Autumn 2010
Issue 42

British Insurance Brokers' Association

The Broker

Focussing on local markets
Lloyd's reveals new strategy

How do you rate them?
A closer look at insurer solvency

Claims champions

How brokers are supporting customers in the downturn

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Welcome

Leighann Burtrand
Editor of *The Broker*

I'd like to thank the BIBA members who took the time to take part in our latest research project, which looked at the state of the market and brokers' involvement in the claims process.

We realise that brokers are swamped with requests to provide expert opinions on a whole range of subjects, often by insurers, who can provide a range of incentives. We may not be in a position to do that at BIBA, but I can say that your responses – and the amount of detail you provided us with – was hugely appreciated.

Now, more than ever, brokers are often under a great deal of pressure – but we hope we can honestly reflect what is going on in the market, and beyond this show the value of using a broker. No one needs reminding that there is still a lot of education needed in this area.

Last year, our similar survey was picked up and covered in the national press, including the Sunday Times, the Mail on Sunday and the Telegraph. What is more, it was used in a House of Commons debate linked to Insurance Premium Tax and to inform numerous parties, including MPs and regulators, as to the service brokers provide and the benefits they bring.

We plan to use this research, outlined on page 18, and the examples and case studies provided in every way we can to promote brokers.

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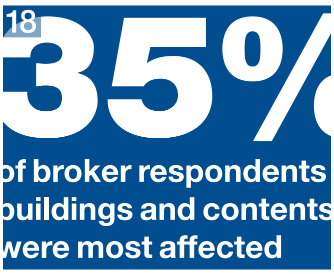

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Viewpoint

Chief Executive Eric Galbraith

As we head towards autumn, many members, along with BIBA, will be budgeting for next year. With stringent austerity measures being imposed on the UK as a whole, no one needs reminding that there are challenging times ahead. Brokers are invariably doing more work for their clients for lower earnings and are likely to have severe restraints on their staffing levels and other expenditure.

Budgeting is even more difficult when insufficient warning is provided by the FSCS about the size of levies – something we have raised with them at the highest level.

But, there are opportunities out there and brokers tend to have exceptional abilities when it comes to coping with difficult trading conditions. They are adapting, looking at their sources of income and in some cases switching to a higher proportion of fee-based revenue and of course, continuing to provide exceptional service.

FSCS reform – working towards a fairer deal

Trying to achieve a more proportionate arrangement for brokers within the Financial Services Compensation Scheme (FSCS) is among our highest priorities.

I know from speaking to brokers that many are extremely angry about the very substantial rises in levies being imposed, which is in the main the result of the failure of credit brokers who sold PPI and because we are all lumped together in the FSCS's intermediary sector – something that must be changed in the forthcoming review of the FSCS.

The rises are placing huge pressure on many members. For those wanting to know more about why brokers are being asked to pay these increases, please go to our website. We have provided a full explanation of the reasons behind the FSCS charging structure on our website, under the heading Financial Services Compensation Scheme - Key Facts.

This has been written by Steve White, our Head of Compliance and Training, who is working extremely hard on our campaign to ensure the current FSCS structure is changed. We are fortunate in that we have close links with the FSA which is conducting a fundamental review of the FSCS and have already had several meetings to set out our case.

There is not going to be an overnight change – the FSA had earlier stated it would not consider a sub class purely for insurance brokers and that it will not move on the current cross-subsidy whereby secondary players are in the same 'pot' as professional insurance brokers.

But, despite this, BIBA is seeking to ensure there is movement on the FSA's current position. There may also be scope within the Insurance Mediation Directive – which is currently being revised – to push through change. We will be taking further action when the regulator publishes its FSCS Consultation Paper by the end of the year. We would also encourage members to follow this issue closely – we are doing all we can, but a groundswell of opinion from members will also help this crucial cause.

BIBA will issue regular updates to assist in our campaign – please watch this space.

Manifesto matters

We have an in-house team who are presently working on our 2011 Manifesto. This is our main positioning document which spells out our key campaigns for the year ahead and promotes the role of brokers – whilst we understand the value of the work we do, we still have lots to do to get our message across. We want to reflect the views of our members, so please contact me with the issues which you feel are most important.

Award success for travel scheme


A successful journey: BIBA's team celebrates travel award win

BIBA has won the prestigious Trade Association Forum Award for its highly regarded travel insurance scheme 'BIBA Protect'.

The accolade was given in the Commercial Initiative category of the Trade Association Forum Best Practice Awards.

The travel product was developed by BIBA in conjunction with insurer Tokio Marine Europe Insurance Limited, aimed exclusively for members to sell. It has proved a great success providing families with high quality, low cost travel insurance which has helped reshape the UK travel insurance market.

Chief Executive Eric Galbraith comments: "This is great example of a win-win. The public benefit through a much better travel insurance product, BIBA's members generate income from selling it and BIBA has generated a further income stream to invest in its members.

"The award is a testament to the hard work of the BIBA team and we are delighted to receive recognition from our trade association peers. This is our hat trick of Trade Association wins, building on success in 2008 and 2009."

Alastair Blundell, Executive Operations Officer at Tokio Marine Europe Insurance Limited, added: "We are delighted that the BIBA travel product has won this prestigious award. Our aim was to develop a market-leading product which the BIBA membership could sell with confidence and would demonstrate why a consumer benefits from purchasing insurance via a broker."

The awards, hosted by the Trade Association Forum, received more than 130 entries and were presented at a ceremony at London's Hotel Russell.

Compliance matters take centre stage

Whether they like it or not, brokers are under constant pressure to remain up to date with regulation – and along with the change of government, there are also major changes planned to the UK's regulatory regime.

A full update on this, along with regulatory issues directly pertinent to brokers, is provided in the latest issue of Compliance Rules, BIBA's clear and accessible guide to regulation. Issue 3 has been sent out to members and is also available on the BIBA website.

Steve White, Head of Compliance and Training, will also be out and about in the regions this autumn, hosting a number of BIBA's popular regional compliance forums. These events, which are held on a regular basis in the UK, give compliance staff the opportunity to discuss the latest regulatory issues in a non-competitive environment.

Steve comments: "The BIBA compliance forums are continuing to prove popular with members right across the UK. With so much on the regulatory agenda at the moment it is difficult for firms to keep up to date and so I would urge those who have not attended to do so – these events are the best way of getting up to speed fast. Members who are 'regulars' at our forums rate them highly and tend to remain in contact with their peers at other firms to share best practice."

Full details of the dates and locations of BIBA's compliance forums are on the website.

BIPAR brings together ‘a United Nations’ of brokers

Representing the interests of members along with knowledge sharing were the priorities of a team from BIBA, who recently attended the AGM of BIPAR, the European Federation of Insurance Intermediaries and which took place in Tel Aviv, Israel.

Eric Galbraith - Chief Executive, Steve White - Head of Compliance and Training and Graeme Trudgill - Technical and Corporate Affairs Executive made the trip, where they were able to meet with representatives from 21 countries at the three-day event. Steve also sits on BIPAR’s Directors’ Committee.

Signposting as a solution: Graeme Trudgill explains how

Steve comments: “An increasing proportion of the rules members have to abide by emanate from Europe and so it is very important that we engage with issues at the right time and at the appropriate level. The IMD revision is the most important European dossier for us and BIPAR at the moment and we were pleased that Karel Van Hulle (Head of Unit at the European Commission - Directorate-General Internal Market and Services) was able to attend the meeting and present to us his latest thinking.”

The IMD is the most important piece of legislation affecting brokers across Europe and currently there are differing interpretations of the IMD requirements across the 27 States.

Steve adds: “One of the key purposes of the IMD was to facilitate cross-border mediation and the Commission is disappointed that the IMD has not delivered this. A key part of the revision will be to help iron out the barriers to a single market. Issues like the scope, professional requirements and transparency are therefore on Van Hulle’s agenda”.

Steve points out that BIBA was largely responsible for drafting the present Industry Guidance, which means brokers should disclose any information relating to commission to clients on request and was accepted by the FSA. “There are significant differences in the handling of transparency, disclosure and conflicts of interest across the EU. Van Hulle has stated that the revised IMD will contain “far greater transparency” and in Tel Aviv he went on to describe disclosure upon request as “the absolute minimum” position for a revised IMD. We at BIBA believe that the upon request regime is the most appropriate solution and that is what we will continue to lobby for.”

BIBA published a BIPAR interview with Karel Van Hulle on its website in July and members are encouraged to read it, if they have not already done so. A consultation paper is expected from the Commission in the autumn, ahead of a public hearing in Brussels on 10 December. That date is firmly in BIBA’s diary!

Graeme adds: “We were able to share our experiences from the UK, which is probably one of the most mature markets. I gave a presentation on signposting and the Equality Act, which was something many delegates wanted to know about, given the planned Equal Treatment Directive.”

He concludes: “What happens in Europe is crucial for our market. We covered many topics including professional qualifications, training, passporting and achieving a level playing field for brokers. We have all experienced a global financial crisis and so everyone has a part to play in sharing best practice and raising competence – these were certainly issues that mattered at this United Nations of brokers.”

Sell, sell, sell - new training programme shows how

The CII Broker Academy has launched a new two-day programme – Sales Skills For Account Executives – as a result of broker demand.

The programme has been designed to develop and support account executives in the broking sector. Steve White, BIBA’s Head of Compliance and Training, said: “We always listen to the requests of brokers and wherever possible we try to organise local workshops to meet specific training needs.”

The training will be delivered by Searchlight Insurance Training, accredited by The Financial Services Skills Council and the CII’s training partner. The programme has been designed to be interactive and its objectives are as follows:

- **Know how to find, win and keep your ‘ideal’ clients**
- **Understand why people buy and the importance of applying benefits correctly**
- **Improve strike rates and value per call**
- **Appreciate the importance of quality communication**
- **Understand/refresh sales interview techniques**
- **Improve how to overcome client resistance and obtain commitment**
- **Practise your client skills**

For more information please email brokeracademy@ ssluk.net or telephone 01372 361177.

Being heard loud and clear

There has been plenty of activity this summer, with BIBA working on all fronts to represent members, as **Leighann Burtrand** reports

While lobbying has been a key focus, BIBA has also sought and secured engagement with relevant parties wherever the interests of brokers can be promoted. The following are some of the most recent examples of our work.

Government

BIBA has had numerous meetings with Government departments, including:

- HM Revenue & Customs to discuss VAT and IPT and separately to discuss inspection fees
- The Northern Ireland Consumer Council and The Office of the First Minister and Deputy First Minister to discuss insurance issues in Northern Ireland
- The Foreign and Commonwealth Office (FCO) to discuss travel insurance
- HM Treasury's Signposting Steering Group

Regulation

Regulatory work has similarly been a priority – specifically campaigning to reduce the burden of the FSCS levy. This has included meeting directly with the FSCS several times and working with consultants and lawyers on this issue as well as the FSA on its fundamental review of the FSCS.

BIBA also attended the FSA's Professional Indemnity forum and met with Financial Services Practitioners' Panel on fees and other issues.

- Working with the Department for Transport (DfT) and the Driver and Vehicle Licensing Agency (DVLA) regarding continuous insurance enforcement
- A further meeting with the DVLA and the DfT about broker access to DVLA driver records
- A review board meeting about employers' liability tracing code, at the Department for Work and Pensions (DWP)
- The International Takaful summit at the House of Lords to discuss Islamic insurance.

Working with other associations

There is strength in numbers and there can be common ground to promote shared interests. BIBA's meetings with other bodies included:

- The Association of British Insurers (ABI) on broker access to driver licence records
- The Association of Independent Financial Advisers (AIFA) on FSA fees and levies
- Building a relationship with the British Security Industry Association (BSIA) to cover security matters within the industry
- The Finance & Leasing Association (FLA) to discuss continuous insurance enforcement
- The British Bankers' Association (BBA) to discuss conditional lending and insurance
- Discussing the issues related to insurance with the Confederation of British Industry (CBI)
- Attending the Association of Medical Insurance Intermediaries' (AMII) Conference and Exhibition.

Lloyd's and the London Market

BIBA's activities in this sector have included:

- Meeting with the London Market Claims Council
- Holding our London Market Compliance Forum
- Attending a Lloyd's live debate on 'Globalisation: risks, challenges and opportunities for business'
- Attending a London Market Claims Club event on trade credit insurance.

BIBA HQ and in the regions

Regular events are held with members and stakeholders in London and across the UK. The most recent include:

- Liability and Accident Committee meeting
- Compliance forum in Eastleigh, Hampshire
- BIBA Partners' meeting
- General Insurance Brokers' Committee (GIBC) meeting
- Health Insurance Focus Group meeting.

Media

Media activities have included appearing on BBC Radio 1, BBC Radio Five Live and BBC Radio Ulster to discuss motor insurance and promote specialist brokers. BIBA spokespeople also spoke on insurance issues with the Mail on Sunday and the Sunday Times.

Within the trade press, BIBA took part in an Insurance Age Power Hour and presented at the Insurance Times broker forum on broker issues with the coalition government.

International

Engagements included meeting with Adecose, the Spanish Insurance Brokers' Association; with Government healthcare representatives from Singapore, and with representatives from the Insurance Institute of Japan.

Leighann Burtrand is BIBA's Communications Manager

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Time t

Vannessa Young takes a look at what Lloyd's three-year Strategic Plan and the appointment of a new UK Country Manager means for its relationship with brokers

With more than 300 years' experience of writing unusual and difficult to price insurance, Lloyd's understands better than anyone the significant role brokers play in identifying and structuring risk.

This year has seen some important changes take place at Lloyd's. Earlier in the year, the Corporation unveiled its three-year Strategic Plan, containing a strong focus on market accessibility. More recently, it appointed Keith Stern as Country Manager for the UK – a new position – with a remit to further develop the UK market. So what do these changes mean for UK brokers, both in the Lloyd's market and beyond?

Priorities

The Lloyd's Strategic Plan 2010-2012 was launched in February, setting out the Corporation's priorities, and plans for achieving them, over the coming three years. It contains five strategic priorities: Performance management, Solvency II, The Exchange, claims transformation and, significantly, access to business

Jose Ribeiro, Lloyd's Director, International Markets, says that the organisation's relationship with brokers is at the heart of the Plan. "Central to our Strategic Plan is the reiteration of Lloyd's as a broker market. Brokers are Lloyd's distribution partners and central to the market's ongoing success," he says. "This reiteration is particularly relevant for our approach to business in the UK, given the key role brokers play in distribution in the UK, which represents 22 per cent of Lloyd's total premium and is our second biggest market after the US.

Keith Stern, Country Manager, for the UK

"Our Strategic Plan looks at how we can work even more closely with brokers to make it easier for them to do business with Lloyd's"

"We are aware that structural changes are taking place in the broker market," he adds. "Consolidation and changes to business models are being introduced to drive efficiencies and increase global reach. That's why our Strategic Plan also looks at how we can work even more closely with brokers to make it easier for them to do business with Lloyd's."

So, what has been achieved so far? Part of that work is seeing Lloyd's run a series of events and market promotions aimed at local producing brokers placing business to managing agents and wholesale insurance brokers. There has already been interaction with BIBA members. Participation in the BIBA annual conference saw Lloyd's CEO Richard Ward take part in a discussion panel, and this will be followed up with more interaction with BIBA members at regional level, so Lloyd's can deepen its understanding of local issues, needs and opportunities, while working to change the perception that it is a London-centred market.

Market access

Other areas of work have centred on new systems and technologies to improve market access for brokers. This has ranged from relatively simple moves, such as enhancing the directories on lloyds.com to make it easier for brokers to identify the market's appetite and areas of expertise, to rolling out The Exchange, an electronic messaging utility which enforces a common ACORD standard across the market for the movement of information through all stages of the risk lifestyle.

The pilot to prove the concept of The Exchange was successfully completed in February. Connection has exceeded expectations with all managing agents, 21 brokers (representing more than 80 per cent of the market by volume) and 13 IUA members now connected. As at

o think **local**

1 July, more than 1,100 placing and 10,000 supporting messages had been sent.

With these moves now well underway, Jose Ribeiro says the appointment of a UK Country Manager will also help improve market access for brokers.

Lloyd's did already have a broker relationship team in place prior to Mr Stern's appointment. However, it is hoped his arrival, combined with the strategy, will provide a focal point for developing Lloyd's profile in the UK market as well as helping the market understand opportunities in the UK.

"Keith has been with Lloyd's for more than 20 years, occupying several positions in London before being seconded to Australia as Lloyd's General Representative in 2000. In his new role as Head of UK and Ireland, based in London, Keith will seek to develop the UK market using his in-depth knowledge of the industry and proven networking skills," he says.

While in Australia, Mr Stern forged close relationships with the National Insurance Brokers Association (NIBA) and Steadfast, the two main broker representative bodies. This entailed sponsoring the national conventions, presentations on Lloyd's, facilitating business opportunities for NIBA/Steadfast members, and making introductions to Lloyd's underwriters and brokers – all things he intends to bring to London.

"Creating an environment for Lloyd's to view work more closely with regional brokers provides opportunities for underwriters, brokers and clients alike, in terms of diversity of products, cover and ultimately choice. This will be a major priority," adds Stern. "I look forward to meeting with wholesale and retail regional brokers around the country and working with them to build new relationships with coverholders and also directly with Lloyd's underwriters and brokers.

Independent brokers

"Existing Lloyd's brokers bringing business from the regions tend to do so under two generic models: wholesale and retail," he adds. "Under the wholesale model, a greater awareness of what Lloyd's can offer among the smaller, independent regional brokers could mean more clients and more volume being placed with Lloyd's wholesale brokers to access the market's speciality products. It could also translate to greater interest among the smaller, independent brokers and underwriting agencies to become Lloyd's coverholders with the support of a London wholesale broker. Under the retail model, a greater awareness of Lloyd's in the regions can also filter down to insurance buyers and could help Lloyd's brokers in explaining the different products and options for their clients."

Mr Ribeiro says Lloyd's efforts are aimed at maintaining Lloyd's as the market of choice for specialist insurance, and are necessary to ensure brokers overcome the perception that Lloyd's is a complex place to do business.

"That complicated perception might be a result of our activity underwriting large international risks," he explains. "Because risks are often written under a subscription model, where several Lloyd's underwriters share a single risk, people naturally see it as more complex given the need to syndicate risks and settle premium and claims payments centrally. Our work around electronic messaging is certainly helping to reduce this complexity.

"The subscription market, however, is not the only way to place risks at Lloyd's. For risks involving smaller premium or higher policy numbers, UK regional brokers have a number of options. Smaller, independent regional brokers wanting to place the occasional special risk at Lloyd's can use a number of Lloyd's wholesale brokers who offer an efficient and easy access to the market."

Mr Stern is in no doubt Lloyd's offers a unique proposition to brokers. "Regional brokers will choose the specialist insurance markets which are best for their clients, and fortunately the UK insurance industry is a global leader in offering choice and competitive products," he says.

"Brokers aiming to design complex packaged policy covers can work with a number of Lloyd's underwriters representing the range of expertise required for the package, and at the end offer the insured a policy under a single brand and security."

Vannessa Young runs BIBA's London Market Secretariat

"Smaller, independent regional brokers wanting to place the occasional special risk at Lloyd's can use a number of Lloyd's wholesale brokers"

BIBA has received many queries from brokers wanting to know the background to rises in FSCS levies. **Steve White** explains how the present model works and why we are campaigning to bring about long term change

Fighting for a fairer future

As members will be well aware, the Financial Services Compensation Scheme is designed to compensate customers in the event of the failure of their financial services provider or intermediary.

The chart below helps to explain how the FSCS funding model currently works for 2010-11. Brokers will note that the scheme is split into five classes – Life & Pensions, Investment, General Insurance, Deposit (not unsecured lending) and Home Finance (mortgages).

The table shows the maximum capacity of each class and sub-class. So, for example, the maximum capacity of the General Insurance class is £970 million – this is split into £775 million for the insurers and £195 million for intermediaries.

The table then goes on to show the FSCS's current budget figure for each sub-class – this shows that the current FSCS budget for the insurance intermediary sub-class is £61.4 million and it is the budget figure that the current levies are based upon.

The huge increase in FSCS levies this year has sharpened members' interest in the workings of the current funding model and has again highlighted the inequity. The current year's FSCS levy is based on approximately 30 per cent of what the budget could eventually rise to, though it is too early to predict with any accuracy what the 2011-12 budget will look like.

What we do know is that the Financial Ombudsman Service is continuing to see an increase in complaints activity regarding payment protection insurance and that around 90 per cent of these complaints are upheld. This is continuing to force a number of mainly credit brokers out of business, with the outstanding compensation payments liability then passed over to the FSCS.

BIBA continues to be actively involved in the FSA's fundamental review of the FSCS. The regulator will be publishing a consultation paper by the end of the year, with any new rules and funding mechanism to come in from April 2012. It will be very important for members to actively engage with the consultation process – to read the paper and formally respond to the FSA with answers to the questions raised within in. BIBA will of course let members know when the consultation paper is published and will suggest some suitable answers.

In the meantime, the unfairness of the current funding model continues to be BIBA's number one lobbying issue.

Further information on this topic is also available on the BIBA website where we have produced a document, Financial Services Compensation Scheme – Key Facts.

General retail pool aggregrate capacity - £4.03bn

Providers £690m max £2m budget	**Fund Management** £270m max £3m budget	**Insurers** £775m max £41.5m budget	**Banks & Building Societies**	**Providers** £70m max £0 budget
Intermediaries £100m max £11.5m budget	**Intermediaries** £100m max £24m budget	**Intermediaries** £195m max £61.4m budget	£1,840m max £4m budget	**Intermediaries** £60m max £0.6m budget
Life & Pensions £790m max	**Investment** £370m max	**General Insurance** £970m max	**Deposit Class** £1,840m max	**Home Finance** £130m max

* The budget figures are used by FSA in setting annual FSCS levies

Steve White is BIBA's Head of Compliance and Training

A difficult balancing act

In the current challenging market conditions, brokers are under pressure to secure competitive deals for clients - but solvency and security are critical factors as **Jonathan Swift** explains

The recent high profile problems at Quinn Insurance, which was forced to cease underwriting UK business by Ireland's Financial Regulator in March, has again highlighted the potential pitfalls of brokers dealing with insurance groups who do not have a financial rating and/or are ultimately based outside the UK.

Quinn withdrew its Moody's rating in July 2008, but continued to curry favour with enough brokers that by the time Matthew Elderfield, the Irish head of financial regulation, stepped in, its UK operation was writing €442.3 million (£372.8 million) of gross written premium according to its last published accounts.

Clear Insurance Management's CEO Howard Lickens believes the market was not oblivious to the issues concerning the insurer: "I think there were more than a few brokers in the market who were aware that Quinn was an accident waiting to happen. But Quinn was cheap and for many brokers that was just what they wanted."

As far as Jelf is concerned, its insurance CEO Phil Barton says it had acquired a fairly sizable Quinn book of some £3 million GWP through various deals which it had been in the process of running down. At the time of the Irish Regulator's announcement it was a tenth of that size: "We have our own procedures in place and do not rely wholly on the rating agencies. To be honest the withdrawal of the Moody's rating was probably the final straw but we had been reducing our exposure to Quinn for a while based on our own intelligence," he adds.

Jelf, like many larger regional and international brokers, has a security committee which it set up over five years ago. This provides it with a resource to analyse and make informed decisions about which insurers it uses. But Mark Addis, managing director, wholesale at Giles Insurance Brokers – another intermediary with such a committee – raises the issue that despite the speculation, Quinn's executives and PR team had "made a massive play" about dealing with market rumours about stability, offering assurances to counter any negative messages. As such, smaller brokers without security committees may have been unsighted about the true picture.

True picture

"In hindsight, the suggestion that brokers would have ultimately been better prepared for the problems had Moody's themselves downgraded or put them on negative watch, is probably right," he adds.

Indeed Mr Barton concedes: "It is difficult for smaller brokers to analyse all of the insurers who are out there," while Higos managing director Ian Gosden believes only the nationals and larger regionals have the resource to do this properly.

The fact remains, though, that in the competitive broking market there are a number of insurers – like Quinn – who are domiciled outside the Financial Services Authority's direct jurisdiction but can passport into the UK through European Economic Area single market rules.

Many of these player have made a particular play of dealing in niche and difficult markets where rates remain high and cover is scarcer.

Mr Gosden adds: "We got to the point where [Quinn] was a market of last resort. So if it was the only underwriter available, or a customer was not prepared to pay more than a certain amount, we had to decide whether to go with them or lose the client."

Mr Barton asserts that Jelf would always walk away from any business where price – rather than stability of carrier – is the over-riding priority of the client: "I am also not a big fan of having caveats in any recommendation because I believe that is absolving responsibility in what is at the end of the day an advised sale."

Despite some reservations, Mr Barton concedes that his firm will use overseas providers – including unrated ones – as long as they fulfil the criteria of its security committee and satisfy its information demands when asked.

Mr Addis agrees: "It is inevitable that for esoteric risks or specialist covers where mainstream markets are not involved, that the use of some carriers without a traditional security rating will be necessary, to meet commercial client demand." Among the due diligence options he suggests Giles carries out to check an underwriter's long term viability are forensic accounting, an investigation of reinsurance arrangements and financial references.

Esoteric risks

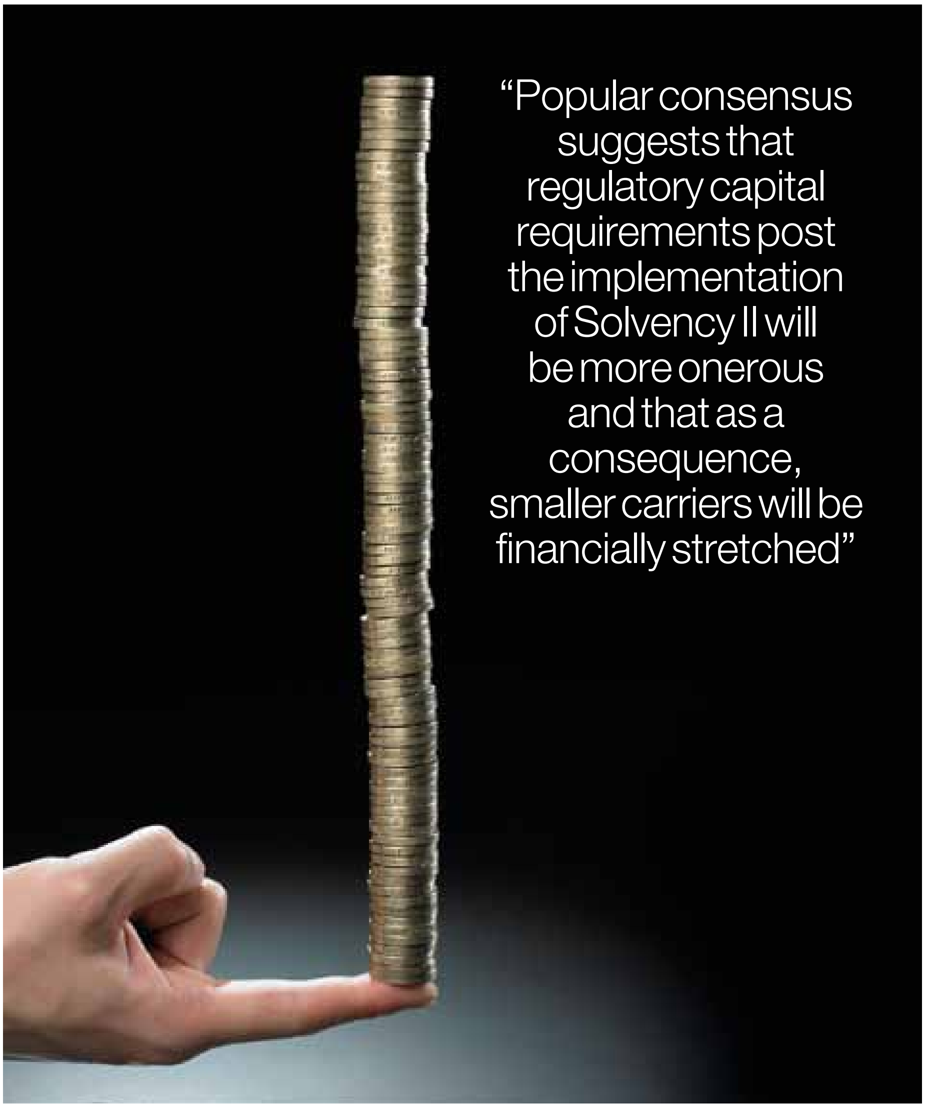
As an international broker Aon faces the different challenge of operating in territories where the major rating agencies "have little reach," according to its head of market information Chris Rathbone. He suggests that "knowledge of the management's expertise and reputation" should also come into play.

With this in mind it is no surprise that many of those spoken to for this article all agree that a rating agency's view on any insurer should not be seen in splendid isolation, and that other factors should always be considered. And even when dealing with rating agencies, Mr Barton notes that brokers should not just look at whether a firm is A rated or not, but the outlook of a business, because "it is the direction of where a business is travelling which reveals a lot more about its long-term stability."

So what of the rating agencies themselves? The Dodd-Frank Act, passed through the US legislature in July, originally included a proposal to create an office of Credit Ratings within the Securities & Exchange Commission to maintain the integrity and quality of the agencies.

Mr Lickens for one is in favour of tougher regulation in the UK: "A system which relies on the company being rated having to pay money to the rating agency is fundamentally conflicted. Perhaps the new Financial Services Authority will use all the data it collects to give its own ratings which brokers could rely upon?"

In contrast, Mr Barton says: "I am a market economist and I believe in healthy competition. So I would prefer the market to naturally self-regulate itself, which should happen as you have a number of rating agencies out there and if one gets it wrong then their reputation will be tarnished and their rivals should prosper."



Whatever happens with regards to the rating agencies in the UK, it will take place against the changing regulatory environment of Solvency II, whereby carriers will have to hold more capital against the risks they underwrite. Whilst brokers remain undecided about whether this will prevent future market failures, they do not see the change circumventing the need for rating agencies as part of their overall scrutiny of an underwriter.

"Popular consensus suggests that regulatory capital requirements post the implementation of Solvency II will be more onerous and that as a consequence, smaller carriers will be financially stretched. While this may mean greater merger and acquisition activity, we suspect that ratings will still be an important element of the evaluation of insurer solvency," comments Mr Rathbone.

From a rating agencies' perspective, Rob Jones, European insurance criteria officer, Standard & Poor's, concludes: "We will monitor the expected impact of Solvency II on the industry and on the rated insurers in particular. Standard & Poor's will also monitor how management's responses to Solvency II may affect our view of the rating profiles of the insurers. While we do not expect this to lead to many rating actions, some ratings may be affected."

Selecting an insurer

BIBA reminds members that brokers/intermediaries have fiduciary obligations and a duty of care to their customers in law. Whilst the broker is not the guarantor of the insurer, the law does expect a broker/intermediary to exercise this duty of care in selecting the insurer and members must be mindful of this when placing insurance.

One of the factors a broker/intermediary can take into consideration when selecting an insurer is the insurer's credit rating and though there may be other considerations, the absence of a credit rating could leave a broker/intermediary vulnerable to allegations of a breach of duty of care.

BIBA has also linked up with Standard & Poor's to provide a cost effective insurer rating facility – which is particularly suitable for smaller brokers who do not have the resources to run their own committees. This is priced at £350 a year.

DIGITAL sol

Now is the time for brokers to brush up their knowledge about technology risks, because this sector looks set to become increasingly mainstream, says **Rachel Gordon**

Cyber risks insurance is no longer an obscure class of business aimed at specialist companies. It is now cost effective, offers broad protection and is relevant for many brokers' clients.

CFC, which provides BIBA's cyber risks scheme, Esurance, is one of the most established providers, having been in this sector a long time – a whole 10 years. But, says business development manager Graeme Newman, the UK still only accounts for a small amount of the company's revenue. "Probably around 85 per cent of the business we write in this area comes from the US."

It is said what happens in the US, almost always crosses over to the UK – and Mr Newman believes cyber cover is a prime example. "It's true that this is a market in its infancy, premiums are probably only around £700 million in total, but you only have to look at how many insurers are moving into the market, to see how much potential there is."

Mr Newman explains there are a number of key areas which makes cyber cover different from other policies in that it provides protection in the event of third party liability – such as if a system is hacked into – but also first party risks, which would involve a company losing data as well as consequential business interruption. The policy can also contain libel protection, such as if a business is libelled on the web.

And, certainly, one major change that should fuel growth in the UK is that in April, the government confirmed that serious Data Protection Act breaches will be subject to fines of up to £500,000.

This potentially huge fine is expected to act as a big deterrent and to encourage companies to take greater care of their data – as well as avoiding offsite disasters, for example when laptops are used out of the office and lost or data is stolen. Mr Newman says there are first party risks which affect companies, but also third party ones when another party causes damage, for example through hacking.

As Mr Newman says, even the smallest business is likely to have a heavy reliance on technology. He comments: "People talk about the digital age, but just think how much information is now emailed. One example of the importance of the internet, for example, is a cinema chain we insure. Once, they were sent reels of film, now, the

utions for all

film is sent digitally. It is vital that this not only arrives, but also that it is not intercepted – if the latest Harry Potter, for example, fell into the wrong hands, it would have a terrible effect on that company's revenue stream."

However, one fact which is holding the market back, is that too many brokers have limited knowledge of this area. And, it is because of this, they may feel unqualified to talk to clients about the risks."

In the US, it is very different, says Mr Newman. "I've spent a lot of time there and it is noticeable how much hunger for knowledge there is from brokers – and this has been driven by legislation, high profile cases of security breaches, as well as demand from clients seeking protection."

A majority of US states have enacted so-called security breach laws, requiring disclosure to consumers when personal information is compromised. In addition,

"Many companies want to grow their business through social media, even if at the same time they have concerns"

data breaches at TK Maxx and Heartland Payment Systems also generated a huge amount of publicity. It also brought Albert Gonzalez to public attention.

Still aged only 28, but now jailed for 25 years, he was the computer hacker who, along with accomplices, masterminded the credit card theft and reselling of some 170 million card and ATM numbers between 2005-2007 – the biggest such frauds in history.

As Mr Newman says: "There is a new breed of criminal out there, and the UK is certainly not immune from them. Brokers may be talking to clients about traditional forms of crime, such as breaking and entering, and the need for security. But companies are also at risk from cyber criminals, who tend to be young, extremely smart and dangerous. And, as is common knowledge, ID crime is the fastest growing crime in the world."

He points out that another growing risk is the phenomenal boom in social media, such as Facebook, YouTube, Twitter and LinkedIn. "If you think about it, BIBA is a media company, since it has a lot of information online and also uses Twitter. In fact many companies of every description want to grow their business through social media, even if at the same time they have concerns."

This can mean that employees can waste time at work through being on Facebook, for example, or also that an employer may suffer defamation at the hands of a disgruntled ex-member of staff who can spread malicious information online. But, at the same time, almost all businesses also want to do more in this area, since it can be such a useful tool to inform customers.

"We are going to see more legal cases in this area, and providing cover against defamation has been something insurers have been wary of. We feel that we can help clients by providing them with access to PR expertise – if a business can react quickly and honestly to a situation, the chances are they will get a handle on it. In the case of Heartland in the US, for example, the company did just this – the feeling from many people was they were a victim of crime – and they were working hard to put matters right."

Looking ahead, Mr Newman says cyber insurance is moving in the same direction as directors' and officers' in the UK. "This was once seen as the preserve of big companies, now it is sold to SMEs online."

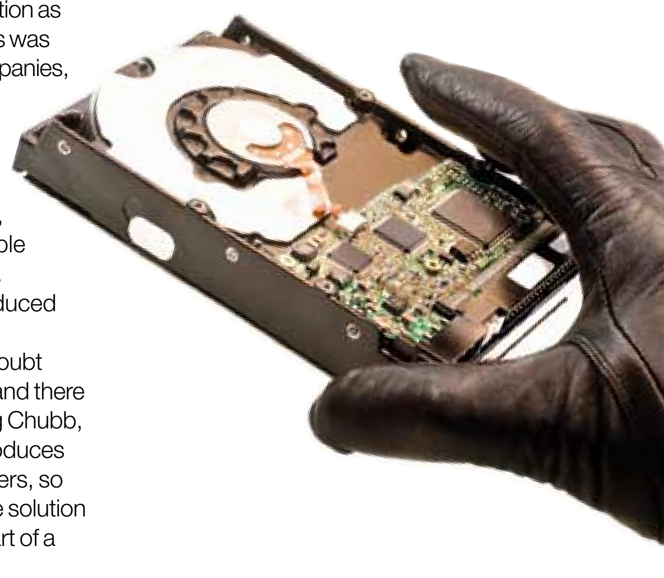
He points out that cover is often competitively priced. CFC, which is a Lloyd's underwriting agency, offers insurance on a modular basis, with up to nine areas of cover available and premiums starting at only £750. BIBA members also benefit from reduced excesses as part of this scheme.

The broker knowledge gap is no doubt something insurers are addressing, and there are a number in the market, including Chubb, Hiscox, QBE and CNA. CFC also produces a weekly emailed newsletter for brokers, so for those wanting a crash course, the solution is to get reading – and be in at the start of a sector that is on the up and up.

Cyber risk management - top tips

- **Have processes in place to update software, firewalls and anti-virus programmes**
- **Safeguard mobile devices that hold sensitive data – encryption is a key tool for this**
- **Safeguard personal data within the workplace, such as pay information and other employee details**
- **Develop operational and procedural guidelines to support security policies and standards that must be followed to maintain security**
- **Implement regular staff training on security procedures and employ rigorous staff vetting when hiring**
- **Have a crisis management plan in place which has been rehearsed**
- **The first 24 hours of a security breach is critical: implement the crisis plan immediately**
- **Having insurance in place covers many of the major costs and insurers have many of the resources to advise a company.**

Source: Lloyd's



Our latest survey assesses members' views on the impact of the economy on their businesses along with insurers' claims performance. **Leighann Burtrand** analysed the results, which show this year is even harder than the last and no imminent recovery is in sight…

Nobody said it was easy

Research undertaken recently among BIBA members show that the challenging business conditions experienced throughout the UK continue to bite.

There are examples where brokers are thriving, specifically if they have expertise in a profitable niche. However, overall, we found members have found their clients have cut back on cover and as yet, there is little sign of when a recovery will take place.

Cliff Humphreys, principal of high street broker Bridge Insurance, comments: "My business is just treading water – which is not that bad considering the market and that brokers are losing a lot of business to the aggregators.

"But aggregators are not subject to TCF rules and do not have compliant, trained staff unlike brokers – and I think we are going to see more and more problems linked to people buying the wrong cover. All insurers do is try and go for market share, rather than supporting brokers more."

However, some brokers remain chipper. Paul Inskip, director of Tempcover, comments: "We're doing okay, but I don't think you will find any brokers who have not been hit by the recession. My view is that you need to spend to cope. We're doing a lot of marketing, but other brokers just seem to cut back. It's helped us and we're seeing increased profits, but you can't stand still. We're planning on working with more insurers and launching new products and add-ons."

He adds brokers also need to adapt to the way the market is moving. "If you're doing a lot of online business, you need less staff, but more good and well paid IT people. Brokers are doing more work for insurers and less work for customers, who tend to be happy to sort out buying the cover for themselves."

Lynn Richards-Cole, Associate Director with Perkins Slade, which has a strong book of schemes business, says there is business to be won – and that at least capacity is not an issue: "A robust tripartite relationship between our insurer, our client and ourselves will generally get us "the last bite of the cherry in the face of competition".

Our survey also looked at the issue of broker involvement in claims. We asked if members were having to intervene to try and ensure their customers received satisfactory settlements. Eric Galbraith, BIBA Chief Executive, said: "Fraud is a major issue, particularly in the current recession, so there is a need for insurers to validate claims. However these statistics suggest a too frequent reduction in the amount offered in claims settlements, which could have a serious impact on our industry's reputation." The survey results included:

Impact of recession on personal and commercial line business

Personal lines

- More than half (57 per cent) of broker respondents have seen personal lines customers reduce their levels of insurance protection during the economic downturn.
- 35 per cent of broker respondents said that buildings and contents policies were most affected.
- 33 per cent of broker respondents said that motor insurance was most affected.
- 27 per cent of broker respondents said that all classes of personal lines were affected.

35%
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33%
of broker respondents said that motor insurance was most affected

27%
of broker respondents said that all classes of personal lines were affected

The top three examples provided of personal lines customers reducing levels of cover were:

- Reducing buildings and contents sums insured.
- Increasing excesses to reduce premiums.
- Deleting add-ons such as personal possessions and accidental damage.

Commercial insurance

- More than two thirds (67 per cent) of broker respondents have seen commercial customers reduce their levels of insurance protection during the economic downturn.
- Commercial combined was highlighted as the commercial class of insurance most affected, followed by construction, all classes, liability and then business interruption.
- When asked what examples can be given, cut back on essential cover and add ons (such as business interruption, legal, theft cover, accidental damage, personal accident and travel) were the most popular responses given. This was followed by reducing sums insured, and increasing excesses to reduce premiums.

Expectations

- 65 per cent of broker respondents do not believe that the situation of customers reducing cover is improving.

Comparisons to last year's research

- Last year 23 per cent of broker respondents said they had seen personal lines customers reduce their levels of insurance in the economic downturn. This year that figure has increased to 57 per cent.
- We also found last year that 52 per cent of broker respondents had seen commercial customers reduce levels of insurance during the economic downturn. This year that figure has increased to 67 per cent.

Claims – are brokers having to do more?

- 93 per cent of broker respondents regularly negotiate up to a 20 per cent uplift on claims on behalf of clients.
- 67 per cent of broker respondents said that they had to fight harder on behalf of clients to get claims paid during the recession. This has increased by nearly 10 per cent since last year.
- More than three quarters (76 per cent) of broker respondents said that they had secured an increased payment for a claim following an initial lower offer, in the last year.

Claims examples

Members provided examples of how they were able to support their clients who had claims. Many brokers perceive falling standards from insurers (see box).

The following examples of broker intervention were supplied:

- A broker's client was offered £900 cash to replace damaged flooring in a dental surgery. The job needed to be done outside business hours to prevent a business interruption claim. The broker intervened and the client was paid £3,100.
- A flood damage claim involved an initial offer of £9,500 and following the broker's intervention, a final payment £17,500.
- In an instance of a poor building survey by loss adjuster, which suggested under-insurance, the broker obtained documentary evidence to show the loss adjuster figures were incorrect and a substantial average deduction was avoided.
- A total loss offer under a motor fleet policy insurer's original offer was repudiated by the clients. The broker obtained documentary evidence from trade publications and upon receipt of these insurers increased the offer made.
- In a travel insurance claim, the broker managed to obtain full 'delayed departure' payout following insurers' initial response when they offered only a 12 hour minimum payment. It is fairly standard for initial claims 'offers' to be improved.
- In a water damage to a kitchen claim, a settlement of £4,500 was originally put forward, but after discussing the claim and providing more information, the claim was eventually settled at £18,000.
- A broker secured an £1,800 payout on a laptop computer that was lost when initially the insurer repudiated the claim entirely.

67%

of broker respondents said they had to fight harder on behalf of clients to get claims paid during the recession

93%

of broker respondents regularly negotiate up to a 20 per cent uplift on claims on behalf of clients

More brokers become claims champions

- Lots of brokers said insurers are now being far tougher on claims. It was also argued that service was often chaotic, with documents lost between outsourced handlers, incorrect interpretation of policy schedules and brokers having to negotiate fiercely – where it is justified – to achieve fairer settlements.
- Brokers bemoaned the fact that too many insurers' staff appeared to have limited knowledge of technical issues, but whose sole intention was to try and reduce the sums owed to the policyholder.
- It was said that with commercial claims in particular, insurers were from the outset looking to reduce any sums payable.
- Others noted that insurers are taking a far harder stance on fraud. One broker commented: "Many are making life difficult for legitimate claimants under so called anti fraud measures. While I accept the need for prudence, this is being applied to claims where there is clearly no element of fraud. This does nothing but harm to the reputation of the industry."
- Loss adjusters were also slammed – as one broker said: "They are the bane of our lives. They delay and penny pinch claims and daily we come across legitimate claimants who are unhappy with the way they are treated."
- Another broker adds: "I think the growth of the aggregator sites is going to cause problems. I am now coming across people who have bought the wrong cover because they did not understand the questions on these sites. They then had claims which were repudiated, the insurer cancelled cover and now these people are struggling to find another insurer."

The benefits of taking control

Taking legal and health and safety advice, free websites for small SMEs and the importance of record keeping on the agenda

Finding time for advice can pay

Employers of all shapes and sizes are at risk being hauled up before a tribunal if they get things wrong – and since so many running firms have little time to keep up with the law and employment rights, having access to help can be invaluable.

Peninsula, which offers legal and health and safety advice, says it has seen a 30 per cent increase in the number of calls to its employment helpline over the last 12 months. The company offers a number of solutions which brokers can recommend to their clients – and which may also be of benefit in-house.

"We offer an online risk assessment...that will minimise the chances of any accidents and potential insurance claims"

Head of introducer partnerships Marcel le Roux says advice can range from simple matters to those which are serious, such as wanting to remain within the law if staff have to be laid off. "We offer online risk assessment, planning and management tools, along with advice, that will minimise the chances of any accidents and potential insurance claims which could have a detrimental impact on the business when they can least afford it."

He adds that health and safety matters can also be problematic. Companies may think taking advice on this is a luxury, but at the same time, those with sound processes in place should also benefit from lower cost insurance - as well as fewer workplace accidents and avoiding litigation.

Case study - putting the past to rights

A paper manufacturer had previously suffered a multi-million pound fire loss. The company also had a number of industrial accidents which resulted in a string of employers' liability claims, explains Peter Jones, UK trading director with Giles Insurance Brokers.

The insurers agreed to indemnify the fire claim but informed the policyholder that they were not inviting renewal of the policy on the basis of the continued poor claims history.

The former brokers submitted presentations to the market for replacement cover but this resulted in a 100 per cent declinature and so the brokers parted company on the basis that they were unable to help.

Without insurance the company could not trade as they would be in breach of banking clauses and compulsory employers' liability. The loss adjuster working with the company to conclude settlement of the fire claim introduced Giles as a possible solution to their problem. Giles quickly learned that its new client lacked knowledge in the area of risk management, health and safety – in fact it was virtually non-existent. It identified that the client had to put in place robust systems to make more it attractive to the insurers.

Giles introduced Peninsula to tackle their client's health, safety, risk assessment and employment issues. As a consequence of these measures Giles was able to approach selected insurers to explain past failings and to demonstrate the investment undertaken to future risks.

Insurers were receptive to the measures and were happy to accept the risk albeit at a higher premium. This was a good result, particularly as the client would be able to continue trading.

"Ironically the new insurer was one of the ones who had originally declined the risk to the former brokers. Three years on, the client has trebled its turnover, remains claims-free and its original annual premiums have halved (despite the threefold increase in the insurance exposure)," says Mr Jones.

Need a website? Now there's no excuse

Any BIBA member who may not have a business website now has the opportunity to set one up at no cost through the Getting British Business Online scheme.

This is backed by the Department for Business Innovation & Skills, Enterprise UK, e-skills UK, Google and BT. It is aimed at any SME business owner who fits eligibility criteria and could benefit from:

- **A free customised website**
- **A free .co.uk web address**
- **A free self help tool to attract new customers online**
- **A bespoke accredited training unit offered through training providers and colleges.**

To date, the Getting British Business Online scheme has helped over 45,000 small businesses, through offering a free professional business website. All brokers need to do is provide a few basic details about their business, such as their address and a quick description. Then the easy-to-use 'website wizard' does the rest. Brokers do not need any computer skills and it should not take more than 20 minutes.

Communications Manager Leighann Burtrand says: "This is a great opportunity for smaller brokers who as yet may not have a website. The campaign aims to help 100,000 small businesses get online – and start winning more business."

To find out more, brokers should visit www.gbbo.co.uk

Keep it on the record

HM Revenue & Customs has issued guidance on keeping records – a matter it admits may not be particularly exciting, but which is also of crucial importance.

Stephen Banyard, Business Customer Unit Director at HMRC said: "Failure to take reasonable care costs the Exchequer over £6 billion a year with poor record keeping a major cause. We hope these top tips will raise awareness of the need for good record keeping among broking firms. We also want brokers to realise the benefits to their business – such as improved cash flow – of taking better care of their records and paperwork."

Keeping good records makes good business sense as it gives brokers the information you need to manage your business and help it grow. In addition, it makes filling in tax returns easier and quicker and helps avoid paying too much tax. Good record-keeping is also a legal requirement. In April 2009, penalties were introduced for not taking reasonable care with records and tax returns.

HMRC's tips for good record-keeping include:

- Set up a reliable system for keeping full and accurate records of your income and expenses from the outset
- Keep records throughout the year – update your records regularly, rather than letting the paperwork pile up
- Keep your records for a minimum of six years
- Keep records to show what you have bought or sold relating to your business. This should include details of all cash transactions as well as invoices and receipts
- If you are an employer you must keep records of wages paid and details of tax and National Insurance that you have deducted and paid to HMRC
- Keep bank statements and building society books – this is particularly important if you don't have a separate business account. You should be able to show clearly what you have spent personally and on the business.

For brokers who want more help with record keeping go to: **www.hmrc.gov.uk/factsheet/record-keeping.pdf**
Brokers who want to watch a short online video on record keeping should visit: **www.businesslink/gov.uk/taxhelp**

High net worth, buy-to-let and premium finance are covered by **Steve Foulsham** as he updates members on the latest enhancements to the BIBA portfolio

Cream of the crop

High value home cover

High net worth product Executive Plus first took the market by storm just over two years ago. The concept was to provide the very best cover and to back that up with exceptional service and insurer Sterling is delighted with the success that has ensued.

Like any insurance product, Executive Plus is only as good as the claims service that backs it up. Sterling has a proud reputation for paying claims fairly and quickly. Recently, it commissioned a customer survey to test how its service was

> 97 per cent of brokers said they thought the claims service we provide was either 'good' or 'excellent'

being viewed by the end user. The results showed that an outstanding 96 per cent of respondents were satisfied with their claim. In addition, 94 per cent felt they had been treated fairly and 96 per cent were satisfied with the speed they were told that cover would apply.

Not satisfied with just asking customers, they also asked brokers to rate the claim service during Sterling's recent broker survey. More than 1,300 brokers took part and again, the results were impressive. They found 97 per cent said they thought the claims service they provided was either 'good 'or 'excellent'. 96 per cent thought the service stood up against the competition. And, it was shown that 72 per cent of brokers felt Sterling set the standard for the market as a whole.

Executive Plus has many innovations not offered by other insurers that will help brokers to find the hook to win new customers. Members have said that the following unique selling points were vital to winning new business. These include:

- Upgraded Jewellery Replacement – the client obtains a 20 per cent uplift on the insured value when replacing through the scheme
- Claims Concierge – a helping hand at a time of crisis
- Three Year Long Term Agreement – this provides peace of mind in a volatile market including a £500 contribution towards the cost of risk improvements
- Free valuations for contents and buildings which removes the threat of underinsurance.

These products and service additions have been warmly received by brokers and are innovations for the market. For further details brokers are invited to contact Mark Arends on 0845 271 1445 or email marends@sterlinginsurancegroup.com

Built for buy-to-let

BIBALet is the only let residential insurance scheme endorsed by BIBA. It incorporates a range of products, all specifically designed for the buy-to-let market, and combines comprehensive covers with top quality customer service.

The buy-to-let market is competitive in itself and, whether landlords are seasoned professionals with multiple properties or someone entering into the market for the first time, the challenges are endless.

It can be confusing as to whether to let furnished or unfurnished, and there is often uncertainty as to what tenants are going to be like, in addition to the legal aspects of letting a property, maintenance and if a letting agent should be used or not.

BIBALet can help to remove the confusion for both the broker and for the end client. Obtaining a suitable quote could not be simpler, either by contacting the team by phone or email or via the quote and buy facility found on the website at www.bibalet.co.uk

BIBALet is run by Barbon Insurance Group, the property insurance specialists, so brokers can be assured that they are receiving expert advice within this market and the potential support to cover all aspects of the lettings world. The team is happy to deal with any questions brokers may have and are able to offer the support brokers need to place this business with confidence.

For further details, contact the team on 01420 471987 or email bibalet@keelan-westall.co.uk

Premium finance: The time is right

With the economic squeeze well and truly on, an ever-increasing percentage of brokers' client bases could be open to the concept of premium finance. So if brokers are looking to maximise their revenue and add value, it is an opportunity not to be missed.

As the No.1 insurance premium finance company in the UK and Ireland – and the only premium finance provider endorsed by BIBA – Premium Credit can work with brokers to help maximise this opportunity.

Targeting and contact

Firstly, identifying and targeting previously uninterested clients who may well be experiencing changed financial circumstances is a must, as these clients could be more receptive to the key benefits of premium finance, which include:

- Improved cash-flow
- Peace of mind, by spreading the payment of premiums
- Freeing up funds to reinvest into their business.

For clients who already utilise premium finance, it makes sense to catch them early to ensure they wish to continue the arrangement at renewal. In most cases, Premium Credit reviews renewals up to three months in advance, which means brokers can proactively contact clients and promote premium finance at the earliest opportunity.

Educate and remind

Secondly, brokers should make sure clients understand how premium finance works and how it can help. For clients who are less familiar with premium finance, Premium Credit's consumer guide can be downloaded from: **www.premium-credit.co.uk/files/documents/ConsumerGuidePL.pdf**

Clients should be educated and reminded as to why they should consider premium finance. For commercial clients, it is a good idea to promote premium finance during client visits, correspondence and in renewal reports.

> By keeping the benefits of premium finance fresh in clients' minds, the take-up rate should increase – along with income

By keeping the benefits of premium finance fresh in clients' minds, the take-up rate should increase – along with income.

Using Premium Credit's Cost Benefit Analysis tool can help to demonstrate how premium finance could work for commercial clients, by providing a breakdown of payments which will help them decide whether premium finance makes financial sense for their business.

Keep your staff informed

Thirdly, staff should be made aware of current products and developments at Premium Credit. Increased awareness will put them in a better position to promote premium finance and make their firm more revenue.

For more information on how brokers can leverage maximum premium finance income with Premium Credit, please contact Cristian Jackson, National Sales Manager on 07899 841315, email Cristian.Jackson@pcl.co.uk or visit www.premium-credit.co.uk

Steve Foulsham is BIBA's Technical Services Manager

Assume nothing, expect everything

It is vital that brokers understand the importance of spelling out the duty of disclosure, advises **Simon Gildener**

It is easy to take things for granted. For example, it is easy to assume that clients understand a broker's advice (unless they say otherwise), particularly where the advice is of a basic nature, universally applicable and should be known off by heart by regular purchasers of insurance.

Examples include, "read the policy carefully" or, "give proper disclosure to your insurers" so it is not a great leap to go on to assume that this kind of advice can go in standard client documents, such as terms of business or cover notes.

As long as the advice is given, somewhere, somehow, the broker can tick the box and move on. They can then be free to focus on the more value-adding aspects of services, like finding the best price and the widest cover.

But, the recent case of Jones v Environcom & Miles Smith is a useful reminder of how we make such assumptions at our peril. Environcom's premises were damaged by fire. It made a claim on its property insurance, placed by Miles Smith. The insurers avoided the policy for non-disclosure.

Environcom then sued Miles Smith for failing to advise it adequately on what to disclose. Miles Smith defended the claim, arguing (amongst other things) that the standard documentation it issued to all of its clients (such as proposals, quote packs, TOBAs) contained advisory warnings about the duty of disclosure. Although Miles Smith eventually defeated the case, on causation grounds, the defence based on standardised advice failed.

> "It is the first document of its kind and should allow brokers to understand the legal, ethical and financial risks that they are faced when advising a client."

When it comes to the matter of a client's disclosure obligations, it is well-established that a broker must:

- advise the client of the duty to disclose material circumstances
- explain the consequences of failing to do so
- indicate the sort of matters which ought to be disclosed as being material
- take reasonable care in eliciting matters which ought to be disclosed but which the client might not think it necessary to mention.

At the Environcom judgment, the court went on to say that:

- a broker cannot just rely upon written standard form explanations or warnings annexed to proposals or policy documents
- a broker must satisfy himself that the client does in fact understand the position. This will usually require a specific oral or written exchange on the topic and this should take place at the time of the first placement and any subsequent renewal.

The practical implications of this judgement are currently being considered by BIBA and members should look out for guidance soon. For the time being, the following suggestions may help to mitigate this risk of liability:

- in all cases of placement (new risks or renewals), there should be some evidence on the placing file of a discussion about the client's duty of disclosure, and what it means specifically in the context of that client's insurance needs.
- this evidence could be a file note of a conversation or an email.
- brokers should satisfy themselves (for reasons they can justify if they are asked) that the client appears to understand what kind of information needs to be disclosed and why.

The final piece of advice I have is simply to assume nothing, and to recognise that clients may not be the sophisticated purchasers of insurance they seem.

Simon Gildener is General Counsel at Howden Insurance Brokers, a BIBA accredited PI broker.