

DRAFT FOR CONSULTATION

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.

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 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.