

**Building Safety Fund Cladding and Fire Safety Limited Exclusion and Aggregation Clause IUA
04-024 (XSA amended)**

Notwithstanding anything contained in this policy to the contrary, the following terms shall apply to Cladding Claims and Fire Safety Claims arising from all works fully funded by the Building Safety Fund.

1. Our liability in respect of Cladding Claims and Fire Safety Claims arising from all works fully funded by the Building Safety Fund is limited to any actual direct loss, cost, expense or Defence Costs incurred by You in rectifying any part of the works where such losses, costs, expenses or Defence Costs are incurred as a direct result of any negligent act, error or omission in the conduct by or on behalf of You in the provision of professional services as defined in the policy. All other losses, costs, expenses or Defence Costs directly or indirectly caused by, contributed to by, or arising out of Cladding Claims and Fire Safety Claims are excluded.
2. You must, as a condition to any right to indemnity or payment under this policy, be able to demonstrate all of the following:
 - a) The appointment of a clerk of works, who are a chartered member of the Royal Institution of Chartered Surveyors (RICS) or a member of the Institute of Clerk of Works and Construction Inspectorate (ICWCI) with experience of fire safety in high-rise residential buildings, by the employer but independent of the employer's design team to oversee all work funded by the Building Safety Fund.
 - b) The delivery inspections of the project at key milestones as defined within the Grant Funding Agreement have been undertaken by a chartered member of the Royal Institute of British Architects (RIBA) or Institute of Structural Engineers (IStructE) or Institute of Civil Engineers (ICE) appointed by the employer but independent of the employer's design team. Where additional works are identified at the key milestones as defined within the Grant Funding Agreement a formal review of the design is to be undertaken by the same chartered member of the Royal Institute of British Architects (RIBA) or Institute of Structural Engineers (IStructE) or Institute of Civil Engineers (ICE) appointed by the employer but independent of the employer's design team.
 - c) That You have a recognised Quality Management System in place such as ISO9001 or similar which is also utilised by any sub-consultant undertaking professional services.
 - d) All works are to be undertaken in accordance with good practice loss prevention works, for example the JCOP – Fire Prevention on Construction Sites (10th Edition).
 - e) Site specific Risk Assessments and Method Statements (RAMS) are to be prepared for all works to be funded by the Building Safety Fund, prior to the commencement of any works.
 - f) Building / remedial work shall be carried out so that all materials (excluding materials which are already part of an external wall, or are existing specified attachments, and are not being replaced) which become part of an external wall, or specified attachment, of a relevant building as defined in Regulation 7(4) of the Building Regulations 2010 as a result of that building / remedial work are of European Classification A2-s1, d0 or A1 (classified in accordance with the reaction to fire classification) except for those materials listed under Regulation 7(3) of the Building Regulations 2010.
3. Our total liability (including Defence Costs and claimant's costs) for all Cladding Claims and Fire Safety Claims shall not exceed in the aggregate the Indemnity Limit expressed in the Schedule. The Indemnity Limit shall not be reinstated.

4. The Excess in respect of Cladding Claims will be *[response]* and shall be applied to each and every Claim for each and every building at each and every site inclusive of costs and expenses.
5. The Excess in respect of Fire Safety Claims will be *[response]* and shall be applied to each and every Claim for each and every building at each and every site inclusive of costs and expenses.
6. We shall not be liable for any indirect or consequential losses that form part of any Claim, including but not limited to loss of profits, loss of use, loss of rent, loss of production, loss of contracts, liquidated damages, bodily injury or for any cost of decamping, rehousing or carrying out fire safety patrols (commonly referred to as a “waking or walking watch”).
7. We shall not be liable for any claim, losses, costs, expenses or Defence Costs directly or indirectly caused by, contributed to by, or arising out of the failure of You in the course of the professional services, to bring to the attention of any client any deficiency, alleged or otherwise, in any work undertaken by others, which failure gives rise to any Claim.
8. We shall not be liable for any claim, losses, costs, expenses or Defence Costs directly or indirectly caused by, contributed to by, or arising out of any work undertaken by others prior to the commencement of work undertaken and fully funded by the Building Safety Fund.
9. We shall not be liable for any claim, losses, costs, expenses or Defence Costs directly or indirectly caused by, contributed to by, or arising out of the Building Safety Act 2022 beyond the scope of any duty that otherwise would be implied by common law or statute in absence of the Building Safety Act 2022.

For the purposes of this clause Cladding Claims means:

any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the combustibility of any composite panels, cladding or façades of buildings or structures, and/or internal or external wall systems and any associated core/filler/insulation material and/or any fixing systems.

For the purpose of this clause Fire Safety Claims means:

any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the fire safety or fire performance or combustibility of a building or structure or any part of such building or structure, other than Cladding Claims.