The Property Institute

Annual Conference

2025

TPI Annual Conference 2025

Contract, Cover, Competence: The Essential Pillars Of Risk Management

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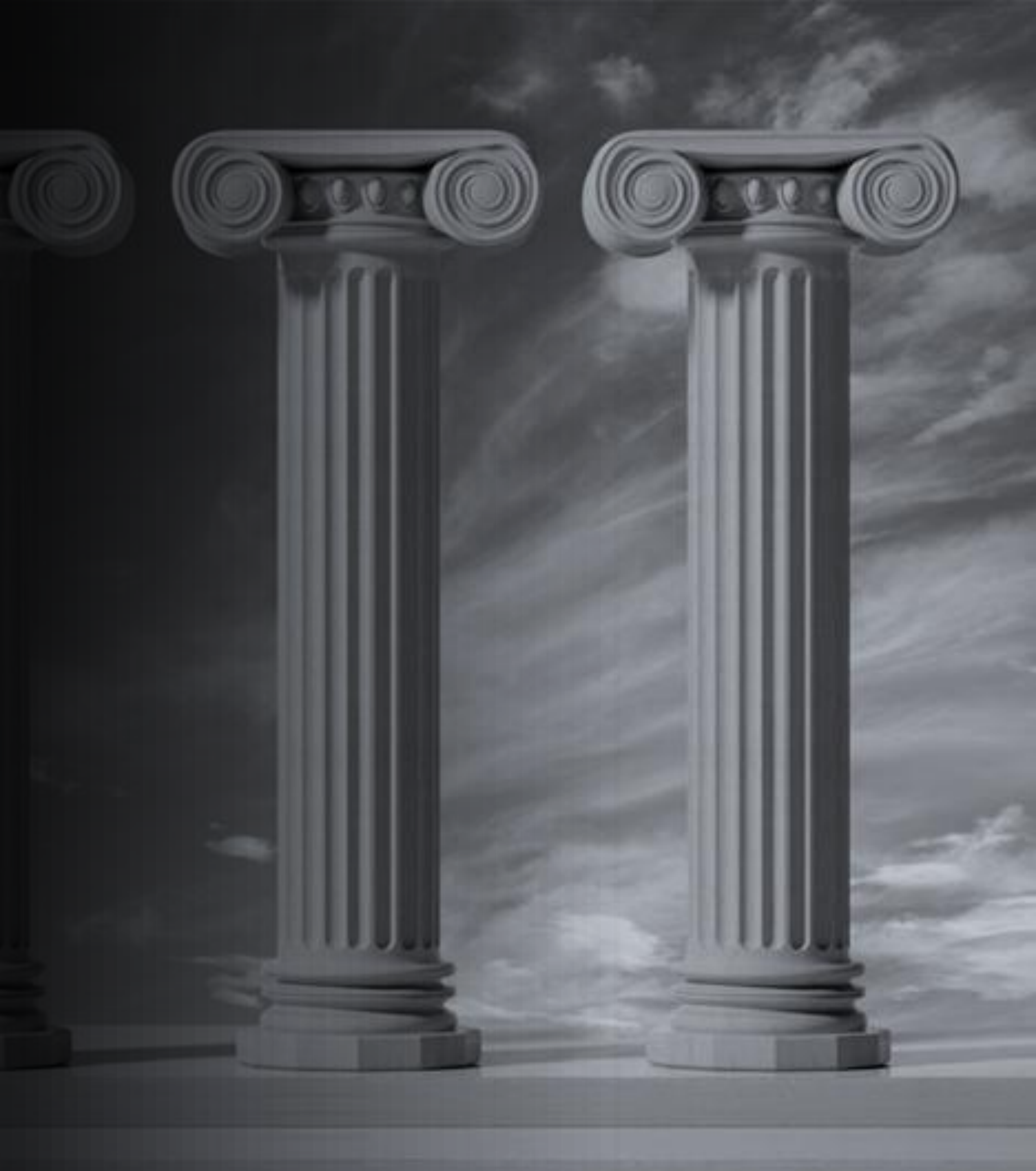
The Questions You Must Continuously Ask

Is this within the remit of our **contractual** and/or statutory obligations?

Does our insurance programme **cover** us for any liabilities arising?

Are we **competent** to deliver the **right outcome?**



If The Response to Any of These Questions Is No, Then You Cannot Deliver the Right Outcome

- Is this within the remit of our **contractual** and/or statutory obligations?
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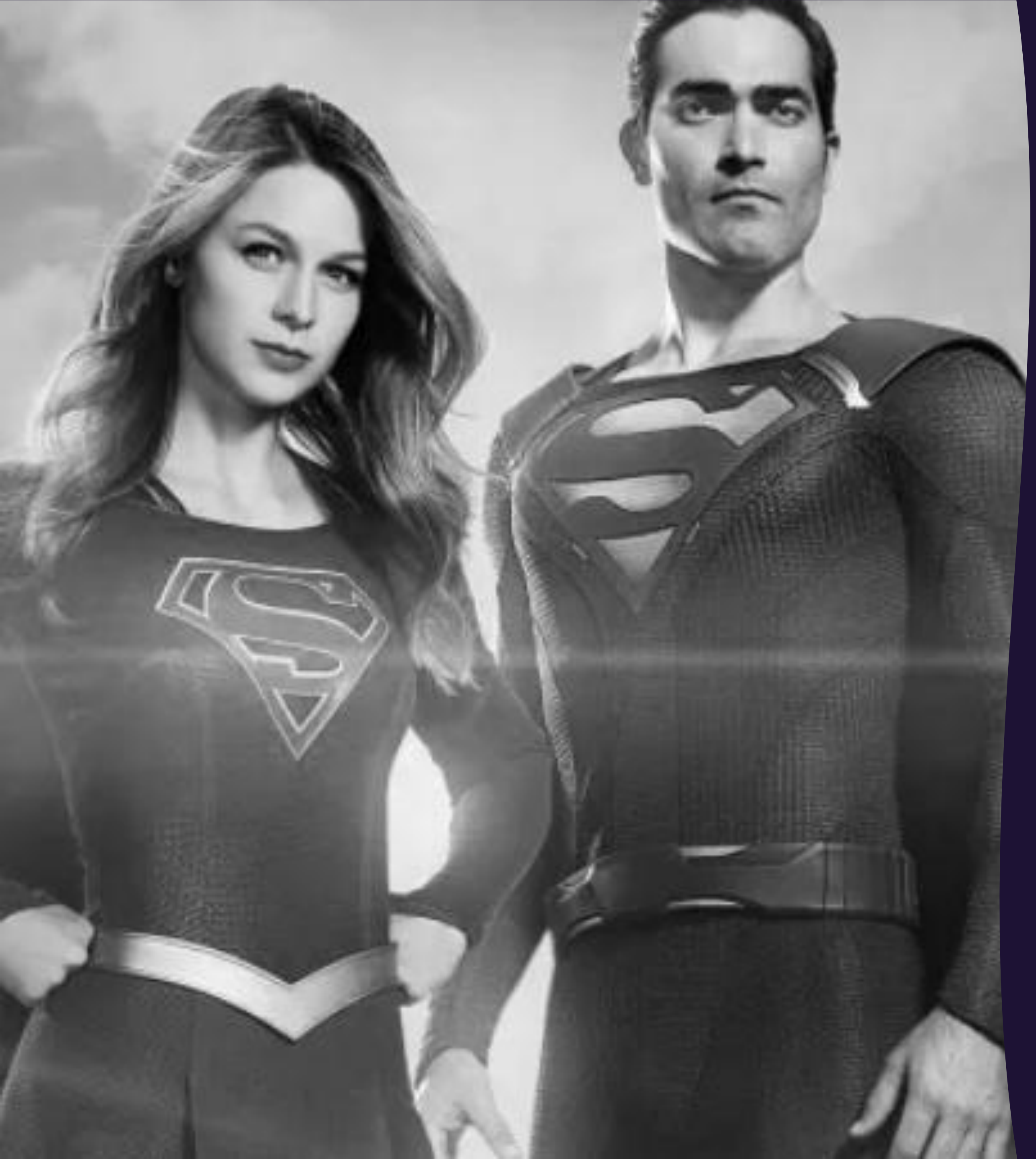


What is the ‘Right Outcome’?

- Saying ‘**no’** is sometimes necessary to achieve the right outcome, and it does not mean you are failing to help.
- You are not required to agree to everything a client requests or go beyond the agreed terms to be accommodating, helpful, or heroic.
- To manage risk effectively, you may need to say, ‘**No, I cannot do that.**’
- It can often be difficult to say ‘**no**.’

What Are You Liable For?

- Tort
- Contract
- Statute and Regulations.

Tort - Key Cases and Principles

- Tortious duties
  - *Hedley Byrne v Heller* [1964]
- Personal liability
  - *Merrett v Babb* [2001]

Contract - Key Points

- **Contract is King**

  Who is your client?

  Scope of services

  Fee

  Limitations and exclusions
- **WhatsApp messages can amount to a contract**

  Jaevee Homes [2025]
- **RICS Service Charge Code of Conduct**
- **TPI Model Management Agreement.**

Statutory/Regulatory

- Occupiers Liability Acts
- Building Safety Act 2022
- Fire Safety Regulations
- Renters’ Rights Bill (soon to be Act)
- Social Housing (Regulation) Act 2023.

Insurance: What Aren't You Covered For?

- **Exclusions / Limitations** (can include)

  Failure to disclose a material fact

  Fraudulent, dishonest or criminal acts (e.g., theft, deliberate misrepresentation)

  Deliberate or reckless breaches of duty (e.g., knowingly ignoring safety risks)

  Personal profit or advantage gained illegally (e.g., secret commissions, bribes)

  Fines and penalties imposed by regulators (e.g. HSE, FCA, ICO)

  Certain contractual liabilities where broader obligations have been accepted beyond common law duties

  Pollution/Environmental damage (except in very limited circumstances, usually excluded).

Professional Indemnity Insurance

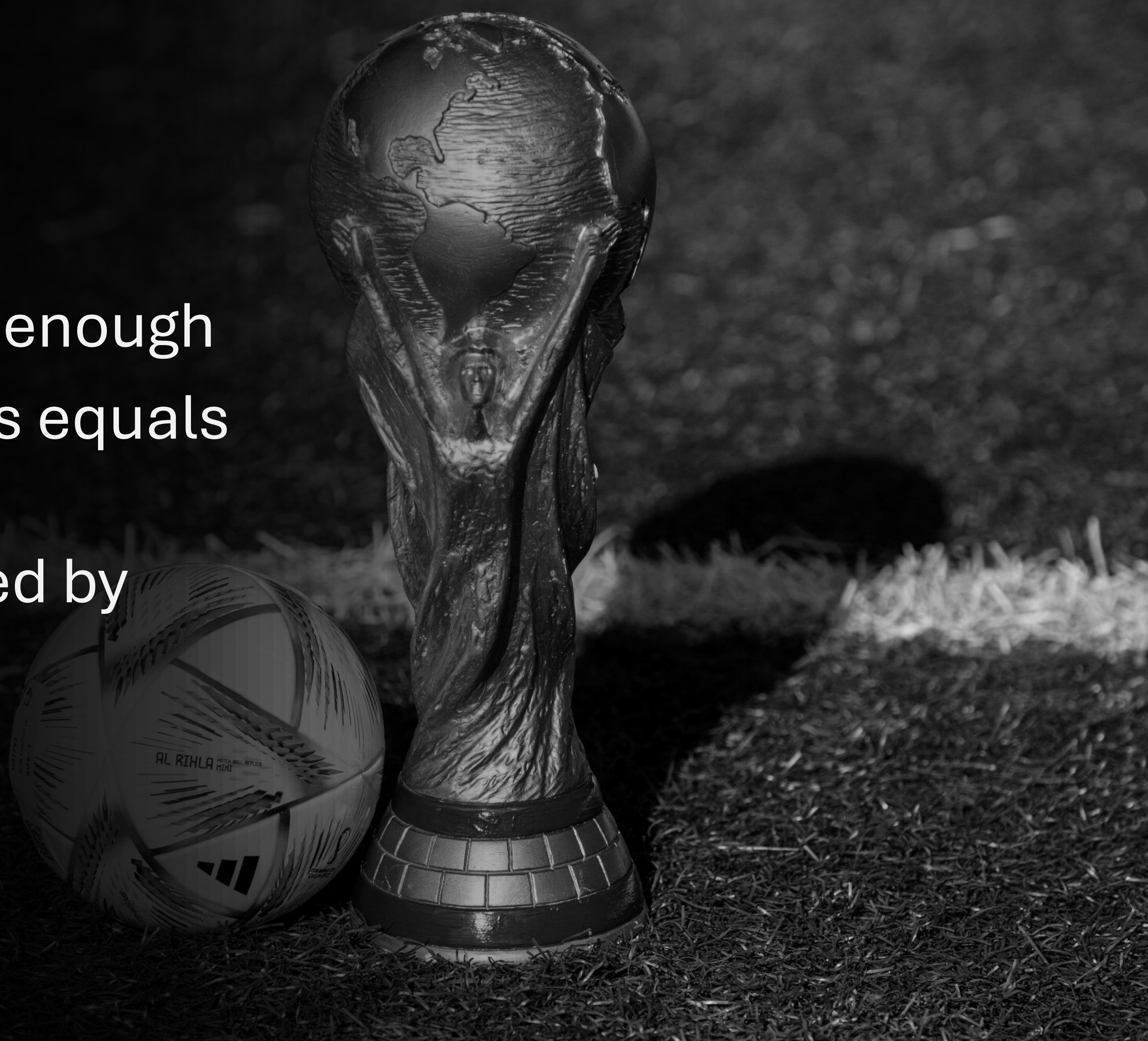
- RICS Minimum Terms 2025
- Fire Safety Exclusions - What cover do you need?
- Regulatory/Disciplinary Claims - Are you covered and if so to what extent?
- EWS1 and Fire Risk Appraisal of External Walls Assessment
- Fraud
- What cover does your appointed suppliers have?

Directors and Officers Insurance

- **Breach of contract exclusions -** e.g. a claim is made against the corporate entity and/or directors for, say, entering into a supply agreement
- **Misconduct clauses** - excluding claims arising from fraud and/or criminal behaviour.
- **Prior acts exclusion** - standard exclusion to exclude claims relating to claims made before the policy period.

Competency

- Being qualified is never enough
- Ability, knowledge, skills equals equipped and capable
- Competency is impacted by many factors.



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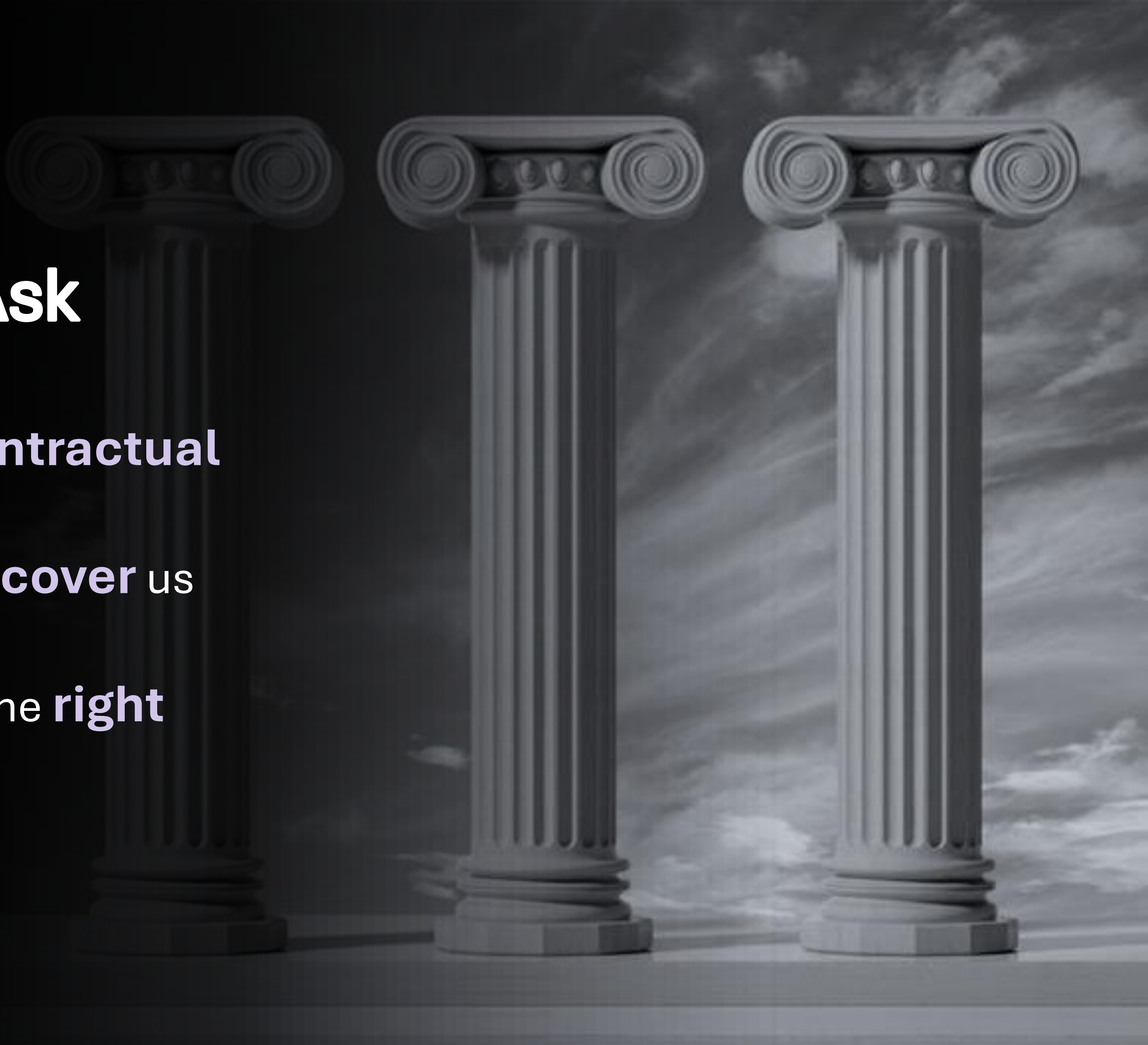

Contact us

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Stand 39

Lunch Break

13:05 - 13:55

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Compliance: Learning from High–Risk Review Findings

Glenys Diebelius
Waqas Mahmood
The Property Institute

Contents

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What is a High-Risk Finding?

What is a High-Risk Finding?

- A **must** within TPI Consumer Charter and Standards Edition 3
- That also has legislation sitting behind it or would result in a critical risk to Client Money.

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High-Risk Findings and How to Mitigate the Risk?

4.1 Bank Accounts

If holding Client Money, the Managing Agent **must** open one or more Compliant Bank Accounts.

Compliant Bank Account:

A bank account used for holding Client Money separately from the Managing Agent's own money which includes either 'client' or 'trust' in its title and is held at a recognised bank (an institution authorised by the Financial Services and Market Act 2000) or a deposit account of a building society (within the meaning of the Building Societies Act 1986), by way of statutory trust in accounts established in accordance With S.42 Landlord and Tenant Act 1987.

4.1 Bank Accounts

If holding Client Money, the Managing Agent **must** open one or more Compliant Bank Accounts.

On Opening a Compliant Bank Account: The Managing Agent

d) Must carry out reconciliations of their cash books with the Compliant Bank Account statements and with the Client ledger balances on a monthly basis within four weeks of the date of reconciliation and keep a record of this. Discrepancies must be investigated, and shortfalls on a Compliant Bank Account must be made good within a reasonable period of time.

4.1 Bank Accounts

If holding Client Money, the Managing Agent **must** open one or more Compliant Bank Accounts.

On Opening a Compliant Bank Account, The Managing Agent:

i) Should never overdraw a Compliant Bank Account
m) Must never use one trust fund for the benefit of another trust fund.

4.2.3 Service Charge Collection

When Sending Demands for Service Charge The Managing Agent Must:

a) Send demands with a summary of tenants’ rights and obligations before they become payable and in accordance with English or Welsh regulations as appropriate.

4.3 Ground Rent and Other Income

4.3.1 Ground Rent

Managing Agents **must** only seek to recover Ground Rents which, are provided for within the Lease and where they have instructions to do so by the Client and in accordance with the Lease and statutory requirements using the prescribed form.

4.4 Administration Charges

e) Ensure that demands for Administration Charges are accompanied by a summary of tenants' rights and obligations before they become payable in accordance with the English or Welsh regulations as appropriate.

4.5 Insurance

Managing Agents **must** not advise, arrange, or administer insurance or handle claims unless they are licensed under the RICS Designated Professional Body Scheme or directly authorised to do so under the rules of the Financial Conduct Authority.

(This requirement does not apply to registered social landlords acting as a Managing Agent, an exempt professional firm or a managing agent acting in the capacity of company secretary and placing insurance in that capacity as an officer of the Company).

5.3 Staff Employment & Staff Management

When The Managing Agent is The Employer of Staff, The Managing Agent Must:

f) Ensure that all employees are trained and competent before undertaking duties and have access on site to a copy of the employer's health and safety policy, fire and building safety policy.

5.5 Consultation

The Managing Agent:

a) Must comply with the statutory consultation requirements:

   i. Qualifying works: these are ‘works on a building or any other premises’ - that is, works or repair, maintenance or improvement. Consultation is required where the relevant contribution (including VAT) of any one Leaseholder exceeds £250

   ii. Qualifying long-term agreements is an agreement entered into or on behalf of the Landlord or a Superior Landlord with a wholly independent organisation or contractor for a period of more than 12 months. Consultation is required where the cost to any one Leaseholder will be more than £100 (including VAT) per financial period.

6.0 Legal Matters

6.1 Statutory Information & Inspection Rights

Where the Managing Agent, has on behalf of their Client, the statutory duty, they **must** provide Leaseholders with an address for service of notices.

6.0 Legal Matters

6.2 Statutory Compliance

The Managing Agent Must Have Regard to and Comply with:

c) Legislation relating to data protection.

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Questions?

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Refreshment Break

15:25 – 15:55

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