If you elect to insure a property against Terrorism, with an insurance company which is a member of Pool Re, you are required to insure all your property for Terrorism; there is no option for selecting individual properties for protection. In fact, the rule surrounding Terrorism adverse selection runs far deeper, as this newsletter explains. We also take the opportunity to consider terrorism insurance in Northern Ireland.

**The Adverse Selection Rule**

Pool Re Members (Insurers) shall ensure that there is no selection against Pool Re. As an example, where an Insured effects Terrorism Cover, they must do so in respect of all Property for which they effect General Cover, and which is eligible for Terrorism Cover.

As part of the reinsurance agreement between Pool Re and insurers, it is a condition precedent to Pool Re’s liability that insurers comply with all of Pool Re’s rules. If an Insurer becomes aware that an Insured has not complied with this rule then existing Terrorism cover must be ‘discontinued as soon as practicable.’

The Pool Re adverse selection rule applies not only to property covered by the same policy, but also to property covered under separate policies regardless of whether they are insured with the same or different insurers or brokers.

If you are aware that you are in breach of this rule then you need to take action to address the situation.

**Adverse Selection Applies Even to Separate Policies**

If you have more than one policy to insure your property investments and one of the policies includes Terrorism Cover with Pool Re, then so should all policies, whether with the same insurer or not.

Pool Re, as the name implies, is a reinsurance company, so your contract is with the insurer, not Pool Re. The insurer in turn reinsures terrorism to Pool Re. Even though Pool Re is not your insurer, there are potential implications for you if you are not complying with Pool Re’s adverse selection rules. Please contact your Client Service team if you require further guidance.

Your insurance policy may contain specific conditions relating to the adverse selection rules.

Willis has seen the following examples of specific conditions in policies including Pool Re Terrorism cover which make it a condition – sometimes a condition that would have to be satisfied before any liability can be attached to the Insurer – that

(a) the insured has arranged for all its properties to be protected by Pool Re Terrorism or

(b) says the insurer will only pay out if they in turn can recover from Pool Re.

There is no such condition however within the Willis Real Estate Practice wording. If you are in breach of specific conditions it could mean you would be unable to claim for terrorism, since insurers can refuse to pay if there is non-adherence to a condition precedent.

Even in the absence of a specific condition, if you are buying Pool Re cover on some but not all policies this could be considered a material fact; that is, a fact which could influence the Insurer in accepting or declining the risk or in fixing the premium or terms and conditions of the contract. If this is not disclosed to insurers, you are at risk of these policies being void from inception. Whether there are special conditions or not, if you think you may be in breach of the adverse selections rules you should consult with your Client Service Team to agree the best course of action.

To resolve the situation it is likely you would be required to purchase additional Pool Re cover for those properties currently omitted.
OTHER ADVERSE SELECTION ISSUES

Other issues that may arise are as follows:

**It is permissible to exclude Business Interruption entirely**

There is no requirement for Business Interruption cover to be selected for terrorism insurance in addition to the Property and Insured’s can opt to exclude this cover under Pool Re entirely. However Business Interruption terrorism cover cannot be arranged under a stand-alone policy separate from the Property Terrorism.

**Joint Ventures who insure separately from their owners can make their own decision as to whether to buy Pool Re cover or not**

In respect of Joint Venture companies who choose to arrange property insurance separately from their respective owners, they can also opt to deviate from what its, respective owners do as regards Pool Re. Aside from this all companies of the same group of companies must follow suit with regard to terrorism insurance.

**Contractual Obligations can be accommodated**

Contractual obligations such as lease conditions and/or lender requirements on certain properties which require the Insured to have Pool Re cover (where the Insured does not purchase Pool Re for their other properties) are permitted, as long as all properties to which the contractual obligations apply are insured for Pool Re cover.

**TERRORISM COVER IN NORTHERN IRELAND**

Pool-Re does not provide terrorism cover for property risks in Northern Ireland.

In respect of Northern Ireland, terrorism (using a wide definition of what constitutes terrorism) will be excluded under a general property policy and it will also exclude civil commotion and some policies will go on to exclude damage caused by riot and (other than by fire or explosion) strikers and malicious persons.

Northern Ireland operates a Compensation scheme under their Department of Justice that is designed to compensate property that has been damaged following riots or acts of terrorism committed by unlawful associations.

RESTRICTIONS UNDER THE NORTHERN IRELAND CRIMINAL DAMAGE COMPENSATION SCHEME (NICDCS)

Compensation under the NICDCS is restricted to damage (a) caused by three or more persons unlawfully, riotously or tumultuously assembled together or (b) acts of terrorism by a person acting in connection with an unlawful association.

It will therefore not apply to damage caused by persons acting alone or in pairs nor to acts of terrorism which are not connected to an unlawful association. Terrorism insurance cover is wider in scope and makes specific provision for incidents carried out by persons acting alone.

An ‘unlawful association’ under the terms of NICDCS means any organisation engaged in terrorism, which is defined as the use of violence for political ends. Terrorism insurance cover extends to include acts committed for political, religious or ideological purposes including the intention to influence any government.

Compensation for damage to property under the NICDCS may be limited to an indemnity rather than reinstatement with no reduction for betterment basis of settlement. Whilst compensation for Business Interruption may be included under NICDCS it would be limited to the period taken to repair the damage, whereas the loss may continue beyond that period (e.g. because of a lack of new tenants).

This compensation scheme may not be sufficient to satisfy the increasingly stringent demands that banks/funders may have on insurance placements before lending their money. Some banks may insist that a specific terrorism policy is arranged.

‘TOP-UP’ COVER

If you have a commercial property in Northern Ireland and seek a quotation to cover the asset, Willis can assist with arranging a solution.

The Willis Terrorism and Political Violence Practice are able to arrange full Terrorism cover for assets in Northern Ireland via Lloyds.

In addition to providing more extensive cover claims will be paid more quickly under an Insurance Policy than through the NICDCS.
If you have a client with commercial property in Northern Ireland and you wish to seek a quotation to cover the asset via a Lloyds Terrorism policy placement, please contact Willis for further assistance.

_real estate practice_
Willis Limited
Level 11, The Willis Building
51 Lime Street, London, EC3M 7DQ

For further information or advice, please contact your usual Willis Real Estate Practice representative or any of the following contacts:

**John Dilley**
Managing Director
Tel: +44 (0)20 3124 6233
Email: dilleyj@willis.com

**Paul Turnbull**
Client Service Director
Tel: +44 (0)20 3124 6253
Email: turnbullp@willis.com

**Ian Kennett**
Director of Sales
Tel: +44 (0)20 3124 6330
Email: kennetti@willis.com

**Matthew Hellyer**
Business Development Executive
Tel: +44 (0)20 3124 8354
Email: matthew.hellyer@willis.com

**Mike Carolan**
Construction Director
Tel: +44 (0)20 3124 6229
Email: carolanm@willis.com

**Fraser Pratt**
Account Executive
Tel: +44 (0)20 3124 8778
Email: fraser.pratt@willis.com