

Information, Communication and Technology

The Information and Communication Technology (ICT) sector is one of fastest growing, most dynamic sectors in the UK.

In an economy where investment returns are low, those with cash are looking internally to strengthen their position and improve their efficiencies. In many cases this involves system reviews and investment in technology.

Whilst this means that the technology sector has not necessarily seen the significant drop in revenue that others have, it does mean that clients are more careful to protect their investments and say when they feel there is something amiss.

This means that the insurance that companies purchase needs to be able to withstand the potential barrage of situations that could happen, from contract disputes to intellectual property issues, from computer viruses to unauthorised access. The wordings themselves are important, but it's the underwriters who write the risk and understand what clients need which make the real difference. There is no point in having the best tools if you don't know how to use them! At QBE we are able to combine a quality wording with the experience to know how it should be used.



QBE is a long established insurer in the Information and Communication Technology sector and is forward looking in both our products and underwriting. Today brokers and clients have access to a fifth generation Information and Communication Technology wording which has continued to evolve over the years to meet the needs and expectations of clients.

Target clients include but are not limited to:

- Software companies
- Hardware companies
- IT-Services
- Telecommunications
- Communications equipment providers
- Digital broadcasters
- Electronics instruments providers.

Essential covers

Breach of contract – Probably the most important element of cover to a Technology company. Breach of contract is mentioned in all Professional Indemnity policies, but in many the cover is then restricted or removed entirely under the exclusions. QBE do not apply such restrictions and even go as far as to define Breach of Contract so client's clearly see what is covered.

Hacker protection – QBE recognise the risk of hackers in the current environment and the damage that they can cause. As standard under the policy there is cover for a third parties good faith/reliance on a hackers fraudulent use of the insured's systems. Further protection from Cyber risks can be purchased through the addition of QBE's Cyber Response product.

Unauthorised access – In 99% of hardware and software projects there is an element of network security. Failing to configure security correctly, add patches where needed and even to switch the security features back on following changes are all areas where insured's face a potential exposure following a hack or virus on their network. This is an area that is often excluded in competitor's wordings.

Public relations and crisis management services – It's all very well protecting the client who has suffered the loss, but what could be the consequence of details of that claim reaching your other clients? Would they be concerned? Could they leave? Would they select another supplier? This section of cover provides the insured with reasonable funds to call in experts and avert or mitigate any material damage to any of the insured's brands or business operations.

Liquidated damages – Many contracts these days include liquidated damages as standard. Liquidated damages are covered as long as they are a fair and reasonable estimate of damages that could be recovered should a liquidated damages provision not have been included in the contract. The majority of policies available exclude this cover as standard and therefore penalise the forward thinking client.

Infringement of intellectual property rights – Breach of intellectual property rights is something that is often given in the market, and yet is also often restricted in value. This is an approach that QBE have not taken, and we provide cover for the full limit. In addition Patent cover is often requested, seldom provided. QBE have the ability to quote up to a £1 million limit of liability following additional questions.

Commercial Liability

The technology sector is slightly different to others in that it is not always easy to see where a PI and PL/products risk stop and other starts. QBE recognises this and so has developed the ability to quote the Products under the same policy as the PI. The benefit for the broker and the client is that you don't need to worry about the incidents that bridge the two heads of cover, all you need know is that QBE will look after it. Under the commercial liability QBE will be able to quote Public, Products Liability and Employers' liability cover with limits up to £10 million.

Key Aspects of Cover

- Limits available up to £25 million AOC and AGG ✓
- Breach of contract – no restrictions ✓
- Failure to protect
 - Against unauthorised access ✓
 - Denial of service attack ✓
- Inadvertent transmission of a computer virus ✓
- Defamation ✓
- Infringement or interference with rights of privacy or publicity ✓
- Misuse of information ✓
- Infringement of intellectual property rights ✓
- Breach of a professional duty ✓
- Negligent acts, errors, omissions, misstatements or misrepresentation ✓
- Defence costs ✓
- Claims emanating from the dishonesty of employees ✓
- Hacker protection ✓
- Public relations and crisis management services ✓
- Costs to withdraw content – mitigation costs ✓
- Court attendance compensation ✓
- Punitive and exemplary damages where insurable by law ✓
- Liquidated damages ✓
- Worldwide territory and jurisdiction. ✓

Claims scenarios

Here are a cross-section of claims scenarios which an insured may experience and would be covered by our Information and Communications Technology policy.

Breach of contract – failure to deliver on time

An insured agrees to supply software to a multi-national computer retailer that was intended to manage all aspects of service and repair relating to computers it sold. The contract involves the supply of licences for the software and the supply of services necessary to install and integrate the software with the retailer's other systems. The scheduled date of implementation passes and the insured is still trying to conclude the installation. The retailer "pulls the plug" saying that the software is of no use to it and that it has suffered loss as a result of the insured's failure to complete the execution of the services on time. With the support of the insurer, expert evidence shows that the software did work (or would have if the insured had been allowed to finish the job!) and that the reason for the late completion was the retailer's own failure to provide timely assistance and co-operation.

These are examples only. Consideration of all claims is subject to policy terms and conditions and reviewed on a risk-by-risk basis.

Misrepresentation – the software delivered bells but not whistles

A nationwide book distributor sends out tenders for a software package for administering its back-office systems. The insured says it has a ready-made software module that can do the job and wins the contract. Despite all their best efforts the software does not work as the insured said it would: the insured cannot quite make the module fit and the product is replaced with a rival software package. A multi-million pound claim is pursued, seeking to recover sums already paid to the insured and the increased cost of working, cost of replacement products, mitigation costs and loss of profits. Although the insured's software did not "do what it said on the tin" and the customer was justified in rejecting it, the insurer provides indemnity and works with the insured to limit losses, as expressed by an effective exclusion and limitation of liability clause to the amount of the fixed-price project fee.

Industry statistics

- Nearly 1 in every 20 people employed in the UK work in the IT sector
- There are over 100,000 companies in the UK IT sector
- Over ¾ of people in the UK use IT as part of their job
- The UK sector is the largest IT market in Europe.

In this brochure you will find details of the full range of products available to the ICT sector. If you need more information please contact your local QBE underwriter.

Infringement of intellectual property rights

An insured provides software for the creation and use of electronic application forms for store loyalty cards. It enters into an outsourcing agreement and while the insured performs its services, it has access to some of its client's software products. After the outsourcing agreement comes to an end, the client claims that the insured has used its software to develop its own products which it is selling on to competitors and that its software infringes the client's copyright. With the support of its insurer and its specialist solicitor the insured is able to establish that its software has been created without copying or adaptation from any corresponding part of the customer's software.

Libel

A claimant asserts that a number of individuals posted defamatory comments about its products on the internet. The insured is an internet service provider which accepts that it had temporarily stored the defamatory information (known as "caching"). The critical question is whether the internet service provider is liable for publication of the defamatory material through its services. With the support of its insurer the insured argues before the court that the necessary ingredients for publication are missing. The court agrees, concluding that an internet service provider that performs no more than a passive role in facilitating postings on the internet could not be deemed to be a "publisher" at common law.

Claims handling

QBE has a dedicated claims handling service with specific experience of Technology related claims, including breach of contract, breach of intellectual property rights and Cyber crime. Our handlers come from both a legal and insurance background and will provide a proactive and collaborative approach to both claims handling and commercial legal enquires. We pride ourselves on building relationships with our clients, understanding their needs to help protect commercial relationships and reputations.

Our in-house qualified solicitors have worked both in private practice and for insurance companies. This experience encompasses the management of court proceedings up to the House of Lords, defending claims to trial and negotiating settlement of litigation and claims. With training in legal principles our claims handlers also understand the need to ally commerciality and common sense to the defence of a claim – dictated by the individual facts of each case.

QBE has the expertise and experiences to ensure your technology clients will not only get an insurance product that will respond to their technology and media liabilities but that the claims will be handled efficiently and effectively.



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