
Liability Briefing

November 2003



Construction Industry Council

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CIC Consultants' Collateral Warranties

The Construction Industry Council (CIC) has published new standard collateral warranties for use where warranties are to be given by consultants to funders or a purchasers/tenants of commercial or industrial developments.

The CIC warranties are based on the BPF warranties for funders and purchasers/tenants published in 1992/93 but they have been updated to take account of changes in the law since then. These new forms are suitable for use in England and Wales and Scotland.

The CIC is the representative forum for the professional institutions, consultant trade associations and research organisation in the construction industry and the warranties are suitable for use by any discipline of consultant.

The liability taken on by consultants under the new warranties is, in general terms, the same as under the BPF forms. For example, liability under the CIC purchaser/tenant warranty is limited to the cost of repairs only, as under the BPF form; and both the funder and purchaser/tenant warranties contain net contribution clauses, again as in the BPF forms. The step-in rights in the CIC funder's warranty are substantially unchanged from those in the BPF forms. The license clauses in both CIC forms are similar to those in the BPF forms save that the license in respect of the documents needed for the health and safety file is not subject to the payment of fees.

The CIC warranties have been updated as follows:

- The net contribution clause has been amended to take account of the decision in the *Co-operative Retail Services* case.
- In the net contribution clause there is no longer a need to list the other consultants and third parties with whom the consultant can be jointly liable: these parties are now referred to generically.
- The consultant is entitled to rely on any exclusion of liability in the appointment, in addition to any limitation of liability, as it is anticipated that consultants will be excluding liability in respect of terrorism and asbestos claims following the

withdrawal or restriction of cover for these claims by professional indemnity insurers.

- The deleterious materials clause refers to the Arup publication "*Good Practice in Selection of Construction Materials*".
- The obligation to maintain professional indemnity insurance now refers to the aggregate cover available for pollution and contamination, asbestos and date recognition.
- Assignment of the purchaser/tenant warranty is limited to twice only and the funder's warranty to another funder only.
- The time for bringing claims is to be limited to a number of years (which is to be inserted, as before) from practical completion or, if that is not achieved, from the date the consultant finishes its services.
- The Contracts (Rights of Third Parties) Act 1999 has been excluded.

The CIC hopes to publish warranties for use on design and build projects in the near future.

The two forms of warranty can be obtained from Publications at the Construction Industry Council, 26 Store Street, London WC1E 7BT tel: 020 7300 7400 fax: 020 7399 7425 email: publications@cic.org.uk.

They are published in pads of five with guidance notes and cost £16 each, £17.50 inc p&p; payment can be made by credit card (over the telephone or by faxing or posting the order form to be found at www.cic.org.uk) or by cheque.

This note is reproduced with the kind permission of Beale & Company, solicitors, who assisted in drafting the warranties.

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