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UMAL NEWS

SUMMER 2011

A Mutual Success in the Public Sector

In the face of hostility from the commercial insurance sector and a climate of disadvantageous legislation, UMAL Chairman Allan Guest explains how the mutuals are fighting back.

In spite of what is being said by the intermediary and commercial insurance market, UMAL believes that the best place for public sector risk is within the public sector itself.

The Government has said mutuals have an important role to play in the modern economy, but despite this we are having to operate against a number of disadvantages, not least the hostility of the commercial sector.

To date the Government's rhetoric has not translated itself into action to remove these disadvantages. We have therefore engaged with the political apparatus to seek some positive action and are encouraged by initial feedback. Lord Sassoon Commercial Secretary to the Treasury said on 4th July in response to a question from Lord Redesdale on behalf of UMAL:

"The Government is committed to supporting the creation and expansion of mutuals, co-operatives, charities and social enterprises and to enabling these groups to have much greater involvement in the running of public services."

New public sector mutuals are seeking to establish themselves despite the difficulties. Indeed, the genesis of UMAL and our sister companies UMSR and UMSL stems from the failure of the commercial market to offer appropriate cover for the HE and FE Sector, along with consistent pricing, excellent service and best value.

Historically, and indeed currently if institutions are not UM members, the University/College Sector appears to have choices, but these are not real choices when dealing with the commercial insurance market.

These choices can be summarised as: dealing directly with a commercial insurer; engaging a broker to deal with a commercial insurer and/or the market; or participating in a framework agreement with other institutions, and engaging a broker to deal with the commercial market/insurer.

As an individual Higher or Further education institution you are a small fish in a big pool and are unlikely to get specialist attention when dealing with a commercial insurer. In addition, going through a broker you are only extending the supply chain which slows down service and incurs costs.

Frameworks further extend this supply chain and add costs, without necessarily creating the aggregate of demand to drive prices down. Behind all these options is the necessity for the commercial supplier to return profit to shareholders, which means the organisations they service are second in the queue of priorities.

On the other hand, the Higher and Further Education mutuals charge no intermediary fees or commissions and do not deal with retail brokers, therefore lowering costs; they reduce the supply chain, have a specialist knowledge of the institution and sector, return profits to members and operate from a lower cost base than any commercial insurer.

As has been seen in the crushing of LAML there have been significant problems for mutuals in the application of the EU procurement directive. This directive was designed to ensure that Public Bodies obtained 'Best Value' from the market place for goods and services in an impartial way via a largely prescriptive tender process. Sadly vested interests have found ways of manipulating the process to achieve a distorted outcome.

In the cases of either individual institutions, or consortia groups, the broker market has obtained a position whereby it offers itself not only for accessing the insurance market, but also as a vehicle for designing, and in many cases controlling, the tender process. At a stroke this puts brokers on a collision course with the mutuals.

However, following the LAML decision clarifying the Teckal Exemption the potential exists to break this stranglehold by allowing public bodies to trade directly with public bodies obviating the requirement to use the OJEU Tender process. What this means in practice is that institutions can save valuable time and resource.

The recent award of costs against RMP serves as a warning to the commercial market that public sector self-help is here to stay.


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Reading the Riot Act

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In April UMAL hosted the Insurance Managers Conference at Aston University, Birmingham. The one day event was attended by delegates from across the industry who heard speakers cover a variety of topics including global terrorism risks, mutuality and the liability market. Delegates were also able to take advantage of a networking session, and to attend an informal dinner.

Katy Lamb of Berwin Leighton Paisner LLP speaking at the conference

The New Golden Age of Mutuality

Mutual organisations are entering a new golden age of opportunity, according to the head of an organisation that represents mutual insurers around the world.

Shaun Tarbuck, Chief Executive Officer of The International Cooperative and Mutual Insurance Federation (ICMIF), said economic, social and environmental factors had made mutuality an increasingly attractive business model.

Addressing the Insurance Managers Conference at Aston University, Mr Tarbuck said: “Being a sustainable business is not just about economic positioning: it is about responding to the call for business to be truly accountable for the long-term future of our world, and never before has that call been so loud.”

“Dramatic climate change, the current global economic crisis, and emerging social issues have increasingly become the responsibility of the business world; thus social, economic and environmental issues have come to be recognised as the three pillars that underpin a sustainable business,” he said.

Mr Tarbuck said it was necessary to look back into the past to understand the relevance of mutuality today: “During the 19th Century mutuality was about building communities to share the burden of big responsibilities.” He said the growing conditions for mutuality were back and the rise of the internet was important for building and fostering mutual communities.

The mutual customer of the future was likely to be comfortable with the internet, willing to share the burden of financial responsibility, and enjoyed being part of a community.

Financial mutuals were gaining an increasing market share in a difficult environment, co-operatives were seeing growth through acquisition and improved performance, and employee-owned mutuals had gained new credibility fuelled by political support. There was a role for community mutuals contributing to the Big Society, and scope for the development of public service mutuals, a new type of public ownership for schools, hospitals, the Post Office and the NHS.

The UK has seen the emergence of nine new mutual insurers, whereas Australia and the USA has seen three new ones in the same period. There are a further ten mutuals in the pipeline in the UK. This was being driven by increased awareness of mutuality as an alternative and dissatisfaction with the inefficiency and greed of the commercial markets. Mutual insurers also exhibited a superior risk pool and a better understanding of risks.

With the growth to the mutual sector, Mr Tarbuck said the first ever co-operative/mutual manifesto has been produced in the UK and targeted at the Government. It aims to ensure mutuals receive equal treatment to plcs by establishing a government office and a designated minister for mutuals.

The manifesto also has a commitment to update mutuals’ legislation, and ensure that regulators act in a way that respects diverse forms of ownership by altering the terms of the Financial Services Authority to make it sustain a full range of business types. It also wishes to promote mutual ownership as a way of serving the public interest by establishing a unit to convert public service providers to this model.

ICMIF was founded in 1922 and is the only global organisation representing mutual and co-operative insurers. It is based in the UK with regional offices in Brussels, the USA and Japan. UMAL joined ICMIF in 2007.

The organisation has 210 members in 72 countries, and represents 6.2% of the world’s insurance market by premiums, or USD 255 billion. Its members have USD 1.34 trillion in assets and employ over 260,000 staff.

ICMIF is holding a conference in Manchester from 26-28 October 2011 entitled “It’s Our Time…”. Topics will include the future of the sector, capital management, managing through a catastrophe, strategic alliances, stakeholder management and values-based strategic marketing.

Changing Face of the Liabilities Market

Lord Justice Jackson's proposals for the reform of litigation costs bring both good and bad news for the insurance sector, John Tutton told the Insurance Managers Conference at Aston University.

Mr Tutton, who is Claims Controller UK Casualty Claims for QBE, told the conference the reforms intended to address the problem of disproportionately high legal costs in civil litigation in England and Wales, particularly where Conditional Fee Arrangements (CFA), such as "no win, no fee" were in place.

The aim of the measures is to reduce costs overall and rebalance cost liabilities between claimants and defendants, but without reducing access to justice.

Lord Jackson has proposed that CFA success fees and After The Event (ATE) insurance premiums should no longer be recovered from defendants but from claimants' damages, up to 25%.

Less welcome would be a 10% increase in General Damages, for example pain, suffering and loss of amenity, to offset the loss of recoverability of CFA mark up and ATE premium.

The proposals received the backing of Lord Young in his report "Common Sense Common Safety" which had been commissioned by Prime Minister David Cameron.

The report, on Health and Safety law and the compensation culture, aimed to free business from bureaucracy and the fear of having to pay out "unjustified damages claims and legal fees".

Lord Young was particularly supportive of ending the recovery of ATE premiums and CFAs. There is also a recommendation to extend the Ministry of Justice motor claims scheme to cases up to £25,000 and widening it to include all personal injury claims, as well as restricting advertising by referral agencies and PI lawyers.

The report also recommends simplifying risk assessment procedures for school trips and activities, voluntary organisations and low risk work places, and increasing the RIDDOR (Reporting of Injuries, Diseases and Dangerous Occurrences Regulations) threshold from three to seven days absence from the workplace. Mr Tutton said he was concerned this would mean fewer accidents were reported to the HSE.

There were 152 fatal accidents in the UK from 2009-10 and 233,000 reportable accidents. UK work places are relatively safe when compared to many other countries but workplace safety remains a big concern for insurers.

Arab Spring's Impact on Global Terrorism Outlook

The success of peaceful, secular, pro-democratic protests as an outlet for grievances in Tunisia and Egypt undermined al-Qaida's anti-democratic rhetoric and the appeal of violent jihad, according to Global Risks security analyst Karlin Younger.

Speaking at the Insurance Managers Conference, she said that while al-Qaida's position was undermined by protests in the Middle East and North Africa, the on-going unrest, especially the armed conflicts in Yemen and Libya, also presented them with opportunities.

"A non-violent, secular, pro-democratic protest movement achieved in a matter of weeks in Egypt what al-Qaida and its predecessors had failed to do for over 20 years of armed, violent struggle."

She said, however, that the resilience of al-Qaeda, and its repeated and consistent messaging is capable of having an influence in the long-term.

"The current intervention in Libya has prompted ferocious statements by (al-Qaida leader) Ayman al-Zawahiri labelling the US and its allies hypocrites and calling for rebels to attack NATO forces," she said.

"The Afghan Taliban has also been quick to taint the intervention citing civilian deaths and Western meddling in a Muslim country. It is important to remember that jihadists are nothing if not resilient in their messaging, and will seek to capitalise on core grievances to clawback public support."

Tough Conditions Could Lead to Hardening of Market

Over the past 12 months the global insurance and reinsurance industry has faced a catalogue of catastrophic losses triggered by events such as the Japanese earthquake and tsunami, severe weather and floods. The cost to the industry of the recent UK disturbances alone is expected to exceed £750m.

For the European market this is in addition to preparation for a new regime - Solvency II – which requires a stronger capital and risk management base.

Conditions therefore remain tough for insurers. Having seen seven years of soft pricing, unrelenting claims and lowered investment returns the industry, whilst seeing some signs of growth in reinsurance pricing, remains seemingly reluctant to increase pricing to commercial insurance buyers.

Renewal premiums globally in the last quarter remained flat according to tracking by the Risk and Insurance Management Society (RIMS). The exception being UK motor insurance rates, which have increased considerably this year, in some cases, according to media reports, of up to 40%. It is widely considered within the industry that a correction in rating of between 15% and 20% is necessary to reflect the exposures assumed by insurers.

Further catastrophe losses could spark higher premiums. Recent reports of 4% increases in renewal rates are the first signs of commercial insurers moving towards stabilisation. Whether this is the beginning of an upturn remains to be seen.

Back row left to right:- Allan Bickerstaffe, Leo Verhaag, Michael Pearson
Front row left to right: Hari Punchilhewa, Lord Redesdale, Susan Wilkinson, Allan Guest

Board meets Lord Redesdale

Members of the UMAL Board held a meeting with Liberal Democrat peer Lord Redesdale at the Waldorf Hilton in London on 12th July 2011 to discuss the Government's position on mutuality, and the support it was willing to give to mutual organisations providing services to public institutions.

Constitutional Changes Strengthen UMAL

UMAL has made changes to its constitution to allow Members and prospective Members to take advantage of a Supreme Court ruling that avoids the need for tendering for risk management services.

The changes cement UMAL's standing as a sector-owned company, and so define it as a public body that can use an article of European law known as the Teckal Exemption. This allows Members to contract with themselves for services without seeking external tenders.

UMAL Chairman Allan Guest welcomed the changes, saying the Association had taken the opportunity to modernise its constitution.

"The changes came into effect on 1st August 2011 and give further confidence to Members and prospective Members that, when selecting the Mutual as an alternative to traditional insurance and broker services, they are able to do so under the Teckal Exemption," he said.

"This confidence is of particular relevance in the difficult financial times faced by the sector and epitomises the shared services model whereby cost efficiencies and savings are retained within the sector," he said.

"It has been timely that the Board revisit the Association's business values in response to the ruling in the Supreme Court in February this year," he said.

UMAL Chief Executive Susan Wilkinson said pricing within the insurance market looked set to harden further over the next few months, and it was important that Members and prospective Members had a full range of options available.

"With the Supreme Court ruling and subsequent changes to the constitution we are able to contribute towards creating a level playing field for all those Higher and Further Educational institutions that want to take the Mutual option," she said.

"By having ownership of their own service providers, institutions not only have control in the way these services are delivered, but also benefit directly from efficiencies and savings."

"These changes open a new chapter in the history of the Association, and one which will see a strengthening of ties with the Members. We want to see Members being able to engage with UMAL at all levels, taking full advantage of all the services offered, and working together for a sustainable future."

Reading the Riot Act

The public disturbances that swept through English cities in August caused a tragic loss of life and millions of pounds worth of damage to property and livelihoods.

As the nation starts to pick up the pieces, when it comes to the question of compensation, one piece of legislation that must be considered is the Riot (Damages) Act 1886. This places strict liability on the police fund to pay compensation for losses or damage to property sustained in a riot. The definition of what constitutes a riot is fixed in the Act, but if the police have not defined the disturbances as such, then it is up to the claimant to provide sufficient evidence to satisfy the definition. In any event each incidence of damage is assessed on a case-by-case basis.

Any owner of property damaged in a riot is entitled to compensation from the fund regardless of any claims of negligence or blame surrounding the policing of the riot. Where the losses have been covered by insurance, the Act enables the insurer to claim directly for such losses. The Act only compensates for physical damage to a "house, shop or building" and damage to or theft of property inside these. A car parked in the street would not be covered, but one inside a garage would be.

Ordinarily, claims must be made within 14 days of an incident taking place but following pressure from the ABI, among others, the Government has extended the deadline to 42 days.

The position regarding business interruption losses is unclear, and there is no space on the claim form for this. However, it is recommended that BI losses are included. Such losses may be covered, although it remains to be seen whether such losses will be accepted by the compensation authority.

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