Spring 2010
Issue 40

British Insurance Brokers' Association

The Broker

Tackling the great unknown
Emerging risks exposed

All change within accident management
How new rules could affect brokers

Professionalism in a changing world

BIBA Conference 2010
– we're going to London's ExCeL

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BIBA

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Welcome

Leighann Burtrand
Editor of *The Broker*

We held the BIBA Conference at ExCeL London three years ago and it was one of the most successful to date in terms of the number of brokers that attended. We're now planning to beat this with our 2010 event, **Professionalism in a changing world**.

For those members who have not been there, it is, in my view as someone who knows London, ideally placed. There is a real sense of space about the venue – there is ample room for a large exhibition and for the plenary sessions, seminars and private meetings.

There is none of the frenetic hubbub that exists in the City, although this part of Docklands is extremely convenient in terms of transport. And, as members will know, the event is now in a two-day format, ending on Thursday evening, which means no-one has to travel home at the weekend.

The conference is free for all BIBA members and we hope as many of you as possible will be able to spend the full two days with us – if so, there are hotels to suit every budget. Many members see this as the must-attend event of the year, but if you would like to come for the first time and want to know more, then please get in contact and we'll do our best to convince you – we'd be delighted to have you join us.

Inside Spring 2010

Viewpoint

Chief Executive Eric Galbraith looks forward to the BIBA Conference and Exhibition and addresses current issues

Professionalism in a changing world

I hope to see you and your staff at conference; I understand that it isn't easy to take time off in the current business climate, but even if you can only manage to come for a few hours, or the two full days, it would be good to see you there. I believe the conference and exhibition offers a range of opportunities to hear more about what is happening to our sector. Your attendance also demonstrates the strength of our sector and I want to thank all of you for your support.

Insurance premium tax (IPT)

I am delighted that we have been able to achieve a significant reduction in scope to the final legislation for insurance premium tax (IPT), which was published in the Budget on 24 March. This was the result of our joint lobbying with the IIB on the original text in the Pre-Budget Report.

Following lengthy discussions with Her Majesty's Revenue & Customs (HMRC) over the scope of the changes, a revised wording was proposed to and accepted by HMRC.

We believe the final legislation is the best result we could have hoped for following publication of the original text in the Pre-Budget Report.

The final wording and full explanatory note is available to members on the BIBA website.

Financial Services Compensation Scheme (FSCS)

The cost to our sector as a result of additional levies to deal with the failures from PPI and the potential levies that are likely to fallout from the banking crisis are of very real concern.

We have already engaged with the Financial Services Authority on this and will be lobbying for changes to the structure of the FSCS.

Public affairs

The date for the General Election should have been announced by the time this publication is circulated. Whether we have a new Government, a continuation of the existing Government or a hung Parliament, just means that we will have an increased workload to get our messages across. In Europe, the revision of the Insurance Mediation Directive is yet another piece in the jigsaw of potential impact on regulatory issues and we are engaged in this through our European Federation, BIPAR, and direct with Treasury and the FSA.

Manifesto

At the start of the year, we launched our *Manifesto*. This is our most challenging yet and outlines our priorities for 2010, some of which I have already mentioned. Our mission statement is to promote and protect members' interests and we cannot do this without the engagement and support of members. As many of you know, having 'one voice' has been a recurring theme of mine for some time and I will continue to raise this.

Paul Garland

Our Membership Manager, Paul Garland, a well known figure to many of you, has decided to retire at the end of May. Paul has been involved with BIBA and the membership since 1999 and has helped to grow and develop our membership base. Paul will be attending conference and I am sure many of you will wish to join me in wishing him a long, happy and healthy retirement.

"Your attendance also demonstrates the strength of our sector and I want to thank all of you for your support"

BIPAR meeting focuses on IMD revision

BIBA's Head of Training and Compliance, Steve White and Technical and Corporate Affairs Executive, Graeme Trudgill have recently returned from Brussels, where they attended both a mid-term meeting of BIPAR – The European Federation of Insurance Intermediaries – and another at the European Parliament conference.

The mid-term meeting focused on the forthcoming revision of the Insurance Mediation Directive (IMD) – the European legislation that brings insurance intermediaries into regulation, explains Steve.

It featured presentations from Peter Den Dekker, Chairman of FERMA (Federation of European Risk Management Associations) and Tomas Kukal, Chief Lawyer of the European Commission's DG Internal Market and Services. Tomas set out clearly the next steps in the revision process, his current thinking on the key issues and acknowledged BIBA's representations for a level playing field.

The conference at the European Parliament was hosted by MEPs Gunnar Hokmark and Jean-Paul Gauzes and featured a speech by British MEP Sharon Bowles, who chairs the Committee on Economic and Monetary Affairs, which Steve says is "very influential".

He continues: "The conference marks a step forward for BIPAR and BIBA's collective engagement with the European Parliament. This will prove most valuable in the forthcoming IMD revision process."

The BIBA *Manifesto 2010* proved a popular document at both the meeting and the conference itself and Graeme adds: "BIBA's profile in Europe has never been higher than it is today".

BIPAR is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe.

It has a membership of 45 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing approximately 250,000 people. Founded in Paris in 1937, BIPAR has been based in Brussels since 1989. It is the official, recognised voice of insurance intermediaries with European institutions.

Twitter campaign launched

BIBA has started a new social media campaign with a blog page, Twitter account and LinkedIn group. BIBA has launched the campaign so that members using social media can keep up-to-date with all the latest BIBA news and information through social media channels. The information, which is already issued on BIBA's website, will go out on the different accounts as the campaign is trialled to supplement BIBA's existing communications.

"We'd like brokers already using social media to sign up to our accounts if they haven't already done so and then we'll be able to provide them with all the very latest information," says Communications Manager, Leighann Burtrand.

The BIBA blog can be accessed via the website, the LinkedIn group is called BIBA and Twitter account is called BIBAbroker.

Manifesto makes its mark

There has been a strong, positive response to BIBA's *Manifesto 2010* which was launched in January and focuses on political and regulatory horizons and signposting.

According to Chief Executive Eric Galbraith: "It is vital that our priorities are clearly outlined for those we communicate to, for example Government. And this has never been more important with an election being round the corner and a potential new regulatory system being introduced."

Graeme Trudgill, BIBA's Technical and Corporate Affairs Executive, adds: "The *Manifesto* is our most challenging yet. Apart from stating our lobbying agenda for the year ahead, it will also enable us to promote the benefits of brokers and the important issue of signposting business to brokers, helping customers and members."

The *Manifesto 2010* is the third produced by BIBA and will be distributed to all political stakeholders who are influential on issues affecting insurance brokers. It will be used to outline BIBA's lobbying position to protect and promote BIBA's members on the key issues affecting them.

BIBA calls for business resilience boost

BIBA is calling on the Government to do more to ensure that the UK's smaller businesses survive a major incident such as a fire, flood, act of terrorism, or a pandemic such as swine flu.

Independent research commissioned by BIBA among some 200 SMEs has revealed that 45 per cent of businesses have no, or at best approximate, plans for dealing with the effects of flood or storm damage. This is despite £3 billion of flood claims in 2007 and the fact that 80 per cent of businesses affected by a major incident close down within 18 months.

The research found the number of small businesses who claim it would take more than six months for their business to recover has nearly trebled. BIBA believes SMEs must have adequate plans in place to cover business resilience and is concerned businesses are putting themselves at risk.

BIBA last conducted research in this area in 2006 and while there has been a slight improvement, many businesses remain unprotected. Technical Services Manager, Steve Foulsham comments: "Larger companies are far more likely to have plans in place, but many SMEs are vulnerable. They need to ensure they are properly prepared for a major incident and many brokers are able to provide invaluable guidance in this area. BIBA will call for the support of the Government in campaigning for all businesses to set continuity plans in place."

Last year, BIBA launched a collection of business resilience support documents to help members advise their clients and these are available on the website.

Two new board appointments announced

Brendan McManus, Chief Executive of Willis UK (top left) and Ireland and Ken Davidson, Chairman of Crispin Speers (top right) , have been appointed to the BIBA board.

Brendan has wide-ranging experience of broking and the general insurance market, and Ken is the existing Chairman of BIBA's London Market Regional Committee (LMRC).

Brendan says: "I look forward to getting involved and representing BIBA members on the many challenges that they face during 2010 and beyond."

Ken adds: "It has been very rewarding to chair BIBA's LMRC and I now look forward to representing the wider issues affecting all BIBA members."

Brendan joined Willis in 2007 from Royal & SunAlliance (RSA), where he was Managing Director of the broker business, a role he held for three years after working in several different capacities.

Ken is a past President of the Chartered Insurance Institute, Chairman of Lloyd's brokers Crispin Speers and Chairman of several companies in the insurance/financial services industry.

At a location near you

There is a huge amount of regional activity taking place around the UK – and the more members participate, the stronger BIBA becomes, says **Paul Garland**

BIBA's calendar of regional events for spring and early summer has something for everyone. Up and down the country, members give up their time to take part in a wide variety of activities from committee meetings to compliance forums and they even manage to fit in a spot of golf and football every so often!

The BIBA website contains information about regional activities and also the names of committee members who will be pleased to be contacted about what is happening. All will emphasise that they are actively seeking more members to join in. It is notable that BIBA members are keen to support each other.

Although BIBA has a base in London, this is relatively small. We're a grass roots organisation that exists to serve members across all our 13 regions. Our team of Regional Executives exists to support BIBA members, helping with event planning and organisation. And they are also on hand to welcome new members to find out about what is going on.

Paul Garland is BIBA's Membership Manager

A taster of what's on offer…

April		
7	Committee meeting	Central
8	Scheme provider presentations /Committee meeting	Yorkshire and Northern
13	Compliance forum	South East /Central
14	Compliance forum	Yorkshire and Northern
15	Compliance forum	London Market
21	Compliance forum	Yorkshire and Northern
22	Top table lunch	Central
26	Regional managers' forum	Anglia
27	Compliance forum	Merseyside and West Cheshire
27	Committee meeting	West of England
28	Lloyd's trip	Central
May		
7	Lloyd's trip	Anglia/East Midlands
10	Committee meeting	South East
11	Committee meeting	West Midlands
13	Committee meeting	Yorkshire and Northern
17	Committee meeting	Anglia
25	Committee meeting	East Midlands
27	Young person coaching day	Yorkshire and Northern
June		
8	Committee meeting	London Market
8	Committee meeting	West Midlands
9	Five-a-side football (BIBA World Cup)	Yorkshire and Northern
10	Scheme provider presentations /Committee meeting	Yorkshire and Northern
10	Five a-side football	South East
10	Compliance forum	West of England
10	Away day	West of England
15	Scheme providers roadshow	Merseyside and West Cheshire
17	Regional chairman's meeting	All regions
18	Lloyd's trip	Yorkshire and Northern
23	Committee meeting	Central
24	Golf day	Central
24	Compliance forum	South East

Regional dinners – dates for your diary

09.07.10
Joint dinner
CII Cambridge /BIBA Anglia
King's College Cambridge

08.10.10
Annual dinner
South Wales
Parc Hotel by Thistle

08.10.10
Annual dinner
Yorkshire and Northern
Queen's Hotel, Leeds

15.10.10
Annual dinner
West of England
TBC

12.11.10
Annual dinner
West Midlands
National Motorcycle Museum, Birmingham

12.11.10
Regional dinner
South East
Hilton Hotel, Croydon

19.11.10
Annual dinner
Merseyside, West Cheshire
TBC

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Reaching those who matter

The start of 2010 has seen a vast amount of activity for BIBA across all fronts, as **Leighann Burtrand** reports

Whether political lobbying, interacting with the media or talking to members in the regions, it has been all systems go for BIBA since the start of the year. These are just some of the meetings, events and projects that the BIBA team has been involved in.

Government

- BIBA achieved a significant reduction in scope to the final legislation for insurance premium tax compared to the original text in the Pre-Budget Report. The BIBA and IIB lobbying campaign succeeded with the best result for members that could have realistically been achieved.
- Influenced Government proposals on the Equality Bill. The Government Equalities Office has now made a policy statement including proposals to introduce signposting (BIBA's suggestion) – this means any customer who is rejected by an insurer should be provided, where possible, with an alternative provider. This should provide an opportunity for the BIBA Find a Broker service to be promoted.
- Continued liaison with Mark Hoban MP, Shadow Treasury Minister and met with three prospective parliamentary candidates to discuss insurance broker issues.
- Responded to DEFRA on flood insurance research.
- Secured a link from the Foreign and Commonwealth Office to the BIBA Find a broker website.
- Liaised with HM Treasury regarding the Flood and Water Management Bill.
- Attended DVLA continuous insurance enforcement (CIE) strategy meeting and presented to the Government and industry on CIE. Also met with Theresa Villiers MP and Shadow Secretary of State for Transport to gain support for this topic and electronic motor insurance certificates. Also formally responded to Department for Transport on proposed new regulation for electronic delivery of motor insurance certificates.
- BIBA's *Manifesto 2010* has been sent to more than 200 political stakeholders.

Europe

- Responded to the European Commission on age discrimination in financial services to promote signposting to BIBA members.
- Met the European Commission Internal Markets' Chief Lawyer to discuss the forthcoming revision of the Insurance Mediation Directive. Also discussed this subject with the Chair and CEO of the European Federation of Insurance Intermediaries (BIPAR).

Regulation

- Met the FSA to discuss its remit for the FSCS review.
- Discussed wholesale broker compliance issues with FSA.
- Met the non-life insurance institute of Japan to discuss UK regulation.
- Attended Financial Services Practitioner Panel and the Smaller Businesses Practitioner Panel trade associations briefings.
- Published regulation updates to members on financial sanction-related releases, on the Information Commissioner's Office introducing £500,000 penalty for data breaches and on our response to the FSA's fees and levies paper CP09/26.

Working with other associations

- Met AIRMIC to discuss current issues.
- Held our board meeting, which included a presentation from the CII on the Professionalism Task Force.
- Participated in the CBI's Trade Association Council meeting and attended the CBI's financial services event.
- Met the Credit Industry Fraud Avoidance System (CIFAS) to discuss how brokers can help with staff fraud detection.
- Issued new good practice guide to help customers buying insurance online.

In the Regions and at BIBA HQ

- Attended the BIBA Anglia, East Midlands, Merseyside and West Cheshire annual general meetings.
- Held the GIBC meeting to discuss member issues.
- Attended and presented at Merseyside and West Cheshire AGM.

Lloyd's and the London Market

- Met with Lloyd's to discuss its pandemic protocol.
- Met the Head of International Regulatory Affairs at Lloyd's.
- Held two London Market Region compliance forums.
- Added new Lloyd's and Xchanging bulletins to the London Market Region section of the website.

Media

- Played a key role in providing information on the value of brokers for a supplement, *Insurance Confidence* which was distributed with *The Guardian*.
- Launched a social media campaign to allow members to communicate on Twitter and LinkedIn.
- Promoted business resilience plans and brokers in the national media.
- Appeared on BBC Radio 4 twice, BBC TV London and BBC TV Breakfast news to promote brokers.

Leighann Burtrand is BIBA's Communications Manager

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XL INSURANCE

Insurers may be taking on dangerous and incredibly costly exposures and so must arm themselves with as much knowledge as possible – **Edward Murray** outlines some hazards of the future

It is often said that what you don't know won't hurt you. However, for the insurance market, it is exactly what it doesn't know that will hurt it the most. Without knowledge and understanding, the insurance market is lost and this is what makes the uncharted waters of emerging risk so dangerous.

Emerging risks come in a diverse bag, but have three characteristics that bind them together.

In its *Industry Insight* publication of June 2009, Zurich's Emerging Risk Group outlines exactly how such a risk is identified: "First, it must be a phenomenon whose nature and effects are unknown – so for example, an imminent outbreak of cholera couldn't really be considered an emerging risk, no matter how threatening it appeared.

Second, an emerging risk must go beyond the bounds of existing underwriting and risk management best practices – so that even a rise in the incidence of cyber thefts and security breaches would fall short, since the exposures by themselves are known risks which existing underwriting and risk management practices are designed to address.

Finally, an emerging risk must go beyond existing actuarial calculations – so that even if everyone switched over to electric cars, it would only matter to the Emerging Risk Group to the degree that those cars had a different actuarial profile than their combustion-driven counterparts."

Developing risks

Clearly there are a huge number of developing risks that need to be assessed by insurers and brokers, but many of them do not fall into the parameters set out by Zurich, as they already have an established basis for accurate assessment, risk management and underwriting.

As an example, one risk that is often seen as growing in threat is that from the Far East. It may be cheaper for manufacturers to use these markets to make their products, but does it open them up to other risks?

Chris Dee, Manager, Casualty, at Allianz, says: "Are manufacturers really saving costs when outsourcing to cheaper markets?" He highlights the need to input significant resource into ensuring the quality of the goods and creating systems and processes that will ensure consistent standards on an ongoing basis.

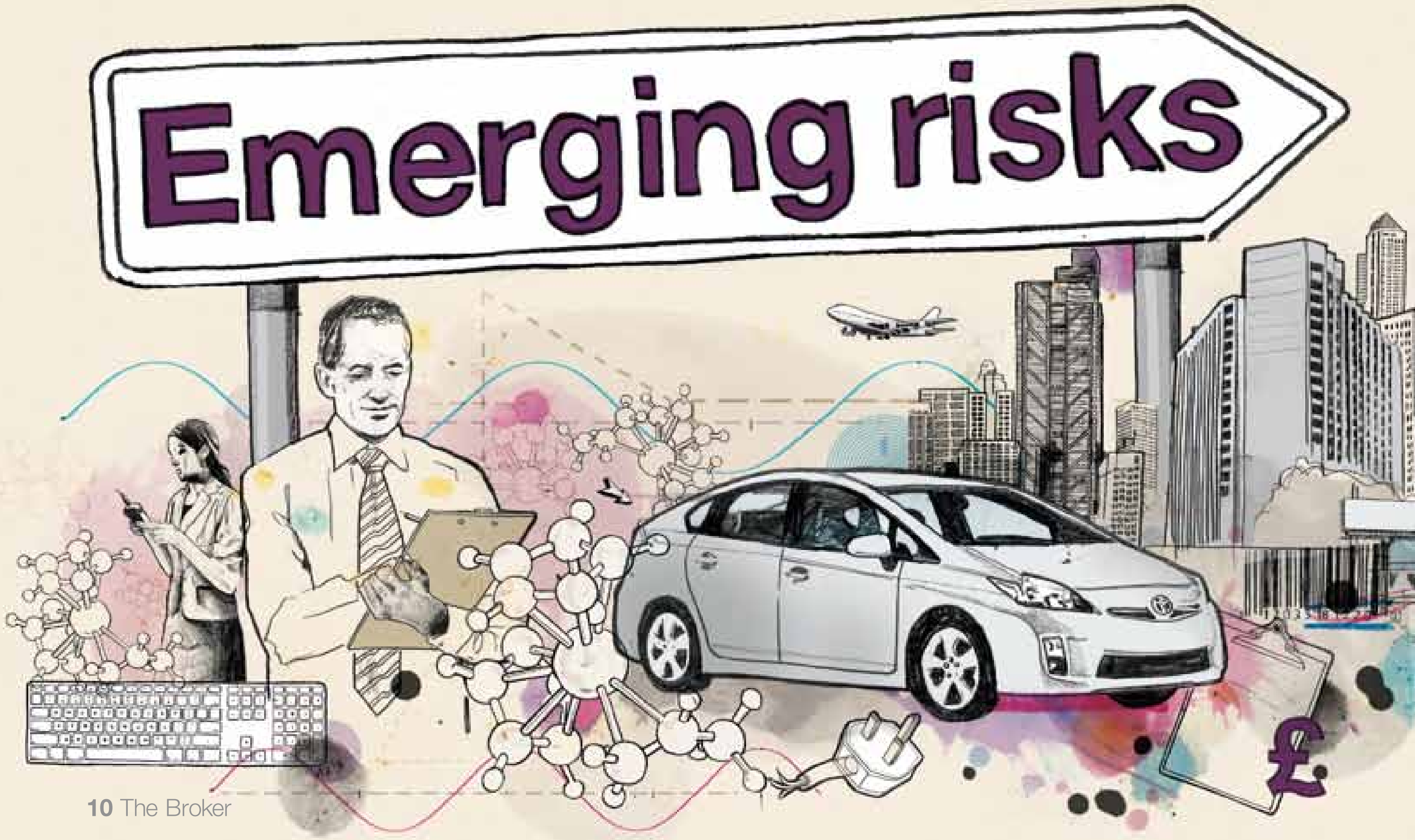
He also emphasises the cost of large-scale product recalls. At a time when Toyota is spending billions of pounds to recall a string of models in its range, many commercial companies will be very switched on to these threats.

Similarly, Jonathan Hughes, Lead Insurance Partner at consultant Bain & Company, says his business monitors a basket of key global super-structural trends including ageing populations, the rise of the East, increasing discretionary spend, urbanisation, global and regional mobility, resource depletion and the impact of technology.

He comments: "Each of these super-structural trends will have multiple impacts on the risks that individuals and companies have to face, but one of the more significant within the UK over the next 10 to 20 years will be the ageing population."

However, although the Far East and the ageing population are changing the nature of the risks that people face, are they completely new? If not, what then constitutes an emerging risk in practice?

One area that has pricked up the hairs on the back of the insurance industry's neck is nanotechnology. Nanotechnology is the science



of the unbelievably small. It is played out on a pinhead and deals with how materials perform when broken down into molecular and atomic units.

In their nano state, materials have different characteristics than they do in their macro state, and this means there is little understanding of the impact they may have on their surrounding environment.

Toxicity

Discussing the emerging risk posed by nanotechnology, Steve Knutson, Director – Emerging Issues at Zurich North America Commercial, says: "Little is known about the toxicity of nanostructures. The science, research and usage have not yet matured. Since nanoparticles may present a different toxicity profile compared to their macro counterparts, we cannot rely on existing research results of macro materials to assess their degree of toxicity in the nanostate.

"Nor can we rely on existing environmental health and safety regulations and risk mitigation protocol. As a result, nanotechnology is largely beyond the bounds of existing underwriting practices and guides, current risk management protocols, and prevailing actuarial calculations and projections."

Therefore, the use of things like nanosilver, which is now used in hundreds of products from sports socks to baby bottles, creates significant problems for the insurance industry if it turns out that the material presents a serious physical threat to the individuals who come into contact with it. Similarly, the manufacture and disposal of the material may create environmental risks that are as yet unknown.

Getting to grips with these risks is going to be incredibly hard for the insurance industry and in looking at how it must approach underwriting in this area, Knutson adds: "One of the most difficult tasks in assessing nanotechnology exposures is to translate technical research studies into useful quantification benchmarks that are relevant to the insurance underwriting business. Insurers may develop such skills internally or seek independent consultation."

When one considers that the impact of nanoparticles is being discussed in the same sentence as asbestos, the horrific nature of the potential risk in terms of both human and financial cost becomes apparent.

As Chris Dee comments: "Carbon nanotubes can have a similar shape to asbestos fibres and are seen as potentially toxic." He also says that nanoparticles such as copper and silver have been shown to harm aquatic life, throwing up very worrying questions about their impact on the environment with all of the associated risk that comes with that.

At the moment, the truth of the matter is that we know too little to really understand the potential risks involved. What is understood is the growing importance of nanotechnology and its increasing influence in the commercial marketplace.

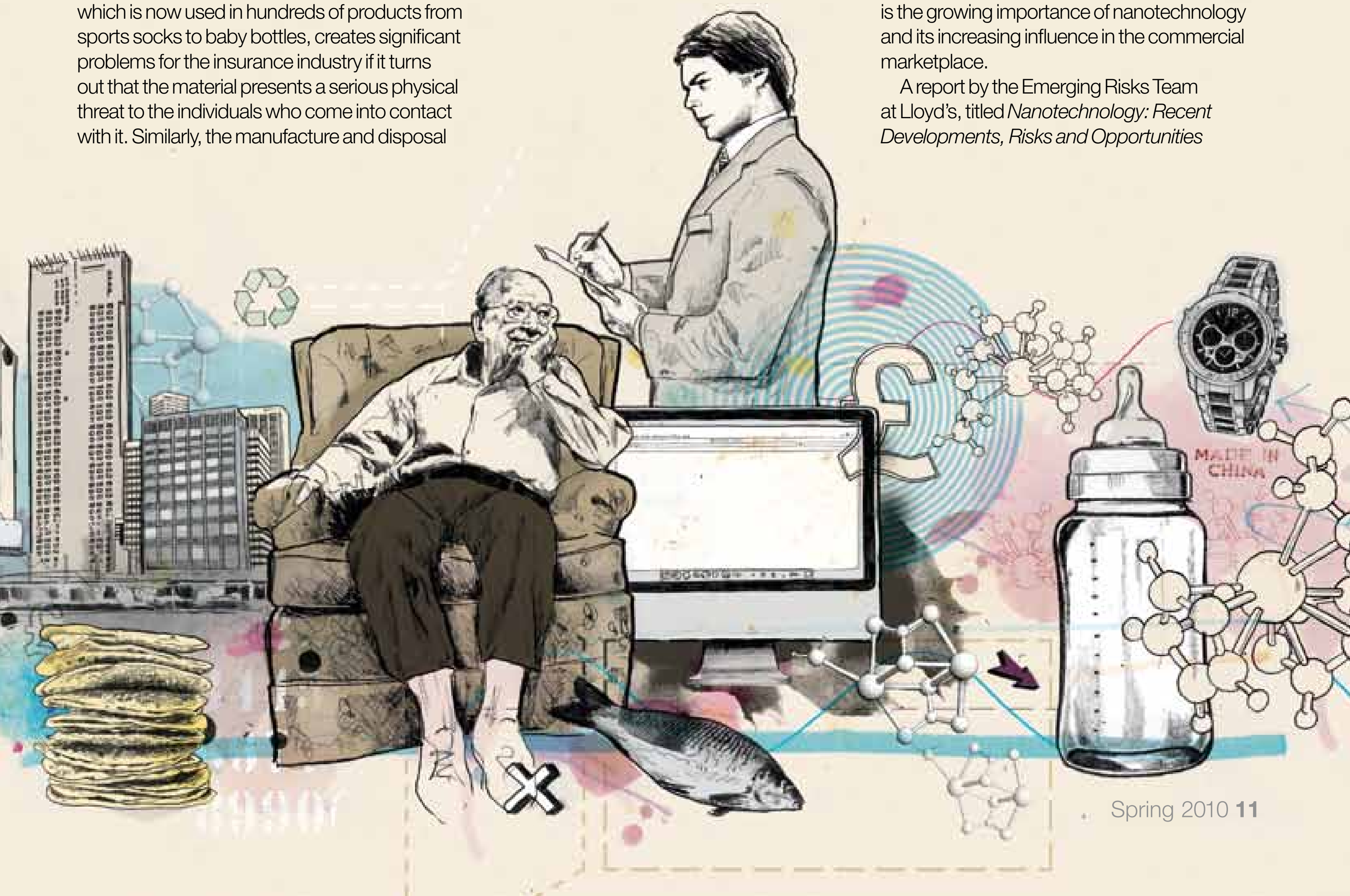
A report by the Emerging Risks Team at Lloyd's, titled *Nanotechnology: Recent Developments, Risks and Opportunities*

European Union regulatory bodies

- REACH – Regulation for Registration, Evaluation and Authorisation and Restriction of Chemical Substances
- DG ENV – Directorate General for the Environment
- SCCPNFP – Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers

United States regulatory bodies

- FIFRA – Federal Insecticide, Fungicide and Rodenticide Act
- TSCA – Toxic Substances and Control Act
- CPSC – Consumer Product Safety Council
- EPA – Environmental Protection Agency
- FDA – Food and Drug Administration
- OSHA – Occupational Safety and Health Administration



commented: "Market research suggests that products valued between US$30 billion and US$200 billion contained nanotechnology in the year 2005. One estimate by Lux Research says that 15 per cent (by value) of all products will contain nanotechnology by the year 2014."

The breadth of the sectors that use nanotechnology and the range of the products that contain nanoparticles also make regulation in this area a nightmare, and the patchwork of rules that are currently in place are likely to make any future claims the matter for significant legal wrangling.

As the Lloyd's report goes on to say: "Currently almost all regulation of nanotechnology is done using existing mechanisms. Stakeholders in nanotechnology are divided on whether specific regulation is required. However, the 'wait and see' approach is increasingly becoming a dangerous way to determine the risks."

"The long-term effects on human health and the environment are nearly impossible to test"
Johannes Klose, Allianz

Just some of the regulatory bodies with responsibility in this area are highlighted on page 11 and it is easy to see how confusion could reign with so many parties involved.

Genetic modifications

Another area of science that is fast becoming a part of everyday life without many people really understanding its potential impact is that around genetically modified organisms (GMO).

Although there has been a lot of media coverage in this area, there is still relatively little known about the long-term effects that might be at play.

Johannes Klose, Scientific Advisor at Allianz Global Corporate and Specialty, explains: "Most people are concerned about contamination. GMOs can intermingle with conventional organisms by transferring some genes to non-modified plants. Basically, genetically modified plants always have an additional piece of DNA. This can produce a new protein that makes the plant resistant to a herbicide. But the protein may also cause toxicities or allergies.

"This is something you can test, but the long-term effects on human health and the environment are nearly impossible to test. You would have to monitor this for decades, but you cannot do this because this would put people at risk. It's a Catch-22 situation. This has already led to losses for insurance companies. One example was a type of genetically modified maize that was approved for industrial use only. But a consumer protection group detected traces of the transgenic maize in tortillas sold in a supermarket. The manufacturer then had to recall everything, and this cost a lot of money."

For brokers that deal with clients who may potentially have exposure in these areas, keeping abreast of the latest thinking is obviously important.

John Simpson, Business Unit Director at Towergate Risk Solutions, Leeds says: "As we are involved in a lot of niche lines, we need to have in-depth understanding and so we have experienced people, external consultants and we invest an awful lot of money in the training budget. People have to make sure they are attending the right conferences, speaking to the right people and getting the knowledge they need to thoroughly understand the niche area they work in."

However, for the vast majority of broking firms, many of the newest emerging risks do not directly affect clients and are not wholly relevant on a day-to-day basis.

As Kevin Young, Chairman of Argyll Group, comments: "These things are important with certain customers, but if you are not involved in it they are not particularly important. However, legal liability, things like corporate manslaughter and manual handling risks in terms of risk assessment and management are the kind of things we see on more of a day-to-day basis."

He adds: "If we know we have someone that is producing genetically modified food then we have to make sure they get the right advice, but that is a fairly small end of the market and the client base that we have is more concerned with things like corporate manslaughter that apply right across the board."

Prioritisation

The key for brokers is in prioritising those clients that have special needs and in nurturing relationships that allow them to get to the crux of the matter where particular problems may need to be addressed.

Kevin says: "It really boils down to the effectiveness of the relationship with the client and the strength of understanding a broker has of the business and the risks it might face. I don't think it is about saying I am going to be an expert in every single field there is and then ask people if they are open to this risk or that risk. I think it is the other way round and it is about the client saying this is what I do and this is the business I'm in and then the broker working with the client to identify the risks as a result of that."

However brokers choose to approach the world of emerging risks, one thing is for sure; the evolutionary nature of our world will keep them hard at work long into the future.

BIBA 2010
CONFERENCE & EXHIBITION
ExCeL London, May 19-20
Professionalism in a changing world
See us on stand F12

PREMIUM CREDIT
A Bank of America company

At Premium Credit, we can help you relax when it comes to arranging premium finance for your clients. Come and see how by visiting us at the BIBA conference - we'll be on stand F12. Here are a few reasons why you should pay us a visit:

LEADERSHIP:

Premium Credit is the No.1 Insurance Premium Finance Company in the UK and Ireland. Last year, we achieved £3 billion gross advances and processed more than 15 million Direct Debits. We have over 1.5 million customers and work with nearly 4,500 intermediaries across our chosen markets.

EXPERIENCE:

All in all, we have over 21 years in the Insurance Premium Finance market and more than 170 years of combined senior management experience.

RELIABILITY:

At Premium Credit, we understand that working together with you, and giving a standard of service that you can depend on, is crucial to our success. That's why reliability is the key reason why many brokers choose to do business with us*.

TRUST:

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** Source: Premium Credit Limited Research (Nov 2008)*

LEADERSHIP EXPERIENCE RELIABILITY TRUST

Change is coming

When it comes to the difficult and at times controversial area of accident management, it is crucial that brokers are fully aware of all the relevant issues. **Graeme Trudgill** updates members

Motor claims are certainly a topical issue right now. Various headlines have claimed that accident exchange rows are rising, that we are faced with sweeping changes from Lord Justice Jackson and there are new rules from the Ministry of Justice (MoJ). This is in addition to insurers withdrawing from the Association of British Insurers (ABI) general terms of agreement (GTA), confused customers complaining to the BBC, and millions of pounds changing hands with referral fees... Brokers are right in the middle. So what is the latest and what is likely to happen?

Income

Accident management companies (AMCs) would never have been so successful if the motor claims process worked perfectly. The truth is that 10 years ago, courtesy cars were often not available and if they were, they were often only suitable for small people with small families.

BIBA recognises the consumer benefits offered by AMCs in the form of hire vans, motorcycles, even trucks to keep businesses running and families mobile. They are also an important source of income for brokers. BIBA does not want to discourage access to recompense for personal injury; however, there seem to be some practices that have led to excessive claims and confusion.

Some brokers generate a referral fee income by selling leads to AMCs and personal injury lawyers. An important line in the sand exists, following the law of agency, namely that only a non-fault claim should be sold and fault claims should not.

Hugh Price, a lawyer and a BIBA Liability Committee member, explains: "With regard to the law of agency, the answer is very simple: if the broker does not have the authority or permission of the principal (ie, the insurer of the client) then he is acting in bad faith – this could be grounds for rescission by the insurer if the broker has any formal contracts with the insurer. If no formal agreement exists, the insurer could claim for any additional outlay suffered and for the referral fee as the agent is making a secret/undisclosed profit from the agency contract."

And Peter Franklin, BIBA Liability Committee Chairman, says: "The agency question is a very difficult one. As the Law Commission has highlighted, it is not easy to decide whether an insurance broker is acting for the insured or the insurer in the various roles he carries out. One point that has not been raised is whether supplying these names is a breach of the Data Protection Act as it is unlikely that, when the information was collected, the client was warned as to the use the information was to be put."

There is concern for the customer shortly after an accident. My car was recently hit from behind while stationary and I was contacted by numerous AMCs and four personal injury lawyers, so I can only imagine the confusion a customer must feel. The cause of this frenzy seems to be the "overriding principle" from the ABI's GTA which states that "whoever is first to a customer and obtains their agreement should provide the service and all subscribers should not seek to intervene". Therefore it is first come, first served, but is this in the client's best interests?

"It is not easy to decide whether an insurance broker is acting for the insured or the insurer in the various roles he carries out"
Peter Franklin, BIBA Liability Committee Chairman

replacement vehicles on a credit basis and did not take up the prompt offers of replacement vehicles by the defendants' insurers."

The court has allowed the claimants' appeals holding that:

- **it was not unreasonable for a claimant to reject or ignore an offer from a defendant (or his insurers) which did not make clear the cost of hire to the defendant – an intervention offer letter should contain details of the cost to the insurer of supplying the 'free' car**
- **even if the claimants had failed to mitigate their loss, they would have been entitled to recover damages based upon the amount it would have cost the insurer to supply the vehicle – they would not forfeit their damages claim altogether.**

So, what guidance has there been so far? The FSA has issued a paper, *Third-party Capture*, but that is aimed at insurers. Lord Justice Jackson has led a fundamental review of the rules and principles governing the costs of civil litigation and made recommendations in order to promote access to justice at proportionate costs.

This January 2010 report announced the findings of the civil litigation costs review. It outlined the final proposals on the costs of civil litigation and importantly cites ending the current regime of "no win/no fee" agreements, by making success fees and after the event (ATE) insurance premiums irrecoverable. Notably, referral fees from solicitors to accident management firms, brokers and insurers would be banned or at least capped.

BIBA Motor Panel member George Nicol explains: "There could be knock-on effects for brokers, AMCs and legal expenses firms as a result but the additional complimentary measure of increase in general damages by 10 per cent may go some way to helping claimants absorb the success fees and ATE insurance. These will become their responsibility, albeit capped at 25 per cent.

"Many of the changes require primary legislation, which can take years, but can't be ignored. If Lord Jackson does not receive the same support as Lord Wolf (who had the backing of Westminster), his proposals may never make it off the paper."

In regard to the new MoJ rules, George adds: "The aims of the new MoJ rules are for quicker compensation to claimant, early settlement, streamlining the process. The value of these claims is £1,000 to £10,000 (based on general damages and special damages). There will be an online automated process to assist document exchange, bearing in mind the tight deadlines. The key timescale is admission of liability within 15 working days and any party can exit due to contributory negligence, denial of liability, no response or inadequate information. Once payment is agreed, this must be made within 10 business days. An additional 10 days will be considered if a potential exit is required. Once the medical evidence and documentation to support special damages has been received, a 15-day window is given to accept or reject with stipulated days of grace for specific reasons. There are set fees for each stage including litigation."

And Allan Briscoe, the BIBA Motor Panel Chairman, says: "There was an important court case, *Copley v Lawn* and *Maden v Haller CA 17.6.09*. Here the claimants hired

Eamonn Browne, a BIBA Motor Panel member, explains: "Following this case motor policyholders could find themselves having to pay a substantial amount of the hire vehicle costs themselves – not the intention of claims management. Even other aspects of their claim could be successfully rejected by the third-party insurer. Clearer guidelines are essential and the policyholder must be correctly advised on the scope of the cover and their requirements to mitigate loss. We have seen policyholders who drive a Nissan Micra being offered a BMW 7 series during repair."

BIBA's Head of Technical Services, Peter Staddon, comments: "Personal injury lawyers never fail to surprise. I was recently contacted by one asking if I wanted to make an injury claim following some data bought from a website holding details of a motor claim two years ago! They asked if I wanted to sue my wife to seek recoveries by suing her on my motor policy in which she was a named driver. I was not in the car, but they still wanted to instigate an action."

With reforms sweeping the industry, brokers whose income model relies on motor claims will have to carefully reconsider their business model.

The 2010 BIBA Conference will look at these issues. Chaired by motoring journalist Quentin Wilson, on the panel will be BIBA Chairman Patrick Smith from Swinton, who concludes: "Motor claims are an important issue and there are many interesting points for debate, I hope members can come along and join in our discussions with the panel on what I expect will be a very interesting session indeed."

Graeme Trudgill is BIBA's Technical and Corporate Affairs Executive

What makes the Fortis formula a winner?

They are not the biggest and they do not have a regional branch network, but this is one insurer which consistently secures high approval ratings. Managing Director **Mark Cliff** talks to **Rachel Gordon** about his company's strategy

What do you feel are Fortis's strengths and weaknesses?
Brokers rely on Fortis to deliver high-speed, high-quality service, coupled with efficient and informed decision making. We do what we say we are going to do. The evidence shows that we consistently outperform the market in this area and industry, partner and customer benchmarking places us in top position for service. A lot of insurers talk about service, but I know how seriously it is taken here. We typically get at least 150 – and often more – letters a month from our customers to say how pleased they are about how we helped them. That could be as a result of business placed through a broker or maybe following up a claim, but we make sure that the members of staff know about this and it keeps people really motivated.

We do well in broker surveys and have won numerous awards voted for by our brokers. For all the talk about services, having brokers vote for you without influence matters enormously to us – and it remains a differentiator.

Equally, how you deal with complaints is vital – you can never totally avoid them, but learning from them pays dividends. What you then have to do, is combine great service with being low cost.

In terms of weakness, we are still thought of by some as being predominantly a motor insurer. However, our focus has been to expand into other markets such as commercial lines and we are getting this message across as we extend our product range and e-training capabilities.

Other insurers promote their branch networks – is it something Fortis would consider?
Fortis operates a centralised structure with two main offices in Eastleigh and Gloucester, supported by regional business account executives who visit brokers in their offices. Our lean, flat structure allows brokers access to key decision makers for a quick turnaround on decisions. You can get situations with regional offices where they compete with each other and I would not want that. Broker feedback to us is that it is not important to have regional networks if they are getting the right level of service. I can't see it would make sense for us to open regional offices when we're already communicating well with our brokers.

How would you describe the culture at Fortis?

What I've been taken with is the dedication of employees – a number have been here for over 30 years and we have a low attrition rate. When we had the extremely severe snow early in the year, one of our employees walked four miles into work – there was no compulsion. Our staff genuinely wanted to come in because they cared about the service we provide, both to brokers and the end customer. In fact, around 75 per cent of people managed to get in, which was phenomenal.

People talk about the family culture – I like the fact there is no internal politics and that anyone who goes beyond the call of duty will be recognised. It's a cliché, but it's about the whole team working together.

Do you think it is still important to meet brokers?

Absolutely. We've recently been holding regional forums in Southampton, London, Manchester and Glasgow to get feedback – my view is you can never get enough feedback.

Brokers say we are not a remote company and we have a flat structure, it is easy to speak to either me or Barry Smith, Fortis UK's Chief Executive.

What are your top priorities for 2010 in terms of developing further broker business?

Our challenge is to win more commercial business and generally widen our footprint. We're competing in the main general insurer league and while motor is still important, at around 55 per cent of our business, it is becoming a smaller percentage of what we do each year as we expand into other profitable growth areas. Our big push is commercial insurance and we also intend to become a substantial fleet player – we piloted a new product in 2009 and have now gone live to our 2,300 brokers. We will also be extending our reach in the household market in 2010.

> "Our big push is commercial insurance. We also intend to become a substantial fleet player"

Why don't you have a club proposition?

I think you offer the same level of service to brokers whatever their size. You may have individual arrangements with some brokers, but we don't want one elite group to have different treatment.

Do you support aggregator sites?

Yes, we do. A lot of people choose to use them and so it would not make sense for us to pull out. They are still a relatively new channel and making sure that pricing is correct going forward is going to be something the whole industry will need to work on.

Within commercial, will you only cover SMEs?

This will be the emphasis, but we will also take on some mid-market risks. Our focus is on developing specialisms so that brokers can be clear on what type of business we want.

Are there people in the insurance industry – or elsewhere – you particularly admire?

I really enjoyed working with Stefan Pater, who was Managing Director with RSA's broker business and is now with Co-operative. He always said it was vital to understand the detail and was a very positive leader who made people think nothing is impossible. He also spent time on business relationships – you need to work at them. My boss, Barry Smith, is also someone who couples strategic vision with great attention to detail – you need clear sight of where you're heading but you shouldn't go ahead with something unless you really understand it. In general business terms, I've always admired Richard Branson, who epitomises what being an entrepreneur is about and has so much energy and determination.

Robust performance in a tough market

In its 2009 year-end results, Fortis reported record levels of non-life gross written premiums of £805 million as a result of the successful implementation of its multi-product, multi-channel strategy.

The company reported significant growth in its commercial lines portfolio and has made good progress in the delivery of its commercial product suite through electronic trading platforms including PowerPlace and, more recently, Acturis.

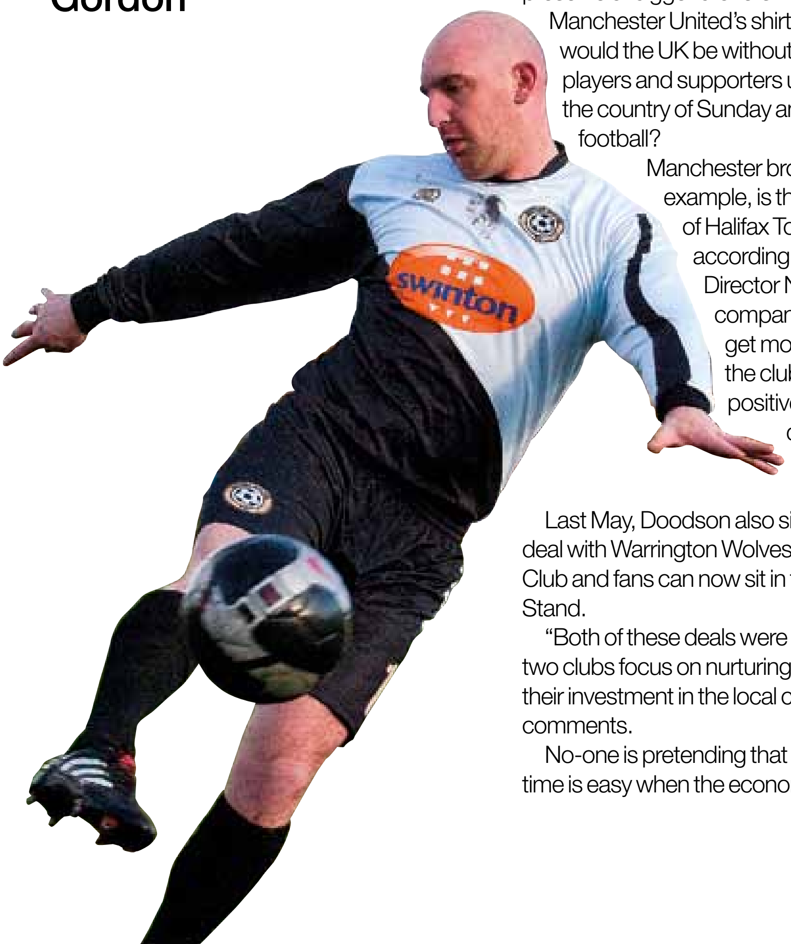
Fortis recently announced a new initiative where it set up four separate teams each dedicated to the insurer's national brokers and consolidators; networks; partner brokers; and high street provincial brokers. Momentum is expected to continue in 2010, as Fortis further builds on its commercial product portfolio through the full launch of a fleet proposition and as software houses develop their commercial platforms, putting Fortis in a leading position in terms of commercial e-trading.

The company has long been recognised for its customer service ethos and innovation, and 2009 was no exception. Fortis consistently achieved a top position for service in broker-nominated surveys in 2009 and has won a number of awards. It employs almost 3,000 people with a head office in Eastleigh and others in Belfast, Bournemouth, Gloucester, Reigate, Haywards Heath, London, Redditch and Stoke-on-Trent.

Fortis also recently announced the proposed new name for the group: ageas. The proposed change follows the disposal of Fortis Holding's banking assets and its sole focus as a global insurance company. The UK business makes up one of the group's four key regions, along with Belgium, Continental Europe and Asia. Subject to shareholder approval in April 2010, the company will be looking to introduce the new name in the UK in the first quarter of 2011.

Making a difference

There are all sorts of ways that brokers can engage locally – and these activities can also bring benefits in terms of customer loyalty and employee team-building, says **Rachel Gordon**



Brokers are often known as being local champions. Their customers want to pick up the phone to someone close by. They may well be able to put a face to a name. And knowing their broker supports the local community also creates a warm feeling.

That warmth could be generated if the broker lets people know the firm is supporting a small local charity, or perhaps a school or sports team. This should not just be the preserve of bigger brokers – Aon may be on Manchester United's shirts, but where would the UK be without its die-hard players and supporters up and down the country of Sunday and non-league football?

Manchester broker Doodson, for example, is the shirt sponsor of Halifax Town FC and according to Managing Director Neil Clayton, the company decided to get more involved with the club after gaining positive feedback during their shorts sponsorship last season.

Last May, Doodson also signed a long-term deal with Warrington Wolves Rugby League Club and fans can now sit in the Doodson Stand.

"Both of these deals were done because the two clubs focus on nurturing local talent and their investment in the local community," Neil comments.

No-one is pretending that investing work time is easy when the economy is so tough, but those companies with a track record in community activities say the effort is well worth it.

Dean Fellows, Operations Manager for Swinton, says: "Each year we nominate charities and for 2010, staff from our Halifax call centre chose Overgate Hospice in Calderdale, West Yorkshire and Ash Green Primary School in Mixenden, Halifax to raise money through a variety of fundraising events – we want everyone to get involved, so it could be a fun run or simply a dress down day."

He continues: "The hospice is close to our offices and many staff know of it – and that the people there do an amazing job. Likewise, you might not think about supporting a school financially, but we employ many parents who send their children there, and they know at first-hand that we could make things better if we help to raise money."

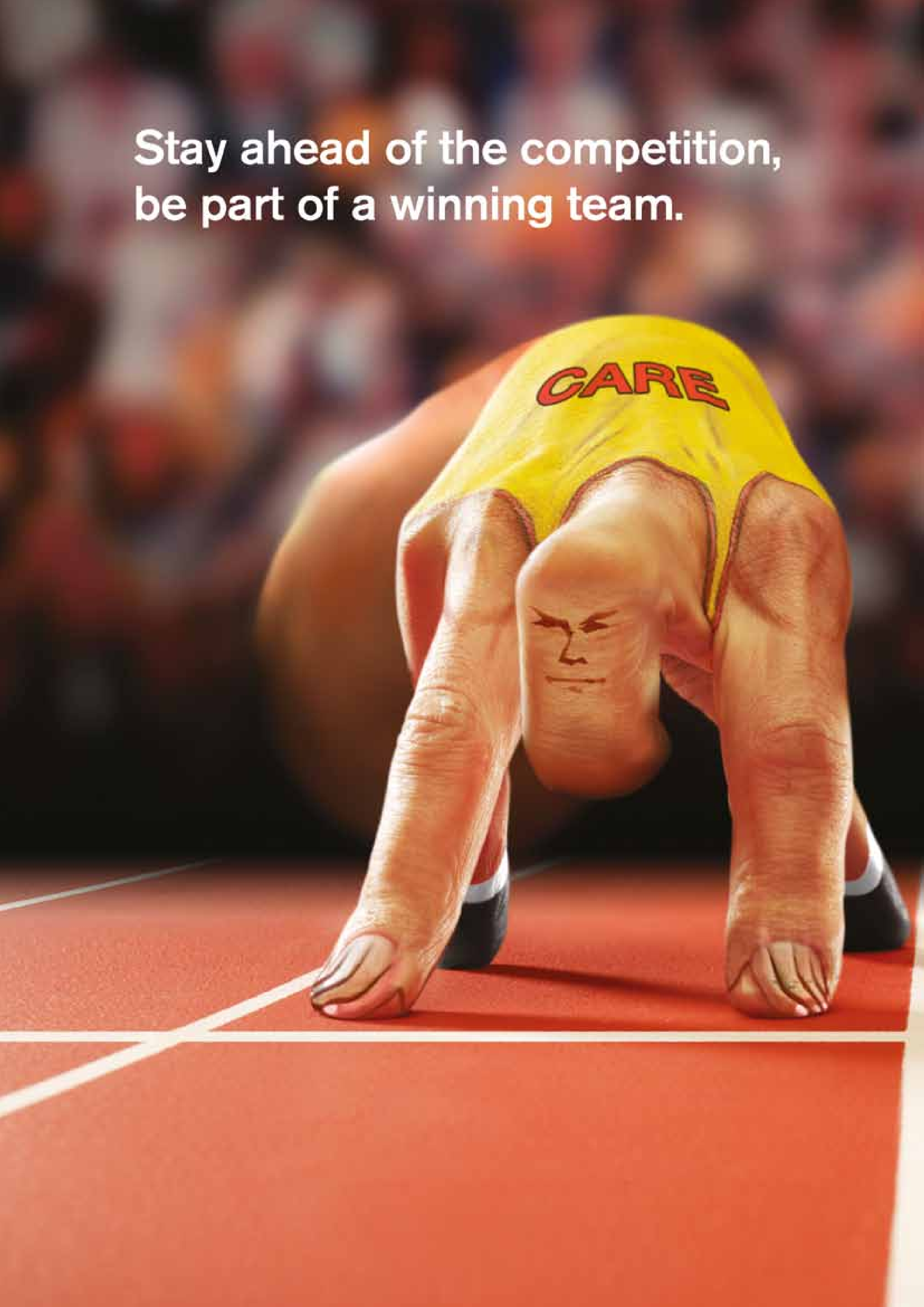
Swinton has also provided local Halifax football team Royal Hotel FC with a new kit for the season.

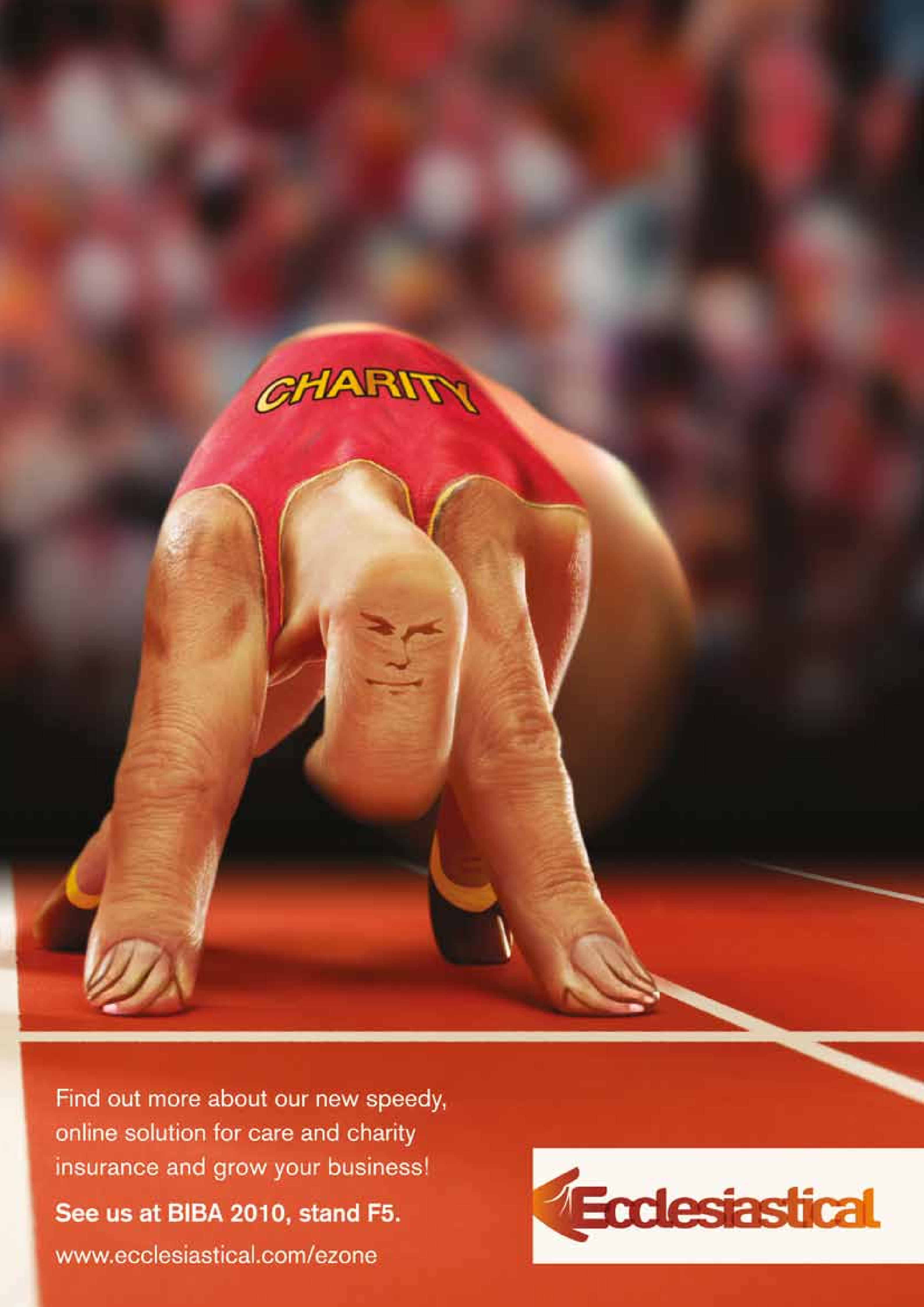
Meanwhile, broker Keelan Westall, the property and commercial division of Barbon, is supporting a local hospice Naomi House, which supports seriously ill children in Hampshire. This has been a favourite cause of staff for a number of years and to date they have raised more than £50,000 – there is a committee of seven employees who organise charity events throughout the year.

"If staff are working together on raising money for a charity, then that's a very positive thing for everyone to do"
Ben Wright, Keelan Westall

Keelan Westall's Managing Director, Ben Wright, says: "Last year was a record-breaking one for fundraising for Naomi House – we raised £10,000. Staff did everything from bake sales to pub quizzes to golf days where we invited insurers and they sponsored holes. It was a huge amount of work, but we know that we have played a part in helping Naomi House start work on Jack's Place, which will provide respite care for older children."

He continues: "If staff are working together on raising money for a charity, then that's a very positive thing for everyone to do. We've had presentations from hospice workers to our staff – so they know how they are helping – and it certainly puts other stuff into perspective."


Stay ahead of the competition,
be part of a winning team.
CARE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The one & only

The whole insurance industry agrees that BIBA's Conference and Exhibition is unsurpassed in terms of its quality, networking opportunities and sheer business benefits for brokers – so find out what's on offer for 2010

Chairman's welcome

Patrick Smith, BIBA Chairman and Group Chief Executive of Swinton

I've attended a number of BIBA conferences over the years, but this is the first I'll be going to as Chairman – it's a prospect I'm very much looking forward to. We're working in an age where business is increasingly being done remotely – and this makes going in person to **Professionalism in a changing world** even more special and relevant.

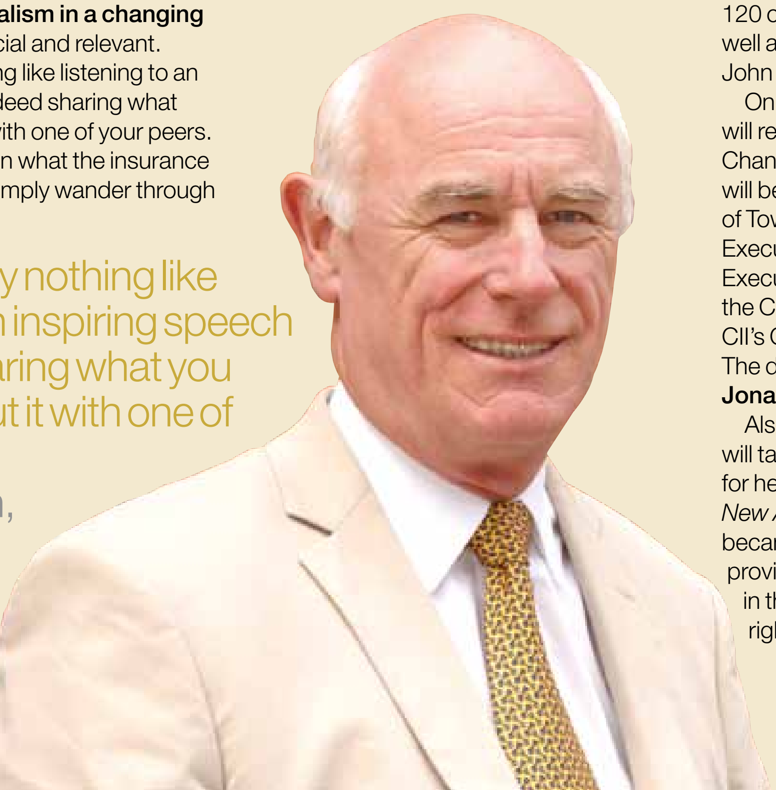
There is really nothing like listening to an inspiring speech or indeed sharing what you thought about it with one of your peers. And, for the very best in what the insurance industry has to offer, simply wander through the BIBA exhibition. You'll be able to meet senior representatives from mainstream insurers and a wide variety of affiliated companies such as legal, finance and technology.

Perhaps you've an idea for a new scheme? Maybe you're dissatisfied with the service levels of a particular insurer and want to see if it can be bettered? Or you could simply be looking for some fresh thinking and different ways of doing business?

The right people will be at this year's BIBA Conference – and there is always a lot going on, such as presentations and seminars as well as plenty of practical ideas on offer to boost business performance...and in between, you'll see brokers catching up with all the gossip. But there is also plenty of time to get together and fit in meetings in designated areas. Although there is so much going on, there is also plenty of time to talk to everyone. And don't forget to schedule in a few hours for the always excellent social programme – where, in turn, plenty of business is also done.

So, for two days of the year in May, let face-to-face take precedence. Videoconferencing may have its uses, email comes in handy and mobile phones certainly have their place. But brokers build their business on relationships – and this is at the heart of the BIBA Conference. So, this promises to be a superb event and I hope to meet as many members as possible at ExCeL – please do look out for me.

> "There is really nothing like listening to an inspiring speech or indeed sharing what you thought about it with one of your peers"
> Patrick Smith, BIBA Chairman



Speaker's corner

This year's conference has secured an A-list cast of keynote speakers who'll be presenting to brokers at ExCeL.

On Wednesday, **Joe Plumeri** will open proceedings. The New Jersey-born Willis Chief Executive Officer has revitalised Willis and now leads a dynamic business which has seen some smart acquisitions and sustained organic growth. He was described by the BBC as "a straight-talking bundle of energy in an industry more usually associated with old-school ties and long lunches," and prior to joining Willis, had a 32-year career with Citigroup.

Also speaking on Wednesday is the BBC's World Affairs Editor, **John Simpson**. He has spent his whole working life working for the corporation and reported from more than 120 countries, including 30 war zones, as well as interviewing many world leaders. John has also written numerous books.

On Thursday, the ever-popular debate will return – in this case, the title is 'The Changing World'. BIBA's top class panellists will be: **Peter Cullum**, Executive Chairman of Towergate; **Robert Brown**, Aon's Chief Executive Officer; **Phillip Hodson**, Chief Executive Officer with Oval; **Richard Ward**, the Chief Executive Officer of Lloyd's and the CII's Chief Executive Officer, **Sandy Scott**. The debate will be chaired by the BBC's **Jonathan Dimbleby**.

Also on Thursday, actress **Joanna Lumley** will take to the stage. She is not only known for her performances in series such as *The New Avengers* and *Absolutely Fabulous*, she became the public face of a movement to provide all Gurkha veterans who had served in the British Army before 1997 with the right to settle in the UK.

Prepare to be bowled over in London

Lindsay Campbell, BIBA's Conference Organiser, reflects on the Manchester event and looks forward to returning to ExCeL in May

I will always have very good memories of last year's conference in Manchester. 2009 had not started well at all – the credit crunch was beginning to bite and six months before the event, we weren't at all sure how badly we might suffer in the cutbacks.

But a combination of factors seemed to work in our favour and, in hindsight, the 2009 conference will probably go down as one of the most successful in recent times.

In reality, while exhibitor numbers were very slightly down on Glasgow, our net stand metreage actually went up. So, those exhibitors who stayed with us continued to invest in the event, demonstrating publicly their continuing support of BIBA and the broker market.

We also took the decision to invest in the event by creating more free visitor places, opening up the exhibition to all brokers and intermediaries, irrespective of whether they were BIBA members or not.

Our pre-conference marketing efforts were also extended and the combination of these two measures saw a record number of brokers making the trip to Manchester. Judging by feedback from exhibitors and delegates alike they really enjoyed the show. There was a real 'buzz' about the place and the open periods in the hall were heaving with networkers. A record total of 1,527 brokers came along, up 46 per cent on 2008.

So, on to London and a return to ExCeL, another of my favourite conference venues. Of course, the general economic picture is still gloomy and budgets will continue to be under pressure as never before. So, recognising these trends, we took the decision to try to help our exhibitors and delegates reduce some of their out of pocket expenses by cutting the number of conference days to two.

But rather than shorten the actual time available, we have extended the second day to a full day. Again, after feedback, we're moving the event to Wednesday/Thursday, so leaving time to get back to the office on Friday, rather than eating into the weekend.

We have spent the last few weeks finalising the conference programme and I'm really happy with the selection of keynote and seminar topics. We wanted to balance the two conference days, so those delegates who can only spend a day with us can still get value for money.

So we now have two keynotes and three seminars on each day. Each day's keynotes will also be balanced in that one will be wholly insurance related and the other of general interest. The seminars are chosen by BIBA for their topicality and relevance to the broking market and we aim to get a good cross-section of subjects/issues, so there should be something for everyone.

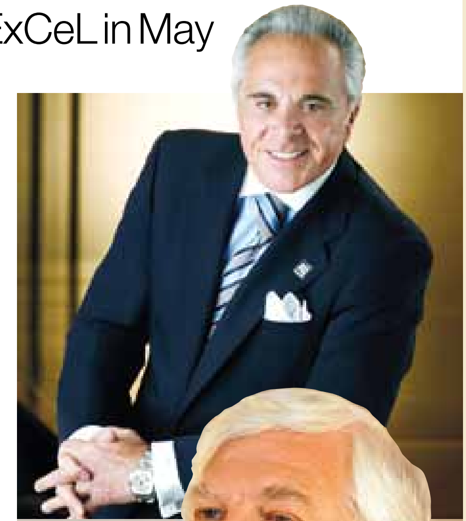
One of the subjects we wanted to include this year is the use of social networking sites for corporate marketing. So if you are already a tweeter or are interested in how Twitter and LinkedIn might work with your own marketing efforts, then this is one for you. We will be embracing this technology ourselves for pre-conference promotion so if you want to get the very latest on the event, then why not follow us on Twitter?

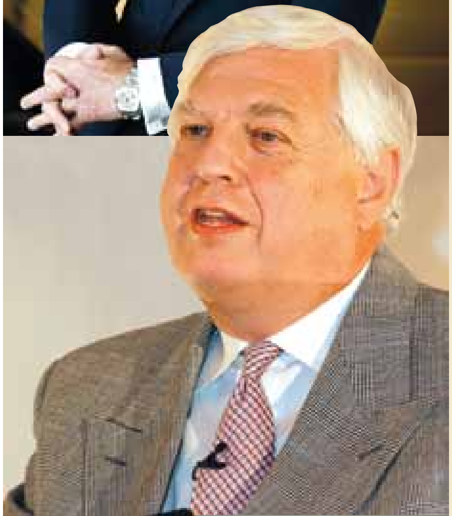
We are always looking for new ideas to inject into the event and this year we are very pleased to introduce a Fringe Programme which all attendees, including exhibition-only visitors, will be eligible to join in with. A selection of our exhibitors will be delivering these sessions and early plans suggest that there will be some interesting topics covered – so keep looking at the website for updates on what's available.

Finally, don't forget to think about joining us at one of the social events we run alongside the conference programme. The usual mix of informal and black tie nights is on offer and the BIBA team is already talking about practising its ten-pin bowling techniques and may well be up for a challenge! The bowling night is on Wednesday 19 May at All Star Lanes, Brick Lane, London E1.

The Gala Dinner will be on site this year, making travel a lot easier for most. Always a popular event, we've planned a good mix of cutting-edge comedy with an excellent cabaret and dancing. It's a great way to end the conference on a real high.

All details of the programme, exhibition and social events are on the conference website. Click on to www.biba.org.uk and follow the conference logo link.





Speaking up at the BIBA Conference (top to bottom): Willis' Joe Plumeri, the BBC's John Simpson, Towergate's Peter Cullum, Richard Ward of Lloyd's and Oval's Phillip Hodson

This year's line up: Aon's Robert Brown, the CII's Sandy Scott, actress and campaigner Joanna Lumley and the BBC's Jonathan Dimbleby

All you want and more in two days

This year, the BIBA Conference will be held over two days, on a Wednesday and Thursday, as opposed to three days with the event ending on Friday evening, the previous format.

The change is to provide a more convenient and condensed event, which means brokers need take less time off work, but can still have two full days of conference. The gala dinner will now take place on Thursday evening, which means that delegates can leave on Friday morning and still have the weekend at home.

Apart from the outstanding keynote speakers, other conference highlights include:

- **a presentation on professionalism from the CII**
- **business resilience and business interruption issues covered by Cunningham Lindsey**
- **BIBA's Motor Panel discussing accident management companies**
- **a session from 'Getting British Businesses Online' – a Government initiative to help SMEs, backed by Department of Business Innovation and Skills, BT, Google and e-skillsUK**
- **a general interest session from an ex-army bomb disposal expert**
- **a session on social networking sites run by Pancentric Digital.**

ExCeL, London – the ideal venue

ExCeL London, the international exhibition and conference centre, is the host venue for this year's BIBA Conference.

Situated in a waterfront location, ExCeL London is located in the heart of London's Royal Docks, within easy reach of central London. The venue is part of a 100-acre campus, including three on-site DLR stations, easy access to the Jubilee Line and London City Airport, parking for 2,600 cars, five on-site hotels and numerous on-site bars and restaurants.

It is located 10 minutes from Canary Wharf and is five minutes from London City Airport.

Professionalism in a changing world – Event programme

May 19

08.30	Exhibition opens
10.00	Conference opens
10.30	Keynote session Facing tomorrow's risks today. The need for trust and transparency. Joe Plumeri, Chairman and Chief Executive Officer, Willis
11.15	Refreshment break and networking session in Exhibition Hall
11.45 – 12.30	Fringe session one *(see website for more details)*
12.30 – 14.00	Lunch in Exhibition Hall
13.00 – 13.45	Fringe session two *(see website for more details)*
14.10 – 15.00	Keynote session From Cambridge to Kabul. The consistent dynamics of a changing world. John Simpson CBE
15.00 – 16.00	Refreshment break
16.10 – 17.00	Seminar sessions *(choice of three)*
17.30	Exhibition closes

May 20

08.30	Exhibition opens
09.30	Keynote session The changing world debate
10.30 – 11.20	Seminar sessions *(choice of three)*
11.20 – 12.00	Refreshment break
12.10	Keynote session Joanna Lumley OBE interviewed by Jonathan Dimbleby
13.00 – 14.30	Lunch
13.45 – 14.30	Fringe session three *(see website for more details)*
14.30 – 16.00	Networking session in Exhibition Hall
16.00	Exhibition closes

So much going on: BIBA's Chief Executive Eric Galbraith makes his opening address while left, the Groupama Insurances stand is always hugely popular

Making sense of a new environment

Richard Ayton-Robinson discusses 'green policy' covers and provides guidance for brokers on an area that is set to become of increasing importance

Within the UK market, 'green' policy extensions are now emerging under commercial covers, in part due to influence from the European Union.

The first extension is Additional Costs of Reinstatement – Energy Performance.

This uses the EU Directive on Energy Performance on Buildings as the cover trigger. Reinstatement would be provided by virtue of the Public Authorities/EU Regulations cover, with this extension providing 'betterment' cover over and above the standard cover. This is automatically provided, other than where the building has non-standard features.

This cover appears to give an extension to the provisions of the Local Authorities Clause specific to the legislation arising from the EU Directive on Energy Performance of Buildings.

There is a clear move on the part of Government to use the statutory legislative framework of the Building Regulations in England and Wales to achieve compliance with the EU (EPBD) Directive, while also meeting the aims of the consultation document *Building a Greener Future: policy statement 2007*.

If approved, this policy will utilise Parts L and F of the Building Regulations to help achieve the following targeted reduction in CO_2 for new buildings above the 2006 base levels as follows:

2010 – 25 per cent reduction
2013 – 44 per cent reduction
2016 – zero carbon.

A consultation process on the proposed changes to Parts L and F of the Building Regulations began in July 2009 with the Government inviting comments on the proposals to be submitted by 17 September 2009.

It is intended that the legislation will also be applied to buildings undergoing alteration. The 25 per cent reduction applicable to existing buildings is scheduled to come into force in October 2010. This will impact upon works other than maintenance, such as partial reconstruction following an insured event.

To achieve the increasing targets, there will be a move away from natural ventilation for many commercial building types, and increased provision of mechanical ventilation systems. This could result in expensive services provision where none existed within the original construction.

In essence, the provisions of the EU Directive to be introduced through the Building Regulations would give rise to a liability for insurers under the existing provisions of the Local Authorities Clause, subject to any limits of indemnity set under the clause.

The inclusion of the Additional Costs of Reinstatement – Energy Performance clause would not appear to extend the indemnity already afforded under the Local Authorities Clause, other than by extension of the policy limits (15 per cent of replacement cost or a set sum). The exclusions seem to follow those applying to the Local Authorities Clause.

Extended cover

The second extension is Sustainable Buildings – Additional Reinstatement Costs.

In addition to the cover provided under the first extension for Additional Cost of Reinstatement, this extends the cover to include materials/products certified and accepted by leading bodies such as the BRE.

The trigger for this extended cover moves to the insured's desire to reinstate using such methods and materials. Cover may also include vegetative roof systems and alternative waste/debris removal. This cover may only be offered for an additional premium and is subject to a set inner limit.

This extension to cover goes beyond anything contained within the Local Authorities Clause. In most situations, this will be a voluntary requirement of the insured to comply with corporate policy or a company vision for the use of green construction materials and methods. There may be situations where the requirement for sustainable construction is linked to grant funding; perhaps in the case of an alternative reinstatement proposal following a major loss.

> "In time the use of sustainable materials will feature more significantly in achieving compliance with Part L of the Building Regulations"

There is a whole raft of standards designed to achieve zero carbon construction. In time the use of sustainable materials will feature more significantly in achieving compliance with Part L of the Building Regulations.

It would seem that accurate underwriting of a Sustainable Buildings – Additional Reinstatement Costs clause would require the agreement of a clear policy statement by the policyholder at policy inception, defining which materials and methods would satisfy their agenda. This is common for organisations such as public bodies which set out a matrix of requirements for repair scenarios and materials.

These may include a requirement for the use of FSC-accredited timber supply, recycling of demolition waste such as concrete and masonry rubble as aggregate, or the use of reclaimed materials such as bricks. Often such requirements can add significantly to construction project costs in material cost and delays due to sourcing and supply. Where the policy incorporates a total biomass strategic approach, such as the use of sedum planted green roofs, this could have significant design and cost implications for alternative construction.

From a claims perspective the following issues are identified:

Additional Costs of Reinstatement – Energy Performance

- **The accurate calculation of rebuilding costs taking into account the policy extension. This will require specialist surveying and quantity surveying skills to ensure that day one cover makes sufficient provision for the policy extensions up to the policy limits (this will apply increasingly to all covers which incorporate a Local Authorities Clause anyway).**
- **Identifying the building elements that fall for consideration under the policy extensions in order to apply the policy limits.**
- **Negotiation with building regulations enforcement bodies to agree the correct application of Parts L and F of the Building Regulations to a project for partial reinstatement, particularly where non-damaged parts of the building fall under the requirement for upgrading to achieve an overall building target reduction.**
- **Managing business interruption implications arising from the application of the policy extension. This may require a review of indemnity periods to make provision for the likely increase in the time period for obtaining statutory approvals prior to reinstatement commencing.**

Sustainable Buildings – Additional Reinstatement Costs

- **Determining the scope of the policy extension.**
- **Calculating the adequacy of the sum insured.**
- **Managing business interruption implication arising from elongated reinstatement periods.**
- **Obtaining competitive tenders/costing for specialist reinstatement methods.**
- **Dealing with situations where there is partial destruction only suffered.**

The emergence of these new covers creates the need for building owners and their brokers to obtain the correct advice from professionals with the appropriate knowledge and skills to ensure rebuilding costs are accurately calculated in line with the extended cover. The implications for prolonged reinstatement periods to achieve statutory compliance and the construction phase also need to be understood in relation to business interruption cover.

Richard Ayton-Robinson is Business Development Director for Cunningham Lindsey UK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Bernard Baruch
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Standing out from the crowd

Directors' and Officers' insurance, advanced product research and the clubs market are new or enhanced additions to the BIBA stable and, as **Steve Foulsham** explains, provide brokers with valuable differentiators

The directors' must-have scheme

BIBA and Bluefin have launched a Directors' and Officers' (D&O) scheme where quotes can be obtained and cover bound via an online system. The policy is underwritten by ACE European.

The product provides:

- **27 per cent commission**
- **a fully non-rescindable policy in respect of non-disclosure**
- **cover for civil fines and penalties payable by the insured person where insurable by law**
- **access to specialist underwriters at ACE in respect of referrals and queries**
- **a relationship manager within Bluefin.**

The policy provides cover for claims alleging a wrongful act by an insured person (examples are given below) while acting in the capacity of an insured person.

It will pay legal representation expenses for an insured person who, during the policy period, is formally required to attend an official investigation into the affairs of the company or the insured person, while acting in their capacity as such. It also provides cover for claims alleging a wrongful act (including an employment-related wrongful act) by the company itself. The policy offers an automatic £250,000 limit of liability for such claims. Higher limits of entity cover are available by way of a separate endorsement.

Bluefin has also produced 10 reasons for brokers' clients to buy D&O:

1. Disqualification

Hundreds of directors are disqualified each year for periods ranging from two to 15 years. Even after a disqualification period ends, there could still be problems with reputation and creditworthiness, so having the best legal defence is important.

2. Personal exposure

When a director is accused of personal negligence, their private assets are put at risk. D&O insurance covers the costs of mounting a robust defence and meeting any settlement.

3. Family firms

Family firms can often erupt into disputes both internally and externally. D&O cover can pay for legal expenses incurred in disputes between directors of the same firm.

4. Partnerships

Partnerships can be vulnerable to employment-related claims – especially discrimination, harassment and failure to promote.

5. Mischievous allegations

Firms can be troubled by mischievous, vexatious or unfounded accusations which can be frustrating and time-consuming.

6. Criminal acts

While it is against public policy to be able to insure against dishonest or fraudulent acts, D&O can pay legal defence costs up until the moment guilt may be established.

7. Investigations

The Department for Business, Innovation and Skills can mount investigations – D&O cover helps to meet the costs involved.

8. SMEs

SMEs often have limited risk management policies and procedures. They are susceptible to expensive and protracted employment-related disputes. D&O insurance covers the defence costs and compensation payments.

9. Run-off cover

Resignation and retirement are not necessarily the end of any negligence claim and actions may even be pursued against the director's estate after death. D&O can provide vital run-off cover.

10. Codified duties

In 2007, changes to the UK Companies Act introduced certain duties for directors which had never been laid out in statute before. It makes directors more accountable and the onus is on them to be aware of their responsibilities. A breach of such duties can result in claims being made. A D&O policy may cover the defence costs and any resulting damages.

To find out more, contact Laura High, Director – Wholesale Distribution, at Bluefin on 01638 782465 or email her on laura.high@bluefingroup.co.uk

Brokers should analyse this

With brokers under increasing pressure from the growing direct market, independent financial research company, Defaqto, has launched an advanced financial product research and analysis system, Engage GI Broker Edition.

Brokers are required to provide comprehensive, thoroughly professional advice every time and to do this they need the fastest research and analysis solutions available.

Defaqto Engage is web-based, offering the flexibility to search for products when at home, with clients, whenever and wherever the broker chooses. It dovetails perfectly with the advice process to ensure that brokers are able to deliver nothing less than best practice. Refreshed daily with real-time data, Defaqto Engage ensures that brokers will have the very latest information at their fingertips to help maximise each and every sales opportunity.

The system has been designed to help maximise new sales conversions as well as renewal retention rates and therefore improve the broker's revenues. It enables brokers to move from a rate-driven sale to a feature-driven sale.

With growing attention on TCF, Defaqto Engage is also focused on improving compliance by producing demands and needs documents as well as product comparison reports, which can be generated in minutes and saved back to the customer's record as an audit trail.

Roger Perry, Head of Intermediary Sales, Defaqto, comments: "There was a gap in the broker market that we believed Defaqto could address. This is a comprehensive product with vast product coverage and functionality and provides the broker with all the necessary information needed to meet the needs of their clients."

All BIBA members will receive an exclusive reduced rate for Defaqto Engage plus extra features and modules and benefit from enhanced service features.

Inside Defaqto Engage

Defaqto Engage is a product research service covering personal and commercial lines and protection. It enables a broker to quickly and easily compare preferred and non-preferred product features and generate reports to support their recommendations.

How does it work?

It is an online service that requires a user name and password and can be accessed via http://adviser.defaqto.com. The broker can research the features of up to four products including direct writers, non-broker products and products offered by the likes of Tesco.

Are all products in the market included?

Defaqto strives to provide 100 per cent coverage, but if brokers spot a product they feel should be included, they should contact the company and it will be added to the system.

How often is the data updated?

Defaqto researchers are constantly searching the market for product changes and new additions. Information within Defaqto Engage is updated three times in each 24-hour period.

For more information, or to sign up for a free14-day trial, contact Defaqto on 0808 1000 804.

Covering the UK's clubbers

ClubPM is the BIBA-approved scheme for the late night entertainment industry. For the past three years, the scheme managers Tasker & Partners have provided BIBA members with policies for hundreds of nightclubs, bars and gentlemen's clubs.

BIBA has announced that Tasker & Partners have been appointed for a further three-year period to provide the scheme to members, which includes the following exclusive benefits:

– process quotes, policies and issue documentation online
– loss of Personal Licence extension
– free ClubSAFE risk management programme.

The products within the ClubPM family all boast significant premium discounts for well-managed venues. Security is provided exclusively by Lloyd's underwriters.

Nightscene, a sister product of ClubPM, is aimed at the growing market for late night bars. Paul Tasker, Chief Executive Officer of Tasker & Partners says: "Since the introduction of the Licensing Act, we identified a new type of venue, essentially a public house or bar taking advantage of the extended opening hours afforded by the Act. We feel such premises are sometimes penalised by insurers who treat them as a nightclub because they may provide entertainment, or engage security staff."

Nightscene targets venues where meeting, drinking and eating are the main focus of customers and offers lower premiums and excesses, recognising risk differences to larger dance venues.

The ClubPM pricing model works with BIBA members and their customers to encourage the application of risk management initiatives, such as digital imaging security and a clear emphasis on the safety of customers and staff. Venues with a positive approach to managing risks enjoy significant premium discounts. Operators with exemplary claims experiences can expect further reductions.

Paul adds: "Our aim is to continue to work with organisations that understand, evaluate and take action on all their risks with a view to increasing the probability of their success and reducing their likelihood of failure. In return, we provide a cost-effective insurance solution that is relevant and specific to entertainment businesses."

For more information about ClubPM, call the Tasker & Partners team on 0207 623 4133, or email imanager@taskerpartners.com or visit www.clubpm.co.uk

Steve Foulsham is BIBA's Technical Services Manager

Why brokers should think about taking on an apprentice, the likely impact of new paternity rights and the role of legal protection insurance are on the agenda

No panic over new paternity rights

Brokers need to be aware of new paternity rights set to come into force from April 2011.

Last September, it was announced that the Government would not extend maternity pay from nine months to a year, as was initially planned. Because of financial constraints, it has now been decided that having 52 instead of 39 weeks permissible for statutory maternity pay was not feasible.

Instead, new parental sharing rights will apply. This means parents can share up to six months parental leave after the baby's first six months.

The Chartered Institute of Personnel and Development (CIPD) says: "We welcome the decision, in the current financial climate, to drop plans to extend paid maternity leave from nine months to a year."

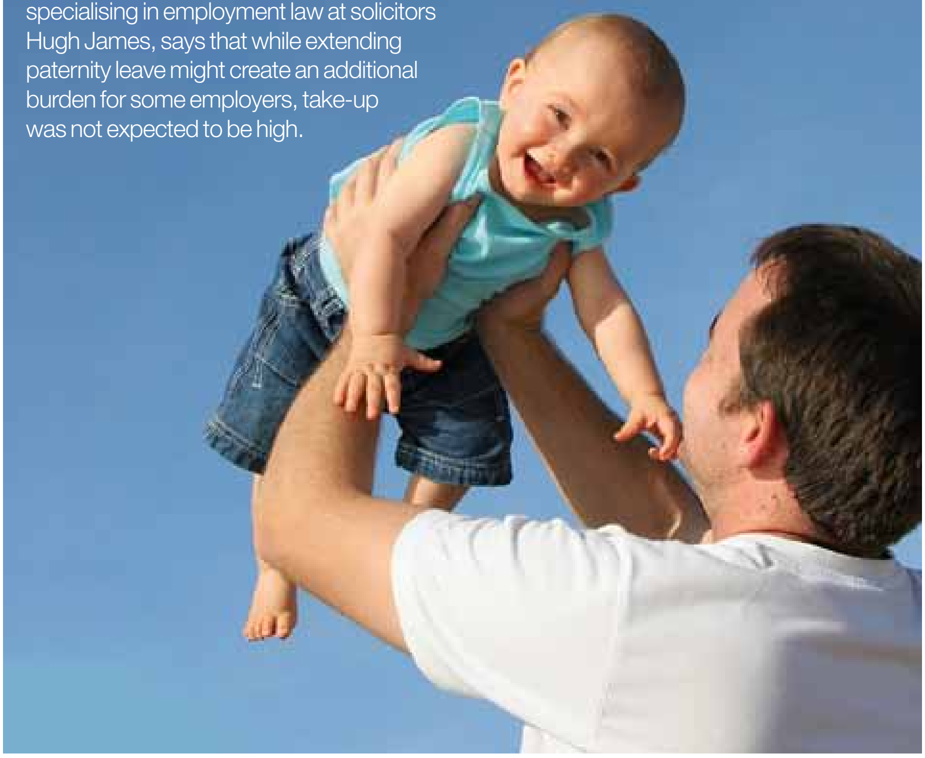
But the CIPD questions whether allowing fathers to take more paid time off work was going to be problematic for employers. "We do think there is a necessity in moving toward allowing fathers more paternity rights, but any plan to achieve this is bound to be expensive and could only be implemented over many years."

Meanwhile, Alison Love, a partner specialising in employment law at solicitors Hugh James, says that while extending paternity leave might create an additional burden for some employers, take-up was not expected to be high.

She points out that the Department for Business, Innovation and Skills (BIS) said that current take-up of Additional Paternity Leave is less than six per cent and estimated that take-up of the extension will affect 0.7 per cent, or one in every 137, of all small businesses.

"The benefit paid is at a low level and the UK was lagging behind in the paternity leave it provided. There needed to be changes but the main thing is for employers to understand the changes – and not to take any notice about scaremongering – it is not necessarily going to affect them. And if a father does take some time off, then perhaps a mother may come back to work sooner."

Katja Hall, Director of HR Policy at the Confederation of British Industry, says employers generally accepted the need for fathers to have more paternity leave rights to help eradicate the gender pay gap. But she adds: "The changes must be introduced in a way that will not cause disruption for employers struggling with the recession."



In the know:

Graham Hollebon, Commercial Director and Head of BTE First Assist Legal Protection, explains why legal protection is the essential SME safety net

Like many small businesses, brokers can find it challenging to keep up-to-date with legal issues that impact on their HR responsibilities, since few have a dedicated department to deal with this.

While many brokers have been able to maintain their existing staffing levels – and indeed, some are recruiting – others have looked to carefully manage costs. As a result, they may have introduced new flexible working arrangements, unpaid holidays, shortened working weeks and sabbaticals. Others have frozen pay and, in rare instances, redundancies have been an unavoidable consequence of the recession.

Making or introducing changes to existing working arrangements is complicated. Such changes can carry serious implications if they are not carried out correctly.

Fairness, transparency and consistency are critical in employment legislation and due process must be followed to the letter. Businesses should have an established process in place to deal with redundancies. This will include the identification of which roles or activities within the firm will endure the cuts, allowing management to select a pool from which the required number of individuals can then be selected for redundancy.

>

Whatever decision an employer makes, a transparent approach should be coupled with clear rationale at all stages in order to avoid error, which could otherwise provide an employee with grounds to take their case to a tribunal.

Most brokers have loyal workforces, but should an employee ever be made redundant or dismissed, then correct procedures must be followed since their dismissal may still be deemed unfair if the correct legal process has not been followed, which could then lead to a claim for financial damages.

Additionally, employment tribunals are taking into consideration the current weak labour market when calculating the loss of earnings element of a claim, to reflect the additional time likely for an individual to find a new job. The financial implications are even greater for firms that have rulings made against them.

"Insurance provides businesses with a safety net"

Getting the process right from the start will help to avoid such problems. Those defending redundancy decisions will need accurate legal advice and information to successfully orchestrate these HR matters.

When looking for tools to guide your commercial clients through the recession, legal protection is essential. Critically, the insurance provides businesses with a safety net when things go wrong.

However, most providers enhance the insurance element with a 24-hour legal helpline, and sometimes an online legal toolkit. These help SMEs set up the right processes from the start to help them manage their legal obligations in all areas and particularly in the specialist area of employment law and ultimately avoid legal disputes and claims wherever possible.

In recognising that they are no different from any other small business, and are also vulnerable during an economic recession, brokers can understand and offer credible solutions to themselves and their clients with the support afforded by legal protection.

Take a fresh look at apprenticeships

The CII is recommending that brokers look more closely at the current Apprenticeship in Insurance and Financial Services scheme and consider whether they could give a young person a start in the industry.

Caspar Bartington, the CII's Education Relations Manager, says there have been a number of changes in the apprenticeship landscape because the Learning and Skills Council withdrew some funding for the 25+ age group across all sectors.

But, for younger people, there is now more money available. The National Apprenticeship Service has made 5,000 lots of £2,500 available for SMEs across all sectors and industries. The highest current level of funding is for 16-18 year-olds and the CII is launching a campaign aimed at this age group to encourage them to think of a career in insurance.

Caspar adds: "There have been cases where brokers have had an older and existing member of staff – who was over 25 – on an apprenticeship programme. They wanted to see if the scheme worked and it was also an affordable way of training someone. But, apprenticeships are about taking on young people aged 16 to 24 from schools and colleges."

The CII has launched the "Discover Risk" campaign to encourage employers to work with the CII and local education providers to help young people who are not graduates find out more about insurance careers – and consider apprenticeships.

"If a broker wants to find out more about apprenticeships, then they should contact me"
Caspar Bartington, CII

He concludes: "If a broker wants to find out more about apprenticeships, then they should contact me and we will also look to help with resources if they want to work with local schools and colleges. This industry must bring on the next generation – and an apprenticeship is one of the easiest ways of providing quality training at low cost – and there is every possibility over the longer term that they will gain from having a loyal and a talented employee."

Reap the benefits with a young trainee

Apprenticeships offer employers a cost-effective way of both training and retaining staff. They contain a qualification that demonstrates competence in a role which is helpful in meeting FSA T&C requirements. Learners benefit from supported learning and the opportunity to learn valuable skills both inside and outside the workplace while earning a wage.

There are a number of apprenticeships on offer in insurance and financial services which provide a grounding in providing financial advice or in insurance and are a stepping stone to higher professional qualifications.

The CII has made a commitment to actively support apprenticeships through their promotion and through the provision of information and advice. Its qualifications and units also make up part of three current apprenticeship programmes.

Don't be a loser...

Losing data or treating it carelessly can have serious consequences. **Vannessa Young** assesses the FSA's take on the issue and looks at what brokers should consider in managing the problem

A forgotten laptop, a BlackBerry in a stolen handbag, a careless courier, or a photograph of the contents of an open customer file taken with a mobile phone – it only takes a moment for customer data to go walkabout. The repercussions of that loss, however, can be long lasting for businesses and individuals, particularly if the data was unencrypted and is used by criminals to commit fraud and identity theft.

It was not so long ago that BIBA members were dealing with the fallout from Zurich losing data belonging to thousands of UK customers. Nor has the Financial Services Authority's fining three HSBC firms £3.2 million for poor systems and controls around data security in July 2009 gone unnoticed. That served as a wake-up call to the broking community.

At the time Margaret Cole, the FSA's Director of Enforcement, noted: "Fraud, particularly identity theft, is a major concern to everyone and firms must ensure that their data security systems and controls are constantly reviewed and updated to tackle this growing threat… In areas where we have previously warned firms of the need to improve, people can expect to see fines increase to deter others and change behaviour."

Financial services firms have a duty to protect personal information under the Data Protection Act 1998 (DPA). New powers for the Information Commissioner's Office (ICO) allowing it to fine organisations up to £500,000 for serious DPA breaches from April 2010 mean that things will get tougher. Helpfully, the ICO has published technical guidance to help businesses identify what is personal information for the purposes of the DPA on its website (www.ico.gov.uk).

The DPA does not apply to commercial entities. Nevertheless, the FSA requires firms to treat with care all customer data held. The regulator defines customer data as comprising any identifiable personal information about a customer held in any format, such as national insurance numbers, address, date of birth, family circumstances, bank details and medical records.

Under PRIN 2, a firm is required to conduct its affairs with due skill, care and diligence. PRIN 3 of the FSA's *Principles for Businesses* requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Additionally, SYSC 6.1.1R requires firms to establish, implement and maintain adequate policies and procedures sufficient to ensure compliance with its obligations under the regulatory system and for countering the risk that they might be used to further financial crime. Data security is also essential to Treating Customers Fairly.

There are a number of ways in which customer data can be compromised which include:

- **the physical security of premises**
- **visitors**
- **employees leaving and joining another firm**
- **staff working offsite**
- **unnecessary access by employees**
- **data/hardware disposal**
- **outsourcing.**

The FSA says it is good practice for senior management to assess data security risks and put in place appropriate policies, procedures and controls to reduce it. Written policies and procedures need to be proportionate to the risks facing a business and relevant to its day-to-day operations. In drawing up these plans, firms should consider:

- securing paper and electronic files when not in use
- introducing an enforced clear-desk policy
- the best way to protect the integrity of computer systems and ensuring those processes stay up-to-date as technology evolves
- using effective passwords
- ensuring that recruitment and staff management processes give comfort that staff are honest and have integrity
- possibly restricting staff internet and email access and monitoring usage
- ensuring that when outsourcing, third-party data security procedures are at the same level as internal policies
- a firm retains responsibility for protecting its data
- shredding all confidential paper waste
- not keeping data any longer than is necessary
- having all visitors sign-in and supervised when on the premises
- when recycling or throwing away computers, ensure that data is securely removed
- restricting access to sensitive business areas, eg, accounts or the computer server.

Staff

Staff are vital in combating data loss and theft. They need to understand the importance and relevance of data security policies and procedures. Training and awareness programmes to ensure employees are aware of more basic risks to customer data arising from poor physical security are a must. Employees must be able to report data security concerns without fear of reprisal and firms should develop an open and honest culture to encourage this. Any reports received should be investigated. If changes are needed, make them and ensure that any new procedures are communicated to staff and followed.

Staff can also threaten data security. Disgruntled employees, those facing redundancy, in financial difficulties or moving on can be a problem. Staff recruitment/vetting is important to weed out those who may be susceptible to stealing data or committing fraud. CIFAS, the UK fraud prevention service, and the Chartered Institute for Personnel and Development have produced a best practice booklet called *Tackling Staff Fraud and Dishonesty: Managing and Mitigating the Risks* aimed at helping businesses. It can be found on the CIFAS website at: **www.cifas.org.uk/download/CIPDGuide.pdf**

Being unaware about who is using what data and where is a recipe for disaster for a firm. Steps should be taken to identify the data being collected, its degree of sensitivity, the reason for collection and how it is being used throughout the organisation. Staff should only be allowed to access the information they need to perform their role. This access to customer data should be reviewed regularly and security settings revised accordingly as a person's job changes.

The FSA has produced a report on data security in financial services and the controls firms have in place to prevent data loss by their employees and third-party suppliers. While that report is now two years old, it still contains some useful examples of both good and bad practice that firms can learn from. Members can find this publication at: **www.fsa.gov.uk/pubs/other/data_security.pdf**

Customer data in transit has been identified as an area which could potentially expose firms to the threat of financial crime. The ICO recommends that portable and mobile devices including magnetic media, used to store and transmit personal information, should be protected using approved encryption software which is designed to guard against the compromise of information. The FSA supports this view. Firms should therefore use encryption for these devices and put in place policies and procedures for restricting the removal of customer data offsite. When transferring data to third-party suppliers, secure internet links, encryption, and registered or recorded mail should be used. Members can find more about encryption at the Government and business-sponsored website Get Safe Online: **getsafeonline.org.**

In the event of loss

Members experiencing data loss or compromise should not delay. PRIN 11 requires a firm to deal with its regulators in an open and co-operative way. A firm must disclose to the FSA appropriately anything of which the regulator would "reasonably expect notice". The FSA would expect to be notified about the loss of thousands of unencrypted customer data records. The regulator will also want to know about remedial action, so detailed plans for reacting to data loss or theft should be prepared. These plans should include when and how to communicate with affected customers – it is their personal data after all.

Vannessa Young is BIBA's Compliance Co-ordinator and runs its London Market Secretariat

Shore up your defences

PI claims are hitting brokers in the recession, so it's vital to be properly shielded from the elements, advises **Alan Eyre**

It will not be a big surprise to brokers who have lived through more than one recession to learn that claims are on the increase. The combined impact of cash-strapped businesses, increased redundancies and stagnant economic activity will always encourage people to scrutinise their insurance policies and turn to lawyers for remedies and windfalls.

Reflecting this, 2009 has seen a significant increase in the number and size of PI claims against brokers themselves. These arise both from clients who find themselves faced with an uninsured or partly uninsured loss, and also in defending clients' interests in a claim against insurers. And there are several areas where alarm bells should be ringing.

Under-insurance is one of the major sources of claims. In a recession most clients will put pressure on brokers to help them reduce premium costs and they are, perhaps, not so inclined to listen carefully to the risk warnings as they might be in more prosperous times. The result can lead to confusion over the technicalities of the cover.

For example, we have seen a number of cases recently concerning under-insurance in commercial property and business interruption cover resulting from an alleged failure by the broker to explain – or put in writing an explanation of – the 'average clause' in the policy wording.

Case law demonstrates that the nature of averaging is a matter which an insurance broker must make clear to his client so that the client is not unintentionally under-insured or intentionally under-insuring but without appreciating the true consequences of doing so.

Unless the broker can demonstrate that the technical element was fully illustrated in a way in which the customer could be expected to understand, the case is likely to go against the professional adviser.

It is, of course, difficult to prove a verbal exchange took place so the solution here is a clear audit trail. After every client renewal meeting or policy amendment, the broker must send a letter detailing all the points discussed. Better still these meetings could be formally minuted to create the necessary chain of documentation. Putting it in writing also gives the broker a second chance to reflect on any shortcomings in the advice given and speak to the client again.

A further error of omission that can blow up in brokers' faces is the failure to notify the PI insurers of a potential claim. This occurs

> "Better still these meetings could be formally minuted to create the necessary chain of documentation"

most frequently in cases where an insurer has repudiated a claim and the broker opts to fight the case on behalf of his client.

A recent example illustrates this well: the insurer rejected a claim because a burglar alarm warranty was breached but, since it was a fire loss, the client supported by his broker argued that the alarm issue was not material. It is at this point that the broker should have informed the PI insurer.

Three months later, the insurance company was still standing firm on the claim, but the broker's insurance policy had moved on...to another provider. Additionally, the presence of an unreported potential claim on renewal could well be a breach of the PI contract and leave the broker hopelessly exposed in fighting the case.

The increase in claims against brokers will, of course, ultimately lead to a hardening of PI rates sometime in the future. In the interim, insurers are likely to increase excesses and look carefully at policy wordings.

Meanwhile, the messages to brokers are unequivocal: advise your clients clearly of the risks, put it in writing, and make sure you are as well covered as all your clients.

Alan Eyre is Managing Director of Professional Indemnity, Towergate Risk Solutions, a BIBA-accredited PI broker