

RICS response to consultation on Assigned Risks Pool

Introduction

1. We recently consulted on proposals to amend the RICS Assigned Risks Pool (ARP) Terms of Reference and the Rules and Procedure for Admission to the ARP. This consultation forms an integral part of the RICS policy development process and ensures that the impact of policy changes have been properly assessed and stakeholders have been consulted and given the opportunity to feed into proposals.
2. The proposals were largely aimed at improving how the ARP functions, including making the application process quicker and more efficient, alongside reducing the burden on regulated firms applying to ARP as well as for insurers and RICS.
3. The consultation document and full proposals can be read in full [here](#).

Summary of responses and analysis

4. A total of 23 written responses were received to the consultation. The majority of responses were received from RICS members and comments were also received from members of the current ARP Panel.
5. An insurer roundtable was also held to gather insight and views from RICS Listed Insurers who underwrite the ARP into the policy development process. A total of 14 insurers attended the roundtable.
6. An overview of the responses received to the questions is outlined below.

Q1 Do you agree with all or some of the proposed changes to ARP Terms of Reference and Rules and Procedures for Admission to the RICS ARP

7. We asked respondents whether they agreed with the changes proposed to the ARP Terms of References and the Rules and Procedures for Admission to the RICS ARP. The majority of respondents (12) agreed or agreed with some of the proposals and only two disagreed with the proposals.

General comments

8. In general, respondents welcomed the simplification of the admissions process and noted the benefits that this would bring. The need for the ARP to act quickly was highlighted and the changes proposed allow for greater flexibility and speed in processing applications. Insurers welcomed the clarification that the changes provided.
9. RICS members responding to the consultation welcomed the acknowledgement that not all firms entering the ARP were doing so due to a poor claims history, but rather due to market conditions.
10. A number of respondents flagged the hardened PII market and the difficulty firms are having in obtaining cover and the costs of premiums. In particular, the long-term impact of reduced cover and increased costs may have a long-term impact on the profession, the services it provides and may call into question the viability of certain activities.
11. No comments were made by those that disagreed with the overall approach.

Rules of Admission - Market exercise

12. We asked for views on proposals to change the requirement for ten constructive declinatures to enter the ARP to the following being '*declined insurance cover (or considers it has been Constructively Declined) or is concerned that it will not be able to arrange insurance*'.
13. Such an approach was generally welcomed and no specific comments were received opposing this approach. However, one respondent noted that it would be appropriate for there to be an appeals process for entry to the ARP, for example where entry is declined due to market terms being offered being deemed not sufficiently onerous for the firm to be eligible for the ARP.

Rules of Admission - Business review

14. The simplification and reduced burden placed on introducing a targeted risk-based approach to business reviews, was broadly welcomed by stakeholders.
15. Two respondents noted the value of the business review and suggested that those with a good claims history be subject to a business review or regulatory review within six months of entering the ARP, unless they have been subject to a regulatory review in the previous 12 months.

16. One respondent highlighted the concern around the cost of the business review and that it might be prohibitive for SMEs.

RICS response

17. We note the comment around market exercise and appealing the decision to be refused entry to the ARP. We do not believe introducing an appeals process is appropriate, as these are not regulatory proceedings. For example, a firm may be refused entry to ARP as a result of insurers unwilling to underwrite the risk, this is a decision by insurers and not an appealable regulatory proceeding.
18. In respect to undertaking business reviews. We are mindful that due to the current challenges in the PII market, many well performing firms with good claims histories are entering the ARP. We do not believe it would be targeted or proportionate to undertake business reviews on those firms, and that resources should be focussed on firms that are going into the ARP due to poor claims histories. We will therefore keep the proposals as outlined in the consultation in respect to business reviews, which also reflect the comment in respect to the cost of business reviews.
19. We received a number of responses from RICS members around the current difficulties and issues in the PII market, in particular around the reduction in supply, increased use of exclusions and significant increase in the cost of premiums, and the impact that this was having on firms and the wider profession.
20. The current hardened PII market is impacting and being felt across all those professions providing professional services. RICS is limited in its ability and power to impact the PII market. However, ensuring the continued availability of adequate and appropriate PII is a priority. The changes to the ARP are part of this work and will allow firms to continue to obtain cover during the hardened market.
21. We also continue to work with the Government, insurers, members and other stakeholders to develop solutions to ensure a sustainable PII market with the availability of adequate, appropriate and affordable PII.

Q2 Are there any unintended consequences of introducing these changes that RICS has not considered?

22. The majority of consultation respondents (12) indicated that there were no unintended consequences to the proposals, while 9 respondents stated there may be unintended consequences from these changes.
23. Concern was raised over the implications for valuation firms, particularly with exposure to the London market and whether the cover and terms would be acceptable to lenders. The ARP is

underwritten by RICS listed insurers and is affected by the same market forces as the wider PII market and the limits of indemnity provided for reflect the current market conditions.

24. No other comments were made in respect of unintended consequences.

RICS Response

25. The changes made in May 2020 provided greater flexibility in the terms provided in the ARP, including changes to make them more acceptable to lending panels. We have been working with lenders to educate them around the conditions in the insurance market and the cover that regulated firms in the ARP have, and we are aware that lenders are now viewing firms in the ARP more favourably. Lenders were also notified of this consultation.

Q3 Do you have any other comments on the proposed changes?

26. A number of respondents provided recommendations for changes to our PII model, including moving the ARP away from being a last resort for firms unable to obtain PII cover and the adoption of a master policy.
27. Wider issues around the PII market were also flagged, including a member noting the unsustainable rise in premiums and suggested that the Standards and Regulation Board consider greater flexibility in the PII Requirements to allow for a higher excess, for example up to £250,000, and allow firms to put a bond down of that amount to reduce premiums, preventing firms from claiming on their PI insurance unless it was at the £250,000 level.

RICS Response

28. Some of the changes in the Rules and Procedure for Admission allow for firms to contact RICS and the ARP Manager to enter the ARP before declinatures have taken place, providing greater flexibility to firms on when they can apply and reducing the last minute and last resort nature of applying to the ARP.
29. We note the wider comments on the PII market, these were helpful, and we will be considering them as part of a wider review of PII in 2021.

Q4 Do you agree or disagree with the proposals to change the composition of the ARP Panel? Please explain your answer

30. The majority of respondents agreed with the proposal to amend the composition of the ARP Panel, noting that a simpler process would be welcomed. Respondents noted that they were comfortable that there is still RICS member representation on the panel. One response suggested that one of the RICS members on the Panel should have experience in residential survey and the valuation sector, due to likely impact of the sector in the current renewal cycle and thus more firms undertaking valuation work entering the ARP.
31. Those that disagreed, highlighted the need for the Panel to continue to be RICS member focused, noting that representation from active professionals on the Panel is key, suggesting that two RICS members is the minimum required.

32. Insurers asked for clarification around the ability for the ARP Manager to represent Listed Insurers at the ARP Panel meetings and the Role of the Vice-Chair and whether this was necessary under the new composition proposals.

RICS Response

33. RICS notes the comments made on panel composition, however feels that two RICS members on the Panel (Chair and other) is proportionate and provides sufficient safeguards in ensuring professional input into Panel decisions. We also recognise that it's important for RICS members on the panel to have a broad range of knowledge and experience, particularly covering surveying activities undertaken by firms that are more likely to enter the ARP.
34. It is worth clarifying that the ARP Manager is only able to represent a Listed Insurer on the panel where the case has been discussed prior to the meeting and where the ARP Manager has sought agreement on the position of the insurer. It is important to note that the input of three listed insurers is still required for the Panel meeting.
35. We note the comment on the Vice-Chair and have removed reference to this. It is clear under the revised Terms of Reference, that there will only be a Chair and one RICS member Panel member both of whom are required to attend. As a result of this clarification we have also amended reference to the quorum as this is no longer relevant.

Q5. Do you believe that the provision for a firm to be regulated for at least 6-months before accessing the ARP provides sufficient protection against phoenixing firms?

36. Respondents overwhelmingly supported the need to address phoenixing firms, with 14 supportive of the proposals, 4 somewhat supportive and 5 respondents not supportive. It should be noted that some of those who indicated they did not support the proposals, wanted more stringent measures in place. Insurers also welcomed the proposals to ensure that phoenixing firms are not eligible to apply to the ARP.
37. A current ARP Panel member noted that it is crucial that the issue of phoenixing is addressed to ensure that the ARP continues to function and is not over-burdened. The fact that a firm is registered for regulation prior to entering the ARP will not necessarily solve the problem; there is a need consider whether individuals have had previous involvement in a firm that has closed due to large claims or if it was previously in the ARP.
38. Many respondents to the consultation noted that the length of time before being able to apply to the ARP should be extended from 6 to 12-months. It was noted that it often takes more than 6 months for shortfalls or substantial mismanagement to be identified. The impact of COVID-19 was also noted as a reason to extend the period.
39. Another Panel member suggested that in order to protect consumers, any Principal of a firm that has closed in a disorderly manner, should be barred from holding a similar role or controlling interest in any other firm for a period of time from the date of insolvency. Any RICS

member who has had such a role and is now a Principal in a different firm, should be excluded from eligibility to enter the ARP for a period of time.

RICS Response

40. RICS notes and agrees with the comment that being regulated prior to entering the ARP, will not resolve all the issues. Where there is concern around an entrant to the ARP, the Panel are able to request further information and undertake a business review in order to obtain sufficient awareness and information about a firm to make informed decisions as to the firms premium and whether a firm should be allowed to enter the ARP for a year or to allow for a managed closure.
41. We note the feedback on extending the required period for a firm to be regulated before entering the ARP and will amend to a firm requiring to be regulated for 12 months before being eligible to enter the ARP.
42. We take on board the comments on more stringent requirements for Principals and excluding eligibility to enter the ARP in order to protect consumers. This was helpful feedback, which we will consider when we review the Rules for the Registration of Firms.

Conclusion

43. We are grateful to all those RICS members and stakeholders who responded to the consultation and participated in the roundtable for their feedback and insight on the proposals.
44. We are pleased that the majority of respondents supported the proposals and how they would improve the efficiency and functioning of the ARP, and reduce the burden that it places on those applying to enter and from an administrative perspective for RICS and insurers.
45. Following a review of the comments and feedback received, we do not believe that the proposals require significant changes. In the Rules and Procedure for Admission to the RICS Assigned Risks Pool we note the comments around phoenixing firms, amending this to require that a firm must be an RICS Regulated firm for 12 months before being eligible to enter the ARP. On the Assigned Risks Pool Terms of Reference, we note the clarifications made to the role of the Vice-Chair and have removed.