This issue of our Market Watch Newsletter marks a major milestone for our specialist real estate and construction practice here at Lockton. It’s now fully two decades since the team first came together back at the turn of the twenty-first century.

Obviously, we would prefer to be celebrating our twentieth birthday in less uncertain and challenging times for the UK property sector. But we’ve weathered the recessions of the early nineties and the global financial crisis before now, and we and our clients have kept moving forward.

It’s amazing to think that we’ve grown from a team of just 17 people back in 2000 to more than 130 today. See the infographic on Page 2 for more detail on that. We’ve also included a timeline on Page 4 that highlights some landmarks along that journey.

Over the years, we’ve certainly seen this market throw up its share of challenges, but we’ve always risen to the occasion, always adapted and innovated to better serve our clients through every phase in the market. That could help explain our market-leading 99% client retention rate.

Looking to the future, we’re focused on anticipating and responding to your evolving needs in a changing market - helping you overcome challenges and embrace opportunities. That’s always been a priority for us, as illustrated in recent years by the launch of our specialist due diligence and contingent and special risks practices.

But that’s enough about us! Also in this issue, we feature articles on the risk factors and considerations associated with the green walls and green roofs that are increasingly popular in the UK today, and on the role of investors in today’s property market.

We hope you enjoy reading this 20-anniversary edition of our newsletter. As ever, we’d love to hear from you with any comments or suggestions, and, remember, we’re always here to help in any way we can.

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Ensuring the safety of green roofs & walls

Green roofs and walls have many benefits although they can potentially increase the risk of fire and water ingress for buildings. Insurers do ask additional questions when developments include such features, however simple precautions and an adequate risk assessment can avoid any potential issues.

The advantages of green roofs and walls are manifold: They can help reduce energy use, CO2 emissions, as well as storm water run-off both in velocity and volumes. Further, they can increase the cooling effect, biodiversity as well as the value of the property.

Unsurprisingly, green roofs and walls are now a common feature particularly in major cities such as London or New York, but some recent insurance claims have brought green roofs and walls to the attention of insurers.

Developers should therefore carefully consider and manage some risk factors during design, construction and post-construction to mitigate the risk of potential claims under the construction, latent defect or property insurance policies that might be in place.

Mitigating fire risk

Whilst there is no guidance under the UK’s Joint Code of Practice in respect of green roofs or walls, particular attention needs to be paid around the potential sources of ignition during construction. Those responsible for issuing hot work permits should be aware of the locations and potential combustibility of the green areas so to try and avoid hot works taking place in close proximity. Developers should make sure measures are in place to avoid temporary electrics resting near or against these areas. Roofs are often a popular place for workers to illicitly smoke and therefore if a green roof has already been installed, developers should restrict access to the roof to all but essential workers and ensure a strict no smoking policy.

Other recommendations include:

- Implement fire breaks at the perimeter of the living matter, including around openable roof lights, windows and doors.
- Ensure breaches do not occur where organic and practically combustible matter encroaches upon the fire break.
- Enhanced inspection during long dry spells.
- Use a substrate compliant with building regulations which will absorb and store water.
- Reduce the danger of substrate erosion through regular maintenance and by deploying an effective retention system to maintain the integrity of the living roof or wall.
- Avoid using plants which contain high levels of oils or resins or that dry out easily as both could fuel a fire.
- Use high water content plants and ensure adequate irrigation during the establishment period and dry spells.
- Ensure a safe distance between large combustible plant holders and walls which will minimise the risk of fire spreading.

Good fire risk management is essential not only to reduce the potential risk of damage to the works/property but also the third party liability risk to surrounding property and injury to individuals within the building vicinity.

Mitigating the water ingress risk

Moisture penetration can also be a cause of claims due to a number of factors such as the roots of plants penetrating the waterproof membrane. Another cause is poor detailing/design at junctions, penetrations and edges.

Recommendations:

- Plan yearly inspections to remove problematic plants to reduce the potential for the development of leaks.
- Use a shallow growing medium to help prevent any plants from growing large enough to develop a strong, deep root system.
- Keep the roof design simple - avoid penetrations in the design or concentrate them in one area.
- Protect the waterproofing membrane from direct sun exposure as part of the design to maintain its longevity.
As the green roof assembly is complex, establishing the source of a leak and repairing it can often be a challenging process. It is recommended that green roof installers perform flood tests immediately after installation to check for leaks. Additionally, electronic leak detectors can be used. Before remote testing can be attempted (including other forms such as thermal imaging or radio frequency) the plants and growing medium may have to be removed. Sometimes the easiest solution (albeit a costly one) may be to re-roof from scratch.

The additional loadings to the building structure also need to be factored into the design. Green roofs are heavier compared to a conventional structure not only due the makeup of the greenery itself such as the material and vegetation, additionally due to the added water from the irrigation system and the extra water retention capacity during poor weather conditions. Therefore, particular architectural consideration needs to be given when retrofitting green roofs on existing properties and professional advice be sought accordingly.

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LOCKTON GLOBAL REAL ESTATE & CONSTRUCTION turns 20

1,375 combined years in the insurance industry

£180,000 raised for Lockton’s Charitable Association

132 skilled associates

116 promotions in the last 10 years

9 PARTNERS WITHIN THE TEAM

Worked over an incredible 805 hours of voluntary charity work

21 ACII and 19 CERT qualified employees

721 combined years working

43 SEMINARS

49 BABIES

43 WEDDINGS

31 Apprentice and work experience employees
The role of debt advisers in these uncertain times

J Paul Getty once said that without the element of uncertainty, pulling off even the greatest business triumph would be dull, routine and eminently unsatisfying. At the time, the oil tycoon was the richest man in the world, so his acceptance of less-than-perfect odds had done him no harm.

Getty died in 1976 so we’ll never know if he would have enjoyed success in the shockwaves that the Covid-19 pandemic brought to the debt markets earlier this year, let alone the lingering doubts around Brexit. What we can be sure of – if the real estate sector is anything to go by – is that clients are greatly valuing expert advice and support in what remains a tricky borrower landscape.

Lender caution is reflected in senior debt’s Covid premium. While margins have narrowed since the pricing shock in March 2020, they are still higher than pre-pandemic levels, especially across retail and hospitality businesses as would be expected. The story is more varied with mezzanine capital, depending on the size, shape and structure of debt-fund lenders.

The goalposts have moved significantly for many clients, so conversations with both incumbent and prospective lenders need to be managed. Many loans have unavoidably required an element of restructuring including capital repayment holidays and covenant waivers to accommodate a temporary fall in income. The flexibility and cooperation of lenders has generally been encouraging, possibly to avoid the PR disaster of acting overly aggressive or to perhaps to avoid marking-to-market prematurely.

The pendulum swings both ways. Lenders might also be faced with their own challenging circumstances in unexpected times like these. Despite a willingness to help borrowers, there may be a feeling of relief when a debt advisor is able to present a client with an alternative funding solution. This may become more important into 2021, when wider cracks such as large scale tenant defaults can no longer simply be plastered over. At that stage there will likely be a wider restructuring role for the debt advisor.

Looking ahead, the picture is not necessarily a bleak one. Whilst a number of deals stalled (predominantly development projects) as advisors we have still seen a number of significant loans since the start of the pandemic. For well capitalised lenders looking to deploy funds against high quality assets managed by proven sponsors, there are now opportunities available at more attractive risk-adjusted returns than at the start of the year. Whilst transaction volumes are down, a number of clients will be looking to refinance their core, stabilised assets, particularly in the office and residential sectors, enabling them to lock into swap and gilt rates that remain at historic lows. This trend is likely to continue for banks and alternative lenders.

A holistic view of the market and longstanding relationships with lenders mean that debt advisors are well-placed to help clients navigate an increasingly dynamic and unpredictable market. We can base our advice on the broad range of comparable data we gather about lenders’ appetites across specific sectors and types of project. Ultimately pricing will be dictated by the market but through generating competitive tension between a targeted number of lenders the economics can be optimised for the client’s benefit.

Debt advisors flourish in an environment like this, when there is such a diverse lender landscape. Maintaining relationships with all key players in the market is extremely time consuming and is not an effective use of resources for borrowers. By working in close collaboration with clients to understand their assets and finance requirements, the more empathetic adviser can focus on negotiating and delivering optimal borrowing terms, enabling them to focus on covering the property market to deliver existing projects or source new transactions.

Ironically, none of this would have appealed to Getty. He often ignored expert advice and was notoriously parsimonious. However, we would like to think that in a volatile multi-faceted market the right expert advice and guidance more than pays for itself.

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Lockton Global Real Estate & Construction (GREAC)

Years Strong

2000
17 individuals join Alexander Forbes to create the Real Estate & Construction division (later acquired by Lockton)

2001
First transaction processed through Asset, our bespoke IT system

2002
Arranges cover for sums insured for global real estate assets over £14 billion

2004
Acquisition of Salisbury Insurance Brokers
Completion of the Gherkin

2006
Lockton Inc. acquire Alexander Forbes

2007
29+ Associates
Apple sell their first iPhone

2008
Global financial crisis
Construction begins at 22 Bishopsgate

2009
WhatsApp Messenger launched

2010
33+ Associates
Launch of the Lockton LLP Structure

2012
Completion of The Shard
London host the Olympics and Paralympics

2014
Arranges cover for sums insured for global real estate assets over £100 billion

2015
GREAC Claims Code is launched
GREAC Contingent & Special Risk Practice is launched
GREAC begin operating in Australia

2016
89+ Associates
Arranges cover for sums insured for global real estate assets over £154 billion

2017
GREAC acquire and integrate Solo Insurance Services
GREAC Due Diligence Practice is launched
U.K. vote to leave the European Union

2018
100+ Associates
GREAC expands to Manchester

2020
COVID-19 Pandemic
Lockton Global Real Estate & Construction now comprises of over 130 Associates and Partners across 4 offices

Hard Market
Soft Market
Soft Market
Q&A with Richard Owen

Lockton’s Head of Global Real Estate & Construction (Lockton GREAC) Richard Owen tells us what gets him up in the morning, what makes him tick, and what (or who) inspires the passion that’s helped make GREAC the success story it is today.

What do you love most about your job?
Having the opportunity to work with an exceptionally talented and creative group of people, whether that’s within Lockton, with clients, or with key insurer partners - a number of whom have become good friends over the years.

What’s the best advice you’ve ever been given, either professionally or outside work?
That good leaders need to demonstrate genuine empathy.

Who was your mentor?
There have been a number over the years, the most recent being Geoffrey Lander, who sadly passed away recently.

Do you have any interesting hobbies?
Whist on honeymoon in Italy, my husband was busy with his art, so I revisited my passion for writing and tried to capture some of our most memorable moments whilst we were there. One of which was taking a hot air balloon ride at dawn across the Tuscan countryside and over the town of Montepulciano, eventually plonking down in a farmers field, who kindly made us breakfast.

What does success mean to you?
Being able to help change the lives of others, in whatever context that means, in a way that’s fair, meaningful and durable.

What is the biggest risk you have taken in your career?
Setting up the new real estate and construction venture in 2000.

Do you see there being lasting changes to the way office environments are utilised?
Yes. I believe there will be a move to ‘destination experiences’ with many more mixed-use/live-work environments, along with increased expectations around sustainability and improved efficiencies within each building and better use of communal outside space.

In a single sentence, what’s the secret of your success?
Aiming to be a better person tomorrow than I was today.

What is your most embarrassing moment?
Whilst speaking to a client at MIPIM, I was expressing myself with my hands and inadvertently flipped his wine glass over with my fingers, tipping red wine down the front of his white shirt! The poor man was only down for the day and had no change of clothes, and despite this, he did take it exceptionally well. I did replace the shirt when back in London!

Do you feel optimistic for the future of our industry?
Yes, because we can innovate to remain relevant and be a progressive, dynamic trusted advisor.

What makes you angry?
Injustice, intolerance, and the ‘ignorance of arrogance’.
If Hollywood made a movie of your life, who should play the lead role?
Daniel Craig - I wish!!

How do you relax?
My love for the outdoors and countryside always helps me relax.

I have a passion for Italy and whilst there a couple of years back, I visited an apiary on a quaint Agriturismo we were staying near to in Sovicille, which got my fascination peaked for producing my own honey in London. So as a surprise, my better half kindly bought me a beehive (Flow Hive) for a birthday present which I assembled during some downtime in Lockdown #1 - all I need now is to order the bees online and sit back and relax whilst they work away!

What is the best piece of advice you’ve ever been given?
Richard Branson said his success was built on creating a company culture that people enjoyed being part of, and employing people who are better than you are and to surround yourself with extremely talented people. Another example is Dan Shulman who emphasised in a recent TED interview that instilling an ethical, inclusive, caring culture, while providing financial security for your people, is the best path to sustained success. These observations resonate with me and certainly reflect the culture we have at Lockton.

What gets you out of bed each morning?
My dog Penny, breathing in my face wanting attention.

Do you have any book or series recommendations during Lockton #2?
Book - The Name of the Rose, Umberto Eco
Watch on Netflix – The New Pope with Jude Law

What is the scariest thing you’ve done?
Riding my electric bike on the roads of London before they put in the latest cycle routes. The roads through Shepherd’s Bush were particularly interesting!

What’s the secret to working successfully with the same people for so many years?
Treating people with honesty and respect, whilst trusting and empowering them.

If you could have dinner with anyone from history, who would it be - and why?
Sir David Attenborough. I grew up watching him being an intrepid explorer, respectful of ecosystems and cultures, and he’s continued to care passionately about the world we all inhabit.

What makes you most proud?
Seeing the success we’ve had over the years, and knowing that we have the strongest foundations in place to continue building on this over the years ahead, come what may.

What do you enjoy doing in your spare time?
We love to travel...Covid allowing, I am planning a trip with my husband and our dogs, driving down through the South of France and across into Italy. Learning French and Italian along the way to make the trip more fulfilling. I want to experience the landscapes, local food and wine, architecture and absorbing the myriad of regional cultures and traditions.

What irritates you?
People not being given a suitable platform to be heard, or those who repeatedly fail to listen respectfully to other people’s views; there is the old adage that we have one mouth and two ears, and that we should listen twice as much as we speak.

Who has influenced you in the world of business?
Sir Stuart Lipton, along with a number of other influential developers, revolutionising urban regeneration and starting a number of much needed projects around London and other city centres over a prolonged period. Our team are fortunate to be involved in such transformational projects, including Battersea etc. It is exciting for us to be part of the professional team and fascinating to work with people who have the vision and determination to enhance our urban environment. Clearly now sustainability has a major role to play in these projects.
Why you need latent defects insurance cover?

Latent Defects Insurance (LDI) provides protection against the costs of remedying damage which occurs as a consequence of the manifestation of a fault in the design or construction of a building and which only becomes apparent following completion of the project.

Funding agreements often require the arrangement of LDI. Increasingly, commercial tenants also make this a requirement, in particular when entering into a full repairing lease.

A latent defects policy is assignable to the future owners and tenants of a property. So if a development is to be sold on completion, LDI can prove attractive to potential purchasers, as it protects them against many of the risks associated with building defects.

After a development project has been completed, standard property insurance will usually exclude damage arising out of a latent defect. This can result in significant issues for owners and tenants, who might have to incur substantial costs in rectifying any defects.

How LDI works

A key benefit of an LDI policy is that it is written for the benefit of the property, rather than a specific legal entity. Making a claim is more straightforward than with many other insurance policies, as there is no requirement to establish who is at fault or to prove negligence. One simply needs to demonstrate that damage has occurred as a consequence of the manifestation of a defect in the way that the building was built.

 Policies are typically written for a period of 10 or 12 years and, for all but the largest of buildings and provide protection for the total reinstatement value of the building. Cover is provided for damage due to structural defects, and against the threat of imminent collapse requiring immediate remedial action to prevent damage. Cover is also provided for ingress of water through the waterproof envelope of the building.

The insurer will instruct an engineer to make regular visits to the development site during the course of the works. The engineer’s role is to monitor the construction of the building and detect any issues which may give rise to defects that manifest themselves post completion. The insurer’s engineer will provide a final sign-off at practical completion of the development, which enables the insurer to make a formal offer of cover.

What LDI covers

LDI policies cover the structural elements of a building and are usually extended to provide consequential damage to non-structural elements. The cover can be extended under a separate section of the policy to include defects in the mechanical and electrical plant within the building. Insurers will not pay claims where a defect existed and was discoverable, when building works were completed.

What buildings insurance doesn’t cover

With buildings cover in place after completion, you might wonder why you still need LDI. Buildings insurance policies typically insure against material damage perils, for example: fire, escape of water, storm damage and malicious damage. What they don’t cover is damage arising from an inherent or latent defect. This could leave you facing significant financial costs for rectifying any defect that comes to light after completion. Problems could arise for a wide variety of reasons. Some examples of claims that can occur are defectively designed floor slabs that move and consequently cause damage to floors and walls, damage caused by the use of inadequate wind-posts or wall-ties, defective cladding, and roofing which allows the ingress of water into the building. These types of incidents would not be covered under a standard buildings insurance.
What about contractual warranties?

If your contractor offers a warranty via the building contract or a collateral warranty, why would you need an LDI insurance policy? Even when you receive the benefit of a contractor’s warranty or collateral warranty, these won’t protect you if the contractor or consultant has gone out of business. Lenders are becoming increasingly nervous about lending on new developments where the ability to rectify latent defects depends on the contractor’s long-term financial strength. The example of firms like Carillion throws in doubt the idea that you can rely on any contractor still being around ten or twelve years from now. The consequence of this has been that many lenders have no appetite for lending on buildings without an LDI policy in place.

What about contractors’ Professional Indemnity insurance?

It might be tempting to assume that, because your contractor and consultants all have adequate Professional Indemnity (PI) insurance cover in place, you can simply rely on claiming against them if a latent defect comes to light. The obvious difficulty here is that professional indemnity insurance is written on a ‘claims made’ basis. This means that if you need to make a claim, it will be the policy in force at that time that applies, not the policy in force at the time of the breach of contract. If the contractor or consultant responsible for a latent defect has subsequently become insolvent, there’s likely to be no insurance policy in place to cover your losses.

Even if you are able to claim against a third party’s PI insurance, this may involve legal proceedings against the contractor and/or consultant to establish the loss. This can often be very time-consuming. It could be months or even years before an agreement is reached. In the meantime, your building could be left exposed, uninhabitable or, at best, in a deteriorating state of repair. An LDI policy, by contrast, will respond without the need to establish which party was responsible for the loss. Its ability to provide an immediate payment without establishing negligence or a breach of contract makes an LDI policy beneficial for everyone concerned: developers, buyers, lenders and tenants.

Professional Indemnity policies only cover the insured party up a fixed limit, which in the case of major developments could be significantly less than the cost of repair works. LDI policies, on the other hand, include annual indexation of the sum insured, which allows for the increase in construction costs over the term of the policy. In the current market, contractors and consultants may have an annual aggregate limit within their PI insurance, as opposed to cover on an ‘each and every claim’ basis. This means that, if there are multiple claims under their PI insurance, there may not be sufficient cover to meet all of their clients’ losses.

For all of these reasons, LDI remains vitally important if you want to be sure of being adequately protected from faults that might emerge after the construction phase of any development project has concluded.

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Past events

WEBINAR | PI UPDATE FOR CONTRACTORS IN CONJUNCTION WITH CECA
THURSDAY, 16TH JULY - WATCH HERE

WEBINAR | CLAIMS - WAR STORIES & TRENDS
WEDNESDAY, 29TH JULY - WATCH HERE

WEBINAR | MINIMISING THE RISK OF CLAIMS AGAINST CONSTRUCTION PROFESSIONALS IN AN UNCERTAIN WORLD
THURSDAY, 8TH OCTOBER - WATCH HERE

Upcoming events

WEBINAR | THE RISE IN FIRE CLAIMS
THURSDAY, 19TH NOVEMBER AT 3PM
Join us for a short 30 minute webinar where Frazer Argyos-Farrell of Crawford and Company will discuss the rise in fire claims relating to Covid-19.
REGISTER HERE

WEBINAR | FLOOD RESILIENCE
TUESDAY, 8TH DECEMBER 2020 AT 11AM
We welcome Ian Gibbs of Sedgwick to present a 30 minute webinar where he will consider the importance of flood risk and its impact on businesses. Ian will provide a simple walk through of the process to create a flood resilience strategy. It is essential to have a clear understanding of the flood risk and what resilience can do, so you can focus on those assets at the highest risk and develop a resilience strategy. By reviewing a case study where a business is currently investing in resilience following a flood incident, in conjunction with their insurers, he will bring the concept of flood resilience to life.
REGISTER HERE

Stay informed with company news and upcoming events by following us on Linked In.

HAVE YOUR SAY
If you have any comments on this edition of our newsletter or would like to contribute an article to a future edition, please contact us at:
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Protecting you in times of change.
You focus on building safe and vibrant student spaces and we focus on protecting them.

Lockton are Gold Sponsors of the Student Accommodation Conference on Wednesday, 9th December. Please visit the Lockton ‘hub’ located on the ‘Partner Showcase’ tab on the virtual platform to meet with a member of the Lockton team.