

# coverstory

The newsletter of Hammond Professional Indemnity Consultants

## Big changes ahead for construction projects



“It’s important that professionals taking on these roles pay careful attention to the extent of their PD obligations and check their PI policy covers them appropriately should any problems occur. At Hammond we are more than happy to discuss this in more detail with anyone who may be affected by the new regulations.”

David Hedgecock, Managing Director, Hammond PI.

If you’re in construction, bear in mind that from April of this year, the new Construction Design and Management (CDM) Regulations 2015 will abolish the former independent CDM Co-ordinator role and replace it with that of a ‘Principal Designer’ (PD).

This will apply to all projects except those that appointed a CDM Co-ordinator and started the construction phase prior to April 6, 2015.

Under the new regulations, the PD must be appointed in writing at the pre-construction phase by the client, and then takes on the health and safety co-ordination role that would previously have fallen to the CDM Co-ordinator. So far, so straightforward, but take note that under the regulations, the PD must be a designer - i.e a person or an organisation who prepares or modifies a design for a construction project, or arranges or instructs someone else to do so.

This means that new liabilities will need to be taken on by design professionals.

Why? Because the vast majority of CDM co-ordinators won’t qualify as PDs due to them having no prior responsibilities around design. This surely means that the role will fall to the lead designer and in most cases, this will be architects - even though they are extremely unlikely to have the skills needed to cover the health and safety duties that the role includes. Inevitably this has major implications for the professionals in question should any claim be made for breach of obligations under a PD appointment.

One way of dealing with a lack of health and safety knowledge on the part of the new PD is to sub-contract the work, but even in this situation, any liability will be borne by the designer in the first instance, and then it will pass to the sub-contractor. All of this will not only involve legal costs, but will carry with it the issues of recovery and potential loss if the sub-consultant is under insured.

For more information on this subject visit [www.hammondpi.com/pi-blogs](http://www.hammondpi.com/pi-blogs).

### Debut for Hammond Business Partners

A 20 year track record and a reputation for top quality service has underpinned a decision by Hammond Professional Indemnity Consultants to launch Hammond Business Partners, a new venture dedicated to business succession and protection planning.

Hammond PI Managing Director David Hedgecock said the move was in response to the needs of its existing and loyal client base. “Hammond Professional Indemnity Consultants have been providing successful PI solutions to businesses for over 20 years and we currently have a 90% plus retention rate on renewable business. We are extremely proud of this, and we thank our clients for their support,” he said.

“For years our clients have asked us if we can assist with other commercial and business protection insurances, and in response to that we set up Pinewood Commercial Insurance to cater specifically for those needs. Following the success of that venture and the very positive feedback received from our clients, we are now launching Hammond Business Partners which will again adopt the same specialist and disciplined approach to advising our client base on business succession and protection planning.

“We are shortly to publish our first Hammond Business Partners newsletter ‘The Business Partner’ which will be circulated to you in the near future. We hope you find it both enlightening and helpful.”





## Do you need retro cover?

An increase in personal injury claims being brought against landlords by tenants is on the up and we've spotted a troubling tendency for such claims to be subrogated or joined against other insured parties, namely the property agent.

An example claim follows: A tenant disputes his returned deposit on leaving a property, which contains some fairly insignificant deductions for slight but genuine damage. The tenant hands a letter over the counter to the letting agent stating he would ask the landlord to reconsider the retentions suggesting he is intending to bring a personal injury claim against the landlord for damages sustained when he tripped on an alleged worn floor covering. This caused him to break his leg and he suffered a loss in income as a result.

## Let there be caution

The letter also says that if the landlord does not see reason, lawyers will be appointed to pursue the claim. The landlord duly informs his insurer and subsequently receives a letter of claim which his insurers decide to investigate.

Some time later the letting agent receives a letter from the landlord's insurance company claiming their policyholder has a claim against him by the tenant which they are defending. However they also advise that they are joining the letting agent into the case alongside the landlord and that the agent should put his insurers on notice as the case is due in court shortly.

The letting agents subsequently advise their PI insurer who straightaway questions how a claim could be in the court system without the agent's knowledge. The insurer points out that if the agent knew about a potential claim against the landlord of one of the properties let by their business, they should have notified it. The insurer reserves their rights pending investigation on the grounds of a late notification thereby leaving the agent uninsured for that claim.

Fortunately in this case, which is based on an actual claim, Hammond PI managed to overturn the reservation but this could have easily gone against the letting agent. It is important that such matters be considered and we suggest you talk to your insurance professional as soon as such a matter comes to your attention.

While Professional Indemnity insurance is becoming increasingly important to businesses such as recruitment consultants, web designers and contractors, we are finding numerous cases of businesses failing to appreciate the way in which it works - and this can be a costly misunderstanding.

The point here is that unlike public liability insurance or property insurance, PI insurance operates on a 'claims made' basis. This means that the policy responds to claims made at the time the insured becomes aware of them, not at the time the error or negligent act took place. Whilst you may hold Professional Indemnity insurance at the time a claim or the threat of a claim is made, this does not necessarily mean that the policy will respond to claims made for work undertaken before the start of the policy - *unless the policy provides retro cover*. We are seeing a number of enquiries coming to Hammond where, for whatever reason, professionals who need this retro cover don't have it. If you would like more information on retro cover, please don't hesitate to call.

### Even unfounded claims can be expensive

It may be an unsavoury practice, but increasingly, we are seeing businesses make unfounded claims against our clients simply to avoid settling a bill or to defer paying one. Their hope is usually that the targeted business will have no stomach for a fight and simply give up on trying to collect their fee.

This is where it pays to remember that Professional Indemnity insurance is not just there to cover negligent claims; it also responds to defend claims of negligence that may be brought *with* or *without* foundation.

Defending both genuine and spurious

claims can be very expensive, so check with your broker that you are correctly insured to cover such instances, or better still, deal with a broker who specialises in Professional Indemnity insurance. It's also worth checking whether you will be expected to pay an excess against the costs incurred in defending a claim. This can be unpalatable, particularly where the claim is not genuine.

All efforts have been made to ensure the accuracy of this guide, which is intended to provide general information only and should not be construed as specific legal or financial advice. Individual circumstances must be taken into account when obtaining insurance cover.

**HAMMOND**

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