Professional Indemnity Insurance – April 2020 Update

Introduction

It continues to be a very challenging Professional Indemnity Insurance (PII) market for anyone working in professional services at this time. To improve availability and affordability, RICS has been working closely with regulated firms and the insurance industry on a number of changes to our requirements, in addition to providing guidance on how to approach insurers and brokers.

While these changes will technically come into effect on 1 May 2020, we have put in process a mechanism to ensure they can be recognised by insurers immediately. This will ensure an immediate response to the current PII challenges faced by firms.

As these challenges continue, we will continue to work with regulated firms, insurers, brokers and government to explore longer term changes which will underpin more stable insurance provision and affordability, especially for SMEs, in surveying services.

The issue of professional indemnity insurance is closely linked to management of contractual liability by firms. For this reason, firms are advised to read and consider the section entitled risk and liability guidance towards the end of this document.

Background

Challenges in the PII market began at the end of 2018 and have worsened due to COVID-19. There are three key reasons for this decline:

- A restriction in availability as a result of a 2018 Lloyds of London review, which highlighted the under-pricing of PII meant that two thirds of syndicates were underwriting at a loss;
- Economic uncertainty initially around Brexit, which is now exacerbated by COVID-19; and,
- Ongoing insurer concern around fire safety and cladding.

We expect these tough conditions to continue, but RICS is committed to supporting firms throughout this period and have been working closely with the insurance market on increasing the availability and affordability of insurance.

To this end, we undertook a consultation earlier this year to:

- change our minimum insurance requirements (the terms in which insurers sign up), to provide greater flexibility on the terms which insurers can write PII for RICS regulated firms
- amend our Assigned Risk Pool to be more agile and accommodating for firms that could not find affordable PII in the open market.

2020 Minimum Policy Wording

Following extensive engagement with regulated firms and the insurance industry, RICS is implementing a number of amendments to the Minimum Policy Wording in 2020 to ensure the continued availability of adequate and appropriate PII.
Fire Safety Exclusions
RICS has removed the prescribed fire safety exclusions wording from the minimum policy terms and has temporarily inserting ability for insurers to apply their own fire safety exclusions. It is up to firms to engage with their brokers to ensure that they secured insurance which is adequate and appropriate for the firm’s work.

There is an obligation on insurers to provide a product summary under the Insurance Distribution Directive, the intent and potential impact of the exclusion need to be clearly communicated in the product summary.

EWS1 Form
In December 2019, RICS launched a new External Wall Fire Review (EWS) process to be used by valuers, lenders, building owners and fire safety experts in the valuation of high-rise properties, with actual or potential combustible materials to external wall systems and balconies.

Concerns have been raised around completing the EWS1 form and the liability that could derive from RICS members that complete the form. An exclusion of liability has therefore been inserted into the new terms. All those undertaking EWS-1 form work, must disclose and discuss this with their insurer.

Other key changes
We have also made a number of other changes to avoid further contractions in the market and ensure the continued availability and affordability of PII. These are:

- The excess applicable in respect of defence costs, to give insurers greater flexibility to write terms.
- Unlimited aggregate round the clock limit of liability, to provide increased availability.

Next Steps
These changes will come into effect on 1st May 2020. However, if you would like to take advantage of these changes sooner, please notify your broker and we will accept requests for dispensations written against these terms.

Assigned Risk Pool
A number of changes have also been made to the admissions process to the Assigned Risk Pool (ARP) have recently been approved in order to simplify the process and provider greater support to firms entering the ARP.

Following concern that well performing firms, with a good claims history, were ending up in the ARP due to market conditions, we have amended the ARP rules to ensure that the ARP offers terms that clients would deem acceptable.

Support for guidance and professionals
RICS is committed to supporting members through the challenging PII market. In addition to the changes to the minimum policy wording and ARP outlined above, RICS is also undertaking a number of pieces of work to provide support and guidance for RICS regulated firms.

Risk and liability guidance
As a profession, surveyors have been slower than some to embrace the use of liability caps, but they are now used more and more frequently.

Please note that RICS already has a guidance note in place for valuers: Risk, liability and insurance in Valuation work. We will shortly be publishing updated guidance which will extend the themes covered in this guidance to other areas of the profession, with the aim of guiding firms on reducing their liability and supporting good risk management - particularly in relation to contract management and fire safety.

In the existing published valuation Guidance Note, RICS recommends the use of liability caps by regulated firms, (where legally permissible and following the principles of good practice set out in the guidance note.
itself), as a way to manage the risk, and to ensure that there is a fair allocation of risk and reward between members and their clients. All principals of RICS regulated firms are encouraged to read this GN as it contains useful information, which can be applied across all sectors.

**SME Support**

The current market is particularly tricky for SMEs. In light of this RICS will shortly be publishing specific guidance for firms in how to approach their broker and obtaining the best deal on PII.