

PCA INTERNATIONAL STRUCTURAL WATERPROOFING CONFERENCE

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An introduction to
the liability and professional risks insurance market
in the context of a
Structural Waterproofing Contractor

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Key responsibilities of our waterproofing contractor ?



Our Waterproofing contractor has been retained to design and install a Waterproofing system at a client's property

In simplistic terms this process involves 3 main phases:

- 1) Pre Works:**
Survey reporting, planning and Design

- 2) Works:**
Install and commission the recommended systems

- 3) Post Works:**
Schedule the preventative maintenance service plan and provide a 10 year Guarantee

What legal liability insurance covers does our Waterproofing Contractor need?



- **Employers' Liability**
Legal Liability to pay Damages and Costs following **death of or bodily injury to any person under a Contract of Service**
- **Public & Products Liability**
Legal Liability to pay Damages and Costs following **death or bodily injury to third parties or damage to third party property arising out of the business**
- **Professional Indemnity**
Legal liability as a direct result of **negligence in the conduct of professional activities and duties** by the Insured
- **Product Guarantee**
Costs of repair of work under Guarantee which fails to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired, despatched or delivered
- **Financial Loss** cover extends the provision of Product Guarantee section to include **damages, costs and expenses arising as a result of any financial loss** which is incurred by customers or third parties **as a result of a failure in performance**

Should Waterproofing Contractors split their liability insurance programme between multiple insurance companies ?



I help PCA members review their liability programmes, and am regularly presented with a number of different open market policies to read.

Split liability insurance placements are commonly structured along the lines of:

Insurance Company A : Employers, Public & Products Liability

Insurance Company B : Professional Indemnity

No Insurance protection for Product Guarantee & Financial Loss

Should Waterproofing Contractors split their liability insurance programme between multiple insurance companies ?



The general principle of the Professional Indemnity insurance cover for a D&C Contractor is that it:

- **Covers design liabilities; but**
- **Excludes liabilities arising from workmanship.**

Design v Workmanship in D&C Professional Indemnity Policies



Covered

Excluded



There is a common misconception that there is a neat dividing line between design and workmanship. In practice the borderline is *blurred*

Design or Workmanship: Mistakes on the dividing line

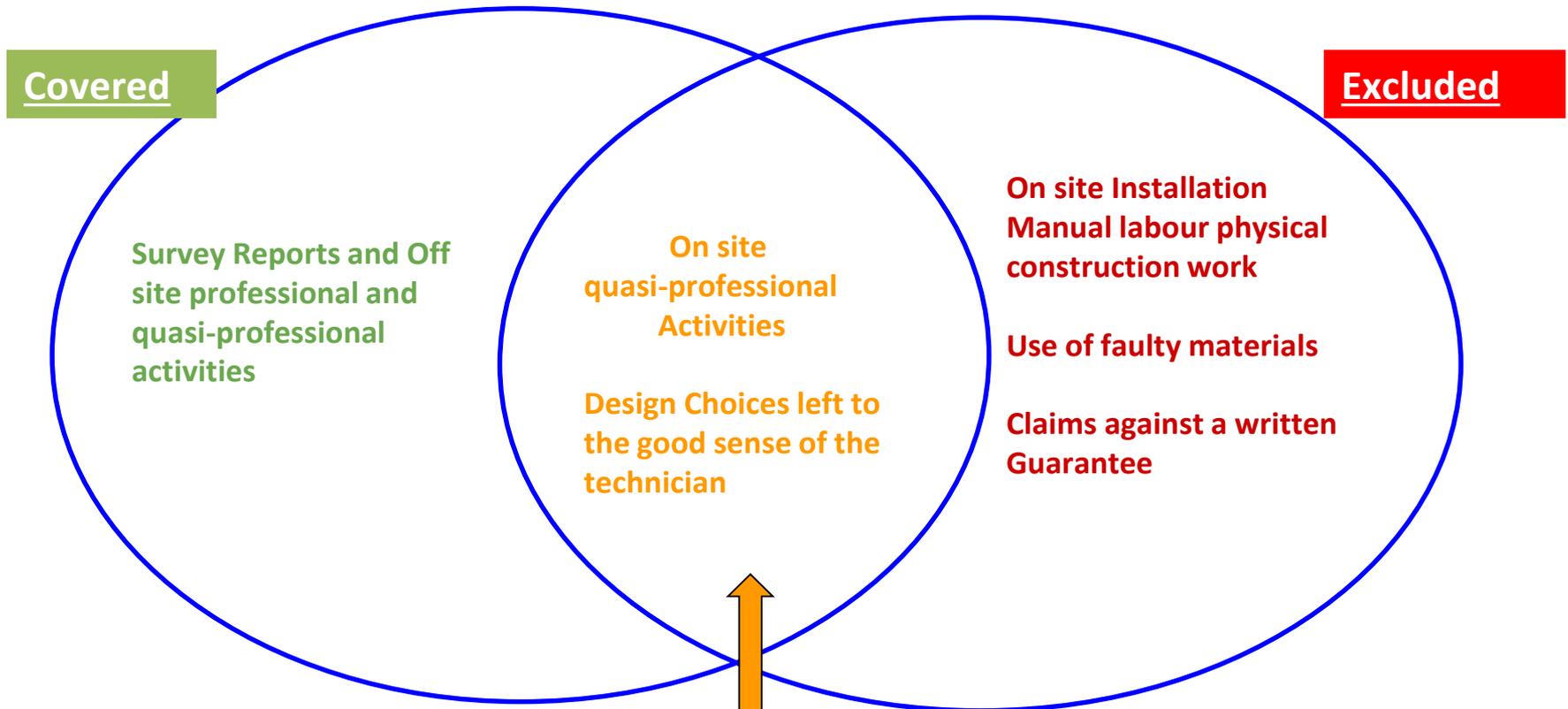


Bellefield Computer Services Ltd v E Turner & Sons Ltd [2002] EWCA Civ 1823

*“There is a blurred borderline between architectural design and the construction details needed to put it into effect. Borderlines of responsibility cannot be defined in the abstract. **A carpenter's choice of a particular nail or screw is in a sense a design choice, yet very often the choice is left to the carpenter and the responsibility for making it merges with the carpenter's workmanship obligations.**”*

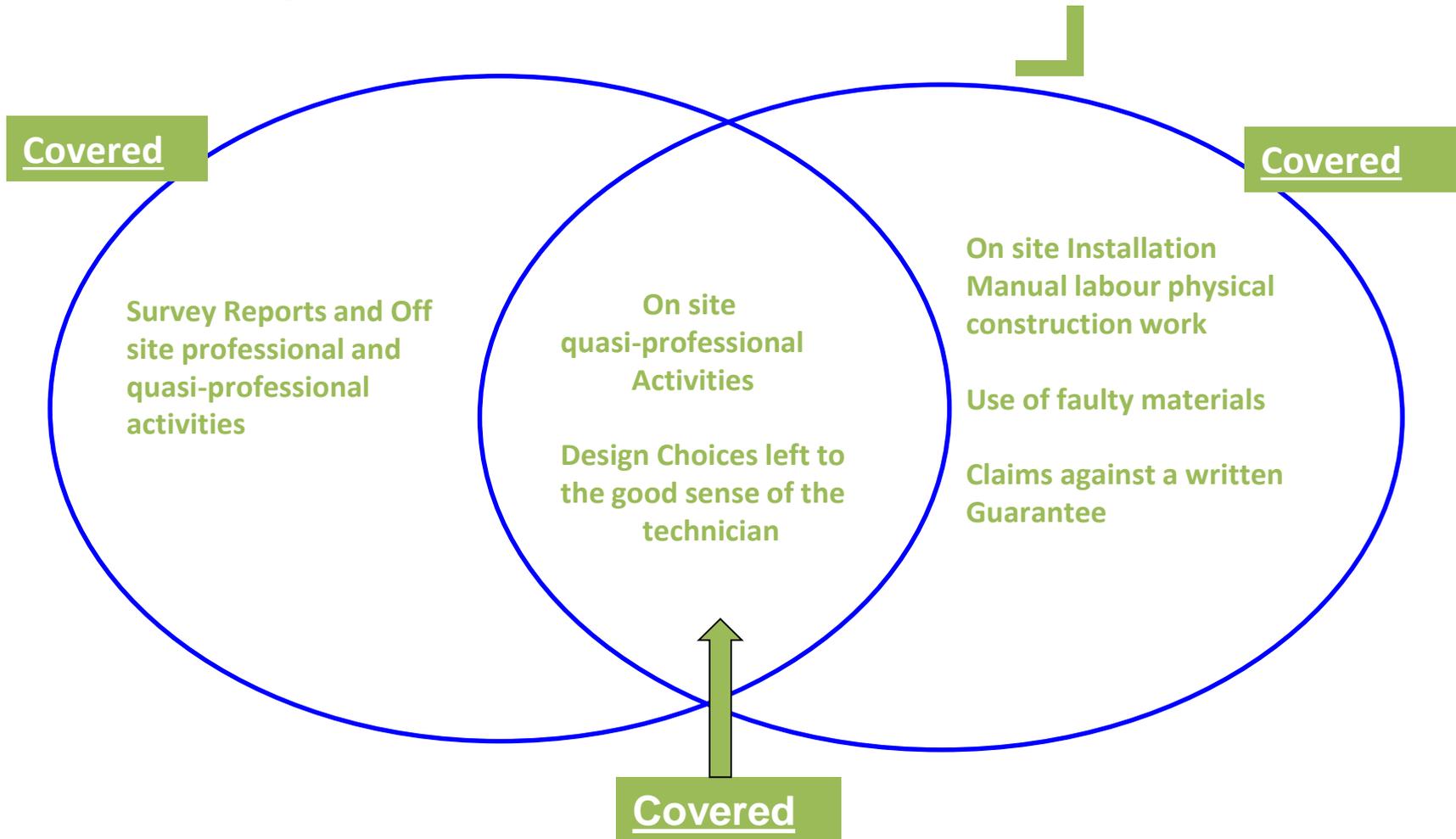
As with the carpenter choosing an appropriate nail, an experienced waterproofing technician will be called upon to make on site “design” decisions without expecting or needing drawings or specifications telling them what to do.

Design v Workmanship in D&C Professional Indemnity Policies



D&C PI markets tend to apply a **Full Workmanship Exclusion**. You can often buy back some cover which is usually subject to an 'experience & qualification' clause for persons undertaking on site quasi-professional activities

But if we combine the D&C Professional Indemnity with Product Guarantee cover



Hidden Pitfalls



Not all policies are the same. Check the suitability of your own insurance programme and avoid potential pitfalls

Here are some clauses I have found in open market policies that had been issued to Specialist Waterproofing Contractors.

- PL/Products - Complete Inefficacy Exclusion
- PL/Products - Use of Heat Exclusion (definition of heat included grinding and cutting of concrete and brick!)
- PL/Products - 1m Depth Limit applied to all work (limit should only apply to excavation work!)
- PI - Policy containing a complete cover exclusion in circumstances 'where the Insured has issued a written form of guarantee'
- PI - Full workmanship and supervisory risk exclusions

Takeaways:



- Avoid leaky cracks - place your liability covers with a single Insurer
- Check your policy cover meets your needs and that you understand the implications of clauses & restrictions
If you need help understanding the jargon why not ask me for an impartial review.
- The PCA Combined Liability scheme continues to develop to support and meet the changing needs of PCA members.