Summer 2009
Issue 37

British Insurance Brokers' Association

The Broker

Industry guidance

Now the market must take up the baton

View from across the pond
Looking into the US insurance market

Lessons in liability
Expertise abounds at round table

Positioned for economic recovery
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Welcome

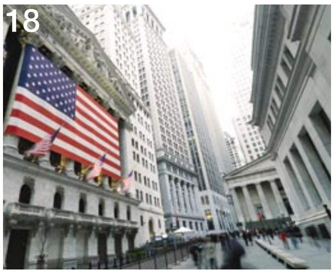
Leighann Burtrand
Editor of *The Broker*

It was fantastic to catch up with so many members recently at our conference in Manchester. I hope you all had an enjoyable time there and also found the networking useful. Certainly from my perspective there was plenty of business taking place – and I know more than a few brokers also let their hair down at the comedy night, too!

I would also like to thank members for the support they have given to us for numerous research projects we have undertaken recently. I know that many of you will be contacted by insurers and other organisations to provide assistance with research and that there are pressures on your time. But your feedback is enormously valuable and allows us to speak to the Government and regulators with concrete evidence on key matters.

One recent topic you have helped us with is what impact the economic downturn is having on insurance purchasing – and this has provided us with valuable information to promote the need not only for cover, but also the benefits of using a broker. This research was picked up by the media and received extensive coverage – all of which will encourage readers to seek advice from brokers. *The Mail on Sunday*, *The Sunday Times* and many regional newspapers were among those which covered the issue. As we all know, there is still confusion among many people, including those running businesses, as to where they should buy their insurance. Brokers are best placed to advise – and we must continue to get that message across.

Inside Summer 2009



Viewpoint

Eric Galbraith provides an update on business issues from the new BIBA HQ

Delivering Value – a conference which delivered

I would like to thank everyone for attending this year's conference, Delivering Value, in Manchester – I hope you will agree this was one of the best we have ever held. We are absolutely delighted with the feedback received so far.

And may I say a personal thanks to our members for attending in force. We had record numbers of brokers and I know that a considerable number came with some less-experienced colleagues so they, too, could feel the buzz of being at a BIBA conference.

None of us needs reminding that the current market and economy is extremely challenging. However, I certainly found there was plenty of optimism around – and a great deal of business going on, too. A number of insurers have since told me that they found the event unparalleled in terms of meeting new and established brokers and there were more than a few conversations taking place about potential and existing business opportunities.

The exhibition acted as a good reminder of how varied our industry is – hosting the massive stands of the major insurers, but also many smaller niche providers and indeed, wholesale brokers looking to do business with other brokers. I feel it would certainly act as an eye-opener for those who have little understanding of the insurance sector and in particular, the range of services and skills brokers provide.

Next year sees us back again at the Excel Centre in London's Docklands and the event will take place on 19-20 May. The conference will run over two days, but in a change of format, it will now conclude on the Thursday, when the gala dinner will be held.

Working for greater unity

As those of you at the conference may remember, one of the key themes of my opening address was the need for us as an industry to speak with one voice. I believe there is still scope to improve the way we work with other industry bodies and a wide range of industry organisations.

That said, there has been progress. I am currently working with the Chartered Insurance Institute (CII) which is looking at a project on professionalism and in recent years we have made great strides in forging a stronger relationship with the Association of British Insurers (ABI). However, there has been real progress and both the CII's Sandy Scott and the ABI's Nick Starling made valuable contributions to our expert forum in Manchester.

Beyond this, we are now working increasingly closely with the Association of Independent Financial Advisers and London Market organisations. We are also very pleased to have the Association of Medical Insurance Intermediaries at our conference and we now have excellent working relations with them.

We are also talking to the Association of Insurance and Risk Managers, and the British Bankers' Association. This is alongside our main focus of promoting members' interests to the Financial Services Authority (FSA) and, in particular, the Government and a wide range of other stakeholders.

One of the main priorities for BIBA now is to strengthen how we influence European legislation, particularly as the Insurance Mediation Directive is under review and we will be working with our colleagues at BIPAR in this area.

Commission disclosure status and conflicts – where are we now?

BIBA is currently holding a number of roadshows to explain exactly what the situation is with the market solution. The FSA has stated that it is prepared to accept an industry solution and not make disclosure mandatory (see page 22). However, it has also said it will review the situation in 2010. Full details of the roadshows are available on our website.

Broker solutions promoted to the Government

BIBA's Head of Technical Services, Peter Staddon, is involved in a number of high-level meetings with the Government, including the Home Office and the Department for Business, Enterprise & Regulatory Reform (BERR) and the Treasury.

Peter says: "One of the biggest issues is the lack of availability of credit insurance and we have more than 100 BIBA members involved in this market who want to do as much as they can to help clients. We believe there are shortcomings in the top-up scheme where cover is limited and many businesses will be ineligible, or have no awareness of its existence. However, following our discussions with the Government, they will be addressing these concerns. An alternative solution exists and we are speaking to our members and captive providers – which may provide a more straightforward and encompassing route. It is possible that one of the options could be a captive in Malta and we will update members as talks progress."

BIBA is also advising on the Equality Bill, a draft text of which has recently been published. Peter adds: "We think there is scope for insurers to revise their thinking, given that many are living longer and healthier lives. Although brokers need to work closely with insurers, we are never afraid to criticise if we feel this is necessary and if consumers should be receiving a better deal. We fully support risk-based pricing, but this must be fair."

Peter is also in regular contact with the Home Office, focusing on issues surrounding home security and property insurance. Peter concludes: "We're providing regular briefings and looking at ways consumers' understanding can be improved, along with increasing accessibility of cover."

Conference awards recognise excellence

Above: BIBA Chairman Derek Thornton with Neil Grimshaw, Young Broker of the Year, and Zoe Travetti and Jody Thirkell (right), runners- up

Below: Derek Thornton presents the Francis Perkins Award to John Miller (right)

Two major awards were made at this year's conference, with Neil Grimshaw of Ravenhall Risk Solutions being named BIBA's Young Broker of the Year and John Miller of Bluefin Group winning the Francis Perkins Award.

In the Young Broker award, Jody Thirkell of Romero Insurance Brokers and Zoe Travetti of Higos Insurance Services were runners-up.

From a standing start two years ago, Ravenhall now employs seven staff and moved into the black 14 months after its inception. Neil is a Huddersfield University graduate who commented: "I wanted to put customers at the heart of the business. So many other companies put profit before people. Yet, if you look after the people, the profit follows. Most of our business is through referrals from happy clients."

Meanwhile, John joins the many illustrious BIBA names who have won the Francis Perkins award. This was instigated by BIBA's first Chairman and is a mark of longstanding dedication and commitment to furtherance of the association.

CiB award for *The Broker*

BIBA's member magazine, *The Broker*, has won an award of excellence in the 'publications for members' category at a recent awards event held by the British Association of Communicators in Business (CiB). This took place at the Hilton Metropole in Birmingham and recognised the work by both BIBA's in-house team and design agency, beetroot.

BIBA supports businesses

BIBA has launched a series of business resilience support documents which will help members to advise their clients about business risk and raise their awareness of this crucial issue.

The templates and checklists have been produced by BIBA's Business Resilience Working Party, risk management and business continuity consultants Crisis Survivor and BIBA's Motor Panel, following requests from members and BIBA's regional chairmen.

The documents are available to download from the BIBA website. They include:

- **a business resilience checklist**
- **a business continuity planning aide memoire**
- **a planning template**
- **a motor fleet health and safety road risk checklist.**

Steve Foulsham, BIBA's Technical Services Manager, says: "These generic documents aim to help the risk assessment process for members and their customers during a time when BIBA research revealed that more than 50 per cent of commercial customers are reducing levels of insurance protection."

BIBA trio's exam triumph

Three BIBA employees have been burning the midnight oil and studying for additional qualifications.

Technical and Corporate Affairs Executive Graeme Trudgill (above centre) recently passed his ACII, which included a distinction in law. He is also now a Chartered Insurance Practitioner. "This has done a lot to improve my technical understanding. I am now planning to take the FCII," he says.

Meanwhile, Compliance Co-ordinator Vannessa Young (above left) has achieved the International Certificate in Risk Management from the Institute of Risk Management. This provides an understanding into the theory of risk management and how regulations and practices impact on organisations.

"This is an area which is growing in importance," she says.

And Communications Manager Leighann Burtrand (above right) has attained the Chartered Institute of Public Relations (CIPR) Diploma from London Metropolitan University. "This allowed me to develop strategic PR management skills and looks at PR as part of successful business practice. It covered numerous areas such as reputation management, corporate responsibility and stakeholder theory. Crisis management was also included, although I hope I won't be making too much use of this," says Leighann.

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BIBA Conference 2009 – we delivered value on every level

More than 1,500 brokers attended Delivering Value, this year's BIBA Conference in Manchester, a record number, with the event being widely hailed as "one of the best ever".

The conference has won praise from all quarters, including exhibitors and delegates, with many opportunities to network and hear both industry-related and inspirational presentations.

In his opening address, Chief Executive Eric Galbraith said that, more than ever, brokers were showing their worth and that their contribution needed to be recognised. He said the Government must realise the UK general insurance industry had the "X-factor in spades" and that brokers' achievements and their standing needed to be properly understood by the regulator.

He urged the FSA to start taking more account of the fact that brokers posed a low risk. "Why is such a heavy burden being placed on us when we pose less risk and there is a very small number of compensation claims? In fact, we pose less risk than the category of firms it regulates." He argued that current regulation in the UK was disproportionate and bureaucratic. "Stop using a sledgehammer to crack a nut. Proportionate, cost-effective regulation is what the insurance sector needs, and soon."

Eric also called on all those working within the insurance industry to speak with one voice when it came to promoting the industry and campaigning

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01 BIBA Chief Executive Eric Galbraith addresses the conference
02 Erin Brockovich
03 Panel speakers take questions on the stage
04 Café talk
05 Ruby Wax
06 View of the exhibition
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on key issues. "Diversity can prevent us from speaking with a single voice. Without a single voice, our message becomes confused. Externally, we have high-level initiatives from the Government, but little, if any, real engagement on general insurance."

However, the conference's Delivering Value debate showed that there could be unity among senior industry professionals. This brought together a panel of experts of Sandy Scott, the CII's Director General, Nick Starling, the ABI's Director of General Insurance and Health, Walter Merricks, the Financial Services Ombudsman, broker Alec Finch and Jeremy Hills of the Financial Services Authority.

The debate was ably chaired by business guru René Carayol, who put the panellists through their paces. Regulation remained a dominant theme in terms of the questions asked and Jeremy won the audience's respect by answering frankly and admitting that the FSA had made errors. Walter told the audience that the main problem in terms of consumer complaints was payment protection insurance, a product sold primarily by banks and loan providers.

The current state of the market was also under scrutiny and it was felt that times would continue to remain tough for some time. Nick, however, emphasised the underlying strength of the insurance industry and the fact that cover became even more valuable when businesses were vulnerable.

The keynote speakers were Ruby Wax and Erin Brockovich. Apart from her TV career as a presenter and comedian, Ruby is also a qualified psychotherapist who also provides coaching to business leaders and politicians. She spoke of how real engagement could be achieved through awareness and gave many tips on direct communication and how this can help companies achieve the most from their employees.

Erin Brockovich was the inspiration for the film starring Julia Roberts. This was based around her work for a law firm in a case against California-based Pacific Gas and Electric over water pollution. The eventual victory cost the utility company some $1bn in legal fees and compensation. Erin told the audience she was also considering a career in politics.

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Politicians and key decision-makers need to know what brokers do and how they benefit clients. **Leighann Burtrand** shows how BIBA gets its messages across…

Making the right connections

To be effective in influencing legislation takes a lot of hard work. There are many organisations seeking to speak to the Government and you need clear messages, be able to overcome obstacles, and be persistent.

BIBA's focus is on promoting the main campaigning issues in our *Manifesto* and also responding to issues as and when they happen.

The professional lobbying industry has been growing steadily – it now employs around 14,000 people – and research suggests MPs are approached more than 100 times a week by lobbyists, according to 2007 *Hansard* research.

At BIBA, we do almost all the legwork ourselves. Our team seeks to set up as many meetings as possible directly and we have forged strong contacts within Government and so are now often invited to relevant meetings and given committee places without having to ask. We also speak regularly to Opposition politicians.

These are just some of BIBA's public affairs activities in 2009:

February
- Peter Staddon attended the Home Secretary's Summit on home security, hosted by Jacqui Smith.
- Eric Galbraith and Graeme Trudgill met the CBI's Director General Richard Lambert to discuss BIBA's *Manifesto*.

March
- Representatives from BIBA met Des Hudson, Chief Executive of the Law Society, to discuss problems with the solicitors' PI renewal season.
- Graeme Trudgill joined the new Department for Transport continuous insurance enforcement (CIE) compliance stakeholder group.
- Eric Galbraith and Graeme Trudgill met Mark Turner, Deputy Director of Enterprise Policy at BERR, and secured BIBA references and links on the insurance sections of the BERR website.

April
- Graeme Trudgill and Leighann Burtrand met Jim Fitzpatrick MP, from the Department of Transport, to discuss e-certificates, continuous insurance enforcement (CIE) and swine flu.

May
- The BIBA team met with representatives of the Citizens Advice Bureau.
- BIBA met with the Shadow transport team, Stephen Hammond MP, Robert Goodwill MP and Saratha Rajeswaran (Conservative transport policy adviser).

June
- BIBA met with Heather Miller, Head of General Insurance Policy at the Treasury.
- BIBA met with a number of prospective parliamentary candidates.

BIBA responds to all relevant Government and regulatory consultation papers and in addition has had numerous meetings with the FSA and with BIPAR, the European broker trade body. There have also been meetings with other trade associations, including the British Bankers' Association (BBA) and the Association of Independent Financial Advisers (AIFA).

We have also responded to more than 80 press enquiries for the national, trade and regional press. Media coverage included Peter Staddon being interviewed on Radio 4's *Moneybox*, Graeme Trudgill appearing on ITV's *Luxury Homes from Hell* and BIBA's website was named as one of *The Times's* Top 100 travel sites.

Graeme Trudgill recently spent a considerable amount of time explaining the issues around insurance for travellers with medical conditions to the *Daily Mail*. The newspaper was planning a negative article about the limited availability of cover. However, Graeme's explanations resulted in a neutral story, including tips from BIBA and promoting the expert services of a BIBA member who was inundated with enquiries.

BIBA welcomes feedback from members on the work we do in this area – and we are always on hand to provide advice to brokers working with their local MPs and media.

Leighann Burtrand is BIBA's Communications Manager

FSA backs down on unfair fees hike

BIBA has persuaded the FSA to reduce the amount brokers are expected to pay in 2009/10. As a result of BIBA pressure, the FSA revised the funding requirement for brokers from £41.2 million to £37.6 million. This represents a 9.3 per cent year-on-year increase compared to the 19.7 per cent increase initially proposed. This was announced in the FSA's Consolidated Policy Statement PS09/8.

BIBA's Head of Compliance and Training Steve White had some forthright conversations with the regulator, emphasising that the original figure was unfair and punitive. He said: "The FSA has changed its model and a significant amount of contingency funding has now been moved to the depositor takers' block, meaning brokers have a lighter burden. We were onto the FSA as soon as its proposals came out – and encouraged our members to complain. I am delighted we've been listened to."

The FSA website has a 2009-2010 fee calculator at: http://www.fsa.gov.uk/pages/Doing/Regulated/Fees/calculator/index.shtml

Thriving through the downturn

Trading times are tough, but plenty of brokers are poised to come out of this recession in a stronger position providing they can take advantage of opportunities and effectively manage their businesses, says **Rachel Gordon**

Insurers are shedding jobs. Fraudulent claims are rising. Premium income is reducing. No broker needs reminding that the economy is in recession, but it is certainly not all doom and gloom – indeed, some brokers are seeing opportunity in these challenging times.

However, no-one is pretending it is easy. Research by BIBA has shown that both consumers and businesses have cut back on their insurance cover as a means of saving money – placing them at considerable financial risk. The fact that both personal and commercial lines have been affected shows the depth of the downturn and also puts brokers in an unenviable position. Many do not want to sell purely on price and beyond this, they know that reducing cover could leave some seriously exposed.

Reductions

In the commercial sector, the results showed that more than half of the BIBA brokers surveyed had seen business customers reduce their level of insurance protection in the economic downturn.

Of the brokers that have seen a reduction in levels of commercial cover, 45 per cent have seen clients reduce cover or take on more risk themselves. When asked which classes of insurance are most affected, three were most frequently given:

- 20 per cent said that commercial combined is one of the most affected classes
- 20 per cent said that commercial liability is one of the most affected classes
- 14 per cent said that all classes are affected.

Looking at personal lines, more than a fifth of brokers surveyed had seen their personal customers reduce their level of insurance protection during the recession. When asked which classes of personal lines insurance are most affected, 96 per cent said motor or home. Examples included:

- 29 per cent of respondents have seen a reduction in non-essential cover and 'add-ons' for personal lines business
- 16 per cent of respondents had seen personal lines clients reducing sums insured
- 16 per cent of respondents have seen personal lines clients increase their excesses.

According to BIBA's Chief Executive, Eric Galbraith: "This downturn generates an increased focus on cost and brokers should demonstrate the value that they add to clients. We are continuing to promote the benefits of brokers and are warning consumers about the dangers of reducing cover without guidance from a broker."

"This division we run is growing and we are doing over £6 million a year in risk management services"
Andy Hawkes, Director, THB Risk Solutions

Pragmatism

However, if there is one thing that sets many brokers apart from other sectors, it is their pragmatism and ability to search out opportunities.

Andy Hawkes is Director of THB Risk Solutions, a division of broker THB, which offers specialist services, such as fully risk-managed insurance propositions for sectors such as motor trade and fleet driver training. He says the times have never been more appropriate for brokers to take a more consultative approach with their clients and to focus far more on risk management guidance.

"This division we run is growing and we are doing over £6 million a year in risk management services. But what staggers me is that most of this comes to us direct from companies, probably as little as 10 per cent comes from broker recommendations and this has to be a concern."

Andy says many intermediaries bypass the subject of risk management. "Clients want to save money – and I understand how tough things are – but brokers are not spending enough time finding out about their clients' businesses and unless they do this, they cannot find ways to save money, let alone offer professional advice."

He adds that risk management guidance

Ways brokers can work smarter

- Now is the time for strategic planning – keep your business model under constant review, be prepared to be agile and give your most important customers extra care
- Consider reducing fixed costs through outsourcing
- Train for the future – the Learning and Skills Council says one in five firms are hiring more apprentices
- Invest in brand building – this is an area still neglected by many other brokers. Terms with local PR, marketing and web design agencies are particularly keen in this market so brokers should negotiate for good deals
- Be open to ideas – there is more support for independent brokers than ever before

"The large consolidators will be finding it hard, they are likely to have heavy debts and cost bases and insurers are shifting away from paying big commissions"
John McLaren-Stewart, Director, Bright Star Risk Solutions

should also be viewed as a necessity from a duty of care perspective. Prosecutions are already occurring as a result of the Corporate Manslaughter Act 2007, most recently when Cotswold Geotechnical Holdings was accused over the death of employee Alexander Wright, who was killed when a pit collapsed last September. The company's director, Peter Eaton, is currently facing charges and, if convicted, could be jailed for life with his firm hit with an unlimited fine.

Andy says: "We may be in a recession, but spending more time with clients, talking to them about relevant legal and health and safety issues is non-cyclical."

In the coming months, THB is going to be running one-day courses in basic risk management and core corporate legislation guidance for brokers. "We provide more advanced services and if brokers recommend these, then we pay them a referral fee, which can be a useful source of income. But these courses, which are going to be low cost, are primarily about ensuring brokers are able to talk to clients more knowledgeably and therefore provide better service."

Smaller brokers in particular may be able to take advantage of the current climate. John McLaren-Stewart recently set up BrightStar Risk Solutions. He comments: "The large consolidators will be finding it hard, they are likely to have heavy debts and cost bases and insurers are shifting away from paying big commissions. And customers are wanting more for less."

He says too many brokers have focused on acquisitions, rather than building their brands and focusing on service and that the consolidators have failed to win over their customers with a strong brand message.

Profile

He believes that smaller brokers should, where possible, now be looking to increase their profile, and establish a position of trust with consumers. BrightStar will seek to differentiate itself through sponsorship of events, will be running a client social network, is producing a corporate video to appear on YouTube and its website and is also working with a PR agency.

All of these can be achieved at relatively low cost and brokers should be able to negotiate hard with local suppliers if they want to increase local – and wider – brand awareness.

Clive Galbraith, Managing Director of broker Green Insurance, has worked in the sector for more than 20 years and says some clients have been hit far harder than others. "Motor traders are struggling as are some property companies – it helps if you have a good spread of business and we've always been a lean operation in terms of staff and are holding up well."

He continues: "Some clients are looking at costs and many see insurance as a distress purchase in any case. We make sure we explain what the consequences could be of cutting back and beyond this, make sure we run a tight ship. That means being careful with credit we provide." However, he says Green is planning further expansion – the firm has made a number of acquisitions in recent years and he adds further deals are in the pipeline.

Neil Grimshaw, who runs Ravenhall Risk Solutions, and is winner of this year's BIBA Young Broker of the Year award, says he has no room for pessimists. "I set up my business two years ago, when conditions were little better. From having no agencies, I now have insurers and networks knocking on my door. I don't see any point in worrying about recessions.

"If you're a good broker, you should be able to spot opportunities – for example, we run schemes for riding stables and travel for pregnant women – both these areas were underserved. You need to think where people are going to need advice – that is what we have to be good at so that we create a sustainable business which can survive any conditions."

Captives & Protected Cell Companies

Benefits for both the independent broker and the SME

By Mike Johns, Alternative Risk Management on behalf of Guernsey.

The concept of retaining risk through the use of a captive insurance company is not a new one. The original captive dates as far back as 1957, yet many independent brokers are still reluctant to introduce their clients to the concept and have overlooked the advantages such a vehicle could bring both to their client and their broking business.

In 1997, Guernsey introduced Protected Cell legislation which provided a more cost effective way of entering into self insurance. This effectively extended the "captive concept" to the small and medium sized enterprises (SMEs) which previously had been the sole realm of large multi-national companies, such as those appearing on the FTSE100. Whilst the PCC has been incredibly successful, and is now available in most domiciles, many SMEs are unaware of their uses and advantages, primarily because the broker has not recommended their use.

At the recent BIBA conference held in Manchester, there was a clear consensus amongst the brokers that, whilst premium rates are flat across many lines at the moment, the market will harden and rates will increase. Many SMEs are aware that it is impossible to insure every risk and they will have to focus on how best to manage their risks, decide which they wish to insure and whether to increase deductibles or retentions to maintain existing insurance costs. Captives and Protected Cell Companies (PCCs) can provide an alternative to the conventional market. Many independent brokers have now identified this and this was clearly demonstrated by a significant increase in the number of enquiries, particularly with regard to Protected Cells, during the conference.

So what can Captives and PCCs offer the typical larger client of an independent broker?

- An ability to smooth premium costs and the level of insurance coverage over a prolonged period of time, hopefully ignoring the volatility in the premium cycle.
- An ability to properly structure an insurance programme in a vehicle that will maximise underwriting profits. These profits will accrue to the captive owner.
- An ability to write risks that may previously have been considered "uninsurable" due to the conventional insurance market attitude to the risk or pricing structure.
- To reflect premium to the specific risk of the client and not a premium pool of other risks inclusive of administration costs of insurers.

However, it is important to emphasise that the benefits of using a captive or PCC are not restricted to the client. The broker can also enhance their business in the following ways:

Enhancement of Risk Financing Capabilities

As a captive grows, the broker will become increasingly involved in providing support by way of sourcing and arranging reinsurance for existing and new covers. Where the captive becomes an increasingly dominant feature in the client's group structure, it will inevitably attract the attention of the main board and senior financial personnel. This can also provide a wider opportunity for the broker to promote other service offerings that may previously have been thought to be solely within the capabilities of the client's other professional advisers.

By emphasising their risk financing capabilities the smaller independent broker can elevate their service to that offered by the large international brokers who have their own captive management operations.

Insurance / Reinsurance Commissions

The use of a captive or PCC should not overtly impact the existing commission / fee structure that may exist. Pricing of the programme within the captive or PCC should be comparable to the conventional market including commission structures.

Producer Owned Insurance / Reinsurance Vehicle

Many independent brokers have valuable schemes and underwriting facilities that produce healthy profits for the incumbent insurers. Several brokers have set up their own captive or PCC to capture some of these programmes with appropriate stop-loss protection and become true underwriting operations.

Development of a Long-Term Relationship

The relationship between the broker and the client is paramount. Brokers are entrusted to advise and assist in the selection of reputable insurance carriers. Whilst most of the time that works as a straight forward broker/client relationship an increasing number of the clients are becoming more sophisticated in their insurance buying and are moving to a more in-depth consideration of their internal and external risk. The establishment of a Captive or PCC Cell will commit the client to a long-term relationship with the Broker and the Captive Manager to develop their organisation's risk management strategy.

Conclusion

Whilst no-one can accurately predict when rates will harden, both SMEs and independent brokers should prepare. By establishing an alternative vehicle, now both parties can ideally position themselves to avoid any undue influences of the premium cycle.

About Guernsey

Guernsey hosts more captives than any other jurisdiction in Europe and is the fourth largest captive domicile in the world.

40% of the FTSE 100 and 95 of the Global 1500 have captives in Guernsey.

Approximately half of the captives established by UK companies are based in Guernsey, although the Island hosts captives from more than 40 different jurisdictions.

About Mike Johns

Mike Johns ACII is Insurance Executive at Alternative Risk Management in Guernsey.

He has 22 years industry experience, 15 of which have been in the captive sector.

A past President of the Insurance Institute in Guernsey, Mike is currently an Executive Committee member of the Guernsey Insurance Company Management Association (GICMA).

For more information on Captive Insurance in Guernsey go to: www.guernseyfinance.com

Turning the spotlight on liability

BIBA's Liability and Accident Committee recently organised a round table, bringing together experts to discuss the latest market issues, as **Rachel Gordon** reports


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Liability insurance is complex and an area where commercial brokers' knowledge is tested to the full. Shifts in the law, long-tail claims and the numerous covers offered by insurers means that keeping up-to-date is crucial.

The Liability and Accident/Leading Insurer Liaison Meeting met at BIBA headquarters to discuss an agenda focused on the latest issues.

Does fraud impact on liability insurers?

The first item was fraud, and Chairman Peter Franklin opened proceedings by asking how brokers and insurers should work together to combat this.

Norwich Union's Bob Donovan said the role brokers played in providing insurers with accurate information was vital. "It's not always easy. You have phoenix companies (where assets of one business are transferred to another) and MBOs, which can create confusion. You can be told a company is a building contractor, but in reality is high-risk demolition business. We have to balance making checks with the fact the market is competitive and you need broad definitions to provide cover quickly."

Heather Heale of RSA agreed insurers had largely sought to minimise paperwork often simply requiring a statement of fact rather than a detailed proposal form. She said brokers may well now be required to produce up-to-date claims experience if there was to be a tighter grip on fraud.

Bob Donovan added brokers should talk to underwriters if their suspicions were raised about credentials and a Companies House check never went amiss.

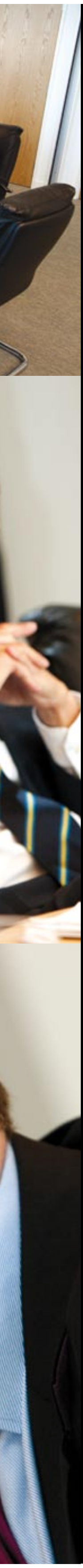
Steve Browne of AXA said brokers had a key role to play. "It helps if brokers question why a new company has been set up and passes on background. My other concern is the growth of online trading is going to make it easier for fraudsters. The industry will need to develop smarter questions as this takes off."

BIBA's Graeme Trudgill pointed out the Law Commission – as part of its contract law reform programme – had stated insurers would be expected to ask more questions, which would help underwriters.

Lawyer Hugh Price said guidance from the Commission was required for whom the broker was acting as agent and beyond this, detailed questions were essential both to reduce intentional fraud and mis-description. "There also needs to be clarity on what a broker's and an insurer's obligations are."

QBE's Chris Judd commented: "No-one is expecting brokers to be catching people out, but it's about up-to-date information and, more than ever, loyalty from brokers is valued." However, he emphasised: "We're in the age of contract certainty – brokers will get jittery if they are unsure about any new clauses."

This was recognised by broker Ben Margetson, who said: "Contract certainty



is important and I think there needs to be greater consistency from insurers on what they expect from brokers and what we need to provide."

Peter Franklin then asked if the recession could prompt some employees to feign injury.

Allan Francis said: "We're keeping an eye on this and would want to intervene before it happens, which his why we have our loss control teams looking at this area."

Broker Wal Andrews added: "I'm not surprised. People don't think of this liability as attracting fraud, but I would imagine insurers will start to see a rise in back injuries and similar harder to diagnose problems."

Will environmental liability insurance take off?

Next on the agenda was environmental liability. Market specialist, Tony Lennon, European Manager for Chubb Environmental Solutions, said: "It's interesting that insurers have approached this in different ways. Specialists such as Chubb see it as an opportunity, while mainstream ones see it as a threat."

However, despite the directive creating new exposures, he said to date there was "no groundswell of demand for the cover". This was despite the Bartoline case which decided insurers were not liable under public liability cover to pay for environmental clean-up and remediation work.

Tony Lennon said he favoured the approach taken in Spain, where companies needed to prove they had funds to pay for any pollution caused or buy cover. In the UK, he said awareness remained low, with brokers having limited knowledge, which was holding the market back.

Peter Franklin countered the market could also be proving slow as a result of the economy and Heather Heale said her company had not seen any rise in enquiries for environmental cover outside of public liability.

BIBA's Steve Foulsham commented: "There needs to be ongoing education in this area, particularly among the SME market and brokers. There is limited perception of increased risk, especially among lower hazard industries."

Steve Browne said: "There are brokers out there who do not understand what is and isn't covered in a standard public liability cover. Bartoline has not raised awareness – brokers often don't realise businesses could be at risk."

Allan Francis said AIG was active in this market: "We see demand for a simple add-on cover that will appeal to regional brokers and can be sold to smaller companies at affordable premiums."

However, Tony Lennon added: "I think the Government could do more to promote insurance – insurers can only do so much. We will continue to offer brokers training – many have no idea cover is available to fill in gaps for as little as £750."

Wal Andrews said: "I would agree some SMEs have real risks – I can see value in particular for motor trade clients." Despite this, Heather Heale added: "The problem is that brokers see this as a low frequency claim area."

Is there demand for retrospective employers' liability cover?

The next topic was whether there was a market for retrospective employers' liability cover. This would cater for the change to the minimum level of cover from £2 million to £5 million and gaps in proof of cover, to provide for long tail disease claims.

Peter Franklin asked if there would be any appetite for this. Bob Donovan said there was none, but that some cover might be made available if a client had bought and sold many businesses over the years.

Similarly, Steve Browne said there was limited enthusiasm from insurers and that guidance would be useful in terms of insurance and TUPE obligations which result when businesses were sold. He said AXA had already looked at providing cover for gaps on a risk by risk basis.

Wal Andrews added: "I can only see this working on a claims-made basis, larger insurers may look to retain much of the risk, possibly within their captive's insurer."

Allan Francis said: "It is all about the quality of the information available. I can't see insurers offering standalone cover," with Heather Heale agreeing: "Insurers need to manage risks and they can't without the history."

Chris Judd added: "We would look at providing cover, but it would need to be on a named basis so you can trace people."

Should the ABI's tracing code be opened up?

Following on, Peter Franklin asked if it is time for an overhaul of the ABI's tracing

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01 BIBA's learned liability specialists
02 Chubb's Tony Lennon and Hugh Price of Hugh James
03 BIBA's Graeme Trudgill
04 BIBA's Steve Foulsham
05 BIBA Committee Member Wal Andrews of Marsh

code, used to find missing insurers. He questioned whether brokers should be given access to the code. A further point was whether an Employers' Liability Fund should be set up, to operate like the Motor Insurers' Bureau.

Steve Browne argued against a change in the status quo, saying: "The code is not a full database. If the industry were to fund one, then it could become possible to open it up, but right now, the information is not accessible."

Chris Judd agreed, saying: "Right now, talks on a proper database have hit the buffers because of funding issues."

Meanwhile, Pat Holland of Groupama said: "There are not really huge problems with the current system. Around 98 per cent of employers' liability claims find an insurer and there is a determination among insurers, particularly in the case of mesothelioma, to deal with any claims as quickly and efficiently as possible."

However, on behalf of brokers, Ben Margetson, said: "A central database which allows brokers to check their clients' insurance history would be very useful, however we appreciate the cost involved."

Latest with trigger litigation under public liability policies

Peter Franklin explained the Bolton case in 2006 decided for public liability cases, the trigger point was 10 years plus or minus one from date of diagnosis. However, later cases based on improved medical evidence now say five years.

He said further guidance should be decided at an appeal to be held this November, but meanwhile, he asked what insurers felt about this issue.

Most insurers said it was too early to reach a decision, although Wal Andrews said he believed there could be more claims if a shorter period was agreed.

State of the market

The meeting closed by asking attendees how they viewed the market. Peter Franklin asked if less people in employment meant insurers were taking a hit. Heather Heale said construction had been affected, but that public sector and civil work was buoyant.

Steve Browne added liability insurers were in good shape and were well placed to assist with risk transfer, in particular for the vulnerable SME sector. It was said that rate rises were happening.

The final topic was the recent announcement that a group of insurers had launched a challenge to the recently-passed Scottish law that states those with pleural plaques should be compensated.

There was broad support for the challenge and Tony Lennon said having different laws throughout the UK was going to be problematic. Hugh Price questioned whether the Scottish Parliament had acted lawfully, while Allan Francis said claims costs would add onto premiums and could run into hundreds of millions of pounds – which would raise costs and lead to more uncertainty.


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06 Peter Franklin, of Franklin Consultancy, AXA's Steve Browne, Marsh's Wal Andrews and AIG's Allan Francis
07 BIBA Commitee Member Ben Margetson of Marsh, QBE's Chris Judd, BIBA's Steve Foulsham, Tony Lennon of Chubb and Heather Heale of RSA
08 Peter Franklin

*** Further information on some of the liability issues raised in this meeting will be provided on the BIBA website.**

In attendance from BIBA HQ:

Graeme Trudgill, Technical and Corporate Affairs Executive
Steve Foulsham, Technical Services Manager

From BIBA's Liability and Accident Committee:

Peter Franklin, Committee Chairman and Managing Director of Franklin Consultancy
Wal Andrews, Deputy Committee Chairman and Technical Advisor: Casualty, Marsh
Ben Margetson, Committee Member and Project Manager, Marsh
Hugh Price, Committee Member and Partner, Hugh James

Insurer representatives:

Chris Judd, QBE, Underwriter, Casualty Division and Chairman of LMA International Business Panel
Pat Holland, Groupama, Assistant Technical Manager, Liability Section
Steve Browne, AXA, Head of Casualty
Heather Heale, RSA, Underwriting Director for Liability and Motor
Bob Donovan, Norwich Union, Technical Manager (Liability)
Allan Francis, AIG, Regional UK and Ireland Manager
Tony Lennon, Chubb, European Manager, Chubb Environmental Solutions

Lessons from America

More than half of Americans have a favourable attitude towards insurers – so is there something we can learn from this over here? **Dr Robert Hartwig** provides some pointers…

It would be unrealistic to expect that the insurance industry could be regarded as the most beloved industry by consumers. But there are good reasons to believe that insurers – and US property/casualty insurers in particular – can emerge from the current financial crisis and economic downturn with their operating model and reputation intact.

Despite the intense media, government and regulatory scrutiny on insurers as a result of events at the non-insurance financial products subsidiary of AIG, evidence suggests that US property/casualty insurers are in a better position than banks and many other segments of the economy. This is primarily because of the superior risk management practices employed by insurers.

While insurers, along with all other segments of the financial services industry, have been adversely impacted by current economic and financial market conditions, the property/casualty industry as a whole remains fundamentally strong.

The bottom line is that insurance markets, unlike banking, are operating normally. The basic function of insurance – the orderly transfer of risk from client to insurer and insurer to reinsurer– continues uninterrupted.

This means that insurers today continue to pay claims, sell and renew policies and develop new products, in stark contrast to banks which continue to fail (57 US banks have gone under as of 1 May), to reduce and eliminate lines of credit, to turn away people and businesses who need to borrow and to scale back the products they offer.

It should also be noted that most property/casualty insurers have stated they have no need for Federal assistance under the US Government's Troubled Asset Relief Program (TARP) and do not intend to seek it.

The resilience and strength that property/casualty insurers have demonstrated during the current and countless past financial crises is attributable to a deeply entrenched and conservative operating philosophy that leads directly to superior risk management strategies. Insurers necessarily run their business under the assumption that every day is a potential doomsday – because it is.

That is what separates property/casualty insurers from the rest of the financial services industry at times like these.

Consider the impact of just three hallmarks of property/casualty insurer risk management: risk-based underwriting and pricing, low leverage and keeping 'skin in the game' in every transaction:

- **Risk-based underwriting and pricing** – insurers use their historical experience and sophisticated modelling techniques to match risk to price and limit their loss exposure based on the amount of capital they have on hand. In the run-up to the current crisis, many banks sacrificed risk-based underwriting and pricing (most spectacularly in the mortgage markets) in order to generate volume and fees.
- **Low leverage** – unlike many of the banks and other financial companies that are struggling, property/casualty insurers do not rely on borrowed money to underwrite insurance or pay claims. So, even when some investments perform

“Evidence suggests that US property/casualty insurers are in a better position than banks and many other segments of the economy”
Dr Robert Hartwig

poorly, the effect is not magnified as it is when investments are highly leveraged. Consequently, there is no credit or liquidity crisis in the property/casualty insurance industry.

– **Keeping ‘skin in the game’** – Property/casualty insurers always maintain a stake in the business they underwrite. Every single claim costs insurers money, hence the strong incentive to underwrite and price to risk. Banks, on the other hand, routinely packaged-up thousands of loans and sold them via the process of securitisation to unwitting investors, severing the link between risk underwriting and risk bearing.

Despite sizable losses in their investment portfolio, property/casualty insurers remained profitable in 2008 and ended the year well capitalized by historical standards. The ratio of premiums written to available surplus, a simple measure of financial leverage, stood at 0.95 as of December 2008. This meant that for every 95 cents in premium written, insurers had $1 in capital (surplus) on hand.

By this measure, the industry’s capital position is stronger now than it has been before any of the major catastrophic events over the past quarter century, including Hurricane Katrina in 2005 (which resulted in $41.1 billion in insured losses) and the September 11, 2001, terrorist attacks (with insured losses of $32.5 billion).

Profitability

Property/casualty insurers also remained profitable in 2008, reporting $2.4 billion in net income after taxes. However, the poor investment environment and higher catastrophe losses contributed to a decline of 96.2 per cent from the $62.5 billion in net income after taxes reported in 2007.

While property/casualty insurers in general maintain a fairly conservative investment profile, investing two-thirds of their assets in highly-rated bonds, interest rates have declined, especially on even the safest of assets. Looking ahead, long-term shrinkage of investment returns is a key concern for the industry.

Amid the continuing economic downturn and sustained period of financial volatility, it is important to remember that state insurance departments closely monitor the financial strength of insurers domiciled or doing business in their states (insurance is regulated by state, rather than federal government, in the US).

State regulators have repeatedly stressed that the insurance system is financially sound. Independent rating agencies also closely scrutinise the financial strength of individual insurance companies and make their rankings available to the public.

Additional evidence of strength and resilience in the property/casualty industry comes from data on financial impairments of insurers. According to AM Best, seven property/casualty insurers became impaired in 2008. The corresponding impairment rate is 0.23 per cent, the second lowest on record – second only to the record low of 0.17 per cent set in 2007.

All of the impairments in 2008 were of tiny companies, whose business mix bears little resemblance to that of the industry overall. Among the impaired insurers were three title insurance companies, a Texas-only motor and home insurer pushed over the edge by Hurricane Ike, and a risk retention group established to handle liability risks of a trucking company.

Reputation

Which brings us to the industry’s perceived reputation among its customers. The latest University of Michigan American Customer Satisfaction Index reveals that, even as the economy weakened, customer satisfaction with the property/casualty insurance sector remained high in the fourth quarter of 2008, improving over 2007 levels. As customer satisfaction with banks declined by 3.8 per cent to record a score of 75, the property/casualty sector recorded a 1.3 per cent gain to record a score of 81. The index measures customer expectations, perceived quality and perceived value of companies in various industries.

Meanwhile, an Insurance Information Institute (III) poll also indicates that, in the five years from 2004 to 2008, most Americans had a favourable or very favourable view of their insurer and even the industry overall. In the five-year period, the percentage of Americans with a favourable attitude towards motor and home insurers averaged 55 per cent. During the same period, the percentage of Americans with a favourable attitude towards life insurers averaged 52 per cent.

While there is always room for improvement, insurance is not, as some would have us believe, the most despised industry in America. By keeping the promises we make to our customers, we can ensure that it stays that way.

Dr Robert Hartwig is President of the US Insurance Information Institute

Niceties of notification

It is vital that brokers correctly advise clients when it comes to claims – not only to offer good service, but also to avoid E&O problems, advises **Simon Gildener**

The issue of claims notification is one which keeps rearing its head in reported cases at the moment and it is one which carries significant errors and omissions (E&O) implications for brokers.

It is my aim to review the common obligations to notify in liability business and explain the importance of getting the scope of the notification right.

An insured is often obliged to notify facts which might, at some time, lead to a claim. Failure to do so promptly may give the insurer the right either to reduce indemnity for a claim, or in many cases, to reject it outright. So, if in doubt over whether or not to notify, the best broking practice is almost always to notify. However, an understanding of what is or is not notifiable is still important. Most notification triggers require the application of an objective test (Would a reasonable person think there is something to notify?) rather than a subjective test (What did the particular insured think?).

Brokers should consider the following illustrations:

- A client instructed you to arrange insurance for two cars. One of the cars has just been in an accident. You have just realised that the policy covers only the other car. Applying the objective test, this would be a notifiable example. Circumstances which 'are likely to give rise to claims' require at least a 50 per cent chance of a claim at the time the circumstances arose and those which 'may give rise to claims' require it be 'at least possible' that a claim will arise.
- A surveyor client has been reading the newspapers about an increasing trend of claims against surveyors linked to collapse of the residential housing market. The client is unaware of any specific issues with its own work, but now wishes to notify all of the residential surveys it has undertaken over the past year, just in case. In general, an unreasoned concern about something is unlikely to trigger notification. Risks must be real, not imagined, so this circumstance would not be notifiable.

The next step is to get the contents of the notification right. It must be broad so as to cover the wide range of potential claims arising from the facts. But it must also be sufficiently detailed to enable an insurer to understand what is being notified and why. It can be a delicate balancing exercise. The more detailed the notification, the better the chance of getting it accepted. But greater is the risk that the notification will be too narrow to encompass connected problems which later come to light. It is important to remember that the content and scope of the notification will be tested objectively, so it does not matter what the insured actually thinks it is notifying.

For example: take a case where a broker has a binding authority. You discover that a rogue employee has been writing unauthorised risks. You make the decision to notify while you are still investigating.

By that stage you are aware of five unauthorised risks. Notifying the five risks to insurers would be a valid notification. But its scope may be limited to just the five risks. A better notification might read: "We are currently aware of five risks which have been written outside the authority. However, there could be more, and we are investigating." This approach is both broad and detailed and provides more scope for the acceptance of a subsequent claim.

In summary, claims notification requires the use of good judgement and enshrining best practice. Getting it wrong for a client could lead to an E&O claim and getting it wrong from your own E&O perspective could mean no indemnification. In this hardening market, it is all the more important to tighten up procedures. All employees should be aware of the importance of the issue and getting it right; making the subject a regular agenda point at management meetings is a good way to keep it front of mind.

Understanding these issues and putting robust systems in place to manage them will help ensure that your house is in order when it comes to prompt and satisfactory claims notifications.

Simon Gildener is General Counsel for Howden Insurance Brokers, a BIBA-accredited PI broker

FSA industry guidance – compliance is in your hands

The FSA has fed back on the proposed industry solution put forward by BIBA and other trade associations. **Vannessa Young** advises on the right action to take...

Significant efforts by BIBA's compliance team, LMBC, IIB and the ABI to create an industry solution to resolve conflicts of interest, improve disclosure of remuneration and boost transparency in the commercial market came to fruition in April.

The Financial Services Authority (FSA) finally confirmed 'industry guidance' status on the industry solution. The FSA's stamp of approval closed one chapter of work on the initiative, but opened another, as intermediaries now need to take the industry guidance and make the appropriate adjustments to their processes and practices. Commercial customers should expect to receive disclosures that are clear and accurate and this industry guidance will play an important part in helping achieve this.

The industry guidance does not impose 'new' requirements upon firms, rather it seeks to provide greater clarity about what is required of them. Members should also remember that this guidance is voluntary and provides them with one approach to achieving compliance, not the only one.

So what is in the industry guidance?

Conflicts of interest – the FSA's rules and principles require firms to take all reasonable steps to identify conflicts of interest between themselves and a client. The guidance explains to brokers that they face a conflict of interest where the firm's own interests conflict with those of a commercial customer; or the firm cannot act in the best interests of one commercial customer without adversely affecting the interests of another commercial customer.

It is the insurance intermediary's duty to manage conflicts of interest so that their interest does not conflict with the interests of commercial customers and of any insurers on whose behalf they may act. In this way, the intermediary will ensure that conflicts of interest arising from remuneration arrangements or business models are properly disclosed and managed. An intermediary may manage such conflicts either by disclosure or withdrawal from the engagement.

The guidance suggests that firms establish their own internal conflicts of interest management policy. It also provides information on how to build suitable conflict management controls, the circumstances in which conflicts of interest might arise and points out that brokers need to be able to demonstrate that they have in place rigorous internal controls for identifying and managing potential conflicts of interest and a mechanism for preventing them adversely affecting the firm's commercial customers.

Capacity – the conflicts of interest section of the guidance concludes by suggesting that one way to help manage the conflicts of interest that arise from commercial relationships is to give the customer clear information about the capacity in which an insurance intermediary is acting – ie, whether it is acting for them, for the insurer or, in some cases, for both. The guidance reminds firms that their relationships with commercial customers and insurers can potentially lead to conflicts of interest and that clearly describing the capacity in which they are working to a commercial customer is one way of mitigating any conflict. It would not be sufficient to simply rely on a generic statement in a Terms of Business Agreement (TOBA) to describe capacity – this should be on a contract-by-contract basis and, of course, it can vary.

Status/breadth of search – the industry guidance reminds firms that the status and

Timeline

2 Feb 2005
FSA issues guidance on conflicts and inducements, BIBA issues Regulatory Update

14 July 2005
BIBA issues guidance on conflicts identification and management

26 July 2005
BIBA announces launch of conflicts investigation service

21 November 2005
FSA issues 'Dear CEO' letter, BIBA issues Regulatory Update

7 March 2006
BIBA issues supplementary guidance on conflicts management

March 2006
FSA Chief Executive John Tiner raises concerns that commercial customers are not asking for commission details

15 May 2006
BIBA issues Regulatory Update on using TOBAs to remind customers about their right to ask for commission details

8 December 2006
BIBA issues a positioning statement, saying a market solution can be found

18 April 2007
BIBA reiterates its position on a possible market solution

14 June 2007
FSA announces forensic review of commission disclosure

26 September 2007
EU Competition enquiry into business insurance is published and comments about lack of transparency

FSA forensic review concludes that costs exceed benefits but further work is needed

11 January 2008
BIBA publishes guidance on how to create and implement a process to disclose if requested

20 March 2008
FSA publishes DP08/2, which includes draft rules

16 April 2008
BIBA reiterates its position on disclosure

24 June 2008
BIBA formally responds to DP08/2

16 December 2008
FSA issues FS08/7 and confirms that its preference is for industry guidance

1 April 2009
FSA confirms industry guidance.

Throughout the process, BIBA had numerous conference and phone calls with the FSA about the industry solution.

product disclosure requirements apply separately in respect of each contract and so the commercial customer must be informed of the breadth of choice on a contract-by-contract basis. The FSA's rules require the breadth of choice to be described as either a 'fair analysis', whether it is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings, or it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a 'fair analysis' of the market. The industry guidance gives brokers assistance on when the breadth of choice they offer can be described as a 'fair analysis'.

Commercial customers' right to commission information and disclosure

The industry guidance maintains the current 'upon request' disclosure regime but gives direction on how brokers can give greater prominence to the commercial customer's right to ask for commission information. It states that simply including a statement in the TOBA would not be sufficient and suggests that it should be made in either:

- the covering letter that might accompany a written quotation
- a document of no more than one page in length
- or orally.

Where the commercial customer exercises the right to request commission information, the industry guidance points out that firms should have in place processes to ensure that the commercial customer receives a full, accurate and timely disclosure of the total commission payment.

The industry guidance goes on to assist firms in how to disclose the value of any contingent arrangements they may have, such as profit share or volume overrides.

Attached to the industry guidance are annexes which suggest standardised methods for making all the disclosures outlined above.

Distribution chains

The industry guidance reminds firms of their obligation to provide clear, fair and non-misleading information. With this in mind, the industry guidance suggests that brokers inform the commercial customer where they have used the services of another intermediary in placing the insurance.

What happens next?

The FSA's supervisors will be assessing whether customers are receiving sufficiently clear and comparable information about their intermediaries' services, capacity and remuneration in 2010/11.

BIBA has produced 10 tips to help firms implement industry guidance. Briefly these are:

- Check current processes' procedures and documents in relation to the accuracy of the disclosures concerning breadth of search and capacity.
- Look and see whether existing TOBAs or processes contain generic descriptions of searching and the firm's capacity. They will need changing if they do.
- Consider using the annexe template from the industry guidance if current methods of working are changed.
- Does the firm inform its commercial customers that they have the right to ask about the commissions received?
- Is the commercial customer notified about the presence of others in the distribution chain?
- Check whether internal policies and processes for identifying and managing conflicts of interests are robust enough.
- Does the firm have a formal process to disclose commission upon request?
- How does the firm explain the services it performs for the client?
- Train staff and raise awareness of any existing or new processes introduced as a result of implementing the industry guidance.
- Keep a formal record of any of the changes made in the way in which commercial business is carried out as the FSA will ask to see them.

BIBA is running a series of half-day training sessions on the industry guidance around the UK. For full details of dates, venues and booking arrangements, please go to:
http://www.biba.org.uk/PDFfiles/TrainingEventsIndustryGuidance.pdf
A copy of the industry guidance is available on BIBA's website:
http://www.biba.org.uk/industryGuidance.aspx
BIBA's top 10 tips on implementing industry guidance are available at:
http://www.biba.org.uk/PDFfiles/IndustryGuidanceTop10Tips.pdf

Vannessa Young is BIBA's Compliance Co-ordinator

Carbon reduction strategies, moving your technology safely to new premises and in-house risk management are the issues of the moment

Time to think carbon reduction

"The UK Government expects companies from all types of sectors to address the issue of climate change"

The Carbon Reduction Commitment (CRC) is linked to the Government's commitment to cut CO_2 emissions by 1.2 million tonnes of carbon per year by 2020. It represents the first world mandatory legislation outside Kyoto (which applies to the traditional 'dirty industries') that requires both the public and private sector to cut their CO_2 emissions. BIBA has been taking guidance on reducing carbon emissions from consultancy Carbon Smart. (www.carbonsmart.co.uk)

Carbon Smart's Associate Director, Esther Rodriguez, says: "Carbon management is an issue that can no longer be ignored. The UK Government expects companies from all types of sectors to address the issue of climate change. The business community has to face the fact that climate change is an 'inconvenient truth' that needs to be managed."

The CRC will affect large non-energy intensive businesses (such as large offices, hotels, large shops, supermarkets, shopping centres) and public sector organisations (local authorities and central government departments) whose annual half-hourly metered electricity use is above 6,000 MWh. This means that if your organisation pays more than £500,000 in electricity a year and has at least one half-hourly meter, it has an obligation to report to the Environment Agency.

It will come into force in 2010 and will have important implications for businesses as follows:

– **Reputational** – the Government will publish a yearly league table comparing companies' carbon performance year-on-year. Companies achieving the highest carbon reduction (measured in both absolute and relative to unit turnover or revenue expenditure for the public sector) will be placed at the top. Companies with poor performance will be at the bottom which will affect the company financially and send a negative message to investors and other stakeholders.

– **Financial** – companies will have to buy carbon allowances at a set price. During the first phase, the price of one tonne of carbon has been set at £12. For example, if a company emits 100,000 tonnes of CO_2 emissions annually, it will have to pay the Government £1,200,000. The Government does not keep the money – revenue is paid back to companies under the scheme plus or minus a bonus, depending on the position at the table. Companies at the top of the table receive a bonus, whereas companies at the bottom will be penalised. For the first year, the bonus has been set at 10 per cent. This will increase year-on-year, ie, in year two, the maximum bonus will be 20 per cent; in year three, 30 per cent and so on until year five, when it will be reviewed again. In year five, where the bonus or penalty is set at 50 per cent, our example company would make or lose at least £600,000 (we estimate the price of a tonne of carbon to rise in five years' time). Additionally, companies failing to submit regular information to the Department of Energy and Climate Change register face significant fines.

– **Management** – companies need to implement or improve their management and data gathering systems to ensure they can send the required data to the Government. Companies need to calculate how many tonnes of CO_2 derive from their energy consumption, ie, gas, electricity and other on-site stationary fuels. This may be particularly challenging for sub-tenants who may not have access to their energy bills or meters and so will need to work with their landlords.

IT in transit – preparation is key

It is said that moving house is one of the most stressful events in life and without careful planning and execution, office moves can be equally taxing.

A key aspect when planning an office relocation is the movement, set-up and reactivation of a firm's IT systems and the data held within. Consultancy ISG-IT recently assisted BIBA with its recent move within the City of London.

Director Peter Kennet advises that any company with a planned move must be thoroughly prepared and that the key issues to focus on are:

– keeping company 'downtime' to a minimum
– movement of physical hardware between locations
– security and safety of the company's data while being moved
– providing clear scheduling and communication, in order to facilitate a harmonious relationship between the various parties involved, such as staff, contractors and service providers
– organising continuation to the new site and/or cancellation (within required notice periods) of service provider contracts, where required.

Peter adds: "Moving office does not have to be a stressful process, least of all relocating an aspect as fundamental to your business as IT systems. By keeping in mind the typical challenges involved and developing practical solutions to them, you can make the entire process cost efficient and stress-free."

BIBA's recent IT move

BIBA moved in February and also used this as an opportunity to upgrade its IT system. This not only gave access from day one to a state-of-the-art IT infrastructure, but also helped to reduce company disruption.

The multiple server-based system used in the old premises was consolidated into a single piece of hardware which was hosted in a dedicated offsite data centre. This allowed data to be migrated from the old servers to the new hosted system prior to the move date, resulting in zero company downtime during data transfer and data being completely secure throughout the relocation process.

The physical movement of hardware was carried out by a fully-insured office relocation contractor and on the transition day was limited to staff desktops such as IT peripherals – printers and scanners.

With the new offsite server infrastructure in place prior to the move date, it was a case of plugging in staff computers at the new location. These were then ready for use on day one.

Numerous parties were involved in the BIBA relocation, the co-ordination and timing of which was critical to making the process seamless. Examples include:

– timing/scheduling of contractors – such as telecommunications wiring installers having access to the new site prior to furnishers
– cancellation of internet service provision at the old office (within the contract notice period) and set up at the new location. As a precaution, clauses to extend services at the old site were included in case the move was delayed.

Putting your own house in order

Most brokers regularly advise clients on the need for good risk management, but the evidence to be found on the FSA website with regard to Final Notices and fines for insurance brokers indicates that many do not practise what they preach, say consultants Mazars.

Patrick Fox and Robert Martin, of Mazars' Governance, Risk and Internal Control unit, say some brokers comfort themselves in the specifics of the Final Notice on the basis that they do not undertake such transactions so have nothing to worry about.

However, they point out that the majority of the Final Notices relate to the failure or absence of adequate internal controls, which, rather than a fine, puts the future of the company at risk.

Mazars advises brokers must be clear on who the risk manager in their firm is and on whether anyone acts as an internal auditor. Neither of these roles needs to be a full-time job and can be outsourced.

The firm emphasises that good risk management starts at the top of the organisation and that the following questions must be answered:

– Does your organisation have definitions of risk and risk appetite and have these been communicated to staff? Some employees may believe they have greater latitude to expose the company to risk than senior management would want them to have. Putting these definitions down on paper helps.
– Have you identified key areas of risk and considered the materiality of the exposures these could create and the probability of occurrence?
– Have you looked at the controls in place and assessed whether they are appropriate?
– Are further controls cost-justified?
– Who owns what elements of risk in your business and do they know they carry responsibility?
– How does risk form part of your business decision making?

Starting a formalised risk management process does not have to involve high expense or complex computer models. A good starting place is a brainstorming session by your senior team to fathom out what your key risks are, advise Mazars.

BIBA's portfolio of exclusive schemes and facilities is a range of specially negotiated products and services. Offering unique benefits to BIBA members and their clients, both retail and commercial. They can improve efficiency, reduce costs, offer a competitive edge and provide a home for those difficult to place risks.

Hand-picked, the schemes range from travel insurance to brokers' own PI cover. They offer benefits to brokers with enhanced commissions and access to specialist markets with nominal support.

BIBA schemes and facilities are approved by BIBA's General Insurance Brokers' Committee and are monitored by BIBA's Technical Department.

For more information on BIBA schemes, or to order a copy of the *Schemes and Facilities* or *PI Initiative* brochures, please contact Steve Foulsham, Technical Services Manager, on 020 7397 0234 or email: foulshams@biba.org.uk

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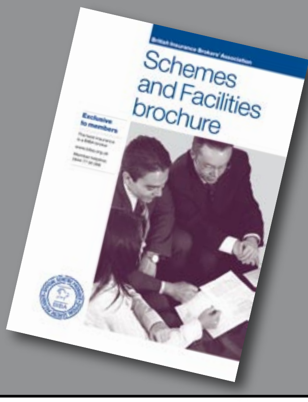

Perfectly tailored for an exact fit

BIBA's range of schemes and facilities are a cut above the rest and so brokers recommending them can meet their clients' specialist needs, says **Steve Foulsham**

Protect against pollution

Gallagher London, in association with BIBA, has launched a new Environmental Liability scheme which provides BIBA members with an online quoting solution – www.bibaenvironmental.com – to cover their client's gradual pollution exposures.

The Environmental Damage (Prevention and Remediation) Regulations 2009 came into effect in England on 1 March 2009. On the basis that the polluter pays, they aim to ensure that companies (both large and small- and medium-sized enterprises) take financial responsibility for their future impact on the environment by introducing new remedies or penalties, such as complementary and compensatory remediation.

It is a misnomer that gradual pollution cover is expensive and difficult to obtain – the online quoting system starts at a minimum premium of £650 and a formal quote can normally be obtained within three to five minutes.

Most brokers accessing the scheme have been extremely pleased to tackle this uninsured exposure for their clients and to develop a new revenue stream in these challenging economic times.

Providing the cover is straightforward, as this Q&A from Gallagher shows:

Q: What information do I need to collect before obtaining an online quote?

A: None that isn't already in every broker's possession, ie, for operational cover you only need:

- title of insured
- current and prior use of the location to be insured (chosen from a drop-down list)
- address and postcode for each location
- for a historical pollution quote, in addition you will need confirmation that a desktop site survey has been passed within the past three months.

Q: Can I receive and bind the quote entirely online?

A: All quotations obtained through the online system will provide documentation electronically via email straight into your inbox. This includes the policy wording, which will appear there within seconds of binding ensuring contract certainty.

Q: What's the best way to train our staff to prepare their first quote online?

A: Probably the most efficient use of time is to log into one of the regular web seminars that Gallagher will be running exactly for this purpose. The training schedule will appear on bibaenvironmental.com.

For more information, ring 020 7204 6096 or email Gallagher London via email bibaenvironmental@ajg.com or visit the scheme website at www.bibaenvironmental.com

Personal lines outsourcing – speak to the specialists

Brokers seeking to halt the drain caused by the increasing cost of administering their motor insurance book should take advantage of the BIBA Personal Lines Administration facility.

Operated by Equity Direct Broking, the BIBA Personal Lines Administration facility enables brokers to transfer all the headaches associated with handling private motor and household policies to a specialist that takes care of the entire process.

The benefits of doing so are immediate and valuable. The facility is specifically designed to relieve the strain on resources, allowing brokers to focus on more profitable areas of their business. It could be the rescue package many are seeking.

Key features of the facility include guaranteed similar cover and price matching on transferred policies and the newly introduced no claims discount on transferred private car policies equivalent to the time the customer has been a named driver.

Higher broker commissions are paid by Equity Direct, not just for the introduction, but for the entire life of the business.

The BIBA Personal Lines Administration facility is best explained by Equity Direct's Broker Development Manager, Steve Young, who says: "It's just like having your very own personal lines department, with none of the overheads and more of the profits."

Effectively, brokers become partners with the facility provider; they benefit from working closely with Equity's team which handles everything from generating renewal quotations to processing claims.

There is no denying that commissions on traditionally-placed motor and household policies are dwindling, especially as the large insurers are withdrawing their services from various networks, so it makes a great deal of sense to protect profit levels through the BIBA facility.

As Steve Young adds: "We do all the work, except walking down to the bank to deposit the commission cheque every month; we leave the broker to do that."

For more information, contact Steve Young, Equity Direct Broker Development Manager, on 01277 206276, fax 01277 240898 or email steve.young@equitygroup.co.uk

Short-term cover made easy

Temporary Cover, the online short-term insurance provider, and BIBA have launched a joint website allowing members to provide short-term motor insurance to their customers.

BIBA members are now able to access a potential new business avenue online via the BIBA- branded Temporary Cover website.

BIBA member benefits include:
- a streamlined website to simplify the sales process for broker and customer
- broker fees are added to the basic premium and credited with the amount due via a monthly settlement
- customers receive their documentation instantaneously via email
- exclusive policy features, such as up to seven days' free EU cover for all comprehensive policies and personal accident cover with all policies
- access to an online admin area giving data on historical quotes so that the customer and brokers do not have to re-supply details if they take up cover later.

Product features include:
- short-term cover for cars and vans (under 3.5 tonne) for 1-28 days
- additional drivers (including overseas visitors)
- no risk to vehicle owner's NCD
- no need to own the vehicle insured
- vehicles up to Group 17
- self-drive hire cover
- secure website with full payment system
- takes less than three minutes to quote and sell a policy.

Managing director Alan Inskip says there are numerous situations where a client may require temporary cover, including:
- borrowing/lending a vehicle to friends and family
- insuring a foreign visitor/relative
- test driving a vehicle prior to purchase
- drive away cover
- sharing a long journey.

Alan adds: "Since the launch of this scheme we have received an extremely positive response from BIBA brokers. With the extra benefits being offered around personal accident and EU cover, brokers are able to offer their customers highly-competitive rates and attractive policy features. This is an attractive niche area for brokers and we've looked to make it as streamlined and simple to sell as possible. It is also fast to register with us, we simply need FSA regulation details and a postcode – we then send brokers information and a password."

For more information telephone 08707 87 35 35 or email contact@tc247.co.uk

Steve Foulsham is BIBA's Technical Services Manager


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Why it's worth doing well

Brokers should beware of the gift horse from insurers which bears free training, as **Steve White** explains

Grandmothers are wise, aren't they? My Gran had several old sayings that I still bear in mind in my working life: "A job worth doing is worth doing well" and "Don't count your chickens before they hatch" are two that spring to mind. I am sure as you read this you can think of several more.

However, there is one such expression that, from a training perspective, causes me to question my Gran's wisdom, and that is: "Don't look a gift horse in the mouth". Let me explain why.

During a soft market, brokers are understandably more inclined to closely monitor items of expenditure and budgets. Tough market conditions and the wider implications of the current recession mean items such as training costs come under the microscope.

It is not surprising, therefore, that the availability of 'free' training provided by insurers is seen by some as an attractive proposition. But this is where my concerns about gift horses comes from.

Training has an important part to play in the development of staff. Remember also that Financial Services Authority (FSA) rules require firms to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

Members often ask me how can a firm demonstrate to the FSA, if asked, that it is complying with the rules. While a 'one size fits all' answer might appear simplistic, the basic elements of that answer are worth repeating.

All staff members should have a job description. From that job description, the key skills, knowledge and competencies required to satisfactorily perform the role can be identified. The firm should then periodically measure each staff member's performance against the identified key skills, knowledge and competencies and where deficiencies are found, training should be used to bring the skill or knowledge up to the required level.

So we have established that training should be used to address an identified need, and I would contend that face-to-face training is often the best kind you can get. But back to those gift horses. The danger of relying on 'free' training from insurers is that it is unlikely to be targeted to the specific needs of specific staff members. It should be viewed as a complement to targeted training, rather than a substitute.

BIBA has given its full backing to, and is a partner to, the Chartered Insurance Institute's Broker Academy. The Broker Academy has been developed by the industry, for the industry. The Broker Academy's regional training programme delivers a mix of technical and business courses at accessible venues across the UK and is put together following consultation with local brokers.

Broker Academy's face-to-face training programmes are now in place across most parts of the UK and the feedback we have had from members has been very positive, as these recent comments show:

"Even after my years in the industry I still found it very useful"
Liverpool delegate

"Great trainer and interesting content"
Birmingham delegate

"Very productive and informative"
Glasgow delegate

"The feedback from my team has been excellent"
UK national broker

On reflection, my Gran was certainly right all along in respect of training, because clearly if the job is worth doing it is worth doing well...

Steve White is BIBA's Head of Compliance and Training

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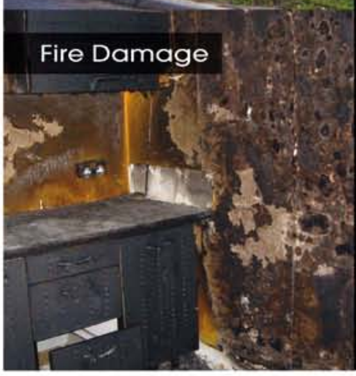

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