



Your guide to legal indemnity insurance

ENTER



Gallagher

Insurance | Risk Management | Consulting

About Gallagher

Gallagher is one of the world's largest insurance brokerage, risk management and consulting firms. As a community insurance broker and trusted local consultant, we help people and businesses move forward with confidence. With more than 32,000 people working around the globe, we're connected to the places where we do business and to every community we call home. Managing risk with customised solutions and a full spectrum of services, helping you foster a thriving workforce, and always holding ourselves to the highest standards of ethics to help you face every challenge – that's The Gallagher Way.

WE HELP CLIENTS FACE THEIR FUTURE WITH CONFIDENCE

Over
32,000
employees worldwide

Revenues* of
\$6bn

Operations in
150
countries worldwide

Global insurance broker with **local presence**

Gallagher has been named one of the World's Most Ethical Companies® for ten straight years. We've been committed to doing the right thing for over 90 years.

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* Based on core Brokerage & Risk Management divisions' adjusted revenue for 12 month period ending 31 December 2020.



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01. Why Gallagher for Legal Indemnity and Title Insurance?



Why Gallagher for Legal Indemnity and Title to Shares Insurance?

Many of the frustrations that emanate within a property transaction, refinancing or development can be insured. Gallagher's Legal Indemnity team help deliver competitive and bespoke domestic or global insurance solutions to mitigate risk, allowing for smooth transactions.

Our clients include law firms, property owners and developers. The team understand the complex nature and the significant impact on the future value of a property associated with these risks. Our experience enables us to provide advice and comment on the availability of products, coverage and premium rates to assist you quickly and thoroughly without any unnecessary delay.

The Legal Indemnity team form part of Gallagher's Real Estate division and we have capability across all types of property and transactional insurance, from Property Portfolio insurance to Warranty and Indemnity insurance.





02. Legal Indemnity and Title Insurance explained



Legal Indemnity & Title Insurance explained

Legal Indemnity and Title Insurance protect investors, developers and lenders against legal defects that may arise during due diligence. Often these risks are historic and cannot be removed by approaching third parties, as there may not be evidence of who the beneficiary is. If the beneficiaries of these title matters are known, it may be too costly and time consuming to fix the issue by approaching them.

Insurance is used to provide a risk mitigation strategy to, not only allow a transaction or development to proceed, but to provide cover for financial losses in the event that one of the risks crystallises. Insurance policies generally last forever; cover the current owner, future owners, lenders and tenants.

During the property acquisition process, a title deed to the property / land is provided by the seller to prove ownership, which is held by the land registry. This document shows the following:

- Owner of the title (including past owners) and whether the title is absolute or possessory
- A description of the land and estate comprised in the title (usually with a plan)
- Charges against the property / land, such as mortgages
- Rights and easements burdening the property / land, such as rights of light, mines and minerals
- Rights and easements benefiting the property, such as rights of way
- List of restrictive covenants

If there is a defect in this document, for example it has not been drafted correctly, has missing documents, has restrictive covenants that have been breached or will be breached in the future or has rights belonging to third parties that burden the property, then you could face a delay in the acquisition process.



Legal Indemnity & Title Insurance explained

Losses Covered

Most policies provide cover for the following losses:



Additional covers include:

Delay costs The costs associated with the suspension of works pending a court order or resolution of a claim	Business interruption Loss of rental income and service charges in the event of an injunction
Re-location costs Costs of relocating tenants in the event of an injunction or court order pending resolution	Service provider costs Utilities and other services can be covered by the insurer if there is a delay in a development due to the defect
Interest on loans or fees associated with early termination Where financing is in place, fees and interest can mount up particularly if there are delays	





Legal Indemnity & Title Insurance explained

Information required to quote

In order to provide a quotation, we will (as a minimum) need the following information:

- Title registers and plans to the property / land
- Confirmation of the use of the property and any development plans
 - If development is planned, please confirm whether planning has been approved
 - If so, planning officers report and confirmation of objections will be required
- Confirmation that there have been no approaches from third parties in relation to the risk that insurance is being sought for
- A summary of the risk that insurance is required for and supporting documentation i.e. statutory declarations, rights of light report (where applicable)
- A limit of indemnity – this is most commonly the market value of the property or the gross development value



03. Case studies



Case studies

Don't just take our word for it - these case studies show how Legal Indemnity insurance can help businesses...

Law firm

What was the scenario?

A top UK law firm would obtain quotations for title issues direct from an insurer.

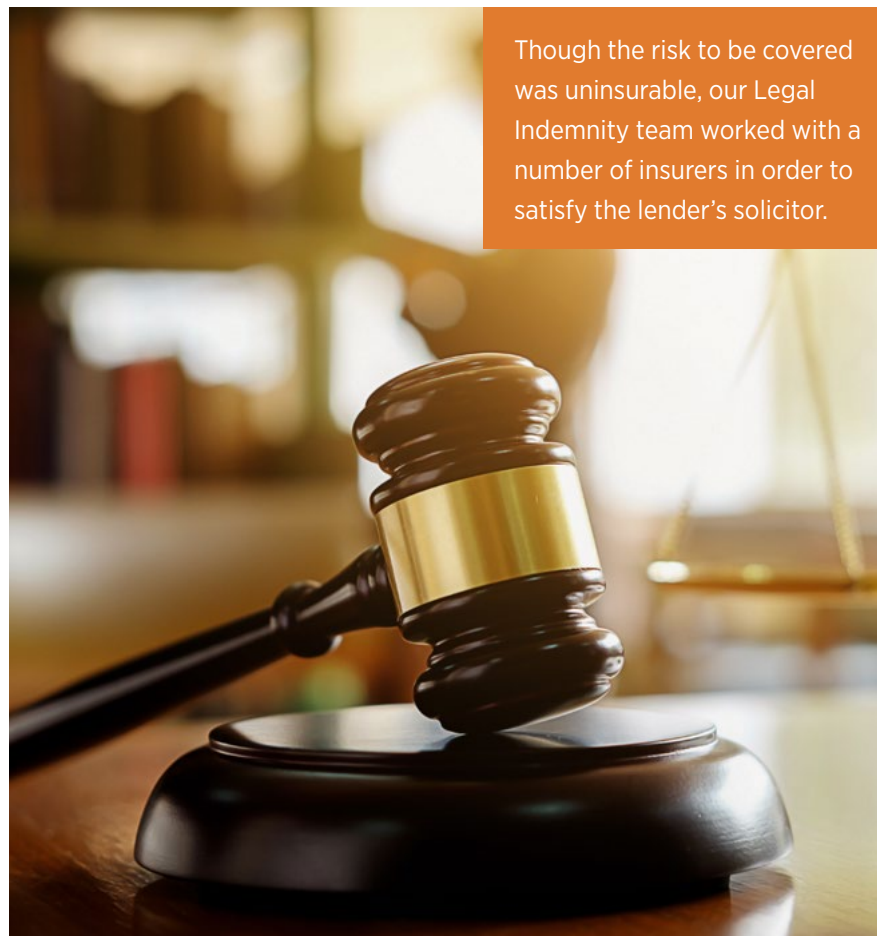
What happened?

A policy was needed urgently in order to protect a lender during a refinancing. The lawyer involved sent the enquiry to an insurer who could not provide cover, and there was a significant delay in declining the risk. The refinancing could not be signed off as the lender's solicitors were not satisfied.

What was our solution?

Gallagher were approached to assist in obtaining a quotation in order to allow the refinancing to proceed. Though the risk to be covered was uninsurable, our Legal Indemnity team worked with a number of insurers in order to satisfy the lender's solicitor. This was done within 24 hours and allowed the refinancing to proceed in the original timescales.

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Case studies

Golf course

What was the scenario?

Our client owned a golf course that they wanted to build a residential development on.

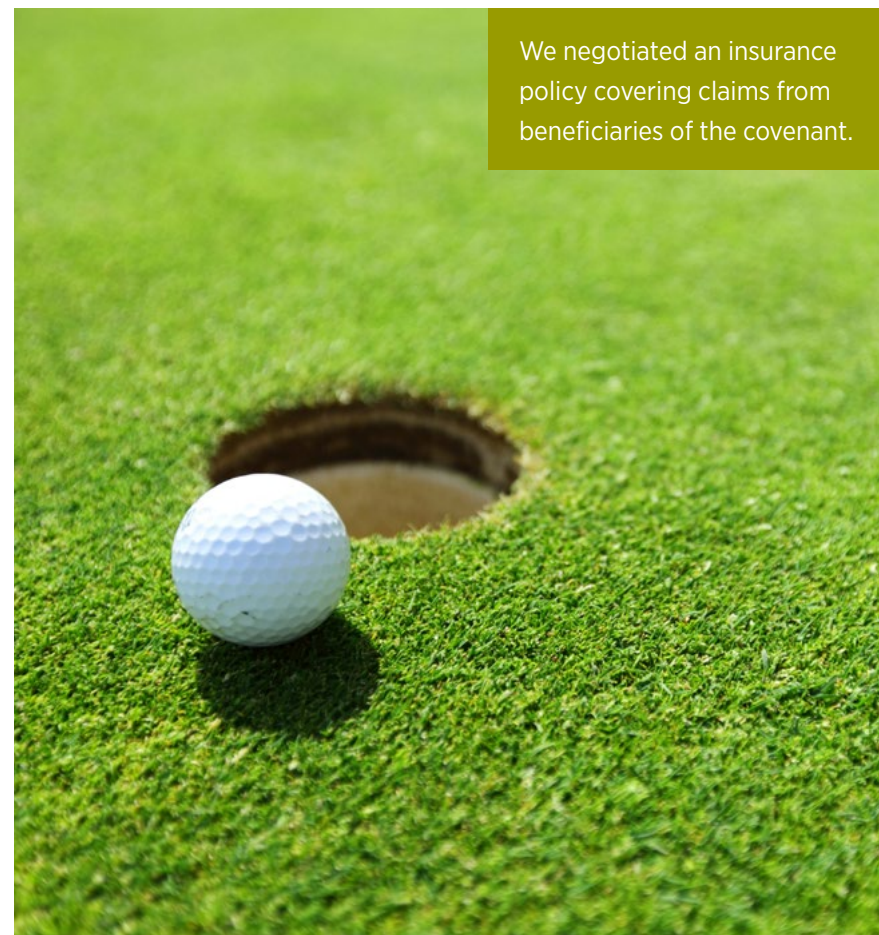
What happened?

There was a restrictive covenant within the title deeds stating that the land could only be used as a golf course and that there had to be a clubhouse erected on the land.

This meant that the GBP140m deal could not go ahead.

What was our solution?

Gallagher's Legal Indemnity team negotiated an insurance policy covering claims from beneficiaries of the covenant in the event that they were able to successfully stop the development from happening (or in the event that the property was already built, from being demolished). The development proceeded.



We negotiated an insurance policy covering claims from beneficiaries of the covenant.

Case studies

Building overhang

What was the scenario?

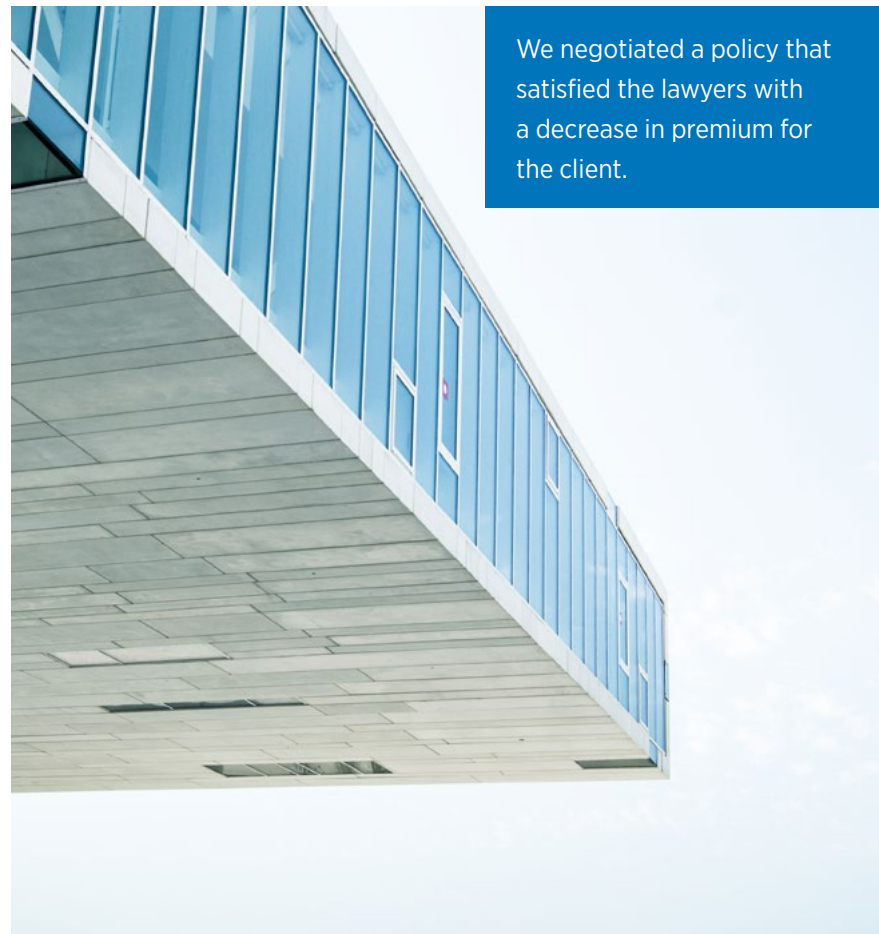
A client had an issue with a development whereby some of the property oversailed a highway.

What happened?

The oversail meant that a third party who could claim ownership of the highway, could potentially stop the development, demand that the development was changed so that there was no oversail or requirement for compensation. This would cause the development (a hotel) to lose up to 12 bedrooms, causing future loss of profit. If the property had already been built, the costs to remove the oversail would be significant. Another broker had quoted the risk with insurers but the client's lawyers were not satisfied with the insurer's response to changes to the policy.

What was our solution?

Gallagher's Legal Indemnity team approached additional insurers with the risk and negotiated a policy that satisfied the lawyers with a decrease in premium for the client.





04. Common Legal Indemnity insurance risks and what they mean



Common Legal Indemnity insurance risks and what they mean

This legal indemnity glossary gives an overview of the types of risk that can be covered by a title policy. If you or your clients have a risk that is not listed, please get in touch as we place many bespoke insurance policies, some of which have never been underwritten before.

Absence of easements

An easement is a right to use to enter over a third parties land or services.

Access

There may be a situation where you need to access your property over third party owned land. You may not know the owner or they may be known. This policy covers you in the event that the third party stops you accessing your land.

Services (i.e. media, cables, pipes and drains)

You may use services which run over, under or through a third party's land. In the event that you cannot connect to services, are unable to inspect, maintain or repair, you will be covered for losses associated with this.

Absent landlord

The landlord no longer exists because they have become insolvent or they cannot be found but they re-emerge and there has been breaches of terms within the lease or covenants or they demand ground rent arrears. This policy will provide financial protection in this situation.

Adoption of roads and sewers

If a developer failed to construct roads, footpaths or sewers to an adoptable standard, the policy will pay out if the relevant authorities require a contribution from the property owner to adopt or maintain and repair these. This policy covers the property owner for these costs.

Adverse possession

Some or part of your property may not be owned by you and you possess this only through long term use / possession. The policy protects you in the event that this land is owned by a third party and they challenge your use.

Abortive planning

Abortive Planning Insurance is a relatively new cover which provides financial protection for professional fees and planning costs in the event that planning is not granted.

Build over a sewer

This is where part of the property is built over or too close to a sewer and the relevant authorities cause damage to your property to access it.

Building regulations

You do not have or cannot locate the relevant building regulation consents to works already undertaken. The policy protects in the event that the local authority challenge this and alterations / demolition is enforced.

Chancel repair

There may be an obligation to contribute to the repair of the chancel of a church. Either this is noted on the title to the property or the property is in an area where there is a potential liability. The policy pays the liability or challenges the liability.



Common Legal Indemnity insurance risks and what they mean

Conservation Area consent

If unauthorised works were undertaken and the property is within a Conservation Area, the policy protects against enforcement action.

Contaminated land – Failed or further action environmental search

If there are potential land contamination issues that have been uncovered by a desktop survey, this policy covers you in the event that remediation is required by the authority for historical contamination.

Flying and / or Creeping Freehold

This is where part of the property extends over, above or below an adjoining or neighbouring property. The policy protects you in the event that the neighbouring property will not undertake repair to support your property, the costs of repair and maintenance or any enforcement action required.

Good Leasehold Title

You have Good Leasehold Title and a third party challenges this and has a better legal ownership. This covers the loss in value / costs of the challenge.

Insolvency Act

Gifted deposit

In the event that a mortgage is unenforceable due to the Insolvency Act and a gift of money was made to purchase the property, a lender will be covered.

Transfer at an undervalue / Pre-existing transfer at undervalue

In the event that a mortgage is unenforceable due to the Insolvency Act and the property being transferred at an undervalue, the policy will protect the lender only. If there was a previous transfer at an undervalue and a claim is made, the policy will protect the owner as well as lenders.

Defective lease

In some cases a lease is defective where it is unclear who is responsible for maintenance and repair of the property or who insures the property. The policy will provide cover if the property is not insured, the insurance is invalidated by third party actions, the lease is forfeited due to a clause in the lease determining timescales for reinstatement following damage or planning cannot be sought following damage.

Lease issues

Superior lease

If there is a Superior Lease in place which is forfeited due to breaches out of your control, this policy will protect you as leaseholder.

Housing Act escalating ground rent

This policy protects the lender only in the event that the lender suffers financial loss due to the amount of rent payable under an escalating ground rent determining the lease.

No mortgagee protection clause

Most modern leases will have a clause protecting the lender in the event that the borrower determines the lease by breaching covenants, not paying rent or becoming insolvent. This policy protects the lender against losses incurred.

Limited or no title guarantee

In the event that a seller has not provided full title guarantee, this policy protects you if a third party claims better ownership.

Listed building consent

If unauthorised works were undertaken and the property is Grade listed, the policy protects against enforcement action.



Common Legal Indemnity insurance risks and what they mean

Manorial rights

Historically, certain rights were retained by lords of the manor in the 20th century when land became freehold – these generally include hunting, fishing etc. If a third party claims to be lord of the manor and tries to enforce these rights, the policy will protect you against financial loss.

Mining / mineral reservation

The mines and / or minerals underneath your land may be owned by a third party who has the right to extract these. In the event that a third party wants to extract these or seek damages, the policy protects you against financial loss.

Missing or uncoloured plans

Generally, these are drafting issues in older hand drawn maps registered at the land registry or missing in their entirety. If these plans are challenged then the policy covers for financial loss as a result of this.

Restrictive covenants

A restrictive covenant is usually registered to the title to your property and benefits a third party, whether that is a neighbour, estate owner or developer. These covenants are restrictions on the use, size or alterations made to a property or land. If a covenant has been breached, the policy picks up claims from third parties trying to enforce the covenant. Cover can also be provided for missing covenants.

Rights, reservations and easements

There may be rights or easements that adversely affect your interest in the property or are missing or not within your title documents. If a third party tries to enforce these, the policy provides cover for the resulting financial loss.

Overhang

There are instances where a property may overhang third party land or highways. In the event of enforcement, the policy covers financial loss in the event that damages are awarded or that the overhang must be altered or removed. This does not cover criminal fines.

Planning permission

In the event that there is no planning permission or a breach of planning conditions, this policy protects against the risk of enforcement by the local authority. The policy can only be for breaches or lack of planning from a past owner and will not cover future planning breaches. Lack of discharge or lack of evidence of discharge of Section 106 (a legal agreement, usually a financial payment or agreement to contribute to or build infrastructure, which is used to mitigate the impact of your development on the local community) can also be covered.

Possessory title

If you or a past owner of a property applied for the registration of a title but did not have the required documents at the time to achieve absolute title, you will be awarded possessory title. The policy covers a third party claiming better ownership or attempting to enforce covenants / easements.



Common Legal Indemnity insurance risks and what they mean

Portfolio title

This policy is acquired when a large portfolio of properties is being purchased and there is limited time / money to undertake due diligence on all properties. Usually a sample of due diligence is undertaken and insurers cover unknown title risks that may occur in the future.

Public procurement

This is a bespoke policy that protects you in the event that a development or letting is challenged because the public procurement rules were not followed and this is challenged. Public bodies must go through an agreed procurement process when acquiring goods and services.

Rent charge

A rent charge is a sum of money, usually paid annually by a freehold property owner to a third party who has no legal interest in the property. Though this was abolished in 1977, Estate rent charges are still used. This policy covers in the event that historically the rent charge has not been demanded and the benefitting third party demands payment.

Rights of light

Rights of light occurs when you are developing a property that reduces a third party's light to a level deemed unacceptable. This party can claim damages or even seek an injunction against the development. A rights of light report and confirmation of whether you need to approach these third parties for neighbourly matters (i.e. party wall agreement, crane oversail licenses) will be required when getting a quotation. The policy covers you in the event that a third party requires compensation or seeks an injunction and the legal fees associated with this.

Share title

Whether you are purchasing a property within a corporate wrapper or just shares in any company, this policy protects you against unknown charges or encumbrances against the shares. It also covers you in the event that the party transferring the shares to you is not authorised to do so or that there are other shares in issuance that affects your ownership or value of the shares.

Searches

Search insurance can be purchased in event that you do not have valid searches when buying or refinancing a property or portfolio. The searches may not have been requested, may not have been received on time or may be out of date.

The searches usually covered are the local authority searches (CON29DW / LCC1 / CON29R / 290 / CON29M or other mining searches). Highways, chancel and environmental searches can also be covered.





Summary

- Title policies generally provide cover in perpetuity for a one off premium.
- The policies cover current and future owners, tenants and lenders but can be limited to lender only. When covering a development, these policies can be provided before you apply for planning or once planning is granted.
- Most of the issues covered in this guide can be relevant in other territories, we can cover these.
- Policies can be updated by way of endorsement for increased limits required or changes to Insured Use (subject to underwriting).
- Additional covers can be sought, such as Loss of Rent / Profit and Delay Costs.
- If a claim has already been received, insurers can still consider the risk on an agreed conduct basis.



Contact us

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