



Consultation response

# RICS response to *RICS PII Market: Call for views*



## Introduction

1. In July 2021 RICS' Standards and Regulation Board (SRB) launched a review of RICS PII requirements in the UK. SRB agreed that the scope of the review was on the following areas:

- Reviewing RICS PII requirements and how RICS can best support the development of an adequate, appropriate, and sustainable PII market for RICS regulated firms;
- Identifying additional guidance and support that RICS can provide for RICS regulated firms obtaining adequate and appropriate indemnity;
- Understanding what information consumers and clients require to ensure transparency around RICS regulated firms' indemnification arrangements; and
- Reviewing how RICS collects and uses data to predict emerging trends in the PII market, as well as better assess and articulate the risk profile of the profession.

2. 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

3. 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.

4. In January 2022 RICS consulted on the outputs of this working group and provided an opportunity for members and other stakeholders to give feedback on a series of short- and medium-term proposals on RICS' PII arrangements.

5. The original consultation document can be found [here](#).
6. This consultation response does not go into detail about what those recommended proposals were, but this detail may be found in the consultation document.
7. We received 49 consultation responses in total from a range of stakeholders including RICS firms, insurers, brokers and lenders. A summary of the responses to each area covered within the consultation is below. Where applicable, the feedback is separated out into that provided by RICS members and firms, that given by the insurance industry, and that received from third parties. The analysis commences with the short-term actions, followed by the longer-term actions.

## Short-term actions

### Data collection

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

#### Members / firms

8. Most members and firms were supportive of the move to collect additional data on premiums and claims. Respondents highlighted benefits such as increased transparency and an increased ability to monitor market conditions and analyse trends.
9. Four members/firms did not support this proposal, citing the commercial sensitivity of the data and the preference from insurers and brokers that this not be shared.
10. Even firms that did support the proposal expressed a preference for these questions to be asked on a non-mandatory basis and for assurances that their data would be handled appropriately and kept anonymous. Some firms felt that making the questions mandatory would increase the burden on those completing the renewal applications and asked that the questions be written concisely. Others felt that the time burden would be negligible.

#### Industry

11. The responses from the insurance industry were sympathetic to the need for better data on firms' professional indemnity insurance but highlighted concerns that there may be a lack of willingness to provide this information.

12. One respondent referenced the data already available from the Assigned Risk Pool (ARP) and felt that this data could provide a representative picture of what is happening elsewhere in the market. Other respondents felt that data should come from the industry direct, while conceding that some insurers may not be willing or well placed to do this.
13. The industry echoed the concerns of members around the commercially sensitive nature of the data and a need for clarity on how this would be used. It was also flagged that analysis would be difficult to achieve because any data set would likely be incomplete. However, it was felt that the number of notifications and the area of surveying practice that gave rise to these notifications would be beneficial to understand better.

## Working with brokers

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

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

### Members / firms

14. The majority of members and firms thought that development of a recommended broker scheme would be beneficial. Respondents felt that this introduction may help firms to find a broker with the requisite knowledge and expertise, and who agree to adhere to a minimum standard of service. SMEs were felt to be in particular need of additional help and assurance that their broker would provide a good service.
15. Firms highlighted the risk that any intervention on the part of RICS might have an anti-competitive effect, create a two-tier marketplace, and could have the potential to drive prices up further. Recommended brokers may use this recognition to charge higher fees. It was felt that RICS should recommend and not prescribe minimum acceptable standards to which brokers should adhere. One respondent felt that RICS should not intervene at all.
16. Two multi-disciplinary firms flagged that their insurance was procured as part of a suite of products through robust internal procurement processes, and that their broker needed to be expert in areas other than PII. A 'one-size-fits-all' approach may not be appropriate in these circumstances and they expressed the desire that using a recommended broker not be a mandatory requirement.

### Insurance Industry

17. Respondents from the insurance industry broadly supported the proposal to move to a recommended broker scheme.

18. One respondent highlighted that brokers are not in control of service levels which often sit with the underwriter. Another stated that the scheme would need to operate on a 'pledge' basis, and it would not be appropriate for RICS to regulate brokers or take any steps that could be anti-competitive.
19. There was concern that the scheme could be a barrier to good quality brokers getting involved in the placement of insurance for RICS firms. It was felt that more detail was needed on the definition of 'recommended' and the criteria brokers would need to meet in order to be recognised as such.
20. Respondents agreed with firms/members that firms should not be required to use a recommended broker, but it could be beneficial in helping firms find a suitable broker and might help to drive standards up.

#### Other

21. One other comment was received which agreed that there is a need to ensure sufficient competition remains as a result of any intervention.

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

##### Members / Firms

22. Roughly three-quarters of members and firms thought that a standard market proposal form would be beneficial. It was felt that this may reduce the administrative burden for firms, help them to present their risk effectively, and prevent them from having to complete multiple forms. It would also help firms in the event that they had to approach multiple brokers.
23. Concerns focused on the practicalities of having one form that is suitable for the whole spectrum of RICS firms in terms of size and discipline, from very small firms to large, multi-disciplinary practices. It was felt that any form would need to be developed in close collaboration with the insurance industry.
24. One firm felt that part of a broker's service should be to work with a firm to present their risk effectively and stated that a tailored and specific proposal form is the best way to do this, rather than a move to something that does not fit with their business model and risk.

##### Insurance industry

25. Just over half of respondents from the insurance industry supported the introduction of a standard proposal form. Benefits cited included the potential for greater consistency and for widespread use of an up-to-date form which asks

relevant questions. It was felt that this form could better educate the insurance industry on the practice of RICS firms and members on insurance.

26. There was recognition that even if the form is standardised, insurers may need to ask additional questions as part of the renewal process. It was suggested that RICS involve underwriters in discussions to get their input.
27. Respondents who did not support this proposal felt that one form would be unable to reflect different insurers' risk appetites and requirements. There was a feeling that the brokers and insurers needed to take it upon themselves to improve their own knowledge of the sector and that a standard form would not replace this need.

#### Other

28. One further response highlighted the need for flexibility and that the form would need to work for a range of different clients, lenders, etc.

#### *Q.5 Any other comments on these two proposals?*

##### Members / firms

29. If the proposal form is standardised, one respondent asked why there is a need for broker involvement at all.
30. One respondent said there was active discouragement by brokers of seeking multiple quotes as this is seen to diminish confidence in the firm's ability to get cover and will waste underwriters' time. The respondent was frustrated by this practice and felt that it played on fear.
31. One respondent felt RICS could provide more information on which brokers can help to secure cover for fire safety. Another felt that brokers should go to the market earlier and very late renewals should be avoided.

##### Insurance industry

32. The industry requested more detail, both on the recommended broker scheme (is this in respect of SLAs or quality of service?) and the market proposal form, particularly whether their use would be mandatory.

#### **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?*

33. A number of responses were submitted to these questions, though there were no clear trends to be taken from the responses. RICS will keep the responses on file and consider them when devising future initiatives.

**RICS' Insurance model**

34. The consultation paper outlined a series of options for more fundamental changes to the structural basis of RICS' insurance model. The consultation paper noted that this was an exploration phase of identifying new models and that further viability assessments and engagement would be required if there was a clear preference to pursue these models.

35. We outlined four potential models for further consideration, these were:

- 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.

*Q.10 Please indicate your preferred model*

36. Respondents were able to select more than one option and the answers are summarised in the table below:

	Self-insurance	Master policy	Maintain and amend current model		Per-project Insurance
<i>Members / Firms</i>	9	9	20		6
<i>Insurance industry</i>		1	7		
<i>Other</i>			2		

37. There was a clear preference across all stakeholder groups for maintaining and amending the existing arrangements. Among members, both a master policy and self-insurance received significant levels of support.

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

## Self-insurance

### Members / Firms

38. A total of nine member respondents indicated their support for a form of self-insurance or mutualisation.
39. Members highlighted that developing a mutual would allow firms to take back an element of control. However, there was concern that it may reduce the effect of external market conditions, namely that there would be less competition, resulting in increases in premiums.
40. One firm called for greater involvement of the RICS in negotiating standardised PII for firms, with the need for bespoke PII terms leading to increased premiums which are potentially prohibitive for smaller firms.
41. It was noted that in order for a mutual to be effective, it would need to be operated by someone who understands the industry issues and offers terms that would allow firms to operate.

### Other respondents

42. No other respondents, including insurers, indicated their support for a self-insurance option.

## Master Policy

### Members / Firms

43. A total of nine members indicated their support for a master policy that was backed by an insurer or number of insurers.
44. Of those indicating their support, a number indicated that their premiums were being affected by cladding issues and claims arising from certain areas of surveying practice which are unrelated to the services their firms provide. Some respondents felt that a master policy would help to address this.

45. One member also flagged that the master policy may be able to provide higher levels of cover than currently available on the open market.

#### Insurance industry

46. One respondent expressed a preference for establishing a hybrid between a master policy and the current free market.

### Maintain and amend existing requirements

#### Members / firms

47. A majority of member respondents, twenty, indicated that they supported maintaining and amending the existing arrangements.
48. In response to the alternatives, one respondent highlighted that the risks appear to be high with regards to developing a mutual or a master policy. It was noted that a change in the underlying approach would increase uncertainty and there is no evidence that a change in approach would lead to lower premiums or fewer claims.
49. It was highlighted that keeping a choice of PII providers is key and RICS should focus on greater agility and flexibility in its approach to PII, whilst ensuring consumers remain protected.
50. Some respondents provided additional suggestions for possible areas of focus. These included greater representation to insurance providers on the differing risk profiles of different areas of surveying practice, e.g. how does the quantity surveying or project management risk differ from valuations? There were also suggestions that RICS should explore liability capping.

#### Insurance industry

51. A majority of respondents from the insurance industry indicated that maintaining and amending the existing PII model was their favoured option.
52. Insurers were of the view that maintaining and amending the current model would likely have the most positive impact on the cost and availability of PII. This, in their view, will continue to allow insurers to differentiate themselves through their expertise and understanding of the sector and promote competition. While the other options may increase stability, respondents highlighted that they risked affecting price elasticity. It was noted by an insurer that up until 2019, RICS regulated firms had benefited from the free market as premiums were low for a long period of time.

53. It was highlighted that one of the main short-term issues was premium increase and that the evidence available to the market, in terms of exposure and claims history, suggests that the correction that led to these increases was long-overdue – however unpalatable this might be for RICS regulated firm. These respondents were of the view that the other options suggested would not suddenly mean that premiums would reduce.
54. Whilst they indicated their support, insurers and industry representatives also suggested a series of recommendations for improving the existing arrangements. The following amendments to the RICS minimum policy wording were suggested by insurers:
- Limit of indemnity to be written in an aggregate basis for all or certain professional business
  - Review the inclusion of first party cyber exclusion, the implied silent/third party cover makes it difficult to underwrite
  - Differentiate the valuation sector.
55. It was noted by one respondent that the more uniform the approach in terms of policy wording and standard proposal forms, the more likely it is to lead to a similar position to the Solicitors' market, which can be described as a 'Dutch auction' and has no better outcomes than the RICS market.

## Per-project insurance

### Member

56. Six respondents indicated their support for project-based insurance.
57. Two respondents suggest that if per-project cover was available for larger projects, then it may lower overall premiums for a firm and increase availability of cover. However, in order for per-project based insurance to function properly, this cover would have to be affordable and there is no certainty that it would be.
58. One advantage highlighted by a respondent was that per-project insurance, with in-built run-off, would allow for better appropriate pricing of work. It was also noted by one member that it would be beneficial for new businesses looking at viability who wouldn't immediately become liable for paying insurance for 6 or more years.
59. Conversely, one respondent noted that the per project insurance would not be practical for larger clients who issue many instructions (e.g. banks, investment funds). On project specific insurance where valuers obtain higher insurance for higher value, or more complex, instructions this will lead to valuers chasing higher fees and operating at levels where they have limited experience and in such a scenario, the client rarely gets the best advice in such circumstances.

60. Another respondent indicated that they had on occasion explored per-project insurance for specific contracts with a view to factoring it into a contract from the outset. Such an approach was not attractive to the client and, in their experience, may not be a cost-effective solution for firms or clients if used frequently. It may be suitable on an exceptional basis where the client was making stringent demands and would need to be managed hand-in-hand with the firm's main insurance programme to avoid issues such as double insurance.

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

61. The consultation also asked whether there were any further thoughts on the options presented. Responses to this question were only received from members and a summary of the key points highlighted is outlined below:

- Higher professional standards – RICS needs to focus on improving professional standards and high claim practitioners should be prevented from practising. Those who undertake higher-risk work need to be properly qualified and regulated by RICS.
- Sector specific – the current approach is too generic and needs adapting to allow for modelling and data to be built into the policy and premium.
- Red Book exclusions – RICS minimum policy wording should allow for exclusions of Red Book valuation cover. This is deemed to be a high-risk area and should be excluded for firms not undertaking this work to increase the perceived risk and premium.
- Retroactive cover – One member noted that the current retroactive basis of insurance required by lenders relating to Valuation advice is problematic and a blocker to firms obtaining affordable PII.
- Stakeholder engagement – RICS needs to work closely with banks to create lesser reliance on PII for the majority of the work and perhaps develop a reliance scale.
- Technology for valuation PII – RICS should consider developing an app with insurers to assist with the risk profile of valuation work. Using data collected, a valuer could use an app to know their profile, the property risk profile via postcode, the estimated value, sector type and client lender's risk appetite. The app could then generate the premium and period of cover and an insurance certificate could be attached to the valuation.

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

62. Members suggested some alternative options for RICS to consider, which have been outlined below:

- Support for smaller firms – RICS should provide enhanced offering for SMEs and develop specific products for them, which would help revolutionise the market

- Run off – a number of members highlighted the importance of run-off cover, a particular concern for smaller firms and the need for this to be considered
- Self-insurance – Allow self-insured excesses, for example up to a minimum of £40k.
- Hybrid models – Explore the possibility of a master policy in place covering general items, with additional project-based insurance being available from the master insurers for specific work, for example each and every valuation. This would enable the valuer and lender to be comfortable that the valuation was insured for a defined period of time.

No respondents from the insurance industry provided details of any other alternative models to consider.

## 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?*

### Members / firms

62. The vast majority of members and firms supported the objectives of a government backed liability capping scheme. It was felt that such a scheme may provide additional protection, reduce PII premiums and discourage spurious claims. There was a call for any cap to be proportionate and reasonable.
63. There would need to be assurance that any liability over the cap would not mean that the member or firm was personally liable. One respondent felt that it would be better for RICS to issue advice to their members not to survey/value properties that are more than 1.2 times the value of cover and to have more involvement in cases such as Hart v Large [2021] EWCA Civ 24.
64. Respondents highlighted that liability caps are of limited use if the client is unwilling to accept them, or if competitor firms were willing to accept uncapped liability. There is also need for buy-in from professional bodies and regulators.

### Insurance Industry

65. The majority of respondents from the insurance industry supported the objectives of a government backed liability capping scheme.
66. One respondent said that a reasonable cap would need to be applied and that a contractual cap would constitute a form of risk management rather than removing the risk altogether. They did not feel that a cap would impact the claims position.

67. Several respondents felt that caps were a good idea in theory but questioned how realistic they were, given the need for government to agree to these and for clients to accept limitations within contracts.
68. It was felt that caps may not stand up in court and there are generally provisions for fraud and gross negligence which insurers will continue to bear. Given that insurers will continue to be liable for claims arising before caps were imposed, it is envisaged that in the short term, there will be no impact on cost.

#### Other

69. Respondents flagged the risk that collateral does not cover the amount of the lending as a result of the increase in PII costs. It was felt that caps should not simply be imposed on clients of firms and there was concern about how realistic it was to achieve such a scheme.

## Conclusion and next steps

70. RICS would like to thank all respondents for their valuable feedback, and to the Expert Advisory Group whose input has been vital.
71. The PII Review has afforded RICS the opportunity to consolidate and improve its in-depth understanding of the issues impacting the PII market, and in turn RICS regulated firms. What has become clear is that there is no one solution to the issue. Instead, we feel that a series of actions are needed to help alleviate some of the pressure on RICS firms and to make the annual renewal process more straightforward.
72. There is no clear basis or backing for a wholesale change to the structure of the PII market. While some respondents did feel that a move to master policy or self-insurance model would bring benefits, there are clear risks to doing so, and any alternative model is not likely to suit all firms, given the diversity of firm sizes, locations, and areas of practice.
73. RICS will therefore be taking forward the following proposals:
  - Data collection – Changes will be made to the annual return to enhance the data RICS collects from its regulated firm population. This will give RICS additional insight into emerging trends and issues and will help ensure that we are ahead of the curve. RICS will ensure that any additional questions are proportionate and do not pose an undue burden to firms.
  - Recommended broker scheme – RICS will work with brokers and regulated firms to agree the proposed criteria and commitments brokers will need to adhere to qualify for inclusion on the scheme. We will then devise a process for brokers to be approved and publish a list of

approved brokers on our website. There remain questions around the inclusion criteria. RICS will not make a decision on this until it has engaged further with members/firms and brokers.

- Standard proposal form - RICS will work closely with brokers and regulated firms to devise a common proposal form which can be easily understood and filled out by RICS regulated firms. Its use is unlikely to be mandatory but recommended. RICS will not make any decisions on the contents of the form until it has engaged further with members/firms, brokers and insurers.
- Minimum policy wording – After receiving feedback from insurers that the minimum policy wording is in need of a refresh, having been added to over the years, RICS commits to working with insurers to redraft the wording from scratch. At present, this may be an unnecessary barrier to firms' ability to get compliant cover which is fairly easy to remedy. Any change in the minimum policy wording will be subject to an assessment to ensure it does not place RICS regulated firms, or their clients, at risk. As part of the review, RICS will look to build more flexibility into the wording to ensure that RICS firms have more options when it comes to being able to demonstrate that they have adequate and appropriate cover in place. This may include reference to mutuals, captive insurers, etc.
- Liability capping – RICS will continue to engage with Government about the challenges in the insurance market and the impact of this on the sustainability of surveying services. We will highlight liability capping as a potential option that has proved successful in other markets.
- Engagement and education – RICS will review the materials it produces at present, with a view to addressing any gaps. It will also continue its important engagement work with insurers and clients, primarily lenders, to educate them about the work RICS firms undertake and the associated risk.