

Assigned risks pool enforcement strategy — a year on

ARP monitoring data

20 January 2012

As part of our equality impact assessment of the ARP enforcement strategy we made a commitment to ensure that clear information about the ARP is made available to the profession.

We are now publishing the following quarterly monitoring data about the ARP [[/sra/how-we-work/reports/assigned-risk-pool/arp-monitoring-data/](#)] (broken down by the firm's ethnicity, gender and age classification):

- The current status of firms who were in the ARP at some point during 2010/11 [[/sra/how-we-work/reports/assigned-risk-pool/arp-monitoring-data/#jan-breakdown](#)] – indicating how many firms are still covered by the ARP, how many have secured market insurance, and how many have closed; and
- ARP premium payments [[/sra/how-we-work/reports/assigned-risk-pool/arp-monitoring-data/#jan-premiums](#)] - indicating how many firms have paid in full, how many have paid in part and how many have not paid at all.

23 September 2011

Summary

This report sets out the progress made in implementing the Assigned Risks Pool (ARP) Enforcement Strategy, following the Board's approval of the strategy in July 2010. The report highlights the key achievements against the four strategic aims and sets out a programme of activity for the continued implementation of the strategy.

Tightened monitoring and supervision of firms in the ARP

Since the enforcement strategy was approved, we have undertaken a targeted programme of activity focused on improving the monitoring and supervision of those firms in the ARP. This programme of activity has included:

- Risk assessing all firms in the ARP, then visiting all those firms categorised as posing a high and medium risk;
- Making referrals for appropriate regulatory action where breaches of rules have been identified;
- Writing to all firms in the ARP on a quarterly basis to remind them of their responsibilities;
- Working with firms to understand their intentions for the next indemnity year - whether they intend to find insurance on the open market or close their practice -and monitoring these firms throughout the year;
- Devising and implementing a process to help firms close down in an orderly manner without the need for intervention;

- Developing up to date outcomes data and individual firms' status information, and keeping this under weekly review.

A combination of visits and direct engagement with the firms has meant that we now have a much clearer picture of the status of all firms in the ARP. This has enabled us to employ a more focused and managed approach to those firms in the ARP.

The table below sets out the latest information (correct as at 28 June 2011) on the status of those firms in the ARP for 2009/10 and 2010/11.

Status	ARP 2009/10	ARP 2010/11
Closed – by intervention	9	10
Closed – non intervention	73	46
Covered by the ARP	95 (for 2010/11)	236
Insured (market)	48	10
Other	2	0
Total	227	302

Given that BME majority owned firms are disproportionately represented in the ARP as a whole, there were concerns that these firms would be subject to adverse impact as a result of the enforcement strategy. The following data shows that this has not been the case.

ARP Firms 2009/10

Ethnicity	Covered by the ARP (2010/11)	Insured (market)	Closed - non-intervention	Closed – intervention	Other	Total
BME majority	40 (41%)	24 (25%)	30 (31%)	3 (3%)	0 (0%)	97
White majority	22 (45%)	8 (16%)	16 (33%)	3 (6%)	0 (0%)	49
No majority	19 (50%)	11 (29%)	7 (18%)	1 (3%)	0	38
Unknown	14 (33%)	5 (12%)	20 (47%)	2 (4%)	2 (4%)	43
Total	95 (42%)	48 (21%)	73 (32%)	9 (4%)	2 (1%)	227

The outcomes data for 2009/10 demonstrates that proportionately more white majority owned firms closed either through intervention (6%) or by through orderly wind down (33%) than BME majority owned firms (3% and 31% respectively). Additionally, BME majority firms were more likely (25%) to find insurance on the open market in 2009/10 than their white majority owned firm (16%) counterparts. This trend has continued in the outcomes data (below) we are already seeing for 2010/11.

ARP Firms 2010/11

Ethnicity	Covered by the ARP	Insured (market)	Closed - non intervention	Closed – intervention	Other	Total

BME Ethnicity	92 (89%) Covered by the ARP	2 (2%) Insured (market)	9 (9%) Closed - non intervention	0 (0%) Closed – intervention	0 (0%) Other	103 Total
White majority	91 (73%)	4 (3%)	23 (18%)	7 (6%)	0 (0%)	125
No majority	34 (76%)	1 (2%)	7 (16%)	3 (6%)	0 (0%)	45
Unknown	19 (66%)	3 (10%)	7 (24%)	0 (0%)	0 (0%)	29
Total	236 (78%)	10 (3%)	46 (16%)	10 (3%)	0 (0%)	302

At the time of developing the enforcement strategy we considered that there was the potential for adverse impact on BME firms given that they are disproportionately represented in the ARP. However we made a commitment to monitor the outcomes, which we have done. We concluded then – and we believe that this has been borne out – that any impact was positive. We continue to believe that our approach is firmly in the interests of consumers as it ensures that firms in the ARP are managed closely and ensures that firms are not practising without professional indemnity insurance. In the course of implementing the enforcement strategy we have offered a named contact point to all those firms that have the potential to continue in practice, to help to support them to secure insurance on the open market.

In light of the success we have had in implementing this approach for 2009/10 and 2010/11, we propose to continue in a similar vein for 2011/12, taking into account the fact that the ARP will only have a duration of six months. Specifically, our key actions will be:

- To ensure that all firms at the end of September 2011 have either secured open market insurance or are in managed closure process;
- All firms applying to join the ARP are risk assessed and made aware of their obligations and the regulatory consequences of failing to pay premiums and the need to continue to actively seek open market insurance;
- Processes will be delivered against the shortened 6 month period of the ARP including the waiver process;
- Continue the regulatory actions against those firms who have been advised of breaches and to commence promptly regulatory actions against those firms that become identified as in breach.

We will also continue to monitor the outcomes data to guard against any adverse impact on equality arising from our agreed course of action.

Improve the incentives to firms to manage themselves out of the ARP

The enforcement strategy originally set out proposals for the SRA to consider the provision of incentives for firms to encourage orderly wind down. In reality, when faced with the choice of either closing through a managed process of orderly wind down or being intervened into, firms have invariably chosen the former. The majority of affected firms have responded sensibly to this approach, recognising that they are unable to pay their premiums or unlikely to secure insurance on the open market in the next renewal period.

In total, 119 firms (73 from 2009/10 and 46 from 2010/11) have closed in an orderly fashion compared to 19 firms (9 in 2009/10 and 10 in 2010/11) that have been closed through intervention.

The table below shows the equality profile of those firms that have closed, either through an orderly process or through intervention.

Ethnicity	ARP 2010/11		ARP 2009/10	
	Closed – non Intervention	Closed - intervention	Closed – non intervention	Closed - intervention
BME Majority	9	0	30	3
White Majority	23	7	16	3
No majority group	7	3	7	1
Unknown majority	7	0	20	2
Grand Total	46	10	73	9

From the data above, we can see that of those firms that have been closed through intervention in 2010/11, 70% were white majority owned firms compared to 33% in 2009/10; while the number of BME majority owned firms that closed by means of intervention decreased from 33% in 2009/10 to 0% in 2010/11.

We have found that clear and early engagement with those firms less likely to be able to continue in practice has been very positive. This engagement has resulted in timely and appropriate plans being made by those firms to enable orderly wind down, which ultimately is of benefit the firms themselves not just to those owning the firms but to those working in the firms as well. This approach is in the best interests of the client as it removes the uncertainty that an intervention may bring. It also represents a better outcome for the profession – it keeps out those firms who cannot and should not be practising - and the SRA in that it is more cost effective, as it removes the need for intervention.

In 2011/12 we will:

- continue to encourage through constructive engagement and support, those firms that are unable to find insurance on the open market to make plans for orderly wind down;
- use the services of KPMG to effectively and efficiently ensure that those firms that are closing are monitored to closure;
- ensure that the processes that were deployed for a 12 month scheme are adapted for a 6 month scheme.

Non payment of premiums

In approving the enforcement strategy, the SRA Board was keen to ensure that firm action should be taken against those firms in the ARP that owe outstanding premiums. Historically, very little action was taken to deal with premium default. There are two strands to this part of the enforcement strategy:

- debt collection, that is the collection of outstanding premiums (the role of the ARP Manager - Capita);
- regulatory action by the SRA including supervision and enforcement.

The SRA and Capita have agreed and implemented a course of action with the objective of

seeking a more effective approach to recovering premiums from firms in the ARP and to put in place sanctions to deal with those who continue to fail to pay their premiums. This approach has included:

- writing to all firms in the ARP to request confirmation that they are up to date with their premium payments;
- visiting those firms which failed to provide such confirmation and which Capita identified as being in policy default;
- advising all firms that they have until 31 July 2011 for all outstanding payments to be made in full.
- chasing non-payers for payment through a combination of the activities of the SRA and Capita. Capita is using statutory demands and pursuing individuals to bankruptcy, while the SRA supports this process through ongoing communications with firms and individuals.

In recent months premium collection has improved. The current position is set out below:

Number of firms covered by the ARP with premiums paid in full	140 (of 236)
Number of firms covered by the ARP with premiums outstanding	96 (of 236)
Of those with premiums outstanding:	
Number that have made some payment	66
Number that have made no payment	30

For 2010/11	At 28 March 2011	At 30 April 2011	At 28 May 2011	At 28 June 2011
Premium due	£13,461,610.83	£13,223,233.07	£13,093,745.93	£12,875,934.80
Premium paid	£4,157,899.62	£4,210,210.09	£4,376,898.08	£4,416,778.92
Premium outstanding	£9,303,711.21	£9,031,022.08	£8,716,847.85	£8,459,155.88

We are actively monitoring premium collection and continuing to encourage both the ARP Manager and the Qualifying Insurers to pursue debts. We accept that in some cases it may not be commercially worthwhile to collect the outstanding premiums, but that is not the case for the majority of firms and principals. In these cases, efficient and swift premium collection must be encouraged.

The SRA can only create a credible deterrent against premium default, and reduce the risks to consumers, by taking regulatory action – and publishing the outcomes of that action – against firms. Taking regulatory action was a key aim of the enforcement strategy recognising that before the enforcement strategy was in place, little or no regulatory action had been taken against those firms in premium default. Firms are now being actively pursued for outstanding premiums and being subject to the regulatory process when they enter policy default (126 firms are currently subject to regulatory action). However taking regulatory action has proved to be slower and more complicated than at first envisaged. Some of the reasons for this are set out in the following paragraphs.

The process of taking regulatory action is complicated by the fact that Capita will, in some cases, only be advised of firm's failure to pay their premium, when the firm defaults on the repayment of the loan, which they obtained to fund the premium in the first place. Firms obtain a loan from PCL (the finance company), which PCL pay in full to Capita. Then PCL collect the

premium on monthly basis from the firm. When a firm defaults for the third time, PCL will advise Capita. Capita pay PCL the full amount owed and then begin formal debt collection action.

A further complication has been the waiver process, by which waivers may be granted to firms to reduce the level of the premium. Regulatory action cannot be commenced where a waiver application is outstanding.

The consequence of the factors set out above has been that, while regulatory action for premium default is now under way against 126 firms, this process began later in the premium year than we would have wished. A key aim for 2011/12 will be to speed up the process. We will do this by:

- Devising a "fast track" approach for regulatory action for premium default;
- Publicising action taken by the SRA against those firms in the ARP that are in premium/policy default, in a quarterly report to be published in the first instance in October 2011;
- Continuing to apply pressure on the ARP Manager to collect premiums in the most efficient manner possible. We need to assist this process by expediting the waiver process so there is clarity on the amount owed by the firm. This process is being reviewed to increase efficiency - the review will be completed by 31 August 2011.

Finally, when we carried out the equality impact assessment of the enforcement strategy we looked in particular at the potential equality impact on ARP firms, of our proposal to take a more rigorous approach in regulating firms who were in policy default through non payment of their ARP premiums. An analysis of the data at the time indicating there was unlikely to be a disproportionate impact on BME firms because there was no statistical difference between the numbers of BME and white firms in policy default. However, we concluded that there was a high level of concern about equality issues in relation to the ARP particularly for BME firms and recommended there should be flexibility and proportionality built in to the more detailed proposals that we developed to regulate policy default which would be consistent with our new outcome-focused approach. We have identified and been in contact with ARP firms from this year and last year who are in policy default and we will be taking regulatory action on a case by case basis. We will continue to monitor the data for equality impact on those solicitors who will be affected by the proposal to take regulatory action.

Increased SRA capacity to manage the ARP

To assist with the implementation of the enforcement strategy, we secured increased capacity, through the outsourcing of work to KPMG. These resources were deployed on the lower risk assessed firms and for work to follow up with firms in the ARP that have indicated they intend to close or are closing through an orderly wind down. This work has served to confirm that work to ensure the firms close following an orderly wind down agreement can be successfully outsourced. It has also allowed the SRA resources to focus on the high and medium risk assessed firms. It is envisaged that with the ARP only being for 6 months next year that we will need to continue to call on this resource.

Of the £1million made available to the SRA for this work we have spent £119k on the outsourced KPMG work. We do not expect to spend the entire £1 million allocated for these purposes, with a figure of £200,000 more likely. This is due to two factors. First, fewer firms than forecast entered the ARP for the 2010/2011 indemnity year, and second there were fewer interventions required.

Equality Impact Assessment

When the enforcement strategy was approved by the Board, the accompanying equality impact assessment set out that there was no clear evidence of any adverse impact on equality arising from the proposals set out in the strategy. We agreed to closely monitor this situation and we have continued to do so over the course of the year. In April, the Compliance Committee received a report which provided an overview of the equality and diversity impact of the enforcement strategy. We propose to provide the Committee with a similar report on a quarterly basis, as well as publishing the report on the SRA's website.

The EIA emphasised the importance of ensuring that clear information about the ARP was available to stakeholders. To address this issue, a communications strategy to support the ongoing implementation of the enforcement strategy is being produced. The strategy will place an emphasis on transparency. All Board papers reporting on the implementation of the enforcement strategy will be made public as will accompanying statistics.

Finally, the EIA also set out that we would ensure that we would build equality and diversity into the specifications for the services that we required to provide additional capacity for managing the ARP firms in accordance with the enforcement strategy. In discussing the services with our preferred provider, KPMG, we made it clear what the work would involve, and they were aware of the equality profile of the ARP. We were satisfied from their proposal that they were able to comply with our equality and diversity requirements which have been built into our contract with them.