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ASSOCIATES

**FAÇADE
REMEDICATION
DESIGN,
CONTRACT
& PII**



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Harris Associates are an award winning RICS building consultancy providing advisory and project led services at every stage of a buildings life cycle, across commercial and residential sectors.

FAÇADE REMEDICATION DESIGN, CONTRACT & PII

Those property managers and other colleagues that are working hard to register their clients' buildings for the Building Safety Fund (BSF) will soon find that the full application process is a whole different ball game altogether.

The full application process requires a different level of detail that those of us who have worked on the ACM fund, know what is coming.

Part of the requirement will of course be the need to assess the façade(s) in question, provide a specification of remedial works, the consideration of all relevant practical and regulatory aspects, seeking costs via a tender process

and deciding upon the choice of contractor. And all of this at break-neck speed in order to hit the MHCLG deadline(s).

One aspect that must be dealt with from day one is the identification of how and where the design liability lies.

You may of course be very aware of the current insurance market conditions which in respect of design, cladding, façades, and fire safety are challenging. The extent of Professional Indemnity Insurance (PII) provided by those responsible for the design should be clarified as early on in any remediation process as is possible.

The extent (or not) of PII provided by consultants / contractors will to an extent dictate the pre-contract procurement route and the eventual form of contract. For example, we are aware that a number of façade / cladding contractors are not able to get sufficient cover for the design aspect of their work. In a lot of cases the cover is aggregated which presents its own limitations. If the contractors' PII is insufficient then the onus for design liability is likely to fall to the directly client employed designer. Assuming of course that there is one!



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It follows that the design (and the associated PII cover) should be considered of vital importance.

The approach of those managing the process for clients must make clear the options, risks, and solutions available. In particular the client must be certain over the cover that is being provided, the quantum of said cover, the possible limitations of cover and what alternative options might be available.

Many remediation contracts are being set up (and have been set up already) based on some form of design and build contract. Design & Build may actually present more risks than first realised and might be entirely inappropriate.

One of the key risks is the potential over-reliance on Employers Requirements documentation and the passing of the majority of the design liability on to a contractor(s).

For example, if the design extent and detail is lacking during the pre-contract stage then over-reliance on a contractor(s) once the contract is awarded is inevitable. And if the contractor of choice has insufficient PII cover then what happens if something gets missed? Who gets the phone call or letter advising them that a claim is heading their way? Where can the client go for recourse? Was Design & Build even the right choice?

The extent of PII is therefore of maximum importance. The availability of PII will impact on the choice of contract.

There would be a palpable risk if a contract is based on a design and build form if the contractor has insufficient cover to carry out the design. This would be particularly onerous where the extent of pre-tender design has been minimal. In these instances, the client would be exposed and the responsibility for design unclear. In such circumstance, a more traditional form of contract might be more suitable (assuming of course that the designers have the appropriate levels of PII).

In summary, it is encumbered upon all professionals responsible for managing and advising on these remediation projects that the key elements of design, risk, contract, and liability are set out clearly and impartially right from the outset.

This is not only vitally important for the client but our friends at the MHCLG will want to be very clear on where the BSF money is being spent and which parties are responsible for getting it right. We may be moving at break-neck speed, but time spent now on these important issues is an absolute must.

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