

Professional Indemnity Cover Under CDM 2015

The need for professional indemnity (PI) cover has grown over the past several decades as more people enter professional service-based professions. PI insurance covers 'traditional' professions—such as architects, contractors and engineers—and can protect yourself, your business and your reputation in the event of legal action due to a negligent act, error or omission.

However, managing your PI risk is not a single event done in isolation. It is a task that requires regular assessments to determine whether your risk has changed due to changes in the work you do, the clients you serve or the legislation that governs your business. As a construction professional, one such change that potentially broadened your PI risk was the introduction of the Construction (Design and Management) Regulations 2015 (CDM 2015 Regulations), which works to ensure the health, safety and welfare of all construction workers.

Rather than supplement the previous regulations (CDM 2007), the current version supersedes the previous rules and procedures. There have been several key changes to the regulations that you—as the owner or manager of a construction firm, or a construction professional, such as a designer or contractor—will need to learn in order to control your PI risk.

CDM 2015 Regulations Explained

The objective of the CDM 2015 Regulations is to emphasise health and safety through increased coordination between the three primary parties, which are client, designer and contractor. This focus is reflected in the five following key changes:

1. All projects must have the following:
 - Workers who have the correct skills, knowledge, training and experience
 - Contractors who will provide appropriate supervision, instruction and information
 - A written construction phase plan that details the project

The introduction of the CDM 2015 Regulations potentially broadened your PI risk with the creation of the new principal designer role. Are you properly managing your new PI gaps?

2. A build project—regardless of whether it is non-domestic or domestic—where more than one contractor is involved, must have the following:
 - A principal designer who is responsible for planning, managing, monitoring and coordinating the pre-construction phase of the project
 - A principal contractor who is responsible for planning, managing, monitoring and coordinating the construction phase
 - A health and safety file that outlines how to safely perform routine procedures and clean up the worksite
3. For any project, the commercial client must always do the following:

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- Provide pre-construction information to designers and contractors, which should outline all known potential hazards that may arise during construction.
 - Make arrangements to ensure those carrying out the project can manage health and safety risks in a proportionate way.
 - Ensure that both the principal designer and principal contractor comply with their responsibilities and duties, including preparing a health and safety file and a construction phase plan, respectively.
4. If a project is scheduled to last more than 30 days and will require more than 20 full-time workers, or will exceed 500 working days, the client must notify the HSE of the project.
 5. The CDM coordinator role is abolished and partly replaced by the new principal designer role.

By adhering to these regulations, you can mitigate your risk of professional negligence claims.

How CDM 2015 Affects PI Insurance

While the changes in the CDM 2015 are wide-ranging, the most important one that affects your PI insurance is the abolition of the CDM coordinator role and the establishment of the new principal designer role.

This new principal designer role potentially exposes you to greater professional liability. The HSE defines the principal designer as a designer appointed by the client in projects involving more than one contractor. Principal designers must have sufficient knowledge, experience and ability to carry out the role. Their main duties include the following:

- Plan, manage, monitor and coordinate health and safety in the pre-construction phase, taking account of relevant information that might affect design work carried out both before and after the construction phase has started.
- Help and advise the client in bringing together pre-construction information, and provide the

information designers and contractors need to carry out their duties.

- Work with any designers on the project to eliminate foreseeable health and safety risks to anyone affected by the work and, where that is not possible, take steps to reduce or control those risks.
- Ensure that anyone involved in the pre-construction phase communicates and cooperates, coordinating their work whenever required.
- Collaborate with the principal contractors, keeping them informed of any risks that need to be controlled during the construction phase.

CDM 2015 replaces the old CDM coordinator role with the principal designer on the project team, such as an architect or engineer, but the two roles do not perfectly line up. CDM coordinators were responsible for advising on health and safety risk management matters, as well as CDM compliance. However, not all designers will be able to fulfil their design duties as well as possess the skills and expertise necessary to manage extra CDM 2015 health and safety and risk management responsibilities.

For example, if an architect is appointed as the principal designer, that architect will now shoulder the burden of being the sole point of responsibility for health and safety compliance. This broadens architects' PI exposure, as they bear more health and safety responsibility than a normal architect, which, in turn, opens them up to the potential risk of criminal liability. Penalties for corporate manslaughter or breaching health and safety regulations include an unlimited fine, two years in prison and director disqualification for up to 15 years.

The architect's PI insurance will only cover defence costs if they let their insurer know they accepted the principal designer role and its extra responsibilities. If not, the architect will likely be on their own.

Because PI insurance protects against claims of professional negligence, it is the responsibility of

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principal designers to alert their insurer of their extra principal designer responsibilities, as PI insurance needs to match up with the duties undertaken by the professional. The insurer cannot be expected to know about the principal designer's extra responsibilities unless it is notified.

If principal designers do not have the required skill sets to handle those responsibilities, they can subcontract them to a health and safety professional to fulfil that specific role. However, if those responsibilities are subcontracted, principal designers would have to consider the risk of the health and safety professional not having adequate insurance cover, leaving them again exposed to the potential risk of criminal liability.

Do not assume the role of principal designer by default. Before you undertake the principal designer role, be sure to consider carefully whether you have the expertise and ability to manage the role's extra responsibilities. Also, remember to notify Crendon Insurance Brokers Ltd, as forgetting to update your policy could lead to disastrous results.

Practices to Minimise or Mitigate Risks

If your construction firm fails to follow the CDM 2015 Regulations and is found to be non-compliant or liable for any type of incident, there will be legal repercussions. Specifically, your firm could sustain fines, prosecutions and loss of credibility in the eyes of both the public and your shareholders. For that reason, your firm must establish a thorough CDM risk management scheme.

Although your construction firm may find solutions that work better for your build projects, here are four suggestions that you may find beneficial:

1. Attend a CDM workshop or course to familiarise yourself on the regulations and responsibilities.
2. Before planning and construction begins, bring in a licensed inspector to identify any potential hazards either in the processes or materials.

3. Develop a construction phase plan quickly and efficiently with the [free app](#) from the Construction Industry Training Board (CITB).
4. You can review the legal responsibilities of all parties involved in the project, which would include clients, contractors, designers and workers. CITB's [free industry guidance](#) provides an overview of these responsibilities.

Retaining Quality through Safe Work Practices

The CDM 2015 Regulations introduced significant changes to the construction industry in an effort to increase the health and safety of its workers without sacrificing the quality of work. To ensure that you can comply with the CDM 2015 Regulations while managing your own PI exposure, contact **Crendon Insurance Brokers Ltd** today.