

Consultation

RICS Minimum Policy Wording

Consultation on proposals to amend the RICS Minimum Policy Wording
for April 2021.



Introduction

1. RICS Rules of Conduct for Firm requires that all regulated firms must hold 'adequate and appropriate' indemnity as a protection for the clients they serve. In the UK, the Standards and Regulation Board set additional requirements for regulated firms to have professional indemnity insurance in place that meets RICS' Minimum Policy Wording.
2. In May 2020 RICS made significant changes to the Minimum Policy Wording to provide greater flexibility to insurers to write PII business and ensure the maintenance of a PII market for surveyors. Given these changes, significant amendments to the Minimum Policy Wording for 2021 is not being proposed.
3. The proposed changes to the wording outlined in this consultation are the result of new regulatory requirements for insurers around clarification of cyber risk and seeking agreement on a consistent approach to fire safety exclusion with the provision of cover in some areas.

About this consultation

4. This consultation on proposals to amend RICS Minimum Policy Wording forms an integral part of the RICS' policy development process, and helps ensure that the impact of the policy wording has been properly assessed, unintended consequences explored and that stakeholders have been consulted and have the opportunity to feed into the process.
5. The aim of this consultation is to gather feedback and views of any unintended consequences around the new cyber risk requirements, alongside views on proposals to amend the fire safety exclusion wording.
6. We are particularly keen to hear from RICS regulated firms, alongside insurers and brokers.

How to respond

7. The consultation will run from 14th January to 29th January 2021.
8. You can respond to this consultation online via RICS iConsult or by emailing your comments and responses to the questions to hgarnett@rics.org

Background

9. PII ensures that if a firm faces a claim, it is protected from financial loss that it cannot meet from its own resources, and is an important consumer protection mechanism ensuring that clients of firms do not suffer financial loss that the firm cannot meet.

10. Rule 9 of RICS Rules of Conduct¹ for Firms states 'A firm shall ensure that all previous and current professional work is covered by adequate and appropriate indemnity cover that meets standards approved by the Standards and Regulation Board.' The Standards and Regulation Board set out further requirements² for the nature and extent of a firm's insurance, stating it that it must be adequate and appropriate in regard to:
 - Policies being on an any one claim or aggregate plus unlimited round the clock reinstatement basis;
 - At a minimum meeting RICS' minimum policy wording or be a more comprehensive wording, and should ensure that policy wording is written on a full civil liability basis; and
 - the minimum level of indemnity be based on the firm's turnover in the previous year (or estimated for a new firm).³
11. The hardened professional indemnity insurance (PII) market has been well documented and continues to be a challenge for RICS regulated firms. Market conditions over the past two years have resulted in a significant reduction in supply of PII for RICS regulated firms, a restriction in cover with greater use of exclusions (particularly relating to fire safety exposure), alongside significant increases in premiums being paid.
12. Over the past 18 months, RICS has undertaken a number of steps to maintain a PII market for surveyors and insure the continued availability of PII. This has included:
 - Amending the minimum policy wording to provide insurers greater flexibility to write terms;
 - Making changes to the Assigned Risks Pool (ARP) to allow it to provide more flexible, market appropriate terms and improve the application process to reduce the burden placed on firms;
 - Work with government, the insurance industry and other built environment stakeholders to explore innovative solutions to current market conditions and continue to call on Government intervention in the market, particularly in relation to fire safety; and
 - Undertaken data collection to improve insight and understanding of market conditions, creating a baseline for future comparison over time.
13. The significant changes that were made to the Minimum Policy Wording in May 2020, to provide greater flexibility to insurers to write terms, were successful in maintaining the PII market for regulated firms. While insurance market conditions have continued to be difficult,

¹ https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/rules-of-conduct-for-firms_2020.pdf

² <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/regulation/professional-indemnity-insurance-requirements---version-7.pdf>

³ Firm turnover £100,000 or less, minimum limit of indemnity is £250,000. Firm turnover between £100,001 and £200,000, minimum limit of indemnity is £500,000. Firm turnover £200,001 and above, minimum limit of indemnity is £1,000,000.

as evidenced by our recent data collection, we have been able to maintain an insurance market that was at risk of collapse.

14. While our ability to impact the insurance market is limited, we continue to work closely with surveyors, insurers and Government to improve market conditions and ensure the continued availability of PII.

RICS 2021 Minimum Policy wording

15. As noted above we are not considering significant changes to the Minimum Policy Wording, rather seeking specific changes with regard to cyber risk, as a result of new regulatory requirements for insurers, and around the provision of fire safety cover.

Cyber risk

16. Cyber risk refers to the potential exposures to financial loss or harm from the failure of an organisations information or communication systems, for example cyber attacks or data breaches.
17. The Prudential Regulation Authority (PRA) requires that insurers suitability identify, assess and manage their cyber liabilities. There has been increasing scrutiny by the PRA into cyber risks provided in non-standalone cyber market and there are reservations that insurers in non-standalone cyber classes of business are not affirmative in their policy approach to cyber risks and do not always consider the potential for systemic cyber exposures, thus leading to potential coverage and wider prudential issues
18. The PRA's work, the growing size and sophistication of the standalone cyber market and scope of cyber risk, has led to a re-evaluation of cyber risks in most non standalone markets, including PII. As a reaction to this, Lloyd's published a Market Bulletin⁴ introducing a new requirement for Managing Agents to be express in their policy approach to cyber risks.
19. We have been working with the International Underwriters Association (IUA), insurers and other professional regulators to agree a common approach to cyber risk and ensure compliance with insurers new regulatory requirements. It is important to note that this is a clarification of the cyber cover provided by PII and is not about limiting cover.

⁴ <https://www.lloyds.com/~media/files/the-market/communications/market-bulletins/2019/07/y5258.pdf>

Proposed RICS approach

20. The changes to the Minimum Policy Wording have been developed to ensure that the new regulatory requirement for insurers is transposed correctly. As highlighted, the changes are aimed to clarify cover and not limit cover – as such, we are keen to understand whether there are any unintended consequences of the proposed wording.
21. A copy of the draft RICS 2021 Minimum Policy Wording is provided in Annex 1, but the key insertions are outlined below:

SECTION G EXCLUSIONS

Save as expressly provided in this policy specifically relating to the use of, or inability to use, a COMPUTER SYSTEM, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a COMPUTER SYSTEM.

INSURERS shall not be liable under this policy for:

[...]

27. Infrastructure

any CLAIM directly arising from:

1. *mechanical failure;*
2. *electrical failure, including any electrical power interruption, surge, brown out or black out;*
3. *telecommunications or satellite systems failure;*
4. *partial or total unavailability of any COMPUTER SYSTEM owned or controlled by the INSURED*

This exclusion shall not apply to any CLAIM arising out of the conduct of the PROFESSIONAL BUSINESS.

28. Computer Virus

any CLAIM directly arising from the receipt or transmission of code, malware or similar by the insured or any other party acting on behalf of the insured.

29. any loss, costs or expenses incurred by the INSURED to:

- a. *determine the existence, extent and cause of a COMPUTER BREACH;*
- b. *contain or stop a COMPUTER BREACH (including a privacy breach);*
- c. *implement remedial action arising from or connected with the COMPUTER BREACH;*
- d. *comply with any notification obligations, including to regulators, third parties and/or individuals, including to notify and protect (including via credit and identity monitoring services) persons whose personal data was accessed as a result of the COMPUTER BREACH.*

30. Data Protection

any loss, fines or penalties for a breach of any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or government entity including Regulation (EU) 2016/679 (the "General Data Protection Regulation" or the "GDPR") and Data Protection Act 2018 (or, when the United Kingdom leaves the European Union, all legislation enacted in the UK in respect of the protection of personal data) and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

This exclusion shall not apply in respect of any civil damages which the INSURED shall be legally liable for any actual or alleged act, error or omission arising out of the conduct of PROFESSIONAL BUSINESS.

[...]

SECTION H DEFINITIONS AND INTERPRETATIONS

In this policy, headings and notes are for information purposes only and are not to be construed as part of the policy. The following words and phrases are used in this policy and in certain instances the words may be used in the plural or singular form. Wherever they appear they are deemed to have the meaning set out below.

[...]

6. *COMPUTER BREACH means damage to, or destruction of, computer programs, software or other electronic data stored within a COMPUTER SYSTEM caused by an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any COMPUTER SYSTEM.*

7. *COMPUTER SYSTEM means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.*

Fire Safety

22. As noted above, cover for fire safety exposure continues to be limited and difficult to obtain for many firms, which has had a significant impact on the market. In May 2020 we inserted the ability for insurers to write their own fire safety exclusions, providing considerable flexibility to insurers.

23. In order to bring some consistency back into the market and look to potentially provide some cover, we are considering make some amendments to our approach.
24. We are currently considering allowing insurers to continue to write their own fire safety exclusions, but consider write backs, circumstances where any claims made the exclusion will not apply in a number of areas.
25. The areas of claims in which we are considering that the exclusion would not apply to, are:
 - Consumers, natural persons acting outside of their trade, business or profession;
 - Valuation for secured lending where the insured has relied upon an EWS1 form;
 - Professional business undertaken in relation to any building with four storeys or less;
 - Arising from any estate agency or property management services; and
 - Arising from the completion of an EWS1 form by an individual who has achieved RICS External Wall System Assessment Training Certificate.

Questions

Cyber Risk

- Are there any considerations that need to be considered in transposing the new Cyber Risk regulatory requirement for insurers?
- Do you have any other comments on the Cyber Risk proposals?

Fire Safety

- Please indicate your firms views on the proposed write backs and whether these will assist in providing cover for your firm.
- Do you have any other comments on the fire safety exclusion?