

Information Document No. 3

Professional Liability

in the context of

the Statue of Limitations and the Building Control Act 1990

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Comhshaol, Pobal agus Rialtas Áitiúil
Environment, Community and Local Government



Information Note

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Background

1. Registered construction professionals (who may be involved in the design, supervision, inspection and certification of construction projects) are required, like professionals in general, to take out professional indemnity insurance (PII) to cover themselves against any claims which may be made against them. PII policies are normally renewed annually and professionals typically continue to cover their work for a seven year period beyond the year in which work is undertaken, although arrangements may vary in this regard.
2. Registered construction professionals argue that the fact that they have PII cover makes them a mark for claims irrespective of whether they are actually liable or not. Various inaccurate assertions have been made that the liability of construction professionals is open-ended, and may extend to a professional's descendants and that the liability of the statutory certificates of compliance introduced under SI No. 9 of 2014 create an open-ended liability. The above assertions do not reflect a fully rounded understanding of the context in which construction professionals carry out their role. The Department has prepared this short note to clarify its understanding of the position in regard to these matters.

Civil Liability

3. Firstly, the matter must be seen in the context of the civil liability code in Ireland. The principle of joint and several liability enables the apportionment of liability among the negligent parties. However, the wronged party can seek to recover the entire compensation amount from any one of the negligent parties once they have at least 1% liability. Thus, the person who is financially strongest may become the target for any claim and this, by virtue of their PII cover, is often likely to be the construction professional. This aspect of the matter is not a function of Building Control Act 1990 or regulations made thereunder which do not in any way regulate insurance. The general legal system and its operation is beyond the remit of this Department and any review or reform of this area would necessarily be part of a wider law reform process overseen or initiated by the Department of Justice and Equality. It is understood that where the matter has previously come up for discussion, the need to ensure redress for consumers has been seen as outweighing concerns regarding the relative liability of the negligent parties.

Statute of Limitations

4. The Statute of Limitations Act 1956 sets a general limit of six years during which a claim for loss or damage can be brought. The Statute of Limitations (Amendment) Act 1991 introduced the 'date of knowledge' for personal injury cases. The date of knowledge is the date when an injury is discovered which may occur much later than the act or omission which caused the injury. An injured person has two years to make a claim from the date of knowledge. This legislation is a matter for the Minister for Justice and Equality.
5. Claims subject to statute of limitations arise in the context of a construction professional having undertaken to perform tasks under contract. Any liabilities relevant to that contract do not pass on to the professional's family or descendants unless they themselves were party to the contract. If a practice is operating as a company which is subsequently taken over, the new owner takes on

responsibility for the previous contractual commitments and responsibilities of the company but company law itself offers various protections and limitations in this regard.

Statutory Building Control Certificates

6. In relation to statutory certificates creating an open ended liability on professionals:-
 - a. all professionals who enter into a contract may be held liable for loss or damage caused by their failure to undertake their work properly. Professional liability arises once a professional becomes involved in a project – it does not originate in the Building Control Act 1990 or regulations made thereunder.
 - b. Building Control Regulations (S.I. No. 9 of 2014) provide for statutory certificates of compliance which balance the liability of the various parties in a number of ways:
 - i. The designer, the builder and assigned certifier each separately sign in respect of their role;
 - ii. Certificates are given in the context of an agreed inspection plan having been prepared and executed in accordance with a *Code of Practice for Inspecting and Certifying Building and Works*, which clarifies the roles and responsibilities of each party, and it being lodged with accompanying compliance documentation and ancillary certificate in a process which is validated by the building control authority who maintain a public register of activity. The discipline and order that this process imposes serves to improve quality and thereby reduce liability.
 - iii. Those giving a statutory certificate may rely on a statutory certificate given by other parties and on ancillary certificates given by others, in the interest of ensuring a transparent chain of accountability thereby enabling a clear identification of where liability for a particular eventuality properly rests;
 - iv. The certs are framed around the signatory having exercised reasonable skill, care and diligence which allows an appropriate defence against unreasonable claims.
7. It is also worth noting that S.21 of the Building Control Act 1990 places a general limitation on civil proceedings brought under the act by reason only of the contravention of any provision of the act or regulations. Thus a professional is protected from proceedings based solely on failing to comply with a requirement of the building regulations. Loss or damage significant enough to justify proceedings must arise.

Conclusion

8. All parties to a construction project may face significant liabilities in relation to their work. The legal code, by way of statute of limitation in particular, makes provision for substantial limitations and protections for parties who may be subject to claims in this regard. Professionals also manage the risks they face by way of insurance. The Building Control Act 1990 and the building control regulations do not of themselves add to such liabilities and, in fact, impose further order and discipline on those who own, design and construct buildings or works which, if properly observed, serve to ensure compliance and quality thereby minimising liability.

Architecture/Building Standards

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