

Byelaws of



Byelaw 5 (Professional Indemnity Insurance & Client Money Protection Bonding)

For the purposes of this Byelaw (5) Member Firms are categorised as follows: -

CATEGORY	DESCRIPTION
A1	A Member Firm with a total fee income, from all business activities, in the last financial year up to and including £150,000
A2	A Member Firm with a total fee income, from all business activities, in the last financial year in excess of £150,000
B	A Member Firm who are also members of the Royal Institute of Chartered Surveyors (RICS) and are registered by the RICS as covered by the RICS Client Money Protection Bonding Scheme.
C	At the discretion of the Association, a Member Firm with net capital assets of at least £3,000,000 may be considered for classification under this category.

PROFESSIONAL INDEMNITY (PI) Insurance

5.1

Every Member Firm shall maintain at all times Professional Indemnity (PI) Insurance appropriate to the size and nature of its business and which meets the minimum requirement in terms of policy wording, cover and limits of indemnity required by the Association and set out in this Byelaw, as amended from time to time. For the avoidance of doubt: - failure to maintain current, adequate PI insurance will result in termination of membership.

5.2

New Member Firms must provide evidence of their PI policy showing cover in respect of claims arising since inception of the business (i.e., full retro-active cover).

5.3

Category **A1**, **A2** & **B** Member Firms shall provide a Certificate each year on the anniversary of the renewal of their policy signed by their Broker or Insurer confirming or showing that the policy complies in all respects with the Association's Professional Indemnity rules. Category **C** Member Firms shall provide a Certificate from their auditors stating that such Member Firm has net capital assets of £3m or more.

5.4

A Member Firm's PI policy shall be no less comprehensive than the Royal & Sun Alliance (Non-RICS) Surveyor's wording (or equivalent), which includes the following main elements.

- Cover is on a civil liability basis
- The limit of indemnity must be on an "any one claim" basis
- The policy must provide indemnity in respect of claims arising out of all work carried out since inception of the business
- The policy must also provide cover for liability arising out of all aspects of a Member Firm's activities, not just residential letting and management services.

Plus, any requisite extensions or addendums as required by any Ombudsman, Arbitration or other similar alternative, independent, dispute resolution scheme to which the Firm may be required to belong.

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5.5

The following are the minimum levels of indemnity, which are required to be in place for each category of Member Firm: -

Category	Minimum levels of Indemnity
A1	£150,000
A2	£500,000
B	As per current RICS requirement
C	No requirement

5.6

Where it seems probable that a complaint or allegation has the potential to result in formal legal action/claim against the firm for professional negligence, the Member Firm should promptly inform its PI insurers, in line with arrangements between them. (Category C Member Firms should promptly inform their appropriate legal advisers.)

5.7

The Association reserves the right to require a Member Firm to provide details, in confidence and without prejudice, of any claims, settlements or court proceedings or judgments in relation to professional negligence.

CLIENT MONEY PROTECTION (CMP) BONDING

5.8

All current registered Member Firms shall automatically benefit from the Association's Client Member Protection (CMP) Bonding Scheme. All Members agree to accept that the rules and procedures of the Bonding Scheme and any relevant associated insurance policy may require modification, amendment and replacement from time to time and that the Association has the full power and authority under the rules to amend such schemes and/or policy, as it thinks fit, in the best interests of the Association, its Members and the consumer.

Marketing or other references to CMP Bonding

5.9

Member Firms' marketing materials which refer to the CMP Bonding Scheme of the Association must be clear and readily understandable and shall not mislead or have the potential to mislead any client, prospective client or member of the public or otherwise, as to the scope of the CMP Bonding Scheme or its contents and shall only use wording recommended by the Association or wording which has been previously approved by the Association.

Scope of cover of CMP Bonding

5.10

The Association's Client Money Protection (CMP) Bonding Scheme applies to and protects client money held by a current Member Firm in the course of its normal business of Residential Lettings and Management of a landlord client's individual residential property, against misappropriation by any partner, director or employee of a Member Firm.

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Explanation of “misappropriated money”

5.11

For the purposes of this Byelaw and the NFoPP CMP Bonding Scheme, “misappropriated money” means: - *“Money rightfully belonging to clients (landlords and tenants) which has been wrongly and dishonestly used to the benefit of the Member Firm (its partners, directors, employees or any direct associate) and therefore not properly reimbursed to the client (landlord or tenant) who is lawfully entitled to it.”*

Main policy elements of the CMP Bonding

5.12

The six key elements of the NFoPP CMP Bonding Scheme are as follows:-

- (1) There is a limit of £25,000 per claim, per member of the public (*subject to (3) below*)
- (2) There is a limit of £500,000 per claim, against a Member Firm (*subject to (3) below*)
- (3) The aggregate limit of total claims liability in any one 12-month period is £3,000,000
- (4) The promise/commitment to the public is made directly by the NFoPP, not by a third party (such as, for example, an Insurance Company)
- (5) Claims – Handling and Control, will be managed by the Association; whilst each case would be dealt with dependent upon the individual circumstances, in broad terms NFoPP will instigate the investigation, instructing specialists to assist as appropriate, e.g. forensic accountants, loss adjuster, expert lettings person etc., liaising with insurers and any other relevant interested parties over this process before determining what reimbursement of client funds might be made by the NFoPP.
- (6) The Scheme is one of “First Resort” – which means that once the NFoPP is itself satisfied of a genuine claim, NFoPP will reimburse clients (subject to any limits in place at the time); and so does not require all other avenues of recovery (for example, police or criminal investigation or successful Court prosecution) to have been exhausted by the client before reimbursement is made.

Obligation to notify suspicions

5.13

It is an obligation and a requirement that any director, partner or employee of a Member Firm who has reasonable grounds to suspect that client money entrusted to that Member Firm is or has been misappropriated, to immediately inform the Association, (in confidence) of those suspicions.

Material changes to the CMP Bonding scheme

5.14

The NFoPP retains the right to modify, amend, withdraw or cease the NFoPP CMP Bonding Scheme arrangements or the details therein and in such circumstances material changes will be notified to Member Firms accordingly, as soon as administratively practicable.

Annual payments to the CMP Bonding scheme

5.15

The NFoPP, in consultation with its Insurance advisers, will determine annual payments due under the NFoPP CMP Bonding Scheme from each category of Member Firm.

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Extra-ordinary or additional levy payment

5.16

The NFoPP may, from time to time, require all Member Firms to pay a special additional levy to help maintain and sustain the financial viability of the NFoPP CMP Bonding Scheme.

Successful Claims / Failure to comply with a recognised adjudicator/body

5.17

- a) A successful claim (whether as a result of legal action or by agreement) under a Firm's PI insurance policy or the NFoPP's Bonding Scheme (or any alternative similar Bonding Scheme which may, from time to time, be acceptable or in place) constitutes a serious breach of these rules and Byelaws.
- b) The failure by a Member Firm to pay (within any requisite timescale) any disbursement of client money (to the relevant parties) as a result of a decision or award by an independent, expert adjudicator/body recognised by the NFoPP e.g. a Court, an Ombudsman, Arbitrator, Independent Case Examiner or similar, will be deemed to be misappropriation and thus considered as a claim under the NFoPP's Client Money Protection Bonding Scheme and thus constitutes a serious breach of these rules and Byelaws.

In such circumstances the Association will be entitled to impose such fines or sanctions as set out elsewhere in these Byelaws and rules of membership as it feels appropriate, without prejudice to any other action taken or being taken against the Member Firm.