

Take cover

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Laurence Cobb weighs up the pros and cons of insurance-backed guarantees

The idea of insurance-backed guarantees (IBGs) is to provide cover in the event that the original contractor has ceased trading and is unable itself to honour its guarantee to the end user.

IBGs are used in a variety of situations; for instance, in contracts for the eradication of Japanese knotweed, damp-proofing, timber treatments, underpinning, roofing and flooring screeds.

Depending on their terms, policies cover the costs of necessary remedial works after, for example, a re-infestation of timber, recurrence of rising damp, breakdown of waterproofing, or failure of roofing, flooring or underpinning.

Period of cover

IBGs typically last for 10 years, or the period of the original contractor's guarantee if that is shorter.

Their main benefit is to provide insurance backing for a written guarantee of the standard of work or materials, in the event that the contractor is unable to discharge its obligations, typically when it has ceased trading. In this way, IBGs assure the end user or owner that any remedial or re-treatment costs will be covered by insurance rather than having to foot the bill themselves, even if the original contractor has ceased to trade.

Of course, whether or not insurance will pay out when the end user seeks reimbursement will depend on the actual wording of the policy. There are a number of points to watch with most if not all guarantees:

- IBGs will not pay out for any part of the works that are not covered by the policy;
- IBGs will not cover defects that arise from a failure on the end user's part to carry out the recommended maintenance of the works or goods;
- a failure to keep the property generally maintained and protected from bad weather is also likely to prevent a claim succeeding;
- structural alterations or other interference with the relevant works are likely to invalidate an IBG;
- consequential and indirect loss are likely to be excluded, so any lost profits, business revenues, anticipated savings, goodwill, damage to other parts of the building or to fixtures and fittings will need to be borne by the end user; for example, a recurrence of damp may be covered under an IBG for damp-proofing works, but the insurance may not extend to rectifying the damage caused to adjacent timbers or replacing carpets;
- there may be a cap on the amount that the IBG will cover, and large excesses might need to be paid;

- IBGs will not generally cover remedial works undertaken without the prior consent of the insurer, and a deterioration in insured works through a delay in reporting may also be excluded.

Small print

As usual, the small print of the policy needs to be studied to check exactly what is covered. You should confirm, for instance, that the contractor's original guarantee is transferable, and that the benefit of the IBG can similarly be transferred if the building is sold.

The usual IBG wording, for example, provides that the benefits of the guarantee shall automatically pass to any subsequent owners of the property. Of course, this will be of no help if the previous property owner has failed to maintain the works in accordance with these terms.

Other issues to consider include the following.

- Does the insurance kick in if the contractor voluntarily ceases to trade?
- If the failure occurs near the IBG's end date and the cap on liability is limited by reference to the original contract price, then the amount recoverable may not be sufficient to pay for all the rectification works.
- Some policies require the end user to pay a claim service fee to the insurer to enable it to investigate, and if the claim is found to be invalid, this is not refundable.

Policy prudence

To conclude, IBGs do not necessarily provide the peace of mind that those promoting the products suggest, so perhaps managing expectations is the best approach. It is always prudent to check the detail of the policy and, in particular, the obligations with which the insured party must comply in terms of maintaining the property and the claims notification procedure. An IBG can be helpful, but should be assessed on its merits both as to its cost and its benefit.

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Further information

- This feature is taken from the [RICS Building surveying journal](#) (December 2017/January 2018)
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