Consultation

RICS PII Market: Call for Views

Foreword

I was honoured to be asked to chair the Royal Institution of Chartered Surveyor's (RICS) PII Expert Advisory Forum which advises and supports the Standards and Regulation Board (SRB) review of professional indemnity insurance (PII) requirements in the UK.

PII is an integral protection mechanism for both professionals and consumers of surveying services, ensuring that both sides have protection should something go wrong.

Over the past few years, the insurance market has been in the midst of a particuarly hardened period. The challenges that surveying firms are facing in navigating this market and the lack of availability of adequate, approprate and affordable PII is one of the biggest issues facing the profession today.

The signficant increase in the cost of PII, which is disproportionately impacting SMEs, is affecting the viability of surveying firms and becoming one of their largest overheads, while the availability of cover, especially in the realm of fire safety and valuation for secured lending, is impacting the work that firms undertake. Additionally, emerging issues such as cover for the effects of cyber attack, are of significant concern to insuers and firms alike.

RICS' approach to PII has held up well since its introduction in the mid 1990s, but it is the right time for RICS to review its model. While it is clear that there is no single easy quick fix to the problems covered in this document, the series of short-term proposals will provide additional support to regulated firms and the medium term actions will examine whether more fundamental structural changes to the PI model are required.

RICS is seeking views on these proposals from all regulated firms, consumers of surveying services, as well as the insurance industry. I would urge all to engage in this process and provide their feedback.

Andrew Gooding FRICS

January 2022

Introduction

RICS PII Review

1. Since 2018 the PII market for surveyors has been challenging, with the insurance market in the 'hardest' cycle for some time. This has resulted in a significant contraction in the professional indemnity insurance (PII) market for surveyors, with a reduction in the number of active insurers and a reduction in the available cover in the market (particularly in relation to fire safety and valuation activities), leading to significant increases in premiums.

2. Over the past 24 months, RICS has undertaken several important steps to maintain a PII market for regulated firms and support regulated firms through this period, which includes:

    - Amending the Minimum Policy Wording to increase flexibility of cover and work with insurers on fire safety, to re-introduce limited fire safety cover in 2021 following blanket fire safety exclusions in 2020.
    - Amending the functioning of the Assigned Risks Pool (ARP) - improving the policy terms and improving the application process to reduce the burden placed on well-functioning firms.
    - Developing a *Risk, Liability and Insurance Guidance Note* to support firms in managing their risk and liabilities through contractual terms.

3. The steps RICS has taken have helped maintain PII availability for the vast majority of surveying work, however conditions remain extremely difficult, with no significant improvements in the affordability and availability of PII over the past 12 months. As a result, RICS' independently-led Standards and Regulation Board (SRB) requested a review of our current arrangements and whether there are more fundamental ways to improve availability and affordability of PII for RICS Regulated Firms.

4. This review specifically focuses on the UK, although it is anticipated that a global review will be undertaken in due course.

5. SRB agreed that the UK review will look at:

    - how RICS can best help to support sustainable, stable and affordable PII availability for RICS members in the future
    - guidance and other support for firms to help them obtain adequate and appropriate indemnity
    - information for consumers and clients to ensure transparency about RICS members' indemnification arrangements
    - the data that RICS holds to help it predict trends in the PII market, better assess and articulate the risk profile of the profession, and help members and stakeholders understand emerging issues in PII availability.

Review Process

6. To support the review, an Expert Advisory Group (the Group) was established, consisting of:

    - Andrew Gooding FRICS BSc MBA MCMI (Chair) – Knight Frank LLP
    - Ruth Brown MRICS BEng PGDip – Ruth Brown & Co Ltd
    - Malcolm Davidson MRICS MAPM – Paragon BC
    - Marion Ellis FRICS CCXP – Love Surveying Ltd
    - Caroline Wooley FRICS (formerly Fattorini)– Bowman Riley
    - Patrick King – Society of Chartered Surveyors Ireland
    - Rod Meade – Carter Jonas
    - Stephen Mehmet MRICS MIFSM MIFireE FCABE C. Build E. NRAC AsPS – Sharp & Bentley
    - Justin Sullivan FRICS FEWI – Adair Limited and Chair, Construction Industry Council

    Additional support provided by:

    - Mark Carver – RICS PII Adviser and Miller Insurance Services LLP

7. The Group was Chaired by Andrew Gooding FRICS (Partner, Knight Frank LLP), who also chairs RICS' Insurance Market Liaison Group. The group consisted of a diverse membership from across the profession, including a range of SMEs and larger firms.

8. In order to support the review, RICS also commissioned, Marcus Elwes FCII, to produce an independent report into the PII market. The report, undertaken by an insurance expert with significant experience in professional indemnity insurance, provided analysis of the current market issues and considerations for short- and medium-term options that could improve the availability and sustainability of PII for members.

9. Alongside this report, the Group also considered evidence and data from RICS' insurance adviser and insurance data from RICS' Assigned Risks Pool (ARP).

10. This consultation documents forms the output from that review initial opportunity for members and other stakeholders to provide feedback on the proposed programme of work and particularly to seek initial views on any structural changes to RICS' PII framework.

How to respond

11. You can respond to this consultation online via RICS iConsult or by responding to the questions outlined in this document and sending your response to pii@rics.org

12. Please ensure that you respond to this consultation no later than 24th February 2022

History of RICS PII requirements

13. RICS has had PII requirements in place since 1921. Initially RICS ran a scheme with a series of Lloyd's syndicates and in 1976 this was replaced by a form of mutual self-insurance. By the 1990s concerns were raised over the competitiveness of the scheme. Since 1997 RICS has operated an 'open market' model, meaning any insurer can provide cover if they agree to, and meet, RICS' minimum terms and insurer requirements.

14. A more detailed history is provided below:

1921	The Chartered Auctioneers and Estate Agents Institute (CAEAI) required its members to have basic PI insurance, via a scheme effected with various Lloyd's syndicates.
1956	RICS offered three options to its members to obtain PI insurance from AW Bain, Stewart Smith Limited and Dominion Insurance Company.
1967-70	The CAEAI was absorbed into RICS.
1970s	RICS took a more active role in requiring that members had a broad ranging PI coverage, to ensure protection to the public and to safeguard reputational integrity
1976	After examination of the market and on advice from market professionals, a scheme was put in place called RICS Insurance Service Limited ('RICSIS'). The policy wording that RICSIS provided cover for was a broad-based, 'claims made' civil liability wording, wide enough to provide cover not just for errors and omissions but also emerging exposures such as defamation and breach of copyright. Most crucially, the limit of indemnity changed from being on an aggregate basis to a far wider any 'any one claim' basis.
1990s	The competitiveness of RICSIS and other endorsed schemes (VEAGIS and SURVIS) was questioned by the membership. RICSIS facility operated essentially as a form of mutual arrangement, profits were limited and the level of premium had to match the level of claims payments made.Larger firms and those who had not received a claim felt that they were being unduly burdened by premium increases resulting from the bad claims records of other firms in the facility.
1997	RICS disbanded RICSIS. Alternative arrangement agreed, where any regulated insurer could underwrite members' PI insurance providing, they met certain criteria, creating a more competitive 'open' marketplace for members. An 'Assigned Risks Pool' ('ARP') facility was put in place, to protect any firm who could not obtain PII in the open market due to their claims record. All insurers in the class agreed to proportionally cover the members in the ARP.
2007	Introduction of firm regulation transferring the obligation to obtain PII from 'member principals' to RICS regulated firms.
Present day	This arrangement broadly remains the current arrangement.

Current PII arrangements

15. The RICS Rules of Conduct for Firms stipulate that all RICS Regulated Firms are required to hold adequate and appropriate indemnity.

16. In the UK this principle is supplemented by more specific requirements[1] which stipulate that firms must have professional indemnity insurance that meets the following requirements:

- Made on an 'each and every' claim[2] basis or on an aggregate plus unlimited round the clock reinstatement basis[3];
- Written on RICS' minimum policy wording, or on a more comprehensive basis, and on a full civil liability basis; and
- The minimum level of indemnity is based on the firm's turnover[4]

17. RICS manages a list of approved insurers in the UK, which have committed to providing insurance on the RICS minimum policy terms. Regulated firms must obtain insurance through one of these approved insurers.

18. As a condition of their approval, the listed insurers operate an Assigned Risk Pool (ARP), which provides insurance to RICS firms that cannot get terms on the open market. Insurers share the underwriting risk of firms in the pool.

19. Historically, only firms with poor claims histories entered the ARP, and it was therefore designed to be a rehabilitative pool with restricted policy terms. With the hardened PII market, more firms are having difficulty obtaining PII and therefore entering into the ARP, including those with good claims histories. This has led us to undertake several improvements to the ARP to make it more efficient and effective and to enable well performing firms to continue operating while in the ARP.

---

[1] https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/regulatory-support/professional-indemnity-insurance-requirements-version-8-april-2021-1.pdf
[2] Under an 'each and every' claim policy, the number of claims that can be notified is unlimited and the limit of indemnity is payable in respect of each claim
[3] The name given to a type of Indemnity Limit whereby layers of insurance are provided by different insurers and each Layer steps down as its underlying limit of indemnity is exhausted. When the final Layer of the total Indemnity Limit has been exhausted, the Indemnity Limit shall start from the beginning and back around to the original Primary Layer of Insurance
[4] Minimum limit of indemnity

Firms' turnover in preceding year (or estimated if new)	Minimum limit of indemnity
£100,000 or less	£250,000
£100,001 - £200,000	£500,000
£200,001 and above	£1,000,000

Market conditions and identified issues

20. The difficulties in the PII market over the last few years have been well documented. These conditions are not unique to surveyors - other professions, such as accountants, architects and insurance brokers, are all facing similar challenges in obtaining PII. There are, however, some exacerbating factors that are adding additional pressures to the PII market for surveyors.

21. This section provides a brief overview of the current market conditions and issues in the surveyor PII market.

Underwriter profitability

22. In 2018, the Lloyd's of London 'Decile 10' profitability review found that non-US PII was the second worst performing class of business, with two-thirds of syndicates reporting aggregate losses between 2012 and 2018. This lack of profitability was a significant catalyst for change, causing a shakeup of the market, with estimates that capacity halved and around 25 per cent of insurers withdrew from the broader PII market.

23. The Prudential Regulation Authority (PRA), the industry regulator, consolidated the work of Lloyd's, and focused on the profitability of the whole PII market, including those insurers outside of the Lloyd's market.

24. As a result of this renewed focus on PII and insurer profitability, insurers either had to increase premiums to improve their performance and profitability to meet their regulatory requirements or withdraw from the market.

25. This has had a significant impact on capacity in the surveyor PII market, reducing the number of insurers active in the PII market and reducing the underwriting capacity of remaining insurers, particularly their appetite for new business.

Claims experiences

26. While the significant increases in premium being seen over the past two years would indicate that insurers may be returning to some level of profitability, feedback from insurers suggests that that those premium increases are not yet offsetting the increases in claims losses.

27. It should be noted that surveyor negligence claims primarily came from valuation activities. While it is recognised that the market has changed since the last crash and that there is a reduced chance of 'confetti letters', insurers remain concerned around valuation for mortgage lending which is perceived as the highest risk part of surveying.

Unrealised exposures

28. Insurers are particularly concerned around unrealised exposure; those exposures that cannot be underwritten with any level of accuracy or certainty. This may lead to either a refusal to underwrite a class of business, e.g. use blanket exclusions, increase premiums for the exposure and/or add limitations in coverage to aggregate insurer exposure.

29. There are a number of factors in the current market, many of which have been well documented, that are acting as unrealised exposures. These include:

- Economic conditions – insurers remain concerned around the prevailing economic conditions in the UK as it recovers from the Covid-19 pandemic and the economy deals with Brexit.
- UK property market – while the UK property market continues to be buoyant, fears remain that there may be a downturn following the period of artificial government protection in the form of the stamp duty holiday and restriction on repossessions and rental evictions.
- Fire safety – the ongoing fire safety crisis has led, and will undoubtedly continue to lead to, an increase in claims, but these remain unquantifiable, and the question remains: who will pay for remediation costs? In addition, the regulatory environment remains uncertain with the Building Safety Bill progressing through Parliament and the Fire Safety Act still being implemented.
- Increasing cyber liability – despite amendments to clarify the cyber liability cover provided in PII, insurers remain concerned about the risk of cyber crime and potential exposure to future cyber liability claims.

30. Many of the unrealised exposures will continue to be concerns for insurers moving forward and while capacity does presently exist, despite hardened market conditions, insurers are likely to continue to be selective in the PII risks that they underwrite, only underwriting those that they deem to be a worthwhile risk. This may be on an even more limited basis, in terms of limits of indemnity and coverage, and may lead to further increases in premium and excess levels.

31. In markets where there is limited capacity and competition, insurers may be less likely to underwrite risks that are more complicated and less straightforward to understand, where the additional information and time required for underwriters to assess the risk, can make it uneconomical for insurers. This has a disproportionate impact on SMEs, where the premium being written may be smaller and insurers may find it uneconomical to assess the firm to underwrite the risk.

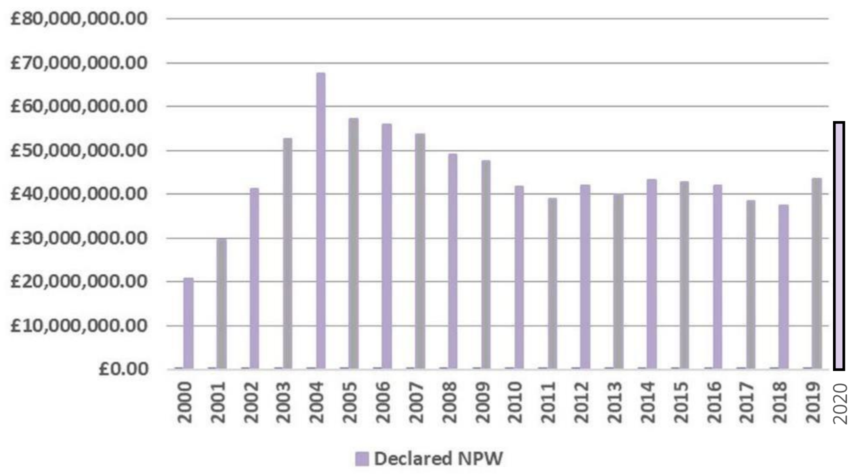
Impact of market conditions

Premiums and excesses

32. As noted above, the profitability reviews and unrealised exposures have had a significant impact on the premiums being written over the last two years.

33. The graph below, shows the premium being written for RICS' £1m mandatory primary layer. Based on the data, we can see that from primary layer, the net premium written (NPW) has increased from £39m in 2018 to £58m in 2020.

Table 1: Declared net premium written for RICS listed insurers



34. It should be noted that the above only reflects the minimum level of insurance that RICS requires, and that the overall market size of the surveyor market, taking into account excess layers (coverage purchased above the RICS minimum requirements), is significantly larger. The data also does not take into account the fact that self-insured excess levels have also seen increases, whilst excess layers have become significantly more expensive.

35. The overall financial burden will have increased significantly for all firms over this period, but it has undoubtedly had a disproportionate impact on SMEs. Evidence collected as part of this review has shown that firms regularly see a 300% increase in their premium, and that some firms have seen premium increase of over 1000% in the past couple of years. While a Construction Leadership Council (CLC) survey of over 1,000 firms undertaken in early 2021 found a nearly 4-fold increase, with premiums doubling the year before.[5] This has caused significant difficulties and distress for those trying to operate viable surveying businesses and deliver vital services upon which the public relies.

Availability of cover

36. While the hardened market continues, the number of firms unable to obtain cover on the open market has increased. The Assigned Risks Pool (ARP), has historically had around 9 firms in the pool. In 2020-21 this has increased to a total of 47 firms.

37. Using the data that we hold, fewer than 150 firms were unable to get complaint PII cover on the open market in 2020. These firms will have either entered the ARP or obtained dispensation from RICS to maintain cover, where an aspect of their policy is not compliant with RICS minimum requirements.

Restricted cover

38. Through the collection of dispensation data and anecdotal evidence received as part of this review, we are aware that some insurers are offering coverage that does not comply with the RICS minimum policy wording and are restricting coverage in certain areas. This is mainly in relation to fire safety and will reflect the professional exposures of the firm. Any reduction or removal of cover leaves the regulated firm more exposed to claims and reduces consumer protection.

---

5 5 https://cic.org.uk/news/article.php?s=2021-03-30-professional-indemnity-insurance-restrictions-harming-industry

39. The CLC survey found that 60 per cent of respondents had some form of restriction on cover relating to cladding or fire safety. One in three respondents indicated that they had a total exclusion in place for cladding claims and one inf five a total exclusion for fire claims.

40. There is also a risk that firms may be at a competitive disadvantage in some sectors of surveying, where the RICS minimum level of cover is beyond that which is readily available for non RICS regulated firms, for example in construction and fire safety. This may also increase exposure for RICS regulated firms, as many other professionals do not have the same level of cover in place. Equally, restricting cover will leave them personally open to claims.

Broker behaviour

41. Several firms indicated delays in receiving terms, even when approaching brokers earlier, leaving them with insufficient time to consider the terms on offer properly. This has forced some RICS regulated firms to accept uncommercial terms or required firms to obtain extensions to their existing policy in order to obtain alternative quotes after their initial deadline has passed. Others noted that brokers did not take time to understand their business or risk profile.

42. Conversely, many firms also have reported positive experiences with brokers.

Proposed programme of work

43. There is no solution that will completely solve all the challenges that are affecting firms. There are however a number of short- and medium-term actions that should contribute to an improved PII market. We have outlined below a proposed programme of work over the next three years.

44. This consists of a series of short-term actions that RICS can undertake immediately which we consider will make a positive impact on the PII market and in the medium term, more fundamental changes to our PII framework.

Short term impacts

45. Over the next 18 months, there are a series of workstreams that we can undertake to ensure that firms are supported and have the knowledge and skills to approach PII confidently.

Data collection and risk management

46. In order to fully understand the PII market for surveyors and the risk profile of the profession, good quality robust data on the profession's claims experience and premiums is required.

47. We propose collecting the following data from firms at the point of regulated firm registration and renewal:

- Premium paid for primary layer of PII insurance, in addition to the excess layer premium
- Firms' claims details on number of claims being made, area of practice giving rise to claim, amounts paid by insurers for each claim (including defence costs incurred) and amounts reserved by insurers for each claim (including defence costs incurred).

48. We will also consider data held by insurers and brokers, and how that might support our work.

49. The collection of this robust data should play an important role in the development of our standards and regulations. Good claims and insurance data would allow us to improve our regulatory interventions, understanding areas of risk to develop targeted risk-based interventions before harm occurs.

<u>Question on data collection</u>

Q.1 If RICS were to ask your firm for this information on an annual basis, would you provide this information and what would the impact be?

Brokers

50. Over the past 24 months, we have had consistent feedback from members that there have been difficulties dealing with insurance brokers. In particular, brokers leaving quotes to the last minute and firms being left in a position of powerlessness with 'take it or leave it' terms.

51. This was supported by the PII Review EAG, who flagged that this was particularly problematic for SMEs who may not have the support, expertise and time to navigate these discussions with brokers.

52. As such we would like to explore ways in which we encourage positive broker behaviour and improved understanding of the surveying sector and better support firms in the renewal process. We would like to seek views on two proposals that we could undertake by working with the broking industry to address these issues.

Recommended broker scheme

53. During this review, a number of members recommended the development of a recommended broker scheme as a way to encourage positive market behaviour and broker understanding.

54. Working with the broking and insurance industry, such as the Chartered Institute of Insurance and British Insurance Broking Association, RICS could seek to develop a list of recommended brokers that regulated firms could approach for PII. To participate in the list, brokers would agree to a set of minimum service requirements and the use of a standardised broker form (see below).

55. This would provide a list of brokers to firms, in the knowledge that they have agreed to a minimum level of service. RICS cannot and would not want to regulate brokers, so participation on the list would be voluntary and RICS regulated firms would be free to use any broker that they wish.

Standard market proposal form

56. Currently the market proposal forms[6] used by brokers vary significantly and are not always asking relevant questions. They can also sometimes be confusing and time consuming to fill out, which can be especially problematic should a firm be required to approach another broker.

57. Working with brokers and insurers, we propose exploring the development of a standardised market proposal form that brokers are able to use. This would ensure consistent and relevant information is collected from firms and that should a firm need to approach another broker to obtain terms, they are not required to fill out another form.

58. The use of a standardised form could form part of a recommended broker scheme. In conjunction with this, we would develop guidance and support for members to complete the forms.

Questions on working with brokers

Q.2 Do you support the development of a recommended broker scheme?

- Yes
- No

Q.3 What are the pros and cons of a recommended broker scheme?

Q.4 Would a standard market proposal form be beneficial and why?

Q.5 Any other comments on these two proposals?

[6] The forms that firms fill out to get a quote for PII cover

Education

59. Firms' PII does not sit in a vacuum and surveyor fees, client expectations and terms of engagement with clients are all important factors that impact the availability, affordability and sustainability of the PII market

60. Throughout the review, education of clients of surveying professionals was consistently highlighted as a key factor that was impacting the wider insurance market, particularly in regards to the level of cover that firms were required to obtain and the value of using an RICS regulated firm with PII in place.

The value of using an RICS regulated firm

61. RICS' requirement for regulated firms to hold PII should be championed and the benefits of holding PII clearly understood. This is particularly relevant in a market where a number of non-regulated firms do not have PII in place or have less comprehensive cover in place than RICS regulated firms.

62. A consumer guide focusing on firm regulation is currently being developed and will incorporate the important role consumer protection mechanisms, such as PII, play in supporting clients of RICS regulated firms when something goes wrong.

Commercial clients and lenders

63. The risk reward ratio in commercial contracts for surveying services has often been highlighted as unbalanced. This has previously been identified as [7], and continues to be, problematic in the valuation sector, where low fees and high liability requirements from lenders increase the risk and potential exposure to valuers. The lack of insurer appetite to underwrite professionals undertaking valuations continues to be a concern and there is a risk that insurers stop underwriting valuation altogether, as has happened in other markets such as Australia.

64. RICS will engage and work with lenders to highlight the impact of the current market conditions and clearly state that in order to have a sustainable valuation profession, the risk reward ratio needs to be addressed. In particular, lender PII requirements need to be addressed and the use of more appropriate liability caps should be allowed.

Legal advice on claims environment

65. Feedback received whilst undertaking the review highlighted challenges in the claims environment and the impact that the litigious claims environment was having on PII premiums.

66. Whilst RICS' ability to influence the overarching claims environment is limited, we will seek legal advice and explore whether there are any learnings from recent claims history and opportunities for reducing likelihood of future claims.

Support and guidance for firms

67. The main driver behind premiums will always be the level of claims. One of the key reasons for the challenges in the current market is that claims being paid outweigh the premiums being written. The fewer claims that firms and receive, the lower their premiums will be. As such, managing the risks that give rise to claims is essential.

[7] https://www.oonaghmcdonald.com/uploads/3/9/0/8/39086241/rics-balancing-risk-reward-sustainable-valuation-report.pdf

68. In April 2021 RICS published its revised and expanded *Risk, Liability and Insurance Guidance Note*.[8] Previously targeted at valuation, this is now applicable to the whole profession. The guidance note currently has a valuation specific annex, which address specific issues related to the profession and we propose developing other sector specific annexes to address specific issues of risk and liability relating to that sector.

69. Alongside the development of sector specific annexes, we propose developing a free to access learning module to support the guidance note to assist firms in managing their risk and liabilities.

70. Furthermore, the collection of data outlined above, will develop a useful insight into the claims experience of the profession, allowing us to develop targeted risk-based support and guidance for firms in the future.

Repositioning the ARP

71. The ARP has provided a safety net for many firms unbale to get PII cover over the last 12 months. As a result, we have made a number of changes to the ARP recently in order to improve its functioning and to reflect the reduced availability of PII.

72. Specifically, this is a reflection that the ARP is no-longer just for firms with a poor claims history. Due to market conditions, there are a number of well performing firms that have entered the ARP due to being unable to obtain terms on the open market.

73. However, it is clear that the ARP continues to be misunderstood and many perceive it to be for firms with a poor claims history; it therefore has negative connotations for those firms that have to use it.

74. We will explore whether there is an opportunity to amend the ARP and whether we can further separate out those firms that enter the ARP due to market conditions and those that have a poor claims history. One such option could be to rename these two pools.

Government advocacy

75. There are a number of wider structural issues and challenges within the insurance market that are outside of RICS' direct control. Broader Government intervention would be required in order to address these.

Government backed schemes

76. Over the past 24 months we have worked closely with the Government to intervene in the PII market. In 2021 we have successfully sought commitment from the Government to develop a Government-backed indemnity scheme and for them to underwrite the risk of competent professionals completing EWS1 forms.

77. We will continue to push for broader Government intervention in the PII market and underwriting of risk in other high-risk areas of the profession, including in the construction sector through our work with the Construction Leadership Council's Covid -19 Industry Task Force, PII Sub-Group.

Liability capping scheme

78. The importance of liability caps has already been highlighted as a key aspect of managing risk and a way of limiting liabilities to make the profession a more attractive risk for insurers to underwrite.

[8] https://www.rics.org/uk/upholding-professional-standards/standards-of-conduct/risk-liability-and-insurance/

79. Whilst RICS promotes the use of liability caps among firms, we understand that some clients of surveying services do not accept the use of such caps in terms of engagement. RICS cannot by itself set a liability cap to limit civil liability for all members as part of its PII requirements as this would be seen to be in contravention of competition law. As such, any intervention would need to come from Government. Liability capping schemes have functioned well in other jurisdictions, such as Australia, where RICS has a liability capping scheme with the Professional Standards Council of Australia.[9]

80. A similar approach to liability capping schemes in the UK would be welcome and would reduce the exposure of firms who participate in the scheme. To this end, we will engage with Government on the merits of developing such a scheme and look to work with other professional bodies and regulators to push for such an intervention.

Question on liability capping

Q.6 Do you support the objectives of a government backed liability capping scheme to cap firms' civil liability and would this have a positive impact on the cost of PII?

General questions on short term actions

Q.7 Which proposal do you think will have the most significant impact on the availability and affordability of PII?

Q.8 Is there anything that you would like to highlight on this work programme?

Q.9 Are there any other actions or steps RICS could take to support members with their PII?

Medium-term structural considerations

81. The short-term actions address the immediate opportunities for RICS to support the profession and ease the burden on firms. However, these actions do not address the structural basis of our insurance model. Over the next three years, we will consider more fundamental structural changes to our PII framework.

82. The current market-based model of insurance, with a pool of approved insurers and a minimum policy wording insurers agree to underwrite regulated firms to, has worked well since it was introduced in the late 1990s and has survived several hard market cycles before. It is only recently with the onset of the hard market that the model has come into difficulties. As we have already noted, there are no 'quick-fixes' and it is likely that with time, the market will come out of its current cycle and soften, but we need to consider whether there are alternative sustainable models.

[9] https://www.psc.gov.au/professional-standards-schemes

83. We believe there four potential options available to RICS to consider, some of which would require a combination of two or more options:

- Introducing self-insurance for part of, or the whole, profession through a mutual;
- Introducing a master policy that is backed by an insurer, or number of insurers.
- Maintaining the existing market-based arrangements of having a pool of approved insurers and minimum policy wording that firms must meet, but reforming the arrangements through a full review of the minimum policy wording and functioning of the ARP.
- Introducing the option to insure on a project basis, for specific higher risk areas of work

84. This is only the beginning phase of identifying these models and there is a need for viability assessments and significant member, insurer and broader stakeholder engagement on these. An overview of these models has been provided below. We are keen to seek initial views from members and other stakeholders on these options.

Self-insurance

85. One option is for the profession, or parts of the profession, to self-insure by pooling the premium that the profession pays into a protected and managed vehicle, which pays out any claims made against the members.

86. The most common way to do this is to form a mutual. Mutuals have been used by other professions, including the BAR Mutual for Barristers and in architecture, where a number of architecture firms have pooled together to form mutuals (the Wren and Griffin mutuals). It should be noted that a number of profession-wide mutuals have proved unsustainable in the long term, including the Solicitors Indemnity Fund which ran between 1987-2000.

87. There are a number of advantages to undertaking such an approach, which would ensure that minimum insurance standards are met by members of the mutual and that profits made from underwriting the members (less any management and re-insurance costs) would be passed back to firms. Under a mutual arrangement data is also consolidated under one vehicle, which will have advantages over time in assessing risk, managing exposures and off-setting losses.

88. However, there are disadvantages. Setting up a mutual would incur significant start-up costs that would be borne by firms' premiums. Should losses incurred in the mutual be in excess of the premium collected, these would need to be paid out with additional calls (e.g. more premium) to the mutual members in the following years. The unlimited nature of liability in RICS' minimum policy wording, would also theoretically be unlimited on members' resources, including potentially into retirement. A mutual for the whole profession would also potentially restrict choice for members and may reduce availability of insurance for those that do not participate.

89. While there are challenges with this model, we believe the option of a mutual, and in particular for certain parts of the profession, should be explored further as more data is needed to establish its viability.

Master policy

90. Under a master policy, all insurers interested in writing RICS business would pool together and co-insure the entire profession. Such an approach would require a lead underwriter or set of underwriters to set the terms and conditions for all insurers. This would operate in a similar manner to a self-insured model, but with the market funding claims rather than members.

91. The main advantage of a Master Policy is that all regulated firms would be able to obtain the same broad minimum level of cover[10] and the level of premium being charged can be controlled to provide stable, transparent and fair pricing. There are also significant advantages gained from the pooling of data for the profession and could also be used to limit the profits that insurers make from RICS business.

92. Disadvantages of a master policy arrangement include that, similarly to a mutual, there is a lack of competition on pricing, with all firms obtaining the same minimum level of cover for the same price. It is also unclear whether there would be support for implementation of a master policy from insurers in the current market.

93. As outlined in the *History of RICS PII Requirements* section above, between 1976 and 1997 RICS' ran RICS Insurance Services Limited, a master policy providing PII to the profession. It is of importance to note that this model was eventually disbanded and the mutual closed as it became uncompetitive and it was felt that it was no longer in the best interest of firms. In particular, those firms with no claims as well as larger firms, felt that they were being unduly burdened by premium increases resulting from the poor claims history of others.

94. Master policies have however been successful in other jurisdictions and professions, namely the Law Society of Scotland and the Law Society of Northern Ireland, where solicitors' PI is sourced under a Master Policy arrangement.

95. It may be possible to have a Master Policy for parts of the profession, for example those that are the highest risk. This could be done by converting the Assigned Risks Pool (ARP) into a Master Policy.

Maintain current arrangements

96. As noted, the current arrangements have functioned well since their inception and it is only recently with the advent of an extremely hard market that they have come into question. The market is cyclical and as such will likely eventually correct itself.

97. However, there may be changes that we can make to the current model to improve the functioning of the market and assist with the development of a more stable, sustainable and affordable market.

98. Maintaining the current model, would not preclude us from undertaking significant changes to the operation of the current model. This could include:

- Amend or completely re-write the RICS Minimum Policy Wording.
- Allow limited coverage for corporate clients, for example with the Minimum Policy Wording to apply to services provided to private individuals and public sector clients, while cover to commercial clients is limited.
- Amend the Assigned Risks Pool
- Lowering the insurer security rating for participation in the RICS insurance market

Per-project insurance cover

99. Under this option, each 'project' or piece of work is insured separately in its own right at a cost which is calculated and paid up-front. The cover exists on a losses occurring basis, with the cover in place for a period after the time the work is completed (e.g. ten years).

[10] Firms that require cover above the minimum limits would be able to purchase excess layers.

100. Such an approach is unlikely to work on its own in isolation and would need to be introduced in tandem with one of the other models. It would also need entire sectors of the profession, e.g. valuer or construction, and their clients, to adopt such an approach. The insurance premium for a project is clearly identifiable and can be passed onto the client.

101. Per project insurance is currently used in parts of the construction sector and has previously been suggested for valuers. However, this has never been adopted, as it is considered more expensive than insuring under an annual PI policy and policy coverage would likely be more limited.

Questions on medium term structural considerations

Q.10 Please indicate your preferred model:

- Self insurance (mutual)
- Master policy
- Maintain and amend current model
- Per-project insurance cover

Q.11 Which option do you think would have the most significant impact on the availability and cost of PII

Q.12 Do you have any comment or further thoughts on these models?

Q.13 Are there any other alternative options or models that we should consider?

Questions

Questions on short term impacts

Question on data collection

Q.1 If RICS were to ask your firm this information, would you provide this information and what would the impact be?

Questions on working with brokers

Q.2 Do you support the development of a recommended broker scheme?

- Yes
- No

Q.3 What are the pros and cons of a recommended broker scheme?

Q.4 Would a standard market proposal form be beneficial and why?

Q.5 Any other comments on these two proposals?

Questions on liability capping?

Q.6 Do you support the objectives of a government backed liability capping scheme to cap firms' civil liability and would this have a positive impact on the cost of PII?

General questions on short term actions

Q.7 Which proposal do you think will have the most significant impact on the availability and affordability of PII?

Q.8 Is there anything that you would like to highlight on this work programme?

Q.9 Are there any other actions or steps RICS could take to support members with their PII?

Questions on medium term structural considerations

Q.10 Please indicate your preferred model:

- Self insurance (mutual)
- Master policy
- Maintain and amend current model
- Per-project insurance cover

Q.11 Which option do you think would have the most significant impact on the availability and cost of PII

Q.12 Do you have any comment or further thoughts on these models?

Q.13 Are there any other alternative options or models that we should consider?