



# UMAL NEWS

SPRING 2011

## Court Ruling Opens Door to Cut Procurement Red Tape

**UMAL and UMSL have welcomed a court judgement that could allow FE and HE institutions to choose the mutual option as an alternative to traditional insurance without having to go through the tendering process.**

The Supreme Court ruling in the case between Harrow London Borough Council and Risk Management Partners (RMP), a commercial sector insurance intermediary, was described by lawyers for UMAL and UMSR as “an extremely helpful development of public procurement law”.

UM companies Chairman Allan Guest said that the ruling had the potential to create a level playing field for mutual organisations in the procurement process.

“This ruling clears the path for local authorities to set up and engage in mutual risk cover arrangements without being challenged in the courts by the commercial sector,” he said.

“What we would now like to see is Government clarification that the principles in the ruling will apply to the higher and further education sectors.”

Mr Guest said: “The clamour of objections from the commercial sector about this ruling misses the point entirely. This is not anti-competitive, but redresses the balance and allows mutuals to compete when commercial organisations had sought to marginalise them or prevent their establishment and development.”

“The ruling is ultimately beneficial for UMAL and its members. We have successfully been providing an excellent service, enhanced by the ethic of shared resources for its higher education and further education members,” he said.

Between 2006 and 2007 various London

councils, including Harrow, set up the London Authorities Mutual Ltd (LAML) as a way of covering each other’s risks, and so avoid the higher costs of the commercial insurance sector.

When Brent London Borough Council became a member of LAML it was challenged by RMP who claimed damages because the borough had not gone out to tender.

The High Court allowed RMP’s claim, and a subsequent appeal by Brent in the Court of Appeal was rejected. Brent and RMP settled.

Because of the implications for other LAML members Harrow LBC was given permission to appeal to the Supreme Court. This was successful and enabled local authorities to engage in mutual arrangements without fear of being sued by the commercial sector.

UMAL lawyer Pollyanna Deane, a partner at Berwin Leighton Paisner LLP, said: “Given the cost associated with the entire tender process for public bodies and, more importantly, the savings that can be achieved by pooling resources, the decision in this case should enable public bodies to manage their affairs more economically.”

“The LAML case provided Supreme Court authority for a flexible approach to the method by which a public body may share service provision with other public bodies. It relied on the test of collective control over the vehicle used to achieve these cost efficiencies without there needing to be individual control or indeed a prescribed legal form of vehicle,” she said.

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# The Rise of the Mutual: Recession Creates Demand for Stability

**The economic downturn has caused a sea-change in thinking about the structures of government and financial services.**

The banking crash highlighted fault lines in a financial system dominated by plcs under pressure to take increasingly large risks to drive returns to their shareholders. A need arose from this for stability in these institutions.

Step forward the mutual. Mutuals, notably those in the financial services sector, had never gone away, but had been declining in numbers for the past 20 years, incentivised to shed their status in pursuit of large quantities of investment cash available to newly floated banks and insurers.

With the banking system going into free-fall, suddenly the concept of mutuality with its inclusiveness, risk adversity and customer ownership, offered a solution to the perceived greed, risk taking and lack of supervision of the larger plcs.

This new-found appreciation of the mutual model also found its way into thinking about the way government delivered services to the people. Last summer the Coalition unveiled its "first wave" of public service mutuals, as part of David Cameron's vision of the "Big Society".

This included the setting up of 12 "trailblazers", mutual organisations delivering services in education, health, social care and housing.



Minister for the Cabinet Office Francis Maude said at the time: "This announcement is the first step in creating a genuinely

ground-up movement where staff, who are the real experts, can come together to take over and deliver better services.

"I know that across the country there are literally thousands of front line employees who can see how things can be done better, but at the moment, with the existing constraints, they just can't get it done. Now this is going to change."

The mutual model received a further boost in September 2010 from a report by Oxford Professor Jonathan Michie, Promoting Corporate Diversity in the Financial Services Sector, issued by the Oxford Centre for Mutual and Employee-owned Business.



Jonathan Michie

Michie, who is President of Kellogg College, Oxford and Professor of Innovation and Knowledge Exchange, highlights the dangers of being too reliant on one economic model, and looks for the strength of diversity that the promotion of mutuals could bring.

He commented on the UK insurance market in particular and observed how it is largely in the hands of overseas owners.

"Some see the UK as a saturated and less attractive market – hence Zurich Financial Services' recent announcement that it is moving its operations to Ireland, AXA selling its life arm, Aegon closing much of its UK capacity, and Prudential's failed attempt to purchase AIG. Mutuals by contrast are generally owned by UK consumers and most

remain entirely focused on the UK market," he wrote.

Professor Michie also pointed to a wealth of research that puts customer service higher in mutuals than in plcs, and in the insurance market a higher claims acceptance ratio.

The report cites the Association of British Insurers 2009–2010 Customer Impact Survey found a satisfaction rating in the industry as a whole falling by a percentage point between 2008 and 2009 to 51%. The mutual proportion of the insurance industry, by contrast gained a percent to 58% in 2009.

"In summary, research appears to indicate that customer relationships with plc banks and insurers are typified by intransigence, convenience and price, whilst in mutuals, customers habitually benefit from value, service and a sense of belonging," the report said.

The Chief Secretary to the Treasury Danny Alexander has pledged that: "The Coalition is determined to ensure that our financial services industry serves the country, not the other way around."

Regulation is one solution to the problem, but has to be carefully tuned so as not to stifle enterprise and growth and at the same time offering stability and continuity for the public and financial markets. Mutualism is the other way, a system that has built in checks and balances to ensure that the interests of the customer, who is also the owner, are put first, that expansion must be backed by a solid cash basis, that customer service and value for money are top priorities and that profits are put back into the business and not siphoned off to disinterested shareholders.

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## Court Ruling Opens Door to Cut Procurement Red Tape *Continued from page 1*

She said the ruling reflected the aim behind public procurement laws, which is that if a public body is getting services from a third party, it must do so only after fair competition. If, however, the body is providing these services through a vehicle under its own control, then following the LAML ruling, the contract for

those services should not be subject to the procurement rules.

Susan Wilkinson, Director and CEO, said: "UMAL and UMSR welcome the decision in the LAML case. As the case concerned the operation of a mutual association very similar to UMAL and UMSR, the UM Companies

are looking carefully at the judgment handed down by the Supreme Court.

"We will be seeking to ensure that the UM mutuals are able to maximize the benefit of this decision to the institutions that they serve, with a view to obviating the requirement to tender for services."



## Recovery Against Airlines from Volcanic Ash Disruption

**Following the eruption of the Eyjafjallajokull volcano in Iceland in April last year, and the grounding of flights across much of Europe, hundreds of academics, researchers and students were stranded overseas. Many had difficult journeys home.**

The travel claims settled by UMAL for members covered most of the costs involved, and UMAL has since been looking to recover these from the airlines concerned. Most are European, so subject to EC Regulation 261/2004 which imposes obligations on airlines in the event of cancellations.

Under this Regulation in addition to refunding the cost of the cancelled flight (or providing an alternative) passengers are entitled to meals, refreshments, accommodation and two telephone calls where these are due to the cancellation.

Some airlines initially declined to offer any compensation on the grounds that the eruption was an act of God, and it took the EC itself to make clear that there was no such exemption. Others have tried to cap the amount, or made the claim process overly complicated.

Some have even refused to compensate any passenger making their own way home at their own cost, even if they saved the airline a great deal of money by doing so. For example, one passenger paid for his own return flight from China when his original was cancelled and the airline could only offer him one two weeks later. If he had waited for that flight, under the EC Regulation the airline would have had to pay all his accommodation and meals for two weeks.

There has been a lot of criticism of this stance, and a report is expected from the Air Transport Users Council (a body set up to help passengers with complaints) recommending that airlines pay up. But the Regulation does not oblige them to, and it remains to be seen if public pressure will change their minds.

## Middle East and North Africa Travel Risks Latest



**As part of its travel cover service, UMAL provides members with up-to-date travel risk advice from Control Risks, the leading adviser in the field. This is their latest update:**

The political instability that has broken out across the Middle East and North Africa has significant ramifications for travellers to the region. We aim to observe the state of affairs and update clients with travel advice regularly to assist them with preparing and responding to the situation. Security conditions are changing rapidly and we would advise anyone planning travel to the region to monitor the latest situation on our Travel Security Online website prior to and during their stay.

Additionally, we offer the following basic guidance should you be travelling to a region where demonstrations are already taking place:

- Seek itinerary-specific security advice prior to travelling to an area affected by protest activity.
- Monitor events closely prior to and during your stay. Register with your embassy to ensure that you receive updates and warden messages while in country.
- Prearrange to be met on arrival by your host or a hotel representative. Ensure you are confident in your transport and accommodation arrangements prior to travel. Do not travel on foot or self-drive while tensions are heightened; use only a taxi or private vehicle and driver.
- Liaise with your hotel staff/hosts on the timing and location of scheduled protest activity. Avoid all protests, rallies and demonstrations as a precautionary measure; do not stop to watch or photograph them. If a crowd or large

group of security personnel begins to gather, vacate the area immediately. In the event of encountering unrest, where possible to do so safely, return to your accommodation until the situation has stabilised. In the event of unrest, only undertake road movement with stringent journey planning and management and if you are sure your route is clear.

- Be aware that localised security incidents including bouts of unrest, vandalism and looting may occur, and the security forces may employ heavy-handed tactics against protestors including the use of live fire. Security incidents are most likely to occur in sensitive known protest locations, but may occur elsewhere. Foreigners are unlikely to be directly targeted but may be at incidental risk. Ensure that you know how to seek support in the event of a security incident.
- Be aware that the security forces' sensitivities may be heightened at this time. Do not cross military or police cordons without the express permission of the authorities and treat members of the security forces you encounter with patience and respect. Carry photographic identification and follow all instructions promptly.
- Curfews may be imposed at times of heightened tension. Stay abreast of and observe any curfew hours; be aware these may be subject to change with little or no notice.



## No Win, No Fee – the new litigation world

The Government has announced that a significant proportion of the recommendations set out by Lord Justice Jackson in his review of Civil Procedure will be implemented. This is good news for Insurers and for defendants generally. Of course there is much to be done in terms of the detail and we can expect further consultation papers in due course. However, the main recommendation is the abolition of the conditional fee arrangement. This has been identified as one of the main causes of cost inflation – “fat in the system”. Secondly, success fees are to be paid out of general damages (up to a limit of 25% of the damages awarded) rather than by the losing party.

Of equal importance is the abolition of ATE “after the event” insurance, which is taken out by claimants even on cases where there is a significant chance of success. While claimants will benefit by an increase in general damages, both sides will be encouraged to make and accept reasonable offers early on in the litigation. There will be penalties if they don’t.

The only element that was missing from the proposal is the abolition of referral fees and it is hoped that a decision to ban these will be revisited.

There is also to be a review of the court structure with a view to streamlining how claims can be brought and then processed.

Ten years after the large major reforms were guided through by Lord Woolf, we are now on the cusp of significant changes. These changes will still enable claimants to access the judicial system but it will be a system that curtails abuse and will ultimately drive out cost. That is good for those organisations faced with an ever growing number of claims and of course good for society generally, which ultimately picks up the cost of those claims.

**Tim Oliver**  
Senior Partner  
Plexus Law & President of FOIL  
(Forum of Insurance Lawyers)

# Don't Be Left Feeling Undervalued

**Philip Webb, Director of Webb Valuations, says independent assessment is vital for educational establishments to get the level of cover right.**

“In the event of your university or college submitting a claim your total sums insured for each building and location could be scrutinized to ascertain that there is no under-insurance on both your buildings and contents.

Insurers may not pay the full cost of rebuilding or replacing your buildings and contents if this amount is inadequate. The responsibility for providing correct declared values is with the institution being covered.

Claims on an under-insured asset may only receive the claimed amount less the percentage of under-insurance claimed on total amounts.

However, it is equally important not to be over-insured. Every million pounds over the correct insurable amount costs money in wasted premiums, which is not recoverable in a loss situation.

It is also important with listed and historical

buildings to ensure that values represent rebuilding costs to the same original specification and not of a modern equivalent replacement building.

So how do you arrive at adequate values? Most institutions either utilise in-house information from their estates or accounting departments or use a previous valuation which may have been originally completed for different purposes and could well be out of date. The collating of this information can be very time consuming for all concerned and may not even produce the correct levels of value.

It is therefore strongly recommend you receive independent advice on your declared values. Although this advice could increase the sums insured, in the event of any major loss there is the knowledge that the claim will be paid in full and the institution will not be threatened by crippling repair or replacement costs.

Webb Valuations specialise in the insurance valuations of all educational buildings and contents and have a strong educational client base including many UMAL existing clients.

**To contact Philip Webb telephone:  
020 7491 3941.**