

# The Broker

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## Regulation change

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## BIBA contacts

### Eric Galbraith

Chief Executive  
020 7397 0201  
galbraith@biba.org.uk

### Peter Staddon

Head of Technical Services  
020 7397 0204  
staddonp@biba.org.uk

### Graeme Trudgill

Head of  
Corporate Affairs  
020 7397 0218  
trudgillg@biba.org.uk

### Becky Pledge

Communications Assistant  
020 7397 0231  
pledger@biba.org.uk

### Steve White

Head of Compliance  
and Training  
020 7397 0222  
whites@biba.org.uk

### Steve Foulsham

Technical Services Manager  
020 7397 0234  
foulshams@biba.org.uk

### Lindsay Campbell

Executive Assistant  
020 7397 0221  
campbelll@biba.org.uk

### Doreen Campbell

Office Manager  
020 7397 0219  
campbelld@biba.org.uk

### Vannessa Young

London Market and  
Compliance Co-ordinator  
020 7397 0233  
youngv@biba.org.uk

### Kirsty Wingrove

Membership  
Manager  
020 7397 0224  
wingrovek@biba.org.uk

**British Insurance  
Brokers' Association**  
8th Floor, John Stow House  
18 Bevis Marks  
London EC3A 7JB

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## Welcome



**Leighann Burtrand**  
Editor of *The Broker*

We have recently launched a new campaign called Challenge BIBA, which looks at the key issues that have affected members and what we have accomplished during the past year.

Challenge BIBA is available on our website and the BIBA TV Channel on YouTube, the video-sharing website. YouTube says that people watch over two billion videos a day, a phenomenal figure, but in part this is one of the reasons why we want to increase our social media activity.

Not all brokers use Linked In or Twitter – but most will be using the internet in some form or other. We need to promote brokers in a variety of media. We continue to focus heavily on the traditional media as plenty of us still read newspapers and watch TV. But, we also need to be aware that being on YouTube brings us to a massive audience and is a medium that is easily accessed by people at work and home.

It would be good to get your feedback on Challenge BIBA. We will add to the series on a regular basis, so if there are topics you think we should include, please let me know.

Whilst on the subject of social media, we have produced a collection of legal guidance to help brokers understand and manage the potential risks surrounding the use of social media. We appointed a law firm to produce the documents for brokers, including a guidance note on managing social media, a template social media policy and a template disclaimer for use on Linked in groups.

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Steve White answers some topical questions for members



As the Coalition Government brings change to Britain, BIBA's Chief Executive Eric Galbraith spells out his aims for a fairer future for brokers through increased political lobbying.

### Spreading the word

A team from BIBA recently attended the Conservative Party Conference in Birmingham, spending a productive time pushing home our Manifesto messages and emphasising that the cost of regulation needs to be proportionate to the low risk brokers pose.

It is important that we do not just target ministers. We want all MPs to understand the role of brokers and the benefits they bring to businesses and consumers. Each MP is different in terms of their knowledge and our focus over the coming months will be to ensure that as many of them as possible are clear on what we do.

### The CPMA – an opportunity for change

We are also heavily involved in discussions regarding the formation of the new Consumer Protection & Markets Authority (CPMA). This will sit alongside another new regulator, the Prudential Regulation Authority (PRA), which operates under the Bank of England.

We have recently issued our response to the Treasury's consultation paper on a new approach to regulation. Our formal two-part response is based on the comments of a cross-section of members, along with replies to the questions in the consultation paper. We also provided a paper providing both quantitative and qualitative comments on the current FSA regime.

Meanwhile, the CPMA, which will assume regulatory authority over insurance brokers, will be here surprisingly quickly – it will take over in 2012 and the FSA is currently being disbanded in stages.

BIBA has over the last five years developed a strong relationship with the FSA, and we hope that this change will provide an opportunity to create a regulatory environment that reflects the low risk nature of professional insurance brokers and intermediaries.

Our other focus remains the Financial Services Compensation Scheme (FSCS) and we will continue to lobby for an end to cross subsidy with other financial sector providers, e.g. lenders, and a separation within our own compensation silo from those whose main business is not insurance intermediation. As I have said before, it infuriates me that our sector is responsible for bailing out



“Regulation change is our top priority for 2011.”

secondary sellers, who have been shown to have caused so many of the problems.

### A different approach to employers' liability

It seems that problems surrounding employers' liability claims – particularly when linked to asbestos – have put the insurance industry in a bad light. As has been well documented, there has been a great deal of litigation surrounding culpability when an insurer is no longer in existence.

We announced recently that we supported the establishment of an Employers' Liability Centralised Database, operated by the Employers Liability Tracing Office (ELTO). This is likely to be the most effective way of bringing certainty to claimants and putting an end to what have been distressing delays.

However, it will also lead to new responsibilities for brokers. We expect that brokers will have to ask for their customers' Employer Reference Number at point of sale, together with the capture of information on subsidiary companies and trading names.

This may require the introduction of training for employees.

### Make it easy on yourself

As an industry, insurance is known for creating wordy documents and when you bring regulation into the mix, reading essential information is hugely time consuming.

Many BIBA members make use of our website, where we provide regular updates – in a concise form. If you have not visited our site for business purposes for a while, then I would urge you to check out the site, whether for the latest need-to-know information or for the extensive archive.

Wherever possible, we look to keep you aware of the key essentials in a format that takes minutes to read. There are a raft of important issues that are set to affect brokers, including the revision of the Insurance Mediation Directive, changes to the Consumer Credit Act, reform of Insurance Contract Law and Continuous Insurance Enforcement.

# BIBA calls on members to back FSCS campaign

BIBA has developed a plan for members to support its lobbying campaign for a fairer deal for brokers through the Financial Services Compensation Scheme (FSCS).

Chief Executive Eric Galbraith commented: "The significant increase in FSCS fees is a major issue and it is BIBA's number one priority to lobby the FSA for a fairer funding model. We have lobbied the FSA hard over a number of years and are pleased that they have listened to our concerns and are launching a consultation on the issue in the coming months – this is our chance to influence and potentially change the way brokers pay their FSCS levies."

He added: "I would like members to be aware that the consultation paper is the key way that we can act on this issue. When it is launched, BIBA will establish a position on the way forward for brokers. We will respond to the FSA directly and lobby the appropriate

stakeholders, including FSA, Treasury, politicians and media."

Eric added: "We have established a database of every members' MP. If we are unhappy with the consultation proposals we can write to every member outlining the position for brokers and the action we need from the consultation paper. We will arm you with our messages so that as a profession we have a consistent voice which is more likely to be heard."

"When the time is right there will be a call to arms from BIBA for members to rally together on this important issue. I encourage all members to support BIBA's central lobby effort so that we can create such a strong voice for the sector that action has to be taken to change FSCS funding."

BIBA is working with professional lobbyists, Fleishman Hillard, who have advised that involvement from members could be key to influencing



change.

Eric concluded: "If even half of members write to their local MP with a message consistent to ours then the impact will be significant and we will be able to build important allies who will lobby the Government from within. We are currently working with others in the industry such as *Insurance Times* and the IIB and keeping them advised of our plans so that everyone can work together to achieve this common goal. If you haven't already done so, I encourage you to familiarise yourself with BIBA's positioning paper."

## Ian Dickinson takes over the GIBC reins

The General Insurance Brokers' Committee (GIBC) has a new Chairman in Ian Dickinson, who is also Commercial Executive/General Insurance Compliance Manager with Gloucester-based broker, Brunson.

Ian is a well known personality and is a past regional Chairman of BIBA. He has worked for Brunson for the past 24 years.

GIBC represents the interests of the association and BIBA members in the general insurance business sector. The GIBC reports to the BIBA Board and addresses all matters relating to general insurance that are brought before it. Ian takes over from David Perry of Towergate.



Ian Dickinson

# BIBA takes BIS into broker offices

BIBA recently took representatives from the Government's Department for Business, Innovation and Skills (BIS) into broker offices to show the challenges and pressures faced by thousands of small brokers

BIBA linked up with BIS which is looking to understand the reality and concerns of day-to-day business and other issues faced by brokers. The department is also interested in any future and succession plans that brokers have.



BIS observing challenges first-hand  
Left to right: Paul Robertson from Midway Insurance Brokers, Christine Chamberlain from BIS and Peter Staddon BIBA Head of Technical Services.

BIS wants to know how better to support businesses and is also focusing on the

impact of regulation – and whether it is viewed as a burden or as protection. In addition, it has looked at how regulation might be reduced but its effectiveness maintained.

BIBA facilitated the visits to two member brokers to enable BIS to get a better understanding of brokers' needs so that these can be represented when future policy and regulations are shaped. The meeting also follows BIS's involvement with BIBA's trade

credit insurance group which was launched last year and has received support from BIS.

Peter Staddon, BIBA's Head of Technical Services, said: "We are pleased to have built up a positive relationship with BIS and this visit will allow them to understand and consider members' needs when they are shaping future policy. There will be big changes ahead and the more understanding that the Government and its departments have of BIBA members, the better."

## New members for Healthcare Focus Group

BIBA has strengthened its Healthcare Focus Group with the appointments of Mike Izzard, former Chairman of AMII and Wayne Pontin, from Jelf Employee Benefits. The move follows the recent appointment of John Miller from Towergate who joined to represent consolidators on the committee.

The new appointments follow the committee's decision earlier this year to broaden its remit from private medical insurance to wider healthcare issues including income protection, critical illness and group life insurance.

Peter Staddon, BIBA's Head of Technical Services, said: "The new members of the Focus Group will strengthen the expertise of the group which will help us to tackle a range of health care industry issues head on."

Glen Smith, MD of Healthcare Partners and Chairman of the BIBA Healthcare Focus Group, added: "The stronger focus group will help us to engage with Government, especially following the announcements around the NHS in the recent comprehensive spending review."



Talking points from left to right: Mike Cowburn of Towergate, this year's Francis Perkins Award winner; Chris Giles, CEO, Giles Group; Brendan McManus, CEO, Willis UK and Ireland; Barry Smith, CEO, of Ageas; Andy Halstead, Head of Distribution, North, Axa and Imran Khan, Regional Young Broker of the Year

## Bouncing Back: Y&N holds annual regional event

BIBA's Yorkshire and Northern Region's event returned to the Royal Armouries Museum in Leeds last month for its annual event, which was entitled 'Bouncing Back'.

According to Regional Executive Ian Raper, the event had its strongest line-up of speakers yet and despite the economic conditions, attracted a larger number of member delegates than last year.

"We had a wide range of presentations with subjects including the 'Bouncing

Back Economy' by an ex-Bank of England executive, social networking, regulation in the new political climate from Branko Bjelobaba, An insurer's perspective from Axa, environmental liabilities and the review of the business interruption policy wording," he commented.

BIBA Chairman, Patrick Smith provided an overview of BIBA's activities and Peter Staddon and Steve Foulsham held a well attended session on BIBA's schemes and facilities.

The day ended with

presentations and a panel discussion on the industry's future chaired by Mike Cowburn of Towergate, this year's Francis Perkins Award winner, Chris Giles, CEO, Giles Group, Brendan McManus, CEO, Willis UK and Ireland, Barry Smith, CEO, of Ageas, Andy Halstead, Head of Distribution, North, Axa and Imran Khan, Regional Young Broker of the Year.

Ian added: "We are grateful to the sponsors and exhibitors for enabling us to put on this event for the benefit of members."

## Opportunities in Adversity is 2011 conference theme

BIBA has announced that Opportunities in Adversity will be the theme for its 2011 conference and exhibition to be held at Manchester Central on 11 and 12 May 2011.

The theme was selected to recognise the difficult economic conditions facing the country, while highlighting those entrepreneurial brokers who will relish the challenge to build stronger business models.



Lindsay Campbell, BIBA Conference Organiser, said: "It's always good to return to Manchester, where we've enjoyed some great conferences over recent years. Manchester Central, which has proved extremely popular

with delegates and exhibitors, is conveniently located in the heart of the city centre, offering great networking opportunities both at the conference itself and late into the evening! We look forward to seeing you there."

The event will follow the successful two-day format launched in 2010. Entry to both the conference and exhibition will be free to all employees of BIBA member firms and all

brokers are welcome to attend the exhibition at no cost.

Eric Galbraith, BIBA Chief Executive, added: "BIBA 2011 will address the business issues for all segments of the broking and intermediary channel, as well as providing the best networking experience available in the industry and the largest insurance exhibition in the UK. I look forward to welcoming you to BIBA 2011 in May next year."



# Making the right connections



## As a busy year draws to a close, **Leighann Burtrand** reports on the latest meetings and activities

A team from BIBA recently returned from this year's Conservative Party Conference, where we joined some 13,000 delegates. It was a high profile event, as was evidenced from the amount of media coverage, and also incredibly hectic.

But we succeeded in building a number of important new relationships, as well as reinforcing our existing main ones including Mark Hoban, the Financial Secretary to Treasury.

We also met David Gauke MP, Exchequer Secretary to the Treasury and Justine Greening MP, Economic Secretary to the Treasury and Mark Prisk MP, Minister for Business, Innovation and Skills with whom we raised key manifesto points including the FSCS, the new regulator, the CPMA and the revision of the Insurance Mediation Directive (IMD) that massively affects brokers.

We also met European representatives including Malcolm Harbour MEP, Chairman of the Internal Market and Consumer Protection Committee. We spoke to him about the IMD other broker regulatory issues. Another useful contact was Vicky Ford MEP, Conservative Spokesman on Economic and Monetary Affairs. She pointed out that 50 per cent of

all MEPs' proposed changes to a European Directive make it to the final text – so we will clearly continue to target this sector.

We are now in contact with Penny Mordaunt MP, who is chair of the All Party Parliamentary Group on ageing and older people. Our aim was to show how signposting to brokers can help older travellers and consumers.

There has also been plenty of other activity going on, as this round-up shows:

### Government

- We met with Heather Wheeler MP, Stephen Lloyd MP and the researcher from Greg Hands MP's office on three separate occasions to discuss HM Treasury consultation on changes to the regulatory architecture
- Gave evidence to the Transport Select Committee on the cost of motor insurance



**Flood risk: The future of cover under debate**

- BIBA met with Mike Penning MP, Transport Minister, to discuss continuous insurance enforcement (CIE) and access to driving license records for brokers. We met with DVLA about CIE
- We met with HM Treasury regarding our *Manifesto*, the IMD Revision, regulation and insurance premium tax (IPT)
- We met with HM Revenue and Customs about interpretation of travel insurance
- We also spoke to representatives from the Office of Fair Trading to discuss comparison sites and internet selling
- We met with the Law Commissioner to discuss the current consultation papers affecting members
- We attended the HM Treasury/FSA industry group meeting on the Insurance Mediation Directive (IMD) revision
- We met with the Department of Business Innovations and Skills (BIS) to discuss regulation, Consumer Credit Directive and succession planning
- We also attended flood summit at DEFRA to debate flood risk management
- Presented to the All Party Parliamentary Group on Insurance and Financial Services on Good.

### Europe

- BIBA attended the BIPAR Directors' Committee meeting in Brussels to discuss the Insurance Mediation Directive (IMD) revision

- > – We also attended an EU Commission meeting on tying and other similar commercial practices in the financial services sector

## Regulation

- We responded to the Treasury consultation on the future of financial regulation
- BIBA responded to the FSA consultation document 'Tracing Employers' Liability Insurers'
- We met with the FSA to discuss their fee structure for brokers
- We attended the FSA Advisory Group meeting on the FSCS review.

## Working with other associations

- BIBA attended the CBI 'State of Trade' meeting to highlight the market conditions for members
- We attended Employers' Liability Tracing Office working group meeting at ABI
- We participated in research commissioned by ABI on the future of flood insurance
- We held a conference call with Citizen's Advice Bureau to promote signposting
- Attended the Solicitors' Regulatory Authority regarding Professional Indemnity
- We held a conference call with the Consumer Council on insurance issues in Northern Ireland
- We held a meeting with the National Flood Forum.

## BIBA HQ and the Regions

- We held regional Compliance Forums for the London Market and in Exeter
- We held the quarterly meeting of BIBA's Regulatory Working Party
- We held the General Insurance Brokers' Committee meeting
- Our Yorkshire & Northern road show took place
- We issued technical advice to members on the Insurance Fraud Cheatline Promotion.

## Media

- We promoted brokers in *The Sunday Times*, *The Guardian*, *The Telegraph*, *The Times*, *Financial Times* and *Which?*, along with meeting *Cover* magazine
- BIBA also promoted brokers live on BBC TV news, BBC Radio Ulster
- We also appeared on BBC Radio 1 Newsbeat programme to discuss young drivers, BBC Radio 5 live, BBC Radio 4 and Watchdog

Leighann Burtrand  
Head of Communications

# BIBA: Brokers are the solution in Northern Ireland



BIBA is working to ensure that consumers are aware that using a broker is likely to be their best option when buying insurance

Head of Corporate Affairs Graeme Trudgill and Peter Staddon, Head of Technical Services recently visited Northern Ireland to meet with the Consumer Council of Northern Ireland and have also since reported directly to the Northern Ireland Assembly on perceived problems in the province.

Graeme says: "There had been numerous reports, including one in 2009 from the Consumer Council, that people in Northern Ireland who were using aggregator sites were finding there was limited choice and high prices."

However, BIBA found that the insurance software houses which supply products electronically to brokers had a wide range of motor insurance – in fact, doing detailed in-house research, BIBA found some 96 motor products were available to Northern Ireland consumers who used a broker.

Graeme adds: "Northern Ireland may not be the cheapest place to buy cover, but it is not unreasonably expensive in our view. For example, Londonderry, in our research, was costlier to buy insurance compared to Norwich – but

is cheaper than Bristol. We believe that if any inquiry into the Northern Ireland insurance market were to include traditional Northern Ireland insurance brokers, they would be satisfied by the competitiveness of products available."

However, he points out that there is also some evidence to suggest that claims which occur in Northern Ireland may also be a reason for higher premiums. "It would appear that more cases go to court and that personal injury claims are higher. We understand that claims costs for serious neck injuries in Northern Ireland range from £30,000 to £265,000 whereas in the rest of the UK they range from £14,000 to £86,000. While more analysis may be needed here, we believe reform of the legal system might also lead to reduction in premiums. There are also problems with uninsured driving."

Graeme is also recommending that more signposting should be used in Northern Ireland – namely, that those who are struggling to find a competitive quote are directed towards a broker who should be able to help.

"BIBA is now working with the Northern Ireland Assembly to develop the situation. Our research has shown that using a broker can make a big difference and we believe greater awareness of this, along with better signposting and other measures to control the cost of claims, is the best solution."





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# Change is in the air

With more than 200 responses to the consultation on the Government's proposals for reform and draft legislation due in early 2011, **Vannessa Young** thinks it unlikely that HM Treasury will have much time for seasonal festivities

Public consultation on the Treasury paper entitled 'A new approach to financial regulation: judgement, focus and stability' closed in October.

The paper invited comment on a range of issues and questions around proposed changes to the regulatory architecture – namely the roles, responsibilities and governance of the newly created Financial Policy Committee (FPC) and Prudential Regulation Authority (PRA) which will sit within the Bank of England, and the Consumer Protection and Markets Authority (CPMA).

Understandably, BIBA was keen to ensure that the interests of its members – large and small, wholesale and retail – were properly taken into account by the Treasury as part of this process.

BIBA composed a two-part formal response to the paper, drawn up after consultation with a broad cross-section of its members. The first part dealt with the questions raised in the consultation paper, while the second went further and provided commentary about the current regime.



The main thrust of BIBA's response was that insurance brokers pose a low risk to the CPMA's objectives and that care should be taken to ensure that the new regime leads to appropriate and proportionate regulation of our profession.

BIBA argued that insurance intermediaries do not present a systemic risk to UK plc and because of this the CPMA was the appropriate body for regulation of our sector.

BIBA took time to comment on the workings of the FPC and the PRA, and although our members are unlikely to have any direct dealings with the new organisations, their role is important and will have a direct impact on the business environment in which intermediaries operate.

We argued that the FPC, rather than having a single, clear, unconstrained objective relating to financial stability and its macro-prudential role, should have that goal supplemented with secondary factors to support successful achievement of a co-ordinated, 'joined-up' regulatory environment in the UK. Furthermore, BIBA argued that these must include consideration of the competitive position of the UK's financial services sector.

In view of the different bodies playing their respective parts in an overall UK regulatory system, BIBA noted that co-ordination and transparency will be a necessary pre-requisite. We welcomed the fact that this was recognised in the paper by the proposal for both the CEOs of the PRA and the CPMA to sit on the FPC Board. The primary objectives of PRA and CPMA should be secondary objectives for the FPC. In addition, BIBA argued that the Principles of Good Regulation set out in the Financial Services and Markets Act should be incorporated into the secondary objectives to give authority to issues such as operational efficiency and economy, proportionality in decision making, protecting the innovative and competitive nature of UK markets.

The second part of BIBA's response categorised members' concerns about the existing Financial Services Authority (FSA) regime under four main headings: cost, complexity, appropriateness and burdens.

In terms of costs, BIBA argued that the regulatory cost burden in the UK is significantly higher than anywhere else in Europe. A competitive and healthy insurance intermediary market is in the national interest and so the issue of the cost of regulation must be taken seriously.

Additionally, the nature of the current

funding model of the Financial Services Compensation Scheme (FSCS) creates an unfair burden on insurance intermediaries.

One BIBA member responding to the questionnaire warned: "By increasing the FSCS fees on such a massive scale, you are driving brokers out of business. These brokers provide expert advice and impartial assistance to the consumer and work to ensure fair claims settlements, competitive premiums and more and more, health and safety advice. They also provide assistance with issues like corporate governance, business continuity planning and business interruption reviews. The increased fees are actually reducing the options for consumers and ultimately acting against their best interests."

There was also a growing concern among respondents that the balance in the regulatory regime had been tipping towards consumer protection and away from the interests of firms. Naturally, any proposals for the new CPMA to be a 'strong consumer champion' as well as regulator had resulted in consternation at member firms.

Members also spoke about the appropriateness of the regime, for example the FSA taking approaches from other sectors (most noticeably banking) and applying them to insurance intermediaries. This has led to a number of occasions where an inappropriate stance had been taken, for example the concept of 'living wills' for intermediaries.

Respondents also said that since the

## "BIBA argued that insurance intermediaries do not present a systemic risk to UK plc"

banking crisis, regulation of the insurance industry had become more rigorous and disproportionate. They argued that the insurance industry was being tarred with the same brush as those in the banking sector, when the risks posed by the insurance industry to the financial system were very different. There was also fear among respondents that issues with the quality of personnel at the FSA and the lack of recognition about the real risks posed by the insurance industry may be carried over to the CPMA.

The HM Treasury decision to use the FSA as the 'competent authority' for the registration of insurance intermediaries (under the Insurance Mediation Directive) led to them being shoe-horned into a

## What happens next?

**The Government will present more detailed proposals, including draft legislation, for further consultation early in 2011. These detailed proposals will be informed by the responses to the range of questions and issues raised in the recent consultation paper, the results of which the Treasury are currently considering. The Government has brought forward legislation to implement its reform programme in the first session of the new Parliament; this is with a view to securing Royal Assent within two years. During this time, members can rest assured that BIBA will be using every opportunity to influence this process.**

complex regime designed for much riskier sectors of the financial services market. This had led to members being subject to a rulebook designed for others and a supervisory approach often not in proportion to the risks posed.

Members also cited areas where the FSA rules, approach and style had created a burdensome regulatory environment. These included the complexity of the Client Money rules (chapter 5 of Client Assets Sourcebook), excessive details required in the FSA's Retail Mediation Activity Report, the multitude of management information, the weight of paper necessary to comply with the rules (set against a continuing lack of interest by a majority of consumers) and the cost of compliance consultants to help achieve and maintain regulatory obligations.

Above all the consensus was that the general insurance broker's business presents a relatively low risk to any regulator and the sector has a good track record of customer care over a considerable period of time. A new regime of heavy handed consumer championing was therefore unnecessary and was likely to complicate and confuse the provider/consumer relationship and be counter-productive. The regulator's valuable resources would be better used in other financial sectors where it is needed most – that is, not in the general insurance sector.

**Vannessa Young is BIBA's Compliance Co-ordinator and London Market Region's Secretariat**



# Storm clouds are brewin

Acting in an advisory capacity brings onerous responsibilities and professional indemnity insurance (PI) acts as an essential safety net for brokers. BIBA brought the BIBA accredited PI brokers together to discuss the state of the market and whether there is trouble ahead, reports **Rachel Gordon**

**Q: Are brokers a good risk, compared to say five or 10 years ago?**

**Neville Miles:** Most are and take risk management seriously. But there are some who ignore it and flaunt the rules.

**Alan Eyre:** Rates have been falling – and to some extent this reflects the fact that the broking market has not been problematic. But, I have to say in recent months, we have seen more claims coming in and prices are moving upwards.

**Lance Rigby:** Overall yes, most brokers are more professional, increasingly they are now charging fees for their services and when doing so they need to be clear on what it is they are being paid for.

But, insurers are also taking a tougher approach when it comes to paying claims – in that sense brokers are also more at risk if a client has a claim rejected. Some policy wordings are also becoming more restrictive – again it puts the pressure on brokers.

**Q: How much of this is as a result of regulation?**

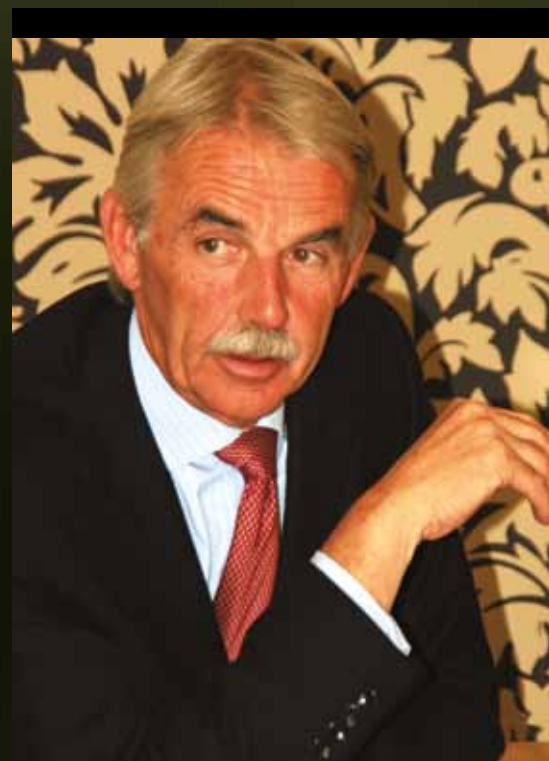
**Lance:** Overall, brokers have become more professional and regulation has played a part in this, for example through the correct use of TOBAs.

**Roger Flaxman:** Regulation has had an impact, but there are some brokers who still rely upon on a tick box formula. Some do not understand the risks they really face.

The recent Environcom case is a really good case study in how a broker's assumptions of what they should do are way off what a court will say they should have done. It is a classic example of the traps a broker can fall into.

**Neville:** Brokers need to be aware of case law changes and also that their TOBAs need to evolve. I also believe that another crucial issue is training. Brokers need to take responsibility to ensure that any sales staff know what they are doing and that they understand areas like the client's duty to disclose – the quality of account executives does vary. For example, in an area like travel insurance which can be sold in a call centre environment, there can be big problems if there is a failure to disclose.

**Alan:** I would agree – the quality of training



Near right: Alan Eyre. Centre: Graeme Trudgill, Roger Flaxman and Alan Eyre. Far Right: Neville Miles, Lance Rigby

# ds g

is a big issue and brokers also need to thoroughly understand their Errors and Omission exposures and what their duty of care is.

**Graeme Trudgill:** BIBA is currently putting together a guide for people who are new to broking, which will be useful for brokers wanting to ensure those who are beginning in the industry avoid pitfalls.

## **Q: Where are claims most common?**

**Alan:** Business interruption is a constant issue. There is a lack of technical understanding and problems with getting sums insured and indemnity periods correct. There are also problems if clients do not understand the impact of a warranty

## **“Brokers need to ensure that sales staff know what they are doing”**

### **Neville Miles**

being breached. Brokers need a paper trail showing exactly what guidance has been given.

**Roger:** I am also seeing problems with brokers not fully understanding business interruption valuations. Some very often underestimate the time it will take for a business to get back on its feet and this ends up in litigation against the broker. There are also cases where brokers are so concerned

## **Who was there?**

### **Alan Eyre**

Managing Director,  
Towergate Professional Indemnity

### **Neville Miles**

Partner, Lockton

### **Lance Rigby**

Executive Director, Howden

### **Roger Flaxman**

Managing Director, Flaxman Partners

### **Graeme Trudgill**

Head of Corporate Affairs, BIBA

about losing business that they avoid asking the client key questions for fear of upsetting them.

**Alan:** I think a broker always has to point out the consequences, however difficult things are...

**Neville:** You can't ever be bullied by a client but in terms of claims, another problem area can be in missing renewal dates – a fundamental issue, but it can happen.

**Roger:** With the Environcom legal precedent recently published there is a new incentive for brokers to take care. The courts are beginning to attribute to brokers standards of professionalism that require more than a cursory glance to satisfy the court's tests of standards of care. This case concerned advising the insured about its duty to disclose





material information and it decided that it is not enough to warn the insured simply by a written reminder; it requires much more than that and specific advice to specific people in certain cases.

## Q: How can brokers best avoid PI claims?

**Graeme:** The need to check and double check remains.

**Lance:** It is important to remember the need for high standards even where cover is being sold in high volumes as is often the case with schemes. The client must always understand what they are buying – and the broker needs to be able evidence that they have understood.

**Roger:** Brokers need to do a proper demands and needs assessment. But it is difficult to afford the time and have an opportunity to do it properly; but they must not just tell the insured in writing that their demands and needs have been considered and met. If put to the test in court, it could be

“The courts are attributing to brokers standards of professionalism that require more than a cursory glance to satisfy”

**Roger Flaxman**

serious exposure to the broker.

**Neville:** Evidence is the issue as we have discussed – it is about asking the relevant questions and making enough notes. Having a complete file is important. It is not good if emails are missing or if there random Post-It notes containing important information.

**Alan:** You need hard copies. Emails should be printed off and any faxes kept.

**Lance:** A broker has to control their business functions and ensure their staff follow correct procedures.

## Q: How can brokers avoid policy wording traps?

**Alan:** In terms of advising their clients on a particular type of cover, brokers need to be very careful – and that includes buying their own PI if they are not experts. One of the key benefits of the BIBA PI initiative is that it means brokers are not going to get caught up in any policy wording traps – and there is a wider wording.

**Lance:** Brokers need to be mindful if they are recommending cheaper cover or using an insurer they know little about. If claims subsequently arise that are no longer covered or the service from insurer is poor there are likely to be errors and omissions implications.

**Alan:** We're in a market where too often price is the pure driver. Most clients will only look at the price – they don't want to know about the wording.

**Graeme:** BIBA has produced a guide on PI Policy wording for members which is available on the website.



## By professionals, for professionals

The BIBA PI Initiative offers members help with professional indemnity insurance-related risk and claims management.

BIBA has appointed three accredited brokers to provide access to PI cover which meets the specific requirements of brokers at competitive rates. A team of PI experts has additionally been appointed to provide members with specialist services including risk management, claims mediation and legal assistance.

The BIBA PI Initiative will enable members to:

1. Obtain optimum protection for its professional liability risks.
2. Fully appreciate the risks associated with being an insurance broker.
3. Avoid breaches of regulation and claims of negligence.
4. Access specialist support in notifying, managing and negotiating complaints and claims.
5. Benefit from an effective approach to liability risk management.



**Q: How much PI should brokers buy?**

**Alan:** You answer that by deciding your maximum levels of exposure.

**Lance:** You should buy as much as you can afford.

**Roger:** The FSA recommended minimum of €1 million is increasingly likely to be too low.

**Alan:** I would say that many brokers are under insured. Brokers should also look at limiting their liability in their TOBAs – although this cannot be guaranteed. I am concerned by some brokers who only have £2 million in liability – frankly if something does happen, and they end up in court, then this sum looks like peanuts.

**Q: Could brokers give better service if they charged more – or indeed charged at all – for their services?**

**Alan:** It all comes down to the quality of your people and ensuring they are properly qualified to do the job. We can't blame

brokers if they do not have a fee-based model though as a lot of customers who are more than able to pay just do not want to.

**Lance:** On the whole, brokers are quite savvy about the way they operate and that includes charging fees. Some will charge an initial fee for placing the risk and then additional fees for mid term adjustments and client meetings.

**Neville:** We certainly are not charging in the same scale as lawyers. But, if we want to be deemed as professionals then we need to be receiving a fair reward.

**"Brokers are quite savvy about the way they operate and that includes charging fees"**

**Lance Rigby**



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BIBA has launched a major new communications campaign on YouTube to explain more about what we do and to promote the role of brokers, reports **Leighann Burtrand**

# Spreading the word

BIBA TV is now on YouTube, the leader in online video and the main destination to watch and share material worldwide. This is an exciting move and one which will allow us to reach a wide audience, telling them how we support our members and our recent achievements.

A total of 14 podcasts are now on BIBA TV and our website, covering a range of hot topics and also the 'Challenge BIBA' series. They involve broker and GIBC Chairman Ian Dickinson of Brunson Group questioning BIBA executives on what the association is doing to represent, promote and support members.

Meanwhile, here is a run through of the content which is currently available. To find them, simply enter the term 'Challenge BIBA' into the search bar at [www.youtube.com](http://www.youtube.com).

## BIBA TV

### Challenge BIBA: Introduction

Ian Dickinson introduces the series of Challenge BIBA podcasts and explains the purpose of the series is to challenge BIBA's executive on key issues. He introduces the panel – Steve White, Head of Compliance and Training, Graeme Trudgill, Head of Corporate Affairs and Peter Staddon, Head of Technical Services.

### Challenge BIBA: Representation

In the current difficult economy, brokers and their clients are struggling, says Ian. What is BIBA doing to help?

Graeme says with a new regulator currently

being established, having a strong voice representing members is more important than ever. BIBA's Manifesto is focused on four key areas: promoting brokers, influencing decision makers, maintaining a stable business environment and supporting members.

Big issues include reform of the Financial Services Compensation Scheme (FSCS), influencing the role of the new Consumer Protection Markets Authority (CPMA) and encouraging signposting – namely, ensuring brokers' details are passed on if another provider is unable to provide cover.

### Challenge BIBA: Spiralling Costs

Ian says that the spiralling costs of regulation are a huge burden on resources.

Steve replies that the real unfairness is in the levies being charged by the Financial Services Compensation Scheme (FSCS).







The solution, he argues, is in separating out the different types of broker, in particular professional brokers who would be BIBA members, from credit brokers. They have been largely responsible for the recent PPI mis-selling problems.

BIBA is calling on members to help by providing details of their MP on BIBA's database to help with lobbying. BIBA will also help members get involved directly in lobbying and that support will be provided to ensure they have the correct messages.

#### Challenge BIBA: Regulation

Ian says many brokers are relieved the FSA is on the way out and that a new body will replace it, and asks if brokers can expect "an easier time."

Steve comments that the recent Treasury Consultation Paper on the new regulator, talks about "expanding on the FSA's intrusive supervisory style." In terms of an easier time for brokers, he believes this is unlikely, at least initially. "We need to demonstrate by our actions and nature that we are compliant and abiding by the rules," he says, with the end result being more proportionate, appropriate and cheaper regulation longer term.

#### Challenge BIBA: BIBA in Europe

Why should regional brokers, such as his firm, be interested in what happens in Europe, asks Ian? Steve explains what happens in Europe is fundamental to UK brokers, pointing out that the reason brokers are subject to regulation is as a result of the Insurance Mediation Directive (IMD).

He says the IMD revision is therefore crucial

and BIBA must be involved. Steve also says he sits on BIPAR's (the European equivalent of BIBA) directors' committee which lobbies the European Commission.

He says there are three key parts to the IMD, namely, its scope, the need for a level playing field across all types of intermediary and the related issues of transparency, disclosure and conflicts of interest.

#### Challenge BIBA: Broker Promotion

Ian asks what BIBA is doing to promote members to customers. Graeme explains a key message is that brokers are the agent of the client. He talks about BIBA's media programme and its close relationships with campaigning bodies such as *Which?*, Citizens' Advice Bureau and Consumer Focus.

He adds BIBA also works closely with the national media, pointing out that the *Mail on Sunday*, for example, visited BIBA's call



centre to find out about some of the difficult risks it places.

Graeme also promotes brokers on TV, such as on BBC Breakfast and Watchdog. BIBA needs to reach all kinds of people, including the customers of the future and also older people, who perhaps may have health problems and need specialist help.

Ian says real life case studies are helpful in explaining the role of brokers and suggestions from members are welcome.

#### Challenge BIBA: Signposting

Ian says he has heard the term 'signposting' used frequently, but needs clarification.

Graeme replies it is a way more consumers can find suitable protection. If someone selling cannot help, they signpost to

someone who can, and that person will invariably be a broker. Examples could be a young driver or an older traveller. "We can pretty much insure any risk, we just want the right system in place," he stresses.

He adds signposting has the support of consumer bodies and government departments, adding it is already helping some 340,000 people a year, with 200 companies signposting to BIBA.

He adds it was an issue during the drafting of the recently passed Equality Bill, but it is possible regulation for signposting may require formal legislation. Overall though, signposting is growing in momentum.

#### Challenge BIBA: Technical Committees

Ian asks Peter what the technical committees and focus groups do.

Peter explains one of the biggest issues in liability is the Environmental Liability Directive and he mentions a guidance document which has recently been produced with the International Underwriting Association.

Another issue which has been under the spotlight is the Employers' Liability Act, which has not been changed since 1969. Ian also asks about BIBA's Property Committee and Peter replies one of the most pertinent topics is which the current flood agreements are set to end in 2013.

He also refers to business interruption insurance, where more up-to-date wordings are being drafted – with BIBA seeking to influence these.

Finally, Peter refers to BIBA's private medical insurance focus group, which is looking at insurers not giving out authenticated claims experience information. BIBA is working with the broker community, engaging with insurers and looking to overcome barriers when the Data Protection Act is used as an excuse not to disclose.

#### Challenge BIBA: Motor Insurance

Ian says motor insurance is a class of business which many brokers provide and that they want to be able to sell it cost effectively and be aware of relevant issues.

Graeme says there are a number of important factors that brokers must be aware of. These include the electronic delivery of motor certificates – a new law was passed





photo



this year, after a prolonged BIBA campaign, which has resulted in better service and savings of £11 million a year.

He discusses uninsured driving, which costs the industry some £500 million a year in compensation and adds some £30 onto each policy. From 2011, Continuous Insurance Enforcement (CIE) will be in place. This will allow the comparison of the insured database with that of the DVLA, and those without cover will be subject to warnings, penalty notices and car seizure.

Graeme also refers to claims management companies. BIBA's motor committee sub-group is coming up with recommendations to iron out problems in this fast growing sector. He adds that if brokers were able to check details with the DVLA, it would help them tackle fraud.

### Challenge BIBA: New Government

Ian says that the UK is now in a changing environment with the new coalition government in power and asks how BIBA is reaching those who matter.

Graeme says there are around 650 MPs that need targeting along with many new civil servants. The focus is on those who wield most influence, such as the Treasury Select Committee, the Department for Transport and those responsible for the new regulatory

set-up.

He explains key messages from BIBA are communicated through the Manifesto.

### Challenge BIBA: Employers' Liability Tracing Office

Ian asks about potential changes to employers' liability. Peter explains that there are plans being considered to set up an Employers' Liability Tracing Office. He says the existing code of practice has failed – only 50 per cent of those who tried to trace an insurer were successful.

He adds that at the same time, brokers – in particular those with delegated authority – may have new responsibilities in terms of having to pass on employer and insurer details to the new office. BIBA is also working with the DWP and FSA in this area.



### Challenge BIBA: Law Changes

The Flood Act and the Law Commission Review on insurance contract law could have important ramifications for brokers, says Ian. Peter says in-depth work is carried out on issues such as these by the technical committees. BIBA is in ongoing negotiations to ensure insurers renew their commitment to provide cover post 2013 – if not, brokers could be in the unenviable position of telling customers no flood insurance is available.

On the Law Commission Review, there are some fundamental changes planned, not least on whether the broker is the agent of the client or the insured. BIBA is

in the process of providing guidance to the Commission and will provide feedback to members.

### Challenge BIBA: Manifesto

The launch of the BIBA Manifesto has been a major success, says Ian, and he asks Graeme to expand on this important document.

Graeme explains BIBA closely follows its key points and reminds members these include issues such as the formation of the CPMA, CIE, the FSCS and signposting.

He adds members can discuss these and many more issues with the BIBA team and broking peers at next year's BIBA conference in Manchester on 11-12 May, when some 4,000 people will attend.

### Challenge BIBA: Round-up

Ian thanks Peter, Graeme and Steve. He says brokers are uncertain about the future because of changes being introduced by the coalition government and the shape of the CPMA. He asks: "Will it act as a consumer champion or a regulator?"

But, Ian emphasises, it is comforting for members to know BIBA is on track to ensure the best possible outcomes and to provide practical support. He says some brokers, such as those with compliance responsibility, can feel lonely – they have to interpret rules on their own. Ian endorses BIBA and recommends those who are not already members to consider joining.



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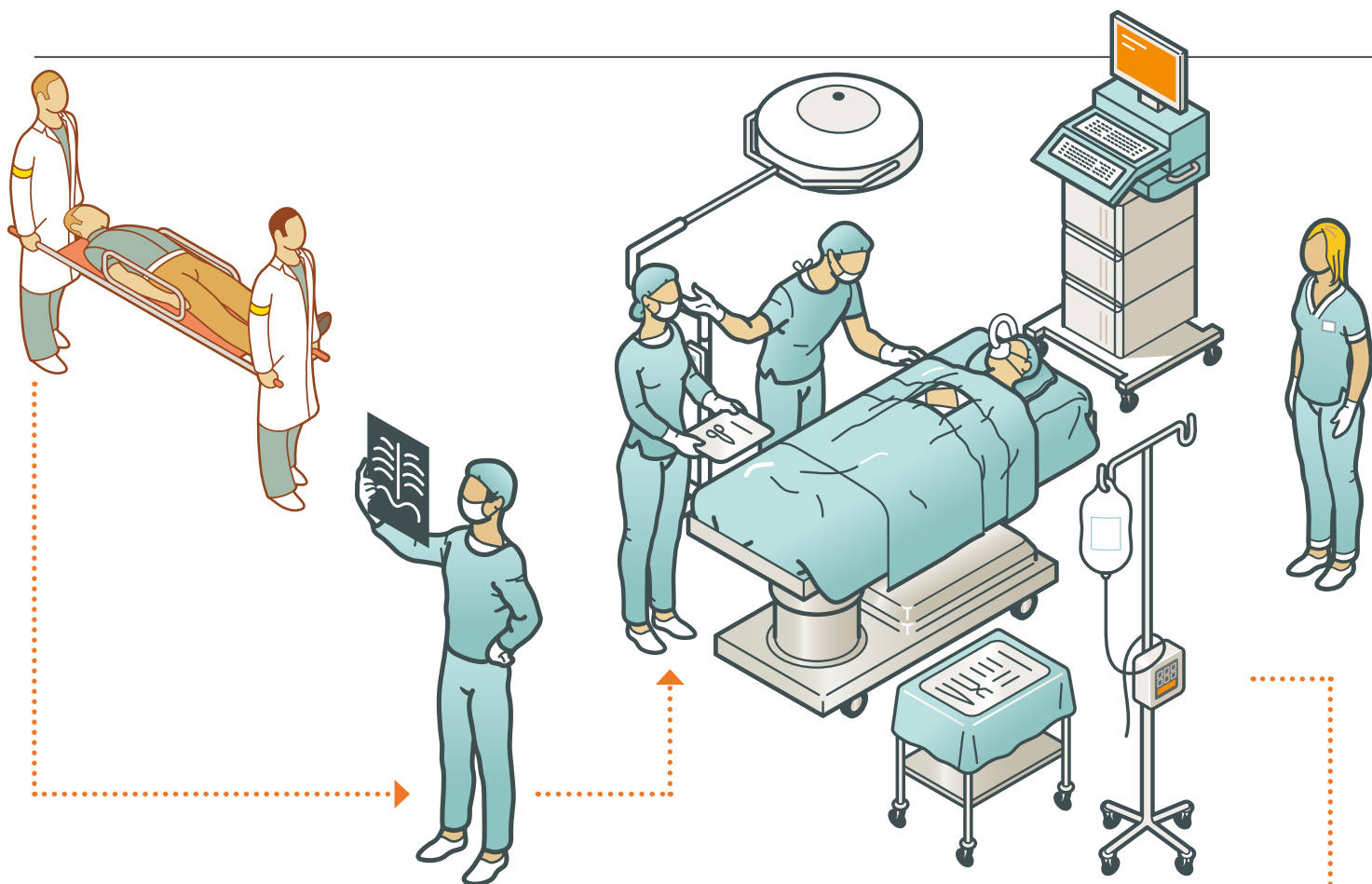
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One of the biggest talking points in the private healthcare sector is the increasing role of claims management. While it is widely accepted that this can be an important tool to reduce fraud and try to contain medical inflation, it is something that has vexed Peter Staddon, Head of Technical Services at BIBA, to the point where he is now calling for members to contact him with details of occasions where they feel providers have taken steps too far.

Peter suggests that addressing another of the industry's constant bugbears, the non-disclosure of claims data for SMEs, could help reduce the need for increased claims management.

"There is fraud and we're in discussion with private medical counter fraud groups, but the whole problem is that insurers are bringing into question the clinical judgment of a surgeon. I don't think the insurance companies have got that right," he says.

"Claims experience is also telling me other things. How many times has someone been back to hospital? Is it because the insurer wants them back so they don't get caught with future additional charges? For example, if the surgeon says return in three weeks, but the insurer says nine days, that starts to impinge on the clinical excellence of the surgeon and we shouldn't do that.

# Time to open up?

The PMI market needs to recover from a year of sharply falling sales and build on state spending restrictions – but it also needs to treat brokers fairly, says **Owain Thomas**

"The Information Commissioner's Office and FSA say there is no reason not to give out claims data, but insurers hide behind the Data Protection Act for their own selfish reasons and we need to break that," he adds.

Peter is not the only one to single out these subjects as particularly concerning and in need of attention for the greater good of the industry. They regularly prove emotive and often mark a dividing line between two camps which, many argue, does no one any favours.

Paul Walker, principal of broker Essential Health, identifies the providers as going too far and resulting in a poor customer outcome. He believes insurers are overstepping their remit and becoming too involved in the industry as a whole, dictating to hospitals, clinics and consultants who can do what, where and when, and for how much.

"They have, in essence, villainised parts of the medical profession and painted it as greedy and the sole cause for premium increases," he says. "What they don't



appreciate is that costs are going up everywhere, medical inflation is high and new drugs cost a premium amount – and of course, as a private patient, clients expect the best and most effective drugs and treatments. This has always been an issue for PMI, but rather than address poor administration and sloppy systems, many insurers have leaned on the medical profession as an alternative route.

“Of course, the common denominator is the customer, who is often lost in the middle of the issues, yet often expected to pay for any gaps or issues that arise.”

However, Mr Walker does accept that insurers need to be mindful of costs, and that some unjust invoices will be submitted, but he suggests in some areas it has gone beyond the ridiculous. Unfortunately these issues are often not new ones to the market, and achieving consensus has long been problematic.

Glen Smith, Managing Director of Healthcare Partners and Chairman of the BIBA Healthcare Focus group, feels greater openness from insurers on issues such as non-disclosure of SME claims data and dual pricing (where a customer is offered a different price depending how they apply for the product) can lower an adviser's trust in a

be guarded with the truth. Dual pricing is just about respecting relationships and the damage it can do to those. I don't have a problem with dual pricing if we know that's what happens and people are honest about it, but when done in a surreptitious way it's harmful.

“If one insurer keeps doing that, then ultimately the broker is not going to trust that insurer,” he adds.

While intermediaries are almost universally in favour of greater claims clarity, the same cannot be said of the providers. Although some smaller insurers are actively promoting or considering the option, the two market leaders, Bupa and Axa PPP, are firmly set against it, suggesting the benefits are not as obvious as brokers may think.

Linda Wallace, Head of Intermediary Management at Bupa Health Assurance, suggests one pitfall is that it can reveal personal data about members of a small company and would lead to wild price fluctuations.

“Employers would be subject to sudden price increases from one year to the next and that's not in the best interests of the customer,” she says. “It would also make it quite impossible for employers to budget for the health of the staff for future years. So for

## “The private sector has a genuine opportunity to make headway”

BUPA direct account BUPA will not pay the broker commission – we think this is unfair.”

Bupa's rival takes a very different view. Paul Moulton, Director of Sales and Client Relationships at Axa PPP, reveals this is a deliberate policy for segmented markets, where different prices are available through different channels and even through different intermediaries, due largely to the volume of business they produce.

But he emphasises the decision is a customer-led one, and that targeting specific broker based customers is very difficult as it is not aware of who an individual is using as an intermediary. “Whilst there maybe occasions where direct is cheaper, there's evidence of a keener proposition through intermediaries sometimes,” he says.

Mr Moulton is also keen to explain why providers are becoming more involved in claims management, and does not feel this has become too disruptive a process, suggesting premiums need to be seen as value for money to grow the business. “We've always been very proactive at a macro level, including discussions with key providers such as hospitals,” he says.

“We generally feel our market scale affords us a better start point (alongside Bupa) than anyone else because the volume is behind us. On a micro claim-by-claim basis there has been significant advancement and more support is made available to patients, the level and complexity of which is light years ahead of where it used to be.”

It is clear that the private healthcare market has many differences within it, but with the NHS facing significant savings in the near future which are likely to impact the level of care provided, the private sector has a genuine opportunity to make headway.

However, this can only be realised if all its constituent members face each other and agree to address concerns to strengthen the industry and present a united front to government and the public.

## “The common denominator is the customer who is often lost in the middle of the issues that arise”

**Paul Walker**

these reasons spreading the risk more widely minimises the impact on annual price fluctuations, making the health insurance much more affordable over the long term. Increased clarity is something we can think about though, and, if the industry feels strongly enough, we would certainly take that into account.”

Both the major players by their very nature are multi-channel operations, but Wallace says Bupa does not dual price and that a customer would receive the same quote no matter what channel they came through.

But Peter comments: “Linda Wallace talks about no dual pricing but one of the main issues here is that if a broker takes over a

provider and result in them being less willing to do business.

“Providing reasonable information about the claims made, such as loss ratios or value, starts to bring down the barriers and can reduce the opportunity for fraudulent claims,” he explains.

“If you know the loss ratio it might put a completely different spin on the information and people might also be less inclined to





Litigation is frequently time consuming and costly – so what can be learned from previous cases? Specialist solicitors gave their views to **Rachel Gordon**

# The benefits of hindsight

The defendants said that, given proper disclosure, there would have been realistic prospects of obtaining cover; they were therefore entitled to recover in respect of this. The defendants successfully established breaches of duty by the broker but failed to win damages.

On the facts, the defendants would not have proposed the fire risk improvements they asserted would have been offered to insurers. Even if they had, no insurer would have offered them terms. Any cover obtained would have been impeachable, as the defendants were breaching their Waste Management Licence and this was also undisclosed. Such cover would have included preconditions that there be no deployment of plasma cutters and no throughput of pentane fridges. Accordingly, the fire would not have occurred.

The defendants' argument – that since fire risk improvements would have prevented the occurrence of the fire, they were entitled to recover damages reflecting financial loss avoided thereby – failed. Such a loss was too remote and it was not the broker's job to advise on fire prevention measures. Rather, the fire was attributable to the defendants' failure to ensure appropriate fire precautions.

*Paul Castellani, Partner with Reynolds Porter Chamberlain, comments on what lessons can be learned from the Environcom case.*

The judge looked at the regulatory position – ICOB 4 – and reminded himself that a broker is under a duty to advise its client of all material circumstances, and explain the consequences of failure to do so.

The broker's standard documentation was found to be inadequate to discharge ICOB obligations, and there was no evidence of a specific exchange with the client. So the broker was negligent.

On the second issue of insurability, despite having breached the duty on disclosure, because the insured was uninsurable, the broker's breach of duty caused no loss.

**"A broker will not be liable for failing to prevent the peril that a policy is designed to insure against"**

**Alex Denslow & John Enoch**

The case reminds brokers that:

- It is dangerous to rely on 'proforma' warnings.
- ICOB obligations will be regarded by the court as standard practice.
- Brokers should ensure – and document – that clients understand their duty to disclose. Brokers might consider obtaining a countersignature from the client to confirm advice has been understood.
- Even if a broker breaches their duty, all is not lost – it will be necessary for the insured to prove the broker's breach caused loss.
- Expert evidence as to 'insurability' may be helpful to prove that the broker's conduct has not caused loss.

## Environcom: A question of scope

Alex Denslow, Partner and John Enoch, Associate, with CMS Cameron McKenna discuss *Jones v Environcom Ltd & Others* when the Commercial Court reaffirmed important limits on the scope of duties that brokers owe their clients.

The defendants ran an electrical goods waste recycling facility. After a major fire in September 2007, they claimed on their property insurance. The insurer sought to avoid paying the claim due to material non-disclosure by the defendants, including their use of plasma guns in disassembling pentane fridges and resultant recurrent ignitions of fridge insulation. The insurer began proceedings for declaratory relief – namely for a judge to decide the parties' rights. The defendants joined their broker Miles Smith as a third party for failing to obtain unimpeachable insurance – that they had not realised a claim could be refused.

## Lessons to be learned

This decision reaffirms the limitations on the scope of a broker's duty to its clients. A broker will not be liable for failing to prevent the peril that a policy is designed to insure against – even if negligence caused that policy to be impeachable for some reason.

The rationale for this limitation is this is not a duty that a broker ought fairly to be taken to assume. The decision also confirms that, in exceptional cases, a broker can successfully defend a claim on the basis that the risk in respect of which the action is grounded was effectively uninsurable.

## How not to write business

Harriet Stevens, Partner, and Anna Gee, Associate, from the professional and financial risk team at Beachcroft, look at a case which reviews the duties of producing and placing brokers.



The insured company was part of a group that provided a wide range of property services. In 2004/5, they held primary layer cover for the group of £10 million, with an excess of £10 million for this company alone to reflect the higher risks of the valuation work it undertook.

On the 2005/6 renewal, the insured instructed its broker to obtain cover on the same or equivalent terms as the prior cover. The broker appointed a placing broker but gave instructions, incorrectly, that the excess cover was to be restricted to commercial property management activities only.

The placing broker prepared a renewal report which confirmed these terms. This was forwarded by the producing broker to the insured with a summary of the “essential features” but the restrictions to the excess cover were not commented upon.

The insured’s finance director read the email and the summary and, relying upon both, did not read the renewal report itself.

During the 2005/6 year, claims were made against the insured arising from valuations. These were accepted by the primary layer but not the excess layer as they fell outside the cover provided.

The insured sued its producing broker who in turn sued the placing broker. The producing broker alleged contributory negligence by the insured as the finance director failed to read the renewal report and notice the restriction.

The judge held that the producing broker had breached its duty as it failed to review the renewal report, identify the limiting condition and bring it to the insured’s attention.

The judge would have found some fault on behalf of the insured were it not for the way in which the renewal report was presented.

It was also held that the placing broker should have appreciated that the limitation to the excess cover would be disadvantageous to the insured and should therefore have queried the instruction. Liability was apportioned 80 per cent as to the producing broker and 20 per cent as to the placing broker.

## Lessons to be learned

If a summary is going to be produced, it must be complete. Ironically, if no summary had been prepared and the insured had been left to simply work it out for himself, liability may not have attached to the producing broker at all.

Both producing and placing brokers need to understand the needs of the client and whether the terms of the cover adequately addresses those needs. Any possible disadvantages to the client should be checked.

The ICOB standards will be used as a benchmark against which brokers’ conduct will be measured irrespective of whether the rules actually apply to the risk.

It should also be noted this was a legacy issue, since a new executive team has been put in place. However, all brokers need to be aware of how ‘old’ issues can come back to haunt a new management team. It is vital to take on board the mistakes of the past and implement changes to avoid them being repeated.

## Hidden word changes create hazard

Simon Thomas, Associate Partner at Greenwoods Solicitors, refers to a case where a broker failed to spot a new exclusion.

A London Market broker was asked by a South American producing broker to place a risk on behalf of a South American reinsured into London. The risk was being renewed for the fourth successive year by the same producing/placing broker combination.

The reinsured suffered losses following the destruction of cargo while in transit and claimed on its policy. The local reinsurers paid out leading to a claim on the London reinsurance policy.

Having assessed the policy wording, reinsurers argued a clause excluding liability arising from ‘the loading and unloading of marine vessels’ entitled them to avoid the claim. This exclusion had not been included in the previous years’ cover.

Reinsurers also suggested the subsidiary company against which the claim was made

was not named as an ‘insured’ within the policy. A request had been made to the placing broker to amend the terms of the insured – this had been ‘noted’ but no action was taken.

Reinsurers sought a declaration that the policy did not respond. The reinsured maintained cover was effective but, if not, it had been negligently advised by the producing broker. That broker, in turn, brought in the placing broker on the same basis.

The defendant parties had to resolve whether the placing broker ought to have communicated the existence and terms of the new exclusion to the producing broker and/or whether the producing broker ought to have recognised and advised the reinsured of its inclusion in any event. The case was settled through mediation.

## “The producing broker needs to know of any change”

Simon Thomas

## Lessons to be learned

Here, the risk had been renewed on similar terms for a number of years. The addition of a single new exclusion, buried deep within the latest wording, caused a material change to the available cover. A cross-check against the prior wording would have identified the additional text.

The producing broker needs to know of any change. The placing broker cannot act as a mere conduit/postal service and its role is to identify relevant changes in cover and to seek appropriate instructions.

That should not, however, absolve the producing broker of obligations to the reinsured. Both brokers owe duties of care to their respective principals to ensure the wording accurately reflects instructions given.

Brokers can move frequently and it is increasingly difficult to gain evidence from former colleagues in relation to long-archived files. Sound working practices, to include better note-taking and file management, means some claims can be headed-off earlier.





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**"Millions saw the apple fall, but  
Newton asked why."  
Bernard Baruch**



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# Brush up your business writing

Improving the quality of business communications, online risk assessments, social media guidance and a new 'payment holiday' National Insurance scheme for start-ups are on the agenda

Brokers may find it difficult to produce important material for their business – such as material for proposals or copy for their website. Fortunately, it is possible to develop a more confident and fluent writing style and there are professionals who can assist with training.

Many brokers may feel that they should not need to have a way with words – after all, they became brokers rather than writers, didn't they? But, being able to craft well written documents can pay off.

Jane Penson runs a writing skills training consultancy ([www.words-work.co.uk](http://www.words-work.co.uk)) and she says having some ability to write well can also save time. Among the brokers she has worked with is Chris Frost, who runs Chris Frost Insurance Services and is based in Maidenhead – he needed help with crafting his marketing leaflets.

There is no doubt some brokers agonise over the letters and emails they send to new and prospective clients and having to write proposals can be even worse.

She says before starting a project, it makes sense to make some brief notes about what you want to achieve and the writing usually becomes easier as a result. She provided the following tips.

## 1. Reader and Objective

**“Think hard about who will read what you are about to write and what you want to happen as a result of them reading it. To demonstrate how I do it, here are the notes I made before writing these tips. It only took a few minutes.”**

### Jane's note:

**Readers** – insurance brokers; may be small businesses; write to clients and need to come over as professional and concise; not trained as writers – picked up skills along the way; need practical tips to do a better job quickly.



**Objective** – to make them aware of my services; to sound helpful and accessible; to give a couple of practical tips they can take away and use today.

## 2. Know – Feel – Do

She continues: **“Make notes under each of these headings to clarify in your mind both the information you need to get across and how it should sound in the mind of the person reading it. To demonstrate this, I have assumed I have to explain why their insurance did not cover a client for a recent claim.”**

### Jane's note:

**Know** – (what you need the reader to know) – the insurance they took out covered xxx but was never intended to cover what they have just claimed for. Reminder of discussion

(maybe copy of correspondence) when they took out the insurance.

**Feel** – (how you want the reader to feel when they read your letter) – satisfied that they understand; confident that you acted properly when setting up the insurance; that you have done all you can to argue their case (if appropriate).

**Do** – (what you want the reader to do as a result of reading your letter) – renew insurance with you; take out additional cover for the circumstances they thought they were covered for (if appropriate); discuss any other insurance needs with you fully.

Jane provides telephone and email advice and runs workshops for professionals and their staff. For six or more people, the cost per head is around £70 and there are free tips at [www.grammartogo/blog](http://www.grammartogo/blog)

## NI Payment holiday scheme to boost start-ups

A new National Insurance contributions (NIC) payment holiday scheme to encourage new business start-ups in key UK regions has been launched.

The 'Regional Employer NICs Holiday for New Businesses' offers substantial reductions in employer NICs for new businesses in those parts of the UK most reliant on public sector employment.

Under the three-year scheme, eligible businesses will be able to take a 'holiday' for each of the first 10 employees they hire in their first year of business. Each holiday will last for the first 52 weeks the employee is in post (providing these weeks fall within the three-year holiday period). New businesses who take advantage of the

scheme will be able to save up to £50,000 in employer NICs – £5,000 per employee, up to a maximum of 10 new employees.

Within the UK, the regions and countries that will benefit are the North East, Yorkshire and the Humber, the North West, the East Midlands, the West Midlands, the South West, Scotland, Wales and Northern Ireland.

The scheme is open to new businesses set up on or after 22 June 2010, and will run until 5 September 2013. Exchequer Secretary to the Treasury, David Gauke, said: "We need to rebalance our economy, which has become over reliant on public spending and jobs provided by the public sector."

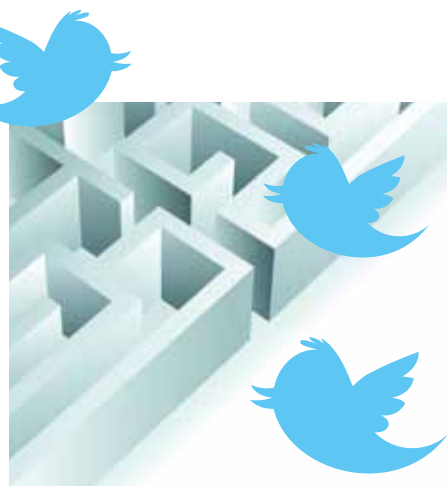
## BIBA launches social media guidance for brokers

BIBA has launched a collection of legal guidance to assist brokers understand and manage the potential risks surrounding the use of social media, in conjunction with law firm Beachcroft.

The documents have been produced following increased interest from members about social media. They include a guidance note on managing social media, a template social media policy and a template disclaimer for use on Linked In groups.

BIBA Head of Communications, Leighann Burtrand, said: "We have therefore highlighted the important issues and many risks that social media can present to members. These include copyright issues, the speed of communication, defamation and reputation. We hope that members find the legal documents helpful in identifying and managing these risks."

Emma Bate, Partner at Beachcroft, added: "BIBA Members need to be aware of the legal and commercial risks of using these sites, as do their employees. The speed and simplicity of social media mean it is all-too-easy for staff



to post something inappropriate or unlawful. In particular, as brokers are FSA-regulated, they must take reasonable steps to ensure that all communications, including tweets or posts on social media websites, are "clear fair and not misleading" and, if they are a financial promotion, should be signed off in the usual way."

The documents can be downloaded from the BIBA website.

## SMEs to benefit from online risk assessments

Brokers may want to talk to their SME clients about a new online risk assessment from the Health and Safety Executive (HSE) that may help cut back the time it takes to weigh up the hazards in offices to around 20 minutes.

The HSE has produced the web tool to help employers consider relevant hazards in their office and think about how they control them to keep staff safe. It claims the tool will help avoid unnecessary paperwork and bureaucracy for office-based businesses, which tend to be low risk.

Safety officials will take account of the results of the assessments when they carry out inspections – evidence that businesses have taken appropriate steps to manage workplace risk.

Judith Hackitt, the HSE chair, said: "Many people assume that risk assessments need to be long, formal documents covering every hazard, no matter how minor or unlikely to occur. That's not the case and the new 20-minute risk assessments make it clear that this can be done for any office quickly and easily."

"Employers know their businesses better than anyone – and with a little helping hand they can easily consider what is necessary to protect workers. Complying with the law in a low risk business can be done with common sense by anyone."

The online tool works by prompting employers to answer a series of questions about their workplace and then generates a unique risk assessment with actions required.

HSE already provides example risk assessments for 34 workplaces, including charity shops, estate agents and hairdressers.

The new 20-minute risk assessments differ because the online tool prompts employers to answer a series of straightforward questions that generates their risk assessment and action plan. Simplified risk assessments for other low-risk workplaces are currently being developed.

The online risk assessment tool for offices can be found at [www.hse.gov.uk/risk/office.htm](http://www.hse.gov.uk/risk/office.htm)



Schemes and facilities providers work in close partnership with BIBA to supply members with expertise and market-leading products explains **Steve Foulsham**

# A winning team

### Why environmental liability cover should be a priority

The unfolding disaster in Hungary, in which toxic sludge escaped from a failed reservoir belonging to an alumina company, should serve as a warning to companies with industrial operations in the UK and Europe that the EU Environmental Liability Directive (ELD) can no longer be ignored.

The horrific impact on people – four were killed, three more were declared missing and another 120 suffering injuries including burns – plus the tragic destruction of land, villages and watercourses, means that environmental and pollution liabilities, if they are not already, should now be a top issue on any company's risk management agenda, says Joanna Newson, director of Arthur J Gallagher.

Environment risks are key business risks and are present at every stage of the business life-cycle – from high-risk activities conducted on-site, to legacy issues arising from previous mergers and acquisitions.

**“Environmental issues effect all types of business ...yet too many brokers still perceive risks as just applying to heavy industries”**

Environmental issues affect all types of business from the high street dry cleaner to farmers to hotels – yet too many brokers still perceive environmental risks as just applying to heavy industry.

There is a great opportunity here for pro-active brokers involved in SME business to actively help their clients look



### A dirty business: Clients need full environmental insurance protection

at ways to assess, manage and mitigate the potential liabilities.

Brokers are reminded that insurance does not simply pay for the financial compensation a company is liable for, but also provides access to experienced professionals who can advise the best way to mitigate damage. Without insurance, dealing with the aftermath of a disaster is completely down to the resources already within a company, something many firms simply can not cope with.

BIBA is here to assist via the BIBA online quoting system for environmental liability. With a premises pollution liability policy

starting at a cost-effective minimum premium of £400 for a £500,000 aggregate limit of indemnity and no need for a site survey, this scheme provides a valuable resource to our membership who can quote these risks at their desk.

Find out more by reviewing [www.bibaenvironmental.com](http://www.bibaenvironmental.com) or by joining a 45-minute web seminar training session run by Gallagher Environmental. For further details please contact the BIBA Environmental helpline on 0207 204 6096 or email [bibaenvironmental@ajg.com](mailto:bibaenvironmental@ajg.com)



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# Building sums insured – are they correct?

It is important that a building is insured for the correct amount. It could be the deciding factor in whether a business survives a large claim or whether a private individual can repair their home.

Establishing an accurate reinstatement cost for a building, of any description, is a specialised task and therefore to ensure that brokers have access to a service that gives clients peace of mind, Cunningham Lindsey has drawn on its many years of property claims handling experience to develop the BIBA Valuation Scheme.

On average, three-quarters of buildings valued are found to be underinsured. Underinsurance usually means that insurers are not collecting adequate premiums for the level of risk. The current value of the building might not reflect its insurance definition therefore it is important that an insurance valuation should be carried out to clarify

which items have been included.

With a property market valuation not always reflecting the true reinstatement cost, Cunningham Lindsey Valuation Services specialises in Building Reinstatement Assessments for insurance purposes only. The way that rebuilding costs are calculated differs quite dramatically between commercial, domestic and listed properties.

A professional valuation will also take into consideration additional aspects such as building type, age, usage, listed status, topography, location, demolition, debris removal and professional fees.

Once the correct reinstatement value has been calculated, it is important to ensure that the valuation is regularly reviewed on a three- to five-year basis.

BIBA members benefit from a tailored and discounted fee scale which is based on the existing sums insured, meaning the



client has the benefit of knowing the price at the time of instruction. For complex and multiple buildings, a bespoke quotation can be offered.

For further information and quotations, please contact Cunningham Lindsey Valuation Services on 0845 641 4975 or [valuationservices@cl-uk.com](mailto:valuationservices@cl-uk.com), quoting BIBA. More details can also be found at [www.cunninghamlindsey.com](http://www.cunninghamlindsey.com)

## Changes to marine cargo trading terms

From 1 January 2011, the 2010 edition of the internationally recognised Incoterms trading terms will be available for use, explains **Peter Oddy**, Cargo Underwriter at BIBA Cargo Scheme insurer Northern Marine Underwriters

Published by the International Chamber of Commerce, the Incoterms rules allow buyers and sellers to transact business with the certainty that each understands its obligations in relation to:

- (a) the point at which the risk of loss of or damage to the goods passes from the seller to the buyer, and
- (b) which party bears the various costs associated with the shipment.

### Main changes from the 2000 rules are: Eleven Terms

In an effort to streamline the trading terms, and to better cater for the practicalities of multi-modal traffic, two new terms, DAP and DAT replace DAF, DDU, DEQ and DES; reducing the total number of terms from 13 to 11.

### Two Categories

Additionally, to try to reduce the misuse by sellers of the FOB, CFR and CIF term for containerised, multi-modal and non-maritime shipments, the trading terms will now be separated into two groups, those applicable to all modes of transport:

EXW	ex works
FCA	free carrier
CPT	carriage paid to
CIP	carriage and insurance paid to
DAT	delivered at terminal
DAP	delivered at place
DDP	delivered duty paid

and those only applicable to port-to-port shipments by sea or inland waterway:

FAS	free alongside ship
FOB	free on board
CFR	cost and freight
CIF	cost, insurance and freight

### Insurance cover

When selling on CIF or CIP terms, the seller is obliged to provide the buyer with a certificate evidencing the arrangement of the necessary cargo insurance, and the rules now specify the 2009 edition of the Institute Cargo Clauses (or equivalent).

### Plain sailing with BIBA's Cargo Scheme

CargoSprint users can be confident that the insurance arranged is fully compliant with the requirements of the Incoterms rules 2010, since the policy wording already uses the 2009 Institute Cargo Clauses, and policyholders are able to produce certificates of insurance.

To find out more, look out for Taking Control of Cover and Costs – the broker's guide to the insurance needs of importers and exporters or search for NMU Incoterms at: [www.nmu.co.uk](http://www.nmu.co.uk)

# Knowledge is power

In this at-a-glance guide, **Steve White** answers a range of topical regulatory questions



**Q: What changes might we expect in the revised IMD?**

**A:** The Insurance Mediation Directive (IMD) is currently being revised and a consultation paper is expected from the EU Commission in November. BIBA is an active participant in BIPAR (the European Federation of Insurance Intermediaries) and through this organisation has been heavily involved in preparing common positions on a number of key issues. These include:

**Scope** – we believe that the current scope, where anyone pursuing any of the listed activities in a business capacity is within scope, is the correct approach and we would not want to see this narrowed.

**Level playing field** – we believe that the customer should be entitled to the same suite of disclosures wherever they buy their insurance and we believe that the disclosures within the IMD should apply to all firms, not just intermediaries.

**Transparency, disclosure and conflicts of interest**

– there is a wide variety of approach across the EU to these issues. The Commission has said that IMD2 will contain ‘far greater transparency’ and BIBA has a strong preference for the ‘upon request’ solution that formed part of the Industry Guidance which we developed. A consultation document is due in November with final draft text expected to be presented to the EU Parliament before the end of 2011.

**Q: We are a small firm – do all the financial crime initiatives apply to us?**

**A:** In a word, yes! The FSA has statutory obligations under the Financial Services & Markets Act 2000, including the reduction of financial crime. Following a review of practices amongst smaller firms, the FSA published a financial crime review for small firms in May 2010. This highlighted four separate areas that the FSA were concerned about:

**Data security** – firms have obligations to protect personal data under the terms of the Data Protection Act 1998 and the FSA is very concerned about the prevention of identity theft. The review focused on access to systems, outsourcing, physical controls, disposal of data and data compromise incidents.

**Sanctions** – the FSA’s review identified that only 26 per cent of firms had procedures in place to comply with HM Treasury’s sanctions legislation. As a minimum the FSA expects all firms, regardless of size, to have procedures in place to comply with this legislation.

**Fraud/Bribery Act** – the review highlighted the need for vigilance and for firms to train their staff on fraud-related matters. The new Bribery Act will place even greater obligations on firms.

**Anti money-laundering/Proceeds of crime** – this review was the first time the FSA had commented about the Proceeds of Crime Act and what they expect from firms. BIBA will be updating and publishing a revised guide to financial crime prevention in 2011, which will cover all these areas in detail.

**Q: I’m not sure I am fully compliant – do you have a consultant that can take a look at my business?**

**A:** BIBA offers members a ‘helpdesk’ for general regulatory queries and questions as part of the suite of membership facilities and this has proven very popular with members. This facility does not extend to consultative services. However, the BIBA Compliance Initiative is available to members. The BIBA Compliance Initiative provides members with access to a range of compliance facilities, provided by a choice of expert providers at commercially attractive terms. A full description of the services and contact details can be found on the BIBA website.

**Steve White is BIBA’s Head of Compliance and Training**

**BIBA’s Steve White, named 2010 Compliance Personality of the Year**

The British Insurance Brokers’ Association’s (BIBA) Head of Compliance & Training, Steve White has won the Compliance Personality of the Year Award at the prestigious Complinet Compliance Awards. Steve who represents insurance brokers to the FSA and government on key regulation issues was selected by the judges on the basis of his excellent compliance personality.



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