

Cessation of practice and compliance with the Code of Conduct

When members either on the Register of Practices or the Profile Register close their practice for any reason, they are required to comply with the *Code of Conduct* Clause 4: Professional Indemnity Insurance. In particular, members must understand their obligations and the need to adequately protect themselves and their clients in the event of any future claim, and indeed to protect the reputation of the Institute.

The most straightforward way to adhere to this requirement would be to secure run-off professional indemnity insurance. This should then be maintained at the appropriate level and for the length of time that it could reasonably be determined that a member may continue to be liable for any works he has undertaken, having taken the necessary advice from his broker, or other appropriate advisor.

All members undertake different types of work and under very differing contractual conditions and it is for this reason that CIAT does not specify a particular length of time or level of cover, but rather dictates that the cover should be adequate. Members are therefore expected to seek the advice of their Professional Indemnity Insurance brokers, and any other appropriate professionals, to arrive at an appropriate level of cover and an adequate period for which this cover should be maintained. Straightforward examples of varying contractual conditions are whether contracts are under hand or under seal, but in addition there are ever evolving interpretations of the laws of contract and of tort. However, the Institute also takes into account that its membership is made up of different nations with their own laws and legal interpretations of this, within the UK and internationally.

It is also recognised that members' circumstances differ, and in some instances it may not be the case that a member has, or is able, to secure run-off professional indemnity insurance regarding the liabilities of the Practice for which he was responsible. One example of this would be: a retiring Director in a practice where the remaining Directors enter into a written agreement to indemnify retrospective works, thereby absolving the member of his obligation and effectively taking on the liability themselves. In those and other such instances, the member is required to complete a 'Discharge of Obligations' Form to confirm to the Institute that he has used his best endeavours to ensure that he has fulfilled his professional duties under this clause. The Conduct Committee may request further information to make a determination should the circumstances be unclear and a case falls outside of routine administration.

To assist members in understanding their liability issues, and to comply with the *Code of Conduct*, the Institute has available:

- Information sheet on Bankruptcy and Insolvency, which details the members' obligations under Clause 10: Bankruptcy and Insolvency from the Institute's *Code of Conduct*.
- Declaration of Discharge of Obligations — the form which must be completed when ceasing to practice, which reiterates the Code of Conduct wording and members' obligations, should evidence of run off cover not be applicable.

Who should purchase PII cover?

Professionals providing advice need to carry this cover. They need also to bear in mind their "vicarious liability" (i.e. liability for the actions of others) for the work of their employees, subcontractors and other parties for whom they are responsible.

Why should PII cover be purchased?

- Transfer of risk to an insurer.
- Regulatory or professional body requirement:
- To protect the reputation of the profession and safeguard the public employing them.
- Peace of mind for the Professional.
- Client protection.

The benefits of PII

Under a scheme such as CIAT's, the benefits extend beyond the obvious and include:

- access to specialist advice, for instance:
 - liabilities and the cover required.
 - claims handling.
 - analysis of potential exposures, such as the wording of collateral warranties;
 - legal help lines; and
 - protection of your reputation.

When should PI cover be purchased and for how long?

PII should be in place for the whole of the professional's working life and in retirement.

- People often refer to the 'standard' limitation period, meaning three years for personal injury and six years for other loss or damage, in accordance with the statute of limitations. However, it is not so simple, as can be seen from the following examples:
- For contracts 'under hand' (which might not even be evidenced in writing) the period is six years.

- For contracts under seal or deeds (usually including collateral warranties) it is 12 years or whatever is agreed;
- In tort (e.g. negligence) there is a minimum of six years allowed but, for technical reasons, the period can start to run from a later point in time and
- Under the provisions of the Latent Damage Act, three years are allowed from the date of discovery subject to a long-stop of 15 years (but even that might not be the end).

Retroactive Cover

Provided that PII cover is properly arranged, it applies to work carried out before the inception of the policy, to the extent that is necessary. Most claims do arise from work carried out before the current period of insurance, as defects tend not to become apparent for some time after construction.

The PII policy may contain a 'Retroactive Date'. This is the date from which the insurance will cover claims going forward. For example, a PII policy valid from 01/01/2018 to 31/12/2018 with a retroactive date of 01/04/2017 will cover all PII claims intimated after 01/04/2017. If the claim was notified to the previous PII insurers on 20/03/2017, then the current PII insurers will not cover.

Collateral Warranties

These are agreements creating contractual relationships (and therefore rights of action) with parties other than a professional's actual client. They invariably contain requirements for PII cover to be maintained for lengthy periods after construction.

Run-off liability cover

The standard definition of 'The Insured' under a PII policy includes the following, in all cases in respect purely of work carried out on behalf of the insured firm:

- current partners and directors – as listed in the proposal form;
- new partners and directors;
- former partners and directors;
- former partners and directors remaining as consultants;
- current employees;
- former employees; and
- the estates of deceased persons in those categories.

Where the practice continues and where it maintains PI cover, run-off liabilities are taken care of. Failing that, a run-off policy for the benefit of the individual is required.

Availability of run-off cover

Insurers do not like providing run-off cover in isolation but the Insurer providing cover at the time of retirement will usually continue to offer run-off cover. One possibility would be to purchase a single policy providing cover for six years (the maximum available) for a one-off premium but, in the current insurance market, this is not generally available. All that can be obtained at the moment is annually renewable cover. There are advantages and disadvantages with each option.

Run-off and the CIAT members' insurance scheme

One of the benefits offered by the CIAT Insurance Services PII Scheme is that there is automatic provision to provide members with 'Run Off' cover if they have been a scheme member for three years.

The premium is a pre-determined percentage of the member's current premium to enable retiring members et al to budget with some certainty. The premium will be a 'one-off cost' for a full six-year period. Most of the benefits that apply to running covers will follow through, ie: -

- Full Civil Liability Wording;
- Free Legal Helpline;
- Claims Handling Assistance; and
- Premium Financing Facilities

The benefit for members is being able to budget for this cost well in advance of retirement, or cessation of practice. If you require further information on professional indemnity insurance, please contact CIAT Insurance Services on 0161 236 2532 (ciat-insurance.co.uk).

Retiring professionals and other run-off liabilities

As mentioned above, claims can arise after a professional has retired. Potential liabilities can and do extend into retirement. Run-off liabilities also arise in other situations, for example:

- Self employment to employment and vice versa.
- Professionals ceasing to practice on their own account and moving into employment continue to be liable for their past work. Cover needs to be arranged accordingly.
- People leaving employment can be personally liable for work which they themselves carried out while employed by the firm (this follows the precedent of *Merrett v Babb*, although particular circumstances would have to apply); and
- Professionals changing their career.

The same principles apply where the change in status involves moving into and out of the profession.

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Bankruptcy and insolvency

This Information note is intended to detail CIAT's policy on members becoming bankrupt or insolvent in relation to the Institute's current constitution.

Responsibilities under the Code:

Clause 9: Bankruptcy and Insolvency

A member shall report to the Institute within 28 days, 35 days if resident overseas, if they are:

- a) made the subject of an order of court disqualifying them from acting as a company director; or
- b) made the subject of a bankruptcy order; or
- c) a director of a company which is wound up (other than for amalgamation or reconstruction purposes).

If you are the subject of a bankruptcy order or become insolvent you are required to advise the Institute in writing within 28-days, 35-days if the member is a resident overseas, detailing the circumstances with any supporting documentation as appropriate.

If you are declared bankrupt, or you are a director or LLP member of an insolvent company or practice, this will not automatically lead to disciplinary action or permanent cessation of membership, although it is likely that you will not be permitted to be a director or LLP member until the terms of your bankruptcy have been discharged.

The Institute will however require information on the circumstances surrounding your financial situation, for example, its impact on your clients and creditors and how the financial problems arose. If your practice has been placed into liquidation, we may ask for the Company's Statement of Affairs. It is only when our investigations suggest there may have been a wilful disregard by a member of their responsibilities, or a lack of integrity in line with the Institute's *Code of Conduct* Clause 1: Professional Conduct, that the case may fall within the *Conduct and Disciplinary Procedures*; you would be notified formally in writing as per the Procedures.

Clause 1: Professional Conduct

The members shall at all times:

- a) act with integrity so as to uphold the standing and reputation of the Institute;
- b) act faithfully and honourably in their professional responsibilities;
- c) rely only on merit or fair competition to secure commissions and appointments;

- d) not seek directly or indirectly to injure the professional reputation of another;
- e) not knowingly misrepresent the views of the Institute;
- f) not knowingly misrepresent their professional qualification;
- g) describe themselves factually and/or in good faith.

Members should never lose sight of the absolute obligation on them to behave in a professional manner and use their best endeavours to comply with Clause 1 and act professionally at all times.

Should any member be the subject of unfortunate circumstances leading to the closure of their practices, they must also consider the impact that this may have on existing clients, or clients that may rely on their professional integrity for the latent defects or liability period. The Institute expects full and honest disclosure and communication from such members and for them to extend this courtesy to clients who are reliant on them and their professionalism.

Professional indemnity insurance in bankruptcy

The availability of ongoing or run-off PII cover (where the practices has ceased) may vary according to the particular situation. Members should take advice from their insurance broker, provider, or an insolvency practitioner, on any steps that can be taken to continue PII. It is advised that this advice be given to the member in writing and retained for future reference.

CIAT Insurance Services state that the issue is whether the premium has been paid, rather than whether or not the existing policy-holder has been declared bankrupt.

If the member has paid the premium, the policy will remain in force until it expires. Thereafter CIAT Insurance Services would recommend run-off cover when it comes up for renewal should the member be unable to continue to practice; this is the standard procedure for any member who ceases to provide a service.

Should CIAT Insurance Services be approached to provide cover for a member who has been declared bankrupt, the process would operate in the usual way. However, the only possible issue might be with obtaining premium finance should the member wish to pay by instalments, and CIAT Insurance Services would require payment in advance or the individual would need to make arrangements for their own finance of the premium.

Insurers may ask for reasons of the bankruptcy, but this should not affect any provision of cover offered unless the reason for such bankruptcy has emanated from a fraudulent or dishonest act. Should you be covered with another insurance provider, you should check their terms and policy requirements.

General advice for those in financial difficulties

Help and advice is available from a number of sources. Seeking help at an early stage is both constructive and beneficial, and ensures that the range of options available can be fully explored. The Insolvency Service (gov.uk/government/organisations/insolvency-service) provides general guidance, and we would also encourage members to seek professional advice from their accountant, Citizens' Advice Bureau or bank before deciding on the most appropriate way forward. Further information on specific issues such as director disqualification or liquidation of companies can be found on the Government websites: gov.uk/company-director-disqualification and gov.uk/liquidate-your-company/what-happens-to-directors

END

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Professional Indemnity Insurance

Declaration of Discharge of Obligations under the Code of Conduct Clause 4

Please tick appropriate box:

1. I am no longer offering or providing architectural advice and/or services directly to clients because:

- a) I am now retired
- b) I have closed my practice
- c) I have severed the practice agreement
- d) I have sold my practice
- e) I have ventured into voluntary liquidation/bankruptcy/insolvency
- f) I am subject to enforced liquidation/bankruptcy/insolvency
- g) Other (please detail)

2. I have obtained run-off insurance cover (evidence of which is attached)

3. Instead of obtaining run off insurance cover I have discharged my duties by (please detail):

4. I confirm that I am aware of my obligations under the *Code of Conduct* issued by CIAT, particularly Clauses 4 and 9 which states:

Clause 4: Professional Indemnity Insurance

Chartered Members or profile candidates who:

a) provide services directly to a client shall obtain and maintain adequate professional indemnity insurance;

b) are principals of a practice providing services directly to a client shall ensure that adequate professional indemnity insurance is obtained and maintained by that practice;

c) were principals but who have ceased to provide services directly to clients shall take all reasonable steps to either:

i. ensure that adequate run off professional indemnity insurance cover is effected; or

ii. discharge their duty whilst protecting the interest of their client;

d) are or were principals shall on request by the Institute provide the necessary evidence to demonstrate compliance with clauses 4a)—4c) above.

***4c)i) Adequacy is to be determined between the member and his broker taking into account all work and types of work that the member is liable for. This is to include both the level of cover and the length of time it should be retained.**

****4c)ii) Members should consult the appropriate professionals to ensure that the member and their clients are protected.**

Clause 9: Bankruptcy and Insolvency

A member shall report to the Institute within 28 days, 35 days if resident overseas, if they are:

a) made the subject of an order of court disqualifying them from acting as a company director; or

b) made the subject of a bankruptcy order; or

c) a director of a company which is wound up (other than for amalgamation or reconstruction purposes).

I confirm and undertake that I have discharged my obligations in accordance with the current Code of Conduct issued by CIAT. Should I begin to offer and provide architectural advice and/or services in any form to clients (including friends and family, paid or unpaid) in the future whilst a member of the Chartered Institute of Architectural Technologists, I will comply with the Institute's requirements on practice registration which includes the requirement to obtain and maintain adequate and appropriate professional indemnity insurance. I also accept that the Institute may request evidence of my circumstances as detailed in 1) a)–g) above, and I undertake to provide evidence of such run-off insurance cover or confirmation that I have discharged my obligations as detailed in Clause 4c) ii) from the CIAT Code of Conduct. I understand that if there is any indication of a false declaration, it will result in the matter being referred to the Institute's Conduct Committee.

Signed: _____ Date: _____

Name: _____ Membership number: _____

Practice Reference Number: F_____

Please return a signed copy of this form to: The Practice Department, CIAT, 397 City Road, London EC1V 1NH. Email: practice@ciat.org.uk.