

Standing in the Spotlight- The Role of Principal Designer

With the introduction of the Building Safety Act 2022, an attempt has been made to create a more sustainable framework for the Construction Industry and a means for addressing the numerous concerns put forward on the aftermath of the Grenfell tragedy.

Part of this new framework is the introduction of a number of new roles, but for our purposes the role that needs to be considered is that of the Principal Designer.

The Principal Designer – What is it?

With the enactment of the Building Safety Act 2022, together with the Building Regulations (Amendment) (England) 2023, there are now two separate and distinct Principal Designer roles.

1. CDM Regulations 2015

Since 2015, the term “Principal Designer” was linked solely to the CDM Regulations 2015. The Building Safety Act 2022 introduces a new “Principal Designer” role which is a distinct role with a separate focus.

Under the terms of the CDM Regulations 2015, the Principal Designer had to:

- Plan, manage and monitor the project from the health and safety perspective taking account of all relevant information that could impact on the design work both before and after construction has started.

- Help and advise the Client in respect of the information that is needed and to ensure that the relevant information is provided to designers and contractors to ensure that they can carry out their duties.

- Work with the other designers to prevent or reduce foreseeable health and safety risks.

- Coordinate with everyone involved in the pre-construction phases and the Contractor during the construction phase.

This role still exists under the CDM Regulations 2015. However, the Building Safety Act 2022 and the associated regulations create a new and distinct “Principal Designer” role.

2. Building Safety Act 2022

This new and separate Principal Designer role, requires the Principal Designer to:

- Plan, manage and monitor the design work during the design phase and co-ordinate the design work so that all reasonable steps are taken to ensure that the project complies with the appropriate building regulations.
- Take all reasonable steps to ensure that designers and any other person involved in relation to design work co-operate with other duty holders and each other.
- Take all reasonable steps to ensure that designers and any other person involved in relation to design work comply with their duties under the legislation (for example, that the people being appointed are competent

and possess the right skills, knowledge, experience, and behaviours for their roles).

- Take all reasonable steps to ensure that the design work of all designers is co-ordinated such that the design complies with the appropriate building regulations.

- Share any information relevant to the planning, management and monitoring of the building work and the co-ordination of the building work and design work with the principal contractor for the purpose of ensuring compliance with the appropriate building regulations.

So, the Building Safety Act 2022 and the Building Regulations (Amendment) (England) 2023 create a much more extensive “Principal Designer” role and, whilst the naming convention may lead to a little confusion, it is entirely different from the role under the CDM Regulations 2015.

New Role? New Policy?

To an extent, the duties imposed on the Principal Designer under the Building Safety Act 2022 are complementary to the role of the lead designer on any project. As such, the duties themselves are unlikely to be considered radically different from expectations of Insurers in respect of your existing professional duties. Therefore, there is currently no suggestion from the insurance market generally, or by the insurers under the CIAT Insurance Services policy, that this role does not fall within the scope of the existing cover under the professional indemnity insurance policies.



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It is important to understand that, as the various elements of secondary legislation are developed and come into force and the new regulatory regime is assessed, this position may change when there is a greater understanding on how the new role is intended to operate. If there is any alteration in how the insurance market views the role, your insurance advisers will keep you informed of any changes that may impact on you.

New Role – New Challenges

Whilst the role itself is likely to be acceptable, wider issues may arise as a consequence of the duties being extended.

There is now a greater emphasis on taking reasonable steps to ensure that the project is being designed and completed in compliance with the building regulations and that the professionals involved in the project are competent. This will mean a greater need to ensure that your records are suitable, clearly show that all aspects of the design work have been considered in accordance with the building regulations and that competencies can be demonstrated from the outset of the project.

In effect, this means that if you are being appointed in the Principal Designer Role under the new legislation and regulations, you will also be accepting a duty to monitor the design work and ensure that all relevant information is provided to the Principal Contractor and this duty will need to be included in the services offered and provided.

This added onus being placed on the professional creates further opportunities for claims to arise against them for failing to ensure all aspects

of the new role are completed and evidenced accordingly.

Another new issue that has the potential to create further problems on a domestic project is that you may inadvertently accept the role of Principal Designer. Under the Regulations as drafted, if the Client fails to appoint a Principal Designer in respect of a domestic project, then the professional in control of the design stage of the project will be deemed to be the Principal Designer.

Whilst it is unclear at what stage of the design process the duty triggers, and based on anecdotal evidence it would appear that some Building Control departments have yet to adopt a consistent approach, this means that there may be a much greater focus on the contractual agreements in place regarding the project. You will either need to be appointed to provide the full Principal Designer role under the Building Safety Act 2022 or, having clearly explained the situation to the Client, have written confirmation that they have appointed someone to accept that role. In both cases the terms of your appointment would need to be clear on what services are being provided.

In view of this, it is highly likely that Insurers will start asking for more information to satisfy themselves that you maintain appropriate and robust systems (including contract documents), policies, and procedures to satisfy the new roles before agreeing to provide cover. As a result, we would suggest that you consider taking the time to review your policies, procedures and systems to ensure that they are suitable and that this can be evidenced when required.

Additionally, whilst not mandatory or required by Insurers, the new CIAT Register may also assist in demonstrating competency. As such, we would suggest that some consideration is given to joining the register and you may wish to discuss this further with CIAT.

Further information can be found at <https://www.gov.uk/guidance/design-and-building-work-meeting-building-requirements#full-publication-update-history>.

If you would like to discuss the issues raised in this article, please contact CIAT Insurance Services or your insurance adviser.

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