



Subject Professional indemnity insurance (PII) guidance
Purpose For Decision
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1. Summary

To consider draft guidance to architects on the professional indemnity insurance arrangements they should have in place to meet the expectations of the Architects Code of Conduct and Practice.

2. Recommendations

It is recommended that the Board issues the draft PII Guidance at **Appendix A** for consultation.

3. Open/Confidential Session

Open session

4. Key Points

Professional indemnity insurance

- 4.1 Professional indemnity insurance is a form of insurance cover that provides financial protection to architects if a claim is brought against them or their practice.
- 4.2 In addition to the financial security it offers architects, it also has an important role to play in public protection. Because construction claims are so costly both in terms of litigation and settlement, an uninsured claim is quite likely to leave many architects practices unable to pay the sums involved. The result of this would be insolvency, or more likely, no sensible client being able to initiate the claim at the outset, knowing that there would be no way of securing compensation even if they were successful. In effect, an uninsured project will leave a client or future user of a building without means of redress if they have claim of negligence.
- 4.3 Because of this, ARB has historically placed significant importance on architects carrying sufficient PI cover to meet a claim. For the last 20 years architects have been expected to hold adequate and appropriate professional indemnity insurance cover under the Architects Code of Conduct and Practice. Details of what PII is likely to be deemed 'adequate and appropriate' have been set out in underpinning guidance as to how compliance with the Code can be achieved.
- 4.4 While the expectation that adequate and appropriate insurance must be maintained has not changed, since 2002 the guidance issued has become increasingly less prescriptive. We have recognised that ARB is not an insurance expert, and that the diversity of practice and risk means that it's not appropriate for us to provide detailed

requirements on what cover must be held. Specialist brokers or membership bodies are better placed to provide detailed advisory services. We no longer, for example, set out the levels of cover to be held based on turnover, or mandate detailed policy wording.

- 4.5 Two elements of prescription remain in the current guidance. The first is that the very minimum level of cover should not drop below £250,000. The second requirement is that cover must be held on an 'each-and-every claim' basis. This means that multiple claims in a calendar year will each be covered up to the level of cover, rather than on an 'aggregate' basis, where the money paid out by the insurer over several claims will add-up until the limit is met.
- 4.6 Disciplinary cases in the last 15 years for failing to insure properly have been consistent, though not alarming. Those cases have usually involved a failure to notify, or a failure to carry any insurance when carrying out 'private' work. There has been scant evidence of 'under-insurance', where an insurance policy has been in place.

The PI market

- 4.7 It may well be that this lack of under-insurance has been the result of a 'soft' PI market, in which there has been plentiful insurance available from numerous providers, all seeking business. This has meant advantageous terms have been on offer to architects, at a low cost.
- 4.8 Those market conditions have dramatically deteriorated over the last four years. A global downturn in the PI market has coincided with a reassessment of risk in the construction market by insurers, following Grenfell and the cladding crisis.
- 4.9 The causes and solutions to these problems are complex and multi-faceted, but the net result is that PI market for architects has constricted, causing an increase in premiums and a restriction in the terms being offered. There are now widespread exclusions being applied to cladding, fire safety and building safety issues. Exclusions are also being applied to historic liabilities, as insurers seek to limit their exposure to the consequences of the much-publicised failings of the construction industry.
- 4.10 While there have been numerous attempts to accurately map the availability of PII for architects, results have been inconclusive. ARB carried out a survey of architects in May 2020, which suggested that while premiums were increasing, there was no significant market failure. Subsequent RIBA and Construction Leadership Council surveys painted a bleaker picture. Because of the competitive nature of the insurance market, accurate and comprehensive data is generally not publicly shared by underwriters.
- 4.11 What has become increasingly clear is that comprehensive cover for fire safety and cladding related claims is no longer available. Retrospective cover for these types of claims cannot generally be bought, and there are wide exclusions and limitations in respect of future work.

Proposed Guidance

- 4.12 This is a difficult regulatory challenge. Even with public interest as a priority, potential future claimants are not going to be protected by driving architects from the Register by imposing requirements that generally cannot be met.

- 4.13 The draft Guidance is at **Appendix A**. It is recommended that the guidance relating to certain areas of practice be relaxed in respect of permitting cover to be held in aggregate. The risk of doing so is that an architect's practice facing multiple claims will quickly reach the limit of their indemnity and be effectively uninsured. We believe that this is a proportionate change, balancing the need to provide protection for consumers and the public, while recognising the reality of the current PII market. It is no longer tenable to require architects to hold insurance that is simply unavailable.
- 4.14 The Guidance further explains the steps an architect should take if they are unable to renew their insurance, or cover for past liabilities is withdrawn.
- 4.15 It is not realistic to expect architects to be able to disaggregate fire safety design from their standard architectural service. Neither is it realistic to expect such liability to be routinely passed to subcontractors; it may be possible in some situations, but the appointment of a fire engineer or consultant on every project would be unsustainable.
- 4.16 The content of this Guidance will remain difficult for some practices to meet. Some will be restricted in the type of architectural work they are able to carry out. Some architects may not be able to practice at all. We continue to work with government and stakeholders in the built environment, including specialist insurers, to find appropriate ways to mitigate this situation.
- 4.17 We also propose to separate the guidance which sits under the Code of Conduct and Practice from any helpful advice we provide to the profession. The former will set out what architects should do to comply with the Code, and so have disciplinary implications if it is not met. The advice, and FAQs, will advise architects on what various steps they might take to improve their risk-profile and chances of getting satisfactory cover.

Minimum levels of cover

- 4.18 The minimum level of cover below which no architect should accept remains at £250,000 for each and every claim. The rationale for this figure was based on the potential financial impact of even the smallest project being subject to a claim, and that a lower level of cover would result in only negligible savings on the premium. It is a figure that has been in place for over 15 years. We intend to test whether that figure remains appropriate, and indeed whether we should still mandate a *de minimis* amount at all.

Run-off cover¹

- 4.19 Under the current and proposed guidance, run-off cover should be maintained for six years (or five years if practising in Scotland). This is to coincide with the statutory time limits on a claim for negligence being made in a particular jurisdiction. Those time limits are now under review as part of the Building Safety Act, so we intend to seek views on whether the period of run-off should be extended, and what the impact of doing so would be.

¹ Because PII is held on a claims-made basis, insurance must be maintained annually to cover any historic liabilities. When practice has ceased, the continued insurance is known as run-off cover.

5. Consultation

Given that the Guidance is directly linked to compliance with the Architects Code of Conduct and Practice, it will be important to consult on it. We will be consulting on the appropriate regulatory approach in respect of professional indemnity insurance, to protect clients, building users and architects. The key questions the consultation will be seeking views on will include whether:

- the proposed approach set out in the guidance is proportionate
- ARB should set out prescriptive policy wording
- the minimum level of cover is appropriate for consumer protection
- the period of run-off cover should be revised in light of legislative developments.

The consultation will be promoted to all architects on the Register, and to the stakeholders who attended our roundtable in 2021. This will include professional institutes, insurers and their representative groups, and relevant officials in government departments.

6. Risk Implications

The lack of available PII is a primary regulatory risk. While the cladding crisis has heightened the chances that architects will face a claim in respect of work carried out, a fully comprehensive mitigation against that risk is now widely unavailable.

The Board will need to consider the balance between insisting on architects carrying sufficient PII to meet a claim, against creating a regulatory environment which excludes some from the profession.

7. Equality and Diversity Implications

We will be carrying out an Equality Impact Assessment before any final policy decision is taken.

8. Communications

We have carried out extensive engagement with the sector, including gathering information through surveys, working with leadership bodies as well as facilitating a round table including experts from the PII market. We recognise that this guidance cannot and will not resolve the many complex issues in relation to the global and domestic PII market. We will work with the professional and representative bodies that are best placed to help individuals and practices to reduce their risk profile and mitigate the impact of the challenging PII market.

We will also need to engage with consumer groups so that they can have their say on the changes we are proposing.

9. Next Steps

Subject to the Board's agreement we will consult on the draft Guidance, and report back to a future Board meeting for a decision on any change in policy.

Professional Indemnity Insurance guidance

Financial protection against liability incurred in practice or business related to architecture needs to be in place in the interest of both you, your client, and any future users of buildings you have designed. That protection can usually be best found by way of a professional indemnity insurance policy.

This guidance sets out how you are expected to cover your professional liabilities through professional indemnity insurance under the [Architects Code of Conduct and Practice](#). A failure to adequately follow this guidance may be taken into account in any investigation into your conduct or competence under the Architects Act.

The guidance should be read in conjunction with 'Advice on risk management and renewing your PII policy' and 'PII – Frequently Asked Questions'.

Commented [SH1]: To be drafted separately, does not make up part of the Code of Conduct guidance

1. What is Professional Indemnity Insurance?

- 1.1 Professional Indemnity Insurance (PII) provides cover to an individual or company in respect of third-party claims arising from professional negligence or a civil liability arising from professional services that have been provided.
- 1.2 PII policies are written on a 'claims-made basis', which means that it is the policy in force at the time that a claim is notified that would come into effect. For example, a claim brought in 2022 for work carried out in 2018 would be settled under the 2022 policy.
- 1.3 PII policies are provided by various insurance underwriters and arranged by insurance brokers on architects' behalf. The coverage provided by insurance policies can vary in their scope depending on the insurer, but will normally written for a 12 month period and then renewed as appropriate.
- 1.4 A PII policy will cover legal defence costs arising from a claim against you or your business, and any damages awarded in relation to any alleged errors in your architectural service. Exactly what a policy will cover will always be subject to the policy terms and conditions, particularly in respect of
 - Level of indemnity (the maximum amount the policy will pay out)
 - The type of loss that will be covered
 - Excess levels (the 'first' amount that the insured must pay on a claim before the policy will react)
 - Exclusions (areas of architectural practice that will not be covered by the insurance)

2. Architects Code of Conduct and Practice

- 2.1 Allegations of professional negligence often involve complex and detailed issues, and litigation may be expensive. Even where an architect has found not to be at fault, the costs in defending a claim can far exceed the fees the practice has earned on a project. An uninsured claim can leave clients and the public with no reasonable route of redress, and be ruinous for an architect's practice.
- 2.2 Because of that, under the Architects Code of Conduct and Practice, you are expected to have adequate and appropriate insurance cover for you, your practice and your employees. You should ensure that your insurance is adequate to meet a claim. You are expected to maintain a minimum level of cover, including run-off cover, in accordance with this guidance.
- 2.3 If you are an employee of a practice then you should, as far as a possible, ensure that insurance cover has been put in place by your employer. It is your responsibility to ensure your professional work is adequately covered.
- 2.4 Some architects may be reliant on others to provide cover/protection on their behalf. Examples of this are those acting as consultants, through agencies, or providing casual or gratuitous advice. You may not need to maintain your own insurance policy where other appropriate cover/protection is provided on your behalf, but again you should seek confirmation of that cover in writing.
- 2.5 Consideration needs to be given to the issues surrounding *pro bono* work. Work carried out for free is unlikely to be free of liability. It is not uncommon for claims to be made against architects even where no fees are being charged so suitable protection will be required, as for other categories of work.
- 2.6 You need to be aware that the terms and conditions of PII policies differ, and you should therefore make proper enquiries to satisfy yourself that the policy on offer matches all your requirements. Consideration should be given to the implications of the date the practice first commenced work and the start date of cover.
- 2.7 There is a strong public interest in architects maintaining proper professional indemnity insurance so that clients and building users have a route to redress in the event of a negligence claim. Because of that ARB, acting through our

Professional Conduct Committee, will view very seriously any failure by an architect in this regard.

3. Limits of Indemnity

- 3.1 You should maintain sufficient cover to meet any claims made against your professional practice. The level of indemnity required will vary widely, depending on the scale and nature of the architectural work you undertake.
- 3.2 While you should seek expert advice from an insurance broker, we would expect a minimum level of indemnity to be £250,000 and that insurance should be acquired on an each and every claim basis. The only exception for this may be in relation to fire-safety claims or cladding claims (see below).

4. Fire safety and cladding claims

- 4.1 In recent years it has become increasingly difficult for architects to secure professional indemnity insurance in respect of fire safety or cladding claims.
- 4.2 It is therefore acceptable to hold professional indemnity insurance on an aggregate basis to cover these types of claims (and also for those relating to asbestos and pollution). That cover may be limited to direct losses arising from a negligent act (that is, consequential losses may be excluded from cover). It is important to understand that having restricted cover in relation to these areas will not mean that your liability is reduced, and so take particular care to manage these risks within your practice.
- 4.3 Such restrictions in your policy should only be accepted where there is no alternative after you have taken all reasonable steps to find comprehensive cover. If you take the decision that exclusions must be accepted for commercial reasons, you may need to demonstrate why paying for more comprehensive cover was not viable for your business. Upon each renewal you should take all reasonable steps to ascertain whether you are able to remove any such limitations on your policy, and be able to evidence that you have taken those steps.
- 4.4 It is not acceptable to carry out architectural work which is subject to a complete exclusion from insurance cover.

5. Uninsured liabilities

- 5.1 If there are new exclusions which apply to your historic liabilities, you should contact former clients to whom the change in policy coverage may affect their ability to bring a claim that is covered by insurance.
- 5.2 If insurance cover for existing appointments is no longer available, you should notify your client(s) without delay. You may need to seek professional advice on your contractual obligations before deciding on whether it is appropriate to remain appointed.
- 5.3 You should also write to us to explain the circumstances of your non-insurance. An architect who has acted in accordance with the Code of Conduct and Practice and PII Guidance published by ARB, but had elements of their insurance removed through no fault of their own, will not face regulatory action because of it.
- 5.4 It remains the case that all architects are expected to have adequate and appropriate insurance to cover their work, where it is available. You should not accept new commissions for work where you do not have appropriate insurance cover in place. An increase in premium is not a valid reason for not renewing insurance.

6. Run-Off Cover

- 6.1 The nature of PII means that cover is provided on a claims-made basis, so in order for cover to be provided insurance must be held when a claim is made, rather than when an incident occurred.
- 6.2 If you are a principal or director of a practice you should take reasonable steps to ensure that you have in place adequate 'run-off' cover when you cease practice, whether it because of retirement or the closure of a business, to cover work previously undertaken. You should always maintain a minimum of six years' worth of run-off cover (five years' if you practice in Scotland) and continue to monitor any risk you have of a claim being made against you after this time. This cover should be held at the same level as the last year prior to the cessation of practice.
- 6.3 Be particularly aware of any liabilities that will extend beyond the normal statutory time-limits. These will include contracts that are made under seal (deeds), for which the period of liability is 12 years.

7. Insolvency

- 7.1 While a decision to continue with PII in the event of you or your business becoming insolvent may be taken out of your hands, if you are the principal or director of a practice you should still take appropriate steps to protect the interests of your former clients and building users. This should include making enquiries as to whether run-off cover can be put in place to cover previous liabilities, and inform your present and previous clients of the position.
- 7.2 If you are voluntarily closing your business then you are expected to ensure that adequate run-off provisions are put in place to cover outstanding liabilities. Such a step should be regarded as part of the expense of winding-up a practice, and should be taken regardless of whether or not you practise as a sole trader or through a limited company or limited liability partnership.

8. Notifications

- 8.1 It is important to understand that your obligations are not met simply by having adequate insurance in place. To avoid the danger of your insurers refusing to cover a claim, it is vital that you notify them – at the earliest opportunity – of any circumstance that is likely to lead to a claim. You should understand the conditions of your insurance policy in respect of notifications and seek advice from your broker if you are in any doubt as to whether an incident requires referral to the insurers.
- 8.2 You should be extremely careful when completing proposal forms for new insurance or confirming renewal of cover. Great care should be taken in ensuring the information submitted is complete and accurate, so not to run the risk of invalidating the policy.

DISCLAIMER: The contained information is for general guidance only and should not be relied upon in place of professional advice. ARB does not accept any duty to advise on the appropriate terms of cover required in specific cases.