

Professional Indemnity Insurance

Supporting guidance for the Architects Code of Conduct and Practice

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Introduction

The Architects Registration Board (ARB) has developed this guidance to support architects in complying with Standard 4 of the Architects Code: *Architects must carry out their work effectively, exercising skill and diligence*

Standard 4 explains that architects will meet this Standard when they ensure their liabilities are covered by adequate and appropriate professional indemnity insurance.

Financial protection against liability incurred in practice or business related to architecture needs to be in place in the interest of architects, their clients and future users of buildings they have designed. That protection can usually be best found by way of a professional indemnity insurance policy (PII).

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.

This guidance sets out how architects should cover their professional liabilities through PII under the Architects Code of Conduct and Practice. Compliance with this guidance is not mandatory, but any architect departing from it must be prepared to justify why they did so, after using their professional judgment.

This guidance does not replace the need to take professional or legal advice.

What is professional indemnity insurance

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.

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 2023 for work carried out in 2019 would be settled under the 2023 policy.

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 be written for a 12 month period and then renewed as appropriate.

A PII policy will cover legal defence costs arising from a claim against an architect or their business, and any damages awarded in relation to any alleged errors in their 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)

Architects Code of Conduct and Practice

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.

Because of that, under the Architects Code of Conduct and Practice, architects should ensure their liabilities are covered by adequate and appropriate professional indemnity insurance. The insurance should be of a reasonable level to be adequate to meet a claim, taking into account the nature and scope of the work being carried out. Architects should maintain a minimum level of cover, including run-off cover, in accordance with this guidance.

If an architect is the employee of a practice then they should, as far as possible, ensure that insurance cover has been put in place by their employer. It is an architect's professional responsibility to ensure their professional work is adequately covered.

Some architects may be reliant on others to provide cover/protection on their behalf. Examples of this are those acting as consultants or through agencies. They may not need to maintain their own insurance policy where other appropriate cover/protection is provided on their behalf, but again they should seek confirmation of that cover in writing.

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.

Architects need to be aware that the terms and conditions of PII policies differ, and should therefore make proper enquiries to satisfy themselves that the policy on offer matches all their requirements.

Consideration should be given to the implications of the date the practice first commenced work and the start date of cover.

Limits of Indemnity

Architects should maintain sufficient cover to meet any claims made against their professional practice.

The level of indemnity required will vary widely, depending on the scale and nature of the architectural work undertaken. While architects should seek expert advice from an insurance broker, there should be in place 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).

Fire safety and cladding claims

In recent years it has become increasingly difficult for architects to secure professional indemnity insurance in respect of fire safety¹ or cladding claims². 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).

Where cover is held on an aggregate basis, it is an architect's responsibility that it is held at a sufficient level to fairly reflect the risk of their practice facing multiple claims. 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 liability is reduced, so architects should take particular care to manage these risks within their practice. Such policy restrictions should only be accepted where there is no alternative after an architect has taken all reasonable steps to find comprehensive cover.

If an architect decides that exclusions must be accepted for commercial reasons, they may need to demonstrate why paying for more comprehensive cover was not viable for their business.

Upon each renewal architects should take all reasonable steps to ascertain whether they are able to remove any such policy limitations, and be able to evidence that they have taken those steps.

It is not acceptable for an architect to carry out architectural work which is subject to a complete exclusion from insurance cover.

Uninsured liabilities

If there are new exclusions which apply to existing contractual liabilities on previous projects, architects should contact former clients to whom the change in policy coverage may affect their ability to bring a claim that is covered by insurance.

If insurance cover for existing appointments is no longer available, architects should notify their client(s) without delay. They may need to seek professional advice on

¹ Fire Safety Claims means any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the fire safety or fire performance or combustibility of a building or structure or any part of such building or structure

² Cladding Claims means any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way related to the combustibility of any composite panels, cladding or façades of buildings or structures, and/or internal or external wall systems and any associated core/filler/insulation material and/or any fixing systems

contractual obligations before deciding on whether it is appropriate to remain appointed.

Architects should also write to ARB to explain the circumstances of their noninsurance.

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 because insurers no longer offer that cover, will not face regulatory action because of it.

It remains the case that all architects should have adequate and appropriate insurance to cover their work, where it is available. They should not accept new commissions for work where they do not have appropriate insurance cover in place. An increase in premium is not a valid reason for not renewing insurance.

Run-Off Cover

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.

A principal or director of a practice should take reasonable steps to ensure there is adequate 'run-off' cover in place when they cease practice, whether because of retirement or the closure of a business, to cover work previously undertaken.

Architects should always maintain a minimum of six years' worth of run-off cover (five years' if they practice in Scotland) and continue to monitor any risk they have of a claim being made against them after this time. This cover should be held at the same level as the last year prior to the cessation of practice.

Architects should 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, or claims that may be brought under the Defective Premises Act.

Insolvency

While a decision to continue with PII in the event of an architect's business becoming insolvent may be taken out of their hands, the principal or director of a practice should still take appropriate steps to protect the interests of their 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 to inform their present and previous clients of the position. If a business is being voluntarily closed, then the principal or director of the business is responsible for arranging adequate run-off provisions 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 an architect practises as a sole trader or through a limited company or limited liability partnership.

Notifications

Obligations are not met simply by having adequate insurance in place. To avoid the danger of insurers refusing to cover a claim, it is vital that architects notify them – at the earliest opportunity – of any circumstance that is likely to lead to a claim. Architects are responsible for understanding the terms and conditions of their insurance policy in respect of notifications and they should seek advice from their broker if in any doubt as to whether an incident requires referral to the insurers.

Architects 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.