

Update

RICS launches consultation on PI for valuation business

A view from Simon Konsta, Patrick Perry and Tom White

On 1 December the Royal Institute of Chartered Surveyors (RICS) published a report and consultation on the current state of the PI market for surveyors who engage in valuation business. The report, which can be found by clicking [here](#), focused on a number of key issues and set out 12 recommendations for further action, as summarised below.

Structural issues around risk and rewards in valuation

RICS were concerned that the current insurance model, both in residential and commercial sectors, may no longer be appropriate in light of changes in the market, and in the risks faced by valuers, following the financial crisis. RICS felt that the structure, application and pricing of the “traditional” PI model are not designed to accommodate the handling of large numbers of unresearched potential claims (ie, the “confetti letter” phenomenon). It speculated that insurance on an “events arising” basis (as is used in Germany and Austria for example) or on a “per click” basis (where there is insurance for each individual valuation) might address this issue. However, it recognised that this would

have significant impacts on the cost of insurance and that it is contrary to market practice.

Recommendations:

- 1 RICS should conduct further research and consultation into whether there are any alternatives to the “claims made” approach to insurance.
- 2 RICS should make better use of forums for regular dialogue with lenders and stakeholders to understand and engage with potential areas of market failure.
- 3 RICS must ensure that the implications of market practice are understood and accepted by government, financial and professional regulators, and consumers, perhaps with the assistance of representatives.

Scale, type and cost of claim

Of primary concern to RICS was the increase in precautionary claims notified to valuers. Such claims can generate a lot of preliminary work and expense, but may be without foundation and rarely make it all the way to court. RICS suspected this trend could be a result of the increased use by lenders of solicitors acting on conditional fee agreements and of ATE insurance. These factors could be reduced by the increased use of alternative dispute resolution, or possibly the introduction of a specialised adjudication scheme.

Recommendations:

- 4 RICS should investigate with the SRA the ethics of certain legal practices in claims.
- 5 RICS should explore the option of using alternative dispute resolution for lower value claims.

Terms and conditions in valuation contracts

In more recent years valuers' terms and conditions have become more onerous for the valuer and resulted in risk being transferred from lender to valuer. This is a particular problem when major lenders appoint valuers to a panel and can therefore impose almost any terms they like. Particular areas of concern were limits and breadth of liability, liability to third parties and the potential personal liability of valuers.

Recommendations:

- 6 RICS should provide guidance to enable members and regulated firms to review current contract terms to understand levels of risk and reward.
- 7 RICS should ascertain whether market practice involves an imbalance which reduces competition and affects public interest.
- 8 Further research should be carried out into the full implications of valuers' liability to third parties in the event that lenders sell on or securitise their loans.

Quality assurance

RICS considered that it is essential that the profession should uphold the highest standards and outlined the role the Valuer Registration Scheme (VRS) will play in that regard, namely to ensure compliance with professional standards, encourage firms to develop new tools, such as peer reviews and regular internal auditing, and to look at their risk management processes.

Recommendations:

- 9 RICS should provide its members with non-prescriptive guidance on how to approach quality assurance in the area of valuations.
- 10 RICS should discuss and agree with lenders different ways in which valuation quality assurance can be enhanced, eg, by lenders obtaining second opinions.

Assessment of negligence

As there will always be some uncertainty in valuation, RICS thought it crucial that valuers explained these uncertainties in their valuations to avoid claims for professional negligence. It was suggested that greater emphasis should be placed on ensuring valuers had the skills to articulate uncertainties to their clients.

Recommendations:

- 11 RICS should highlight the information provided in the new edition of the RICS Valuation Standards and look to provide additional guidance on uncertainty in valuations.
- 12 RICS should undertake further research into the evidence base that allows for the application of the "bracket" in negligence cases and consider whether the outcome adequately protects both firms and clients.

The consultation

The consultation document poses nine questions:

- (i) Does the analysis in the report reflect your understanding and experience of current market practice?
- (ii) What needs to be done to correct any imbalances to provide reasonably priced PI insurance?
- (iii) Are there alternatives to a "claims made" approach to insurance that should be explored?
- (iv) Should RICS explore the option of an adjudication scheme for dealing with valuation claims up to a certain level?
- (v) Do you consider that professional and financial regulators have a role in defining what is acceptable claims practice?
- (vi) Is RICS' current policy and guidance on PI insurance clear and adequate to protect members, firms, clients and the general public?
- (vii) What should RICS be doing to reduce risk and therefore lower PI premiums and, ultimately, the cost to the consumer?
- (viii) What guidance do valuers need on approaching quality assurance in valuations or the valuation of uncertainty?
- (ix) What additional guidance should RICS provide to members to help them to manage risk?

Conclusion

The recommendations and observations made by RICS in the report and the queries raised in the consultation merit careful consideration. We at Clyde & Co will be considering them in light of our experience, both in the UK and overseas, and will be submitting responses to the consultation. We would urge all interested parties to participate. The consultation closes on 28 February 2012 and the results will be published by 1 April 2012.

Property Professionals' Liability at the merged firm of Barlow Lyde & Gilbert and Clyde & Co

As many of you will have read, Barlow Lyde & Gilbert and Clyde & Co merged on 1 November 2011. The combined firm will provide a full service capability for our clients, with an international reach covering continental Europe, the Middle East, the Far East, USA, Canada and South America. Our specialist Property Professionals (Surveyors and Valuers) sub-group of our practice deals with professional indemnity claims on

behalf of surveyors and their insurers and encompasses the whole range of surveyors' practice (both defence and advisory work) including: valuations and surveys of all types including commercial, residential, industrial and agricultural; rent review cases; related landlord and tenant matters involving surveyors; design and supervision; property management; project and consultancy work; planning and quantity surveying.

Further information

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