to act fast. From April 1, 2023, it will be illegal to rent these out.

On that date, the latest Minimum Energy Efficiency Standard (MEES) ruling comes into force, applying new minimum standards in England and Wales, to both continuing/existing leases and new ones.<sup>6</sup>

This is another milestone in the drive to achieve greater energy efficiency. By 2027, a 'C' rating is likely to be required; by 2030, a B-rating.<sup>7</sup> The legislation aims to help achieve net-zero carbon emission targets by 2050. Currently, non-domestic building stock contributes 23% of UK built environment emissions.<sup>8</sup>

Landlords need to demonstrate they have strived to achieve the highest EPC band possible. For many, particularly those with commercial properties, this could be problematic.



It is believed thousands of commercial properties will not meet the minimum standard required by April.<sup>9</sup> Any landlord continuing to rent out non-compliant property, thereafter, will be fined 10-20% of the property's rateable value, up to £150,000, unless granted an exemption.<sup>10</sup> Overall, 10% of commercial property does not currently have a rating of 'E' or above.<sup>11</sup>

To achieve the required rating, premises are likely to need a number of improvements, which could include fitting a replacement boiler, double glazing, wall or solid floor insulation or solar panels, or installing solar-powered water heating. Landlords are likely to need to act upon a surveyor's recommendations and spend significant sums upgrading the energy efficiency of their commercial portfolios.

If work has not already started, the timeframe is tight, especially over winter. Businesses should check the energy efficiency rating of their premises and assess who is responsible for paying for any required upgrades, under the terms of the lease. If renting a new property, the same checks should be carried out, to ensure business continuity will be possible. A public EPC register is available, for reference.<sup>12</sup>

If the E or higher EPC rating is not yet in place, businesses should ponder the implications. Will landlords have to enforce closure? Will they need to access their building, to carry out necessary improvements? If so, what will this mean for business continuity? Will it disrupt production or workflow? Will areas need to be vacated?

Businesses should also look at the bigger picture. Firstly, better energy-efficiency should keep bills down. Secondly, many businesses may be looking to work with suppliers demonstrating strong green credentials, as it will be part of their due diligence for their ESG (Environmental, Social and Governance) practices and reporting.

In short, being seen to operate from premises with an unacceptable energy rating may be more harmful than allowing your landlord the required access to carry out the upgrades, so liaise with them now and avoid further issues in the months and years to come.

<sup>6</sup> <https://www.gov.uk/government/publications/non-domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance>

<sup>7</sup> <https://www.fladgate.com/insights/minimum-energy-efficiency-action-required>

<sup>8</sup> <https://www.ukgbc.org/climate-change-2/>

<sup>9</sup> <https://hrnews.co.uk/understanding-the-new-uk-meas-regulation-and-what-to-watch-out-for/>

<sup>10</sup> <https://www.gordonsllp.com/mees-epc-rules-are-you-ready-for-2023/>

<sup>11</sup> <https://www.propertynotify.co.uk/news/understanding-the-new-regulations-for-uk-minimum-energy-efficiency-standard/>

<sup>12</sup> <https://www.gov.uk/find-energy-certificate>

## Christmas Crackers

1. What did Santa invest in for the good of his workforce?
2. Why do Christmas bakers struggle to get insurance?
3. Which is the most popular cover for candlemakers to buy?
4. In the hard insurance market, what have insurers stripped Santa's polar protection back to?
5. Why is Santa nervous about damaging chimneys this year?

### Answers

1. Private elf care
2. Too high whisk
3. Waxcidental damage
4. The bear minimum
5. He's heard building repair costs have gone through the roof







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