

# Cessation of practice and compliance with the Code of Conduct

When members or affiliates either on the **Register of CIAT Chartered Practices** or the **Affiliate Register** close their practice for any reason, they are required to comply with the **Code of Conduct** Clause A4 or B4: Professional Indemnity Insurance. In particular, members and affiliates 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 or affiliate may continue to be liable for any works they have undertaken, having taken the necessary advice from their broker, or other appropriate adviser.

All members and affiliates 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 and affiliates 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 members and affiliates reside in different nations with their own laws and legal interpretations of this, within the UK and internationally.

It is also recognised that members' and affiliates' circumstances differ, and in some instances it may not be the case that a member or affiliate has, or is able, to secure run-off professional indemnity insurance regarding the liabilities of the Practice for which they were 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 or affiliate of their obligation and effectively taking on the liability themselves. In those and other such instances, the member or affiliate is required to complete a **'Discharge of Obligations'** Form to confirm to the Institute that they have used their best endeavours to ensure that they have fulfilled their 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 and affiliates 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' and affiliates' obligations under Clause A9 or Clause B9: Bankruptcy and Insolvency from the **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' and affiliates' obligations, should evidence of run off cover not be applicable.

## Who should purchase PII cover?

Professionals providing services and/or advice need to carry this cover. They need to also bear in mind their "vicarious liability" (i.e. liability for the actions of others) for the work of their employees, sub-contractors 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.
- 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 this is not always available, in which case annually renewable cover would have to be secured. There are advantages and disadvantages with each option.

Run-off and the CIAT Chartered 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, i.e.:

- 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.

Affiliates can obtain professional indemnity insurance through CIAT Insurance Services, but this will be a policy purchased "off-scheme".

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).
- Professionals changing their career.

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

#### **END**

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