

28 PROFESSIONAL INDEMNITY

Professional advisors and professional indemnity insurance cover

When a building scheme is proposed, the normal recommendation to Church Councils from Support Services in Manchester is that independent professional advisors be appointed who have professional indemnity insurance (PII) cover. We also require the professional to provide the Church Council with a copy of their insurer's certificate of PII cover.

There are substantial benefits for Managing Trustees in using a professional who has PII cover. Managing Trustees could, if so advised, be obliged to sue a professional advisor for negligence. In the absence of PII cover, the likelihood of the Managing Trustees being able to recover that money from the professional would be very remote indeed, and might even result in bankrupting the individual. This is why we advise Managing Trustees only to appoint professionals who carry PII so that in those cases where there is a claim, there are resources there to settle the claim.

We advise the appointment of independent professional advisors rather than professionals who are church or circuit members, ie 'in-house'. The purpose of this is to ensure that there is a totally impartial professional relationship between the Managing Trustees and their professional advisors. There can be a strong temptation to accept the offer of services from in-house professionals who are either retired, or an employee of a large organisation but working privately and, in either case, without PII cover. The temptation is partly because of possible saving on fee costs, and partly because there is a potential embarrassment if the offer is declined. However, any potential embarrassment is nothing compared to the embarrassment which may take place in due course should, for any reason, the scheme go awry and the professional be in any way implicated.

Our advice where there is an in-house professional is that they could best provide their services by acting on the church's behalf in the church's relationship with a properly appointed independent professional. Hopefully, this avoids the in-house professional feeling in any way snubbed, but also avoids the longer-term possibility of the church having to sue a member.

The question is sometimes raised of a Church Council buying PII cover for an in-house professional. However, our understanding is that, under contract and under tort, the professional has legal liability for six years after practical completion of a project, and thereafter there is liability under tort for a period of up to fifteen years after practical completion so long as an action is brought within three years of the defect becoming known. This means that, for a church to be adequately covered under PII, their professional needs to have PII cover for at least fifteen years after practical completion of a scheme.

The question is also sometimes raised of the Church Council passing a resolution not holding their in-house professional responsible in the event of anything going wrong with the project. Unfortunately, under Trust law, the Church Council as Managing Trustees cannot pass such a resolution and there remains the legal possibility that should the works prove defective they could be obliged under Trust and Charity Law to sue.

From the above it will be seen that in all but the simplest of schemes, in properly exercising their statutory responsibilities, Church Councils should ensure that there is a properly appointed, independent professional person having oversight of the works and having the benefit of professional indemnity insurance cover.


