



Consultation

# Risk, Liability and Insurance

Consultation on draft Risk, Liability and Insurance Guidance Note



# Introduction

1. RICS has a responsibility, under its Royal Charter, to maintain standards in surveying services in the public interest. It is important to maintain the usefulness of the surveying programme for the public that the profession is diverse and sustainable and the risk associated with providing professional advice and services is properly identified, fairly apportioned and properly managed.
2. RICS has authorised development of some additional guidance to support the Rules of Conduct for members and firms and to address areas of particular risk. RICS guidance notes provide members with recommendations for professional advice and areas of good practice.
3. A key aspect to providing professional advice and service is effective risk management and understanding risks, managing and limiting liabilities, alongside ensuring adequate and appropriate insurance is in place is integral to this.
4. In January 2018, RICS published the 2<sup>nd</sup> edition of [Risk, Liability and Insurance in Valuation work](#) guidance note. The guidance note was intended to assist both members and clients to understand the main risks and liabilities associated with valuation. It guides members in the negotiation of equitable contracts with clients and the avoidance of major risks and pitfalls.
5. Since the publication of the guidance there have been significant changes in the market, particularly in relation to insurance and it is clear that there would be benefits if this guidance was extended and had relevance to the wider surveying profession.

## About this consultation

6. This consultation on the draft *Risk, Liability and Insurance Guidance Note* forms an integral part of the RICS' standards and guidance development process, and helps ensure that the impact of the guidance has been properly assessed and stakeholders have been consulted and have the opportunity to feed into the content.
7. The aim of this consultation is to gather feedback and views on the guidance note. The consultation is open to all, but we are particularly keen to hear feedback from RICS members and regulated firms. Feedback received will help us develop the final guidance.

## How to respond

8. The consultation will run from Monday 1<sup>st</sup> February to Friday 26<sup>th</sup> February.
9. You can respond to this consultation online via RICS iConsult or by emailing your comments and responses to the questions to [scrouch@rics.org](mailto:scrouch@rics.org)

## Overview of the guidance

### Rationale

10. Effective risk management including understanding risks, managing and limiting liabilities are an integral aspect of providing professional surveying services. In addition, Rule 9 of [RICS Rules of Conduct for Firms](#) requires that all firms shall ensure that all previous and current work is covered by adequate and appropriate indemnity cover.
11. The aim of the revised and expanded Guidance Note is to address knowledge gaps, particularly within RICS regulated firms, about the risk of claims against the firm and how to manage and reduce those risks by using fair and enforceable contractual terms to cap or limit liability. It is intended to address these gaps by providing explanation of the type of claim that could be brought and examples of the type of contractual clauses that could be used.
12. The guidance note is primarily aimed at regulated firms operating in the UK. The guidance is based primarily on English law. Some key differences in Scots law are identified but members are recommended to take specialist advice on issues of Scots law. Similarly, although Northern Ireland law is very alike to English law, firms in Northern Ireland are recommended to take specialist advice on issues of Northern Ireland law.
13. It is hoped that the guidance will also serve as a valuable starting point for members working outside the UK.
14. While the Guidance Note has applicability across the profession, we will following finalisation of this document be developing sector specific annexes to address specific areas of risk across the sectors of the profession.

### Structure and content

15. The *Risk, Liability and Insurance Guidance Note* provides guidance on the following:
  - **Section 2: The Court's approach to professionals' liabilities** - This section covers breach of contract, negligence, damages and the limitation periods for claims.
  - **Section 3: Liability caps** - RICS recommends the use of appropriate liability caps where legally permissible, in order to manage risk in professional work.
  - **Section 4: Third party reliance** - Clients may ask members to allow non-clients (known legally as 'third parties') to rely on their advice. RICS recommends that, as a default position, members do not permit third party reliance.
  - **Section 5: Contractual terms** - The terms of your contract provide you with an opportunity to think about and manage the risks faced in carrying out professional work for a client.
  - **Section 6: Professional indemnity insurance** - All firms must ensure they have adequate and appropriate professional indemnity insurance in place that complies with the *RICS Rules of Conduct* and RICS Minimum Terms. Having proper cover is a key part of managing your risk.

- **Appendix A: Valuations** - RICS recognises that there are specific risks in valuation work and that the risks in residential valuation differ from those in commercial valuation. This guidance note is therefore supplemented by an appendix addressing each: Appendix A1, Residential (covering mortgage valuations and building surveys), and Appendix A2, Commercial (covering valuations for commercial lending).
  - **Appendix B: Residential valuations and building surveys** – Appendix B covers guidance to valuers advising in residential mortgage valuation and ‘consumer’ work.
  - **Appendix C: Valuations for commercial** – Appendix C offers guidance to valuers providing advice in commercial lending situations and other commercial valuation situations
  - **Appendix D: Valuations for investment funds and public offerings** – Appendix C provides guidance on liability issues arising in valuations for some investment funds and in public offerings.<sup>1</sup>
  - **Appendix E: Dispute resolution** - Appendix E provides details of dispute resolution mechanisms.
16. The document does not extend to providing guidance on quality assurance issues; that is the role of sector specific standards; for example *RICS Valuation – Global Standards 2017* (Red Book).

### Feedback and questions

17. As set out above, respondents are invited to provide comments on the draft document either online or via email.
18. We would also welcome responses to the following questions, which you can submit via email or by answering the online questionnaire.

Q1. Will this guidance assist you and your firm in managing its risk and liabilities?

Q2. Do you think that there is anything that needs to be added to the Guidance Note? If yes, please expand.

Q3. As noted in the consultation, we are considering future sector specific appendices to be added. Please indicate the sectors where additional guidance would be helpful.

Q4. Do you have any further comments or suggestions?

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<sup>1</sup> Please note that we have withdrawn guidance on the EU Alternative Investment Fund Managers Directive (AIFMD). We are currently considering RICS response to AIFMD following UK’s exit from the EU and will be producing guidance once there is greater clarity. If you have any questions around AIFMD, please contact Charles Golding, Senior Specialist Valuation & Investment Advisory ([cgolding@rics.org](mailto:cgolding@rics.org)).