
Code of Professional Conduct

Guidance Note 5

Insurance

5.1 RIBA Requirements

Members practising architecture are exposed to the risk of being sued for negligence or breaches of contract. Some form of insurance should therefore be held which will generally cover liabilities arising from such claims. Holding appropriate insurance cover is a requirement of an RIBA Registered Practice.

5.2 ARB Requirements

In the UK, the Architects Registration Board requires all practising registered persons to be covered by a professional indemnity insurance (PII) policy. Advice should be sought from the ARB regarding the level of cover it requires for a member's income and portfolio.

5.3 Members practising overseas

The Institute recognises that PII is not the only form of insurance cover available. Those members not registered with the ARB (such as those working abroad), must ensure that they have an appropriate form of cover for their circumstances.

5.4 Members' assets as cover

Whilst in theory members could pay damages and costs from their business or personal assets, this is rarely adequate or practical and is not generally acceptable as the sole form of cover for negligence and breach of contract.

5.5 Members should therefore ensure that their professional work is protected by an appropriate insurance policy at a level of cover commensurate with the type of projects they undertake.

PI Insurance is explained in more detail in the Annex: Professional Indemnity Insurance.

GN5 ANNEX

Professional Indemnity Insurance

It is not possible to cover all the intricacies of PII here but the main points are:

1. **Limiting the levels of liability and cover**

It is possible and appropriate to include clauses in the appointment contract that limit the level of liability and level of cover, and such clauses are included in the RIBA standard appointment forms. There are no prescribed formulae for calculating the appropriate amount, but it should cover the potential rectification costs and consequential losses. This should be negotiated between the client and the architect. Client demands for very high amounts of cover are often the result of an inappropriate blanket application to cater for larger/different risks and other types of insurance (often on an “aggregate” basis – see below). However the amount must be reasonable and clearly explained to the client in relation to the particular project, especially if dealing with a “consumer client”.

2. **Net contributions**

As well as sensibly limiting the total amount of liability and cover available for the project the RIBA standard appointment forms make provisions intended to limit the liability for an event where responsibility might be shared with another party to “...*that sum as is just and equitable for the Architect to pay having regard to the extent of the Architect’s responsibility for the loss and/or damage...*”. This is known in the RIBA forms as the “Net contribution clause”. In other contracts it is sometimes called a “proportional liability clause”.

3. **‘Claims made’ annual insurance cover**

Like most insurance PII is annually renewable, but it differs because it is written on a “claims made” basis. This means that the insurer at the time the claim is made is responsible for covering that claim. This is why proposal forms are often detailed and must be filled-in conscientiously. For example an architect would not be able to make a claim with a new insurer for a project or advice (however trivial) completed, say 2 years ago, if they forgot to put it on the form. Less obvious mistakes or omissions on the proposal form to a new or existing insurer could also invalidate the cover.

4. **Aggregate or ‘each and every claim’ cover**

Whilst it is possible to buy “aggregate cover”, to comply with the ARB requirement all PII must be written on the basis of “each and every claim”. This means that the full amount of the cover limit (see above) is available for each and every separate and unrelated claim on the project. If aggregate cover (where each claim on a project is added to the others until the cover limit is reached) were to be permitted then the cover limits would need to be significantly higher.

5. **Notifying Claims**

Claims must be promptly notified, but policies will also require prompt notifications of the architect becoming aware of “...*circumstances that might give rise to a claim...*”. Claims or “circumstances” should still be notified even if their potential amount is less than the excess of the policy. Insurers will normally correspond with the insured via the broker. Where claims handling is a part of the service offered with the insurance this is usually organised via the broker. It is very unwise, if a claim or “circumstance” arises at the end of an insurance period, to delay disclosure (even by a day or two) in order that it does not appear on the proposal form for the following year’s insurance – thus not affecting that year’s premium quotation. If such delay is detected and proven the cover could become void.

6. **Client information**

Whilst it may be reassuring for a client to know the name of the insurer at the time the appointment is made, and some client contracts call for the use of a “reputable insurer”, this information is not likely to be of practical purpose in the event of a claim. This is principally for two reasons: Firstly, the insurer will not correspond with the architect’s client directly until after the architect has notified the claim. Secondly, since PII is written on a “claims made” basis (see above) it is possible that the insurer at the time of the appointment will not be the insurer at the time a claim is made.

7. **How long does an architect need to remain covered?**

PII covers liability in both contract and tort, making this question very difficult; indeed there is no definitive answer, however below is some brief guidance¹:

i. **Contract:**

Under the law in England and Wales liability under the appointment contract for each project is either 6 years (simple contracts) or 12 years (deeds) from the architect’s last action on a project. For the longest length of run-off cover this is measured from the project with the most recent last action date. This will inevitably take the insurance into the seventh or thirteenth year. The six-year period also coincides with the ARB requirement.

ii. **Tort:**

For tortious liability in England and Wales the period must be calculated with reference to The Limitation Act 1980 and The Latent Damage Act 1986. The net result on liability periods for negligence actions in tort is the operation of the 15 year long-stop provisions of the 1986 Act. Theoretically this suggests that PII should be

¹ **NB.** Members should note that under Scottish law there are different time periods for suing (limitation) and the extinction of claims (prescription). Members should refer to the Prescription and Limitation (Scotland) Act 1973 (as amended). Time periods may vary in Northern Ireland as well: refer to the Limitation (NI) Order 1989.

maintained for this period with the added complication that the architect could become involved as a third party in a claim against somebody else (e.g. the engineer) for probably up to two to three years beyond this time. The ARB requirements do not appear to consider these issues.

See Also: “Retirement rules – how long you should maintain PII after ceasing to practice” (RIBA practice pages July 2003)

Information from the Construction Industry Council (CIC)

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1 Managing Liability through financial caps

<http://www.cic.org.uk/liability/lb200402.pdf>

2 Professional indemnity insurance for construction consultants

<http://www.cic.org.uk/liability/lb200401.pdf>

3 Professional indemnity insurance

<http://www.cic.org.uk/liability/LA3.pdf>