**INDEX**

* **Introduction Page 4**
* **SECTION ONE: BASIC FACTORS**

**Generally Page 10**

**Specific Examples:**

**- Motor Third Party Liability Page 16**

**- Employers‘ Liability Compulsory Insurance Page 19**

* **SECTION TWO: METHODS OF EFFECTING**

**Specific Examples:**

**- Motor Third Party Liability Page 21**

**- Employers‘ Liability Compulsory Insurance Page 22**

* **SECTION THREE: FINANCIAL ASPECTS**

**Specific Examples:**

**- Motor Third Party Liability Page 23**

**- Employers‘ Liability Compulsory Insurance Page 25**

* **Examples where obligation to take out insurance imposed by contract upon another Page 27**
* **SECTION FOUR: REINSURANCE Page 28**
* **SECTION FIVE: INTERNATIONAL ASPECTS Page 30**
* **SECTION SIX: ASSESSMENT & RECOMMENDATIONS Page 35**
* **SCHEDULE OF EXAMPLES OF UK COMPULSORY INSURANCE Page 57**

1. **Transport**
2. Motor Third Party Liability Page 57
3. Aircraft Operators’ Liability Page 57
4. Air Travel Organisers Page 60
5. Rail, Tramways etc Liability (and Office of Rail Regulation licensing) Page 63
6. Waterways – Houseboats and pleasure craft Page 65
7. Space Travel Page 67
8. **Occupational accidents and health**
9. Employers’ Liability Compulsory Insurance Page 69
10. **Leisure and sports activities**
11. Riding Establishments Insurance Page 69
12. **Pollution**
13. Shipowners’ Liability for Oil Pollution (and other environmental damage) Page 72
14. (\*Environmental Damage) Page 76
15. **Nuclear power**
16. Nuclear installations insurance Page 79
17. **Professional activities**
18. Health professions/activities
    1. Doctors (and other NHS workers) Page 81
    2. Dentists Page 83
    3. Chiropractors Page 85
    4. Osteopaths Page 85
    5. (\*Independent Midwives) Page 87
19. Building industry professionals
    1. Architects Page 89
    2. Surveyors and Valuers and Auctioneers Page 91
20. The Law
    1. Solicitors Page 94
    2. Barristers Page 99
21. Commercial/financial activities
    1. Accountants Page 102
    2. Insurance brokers/intermediaries Page 106
    3. Independent financial advisers Page 108
    4. Credit unions/providers Page 109
    5. Estate agents Page 112
22. **Others**
23. Dangerous Wild Animals Insurance Page 115

**Introduction**

The concept of compulsory insurance was unknown to English law until proliferation in the use of motor vehicles (and concern about compensation required for a rising trend in traffic accidents) saw the passing of legislation imposing compulsory motor third party liability insurance in 1930.

It was some thirty years before any further statutory intervention occurred, mainly in the field of liability insurance. This was in a fairly sporadic and ad hoc fashion, a trend which has continued to this day. Modern phenomena, seen as capable of causing widespread loss or injury (such as aircraft travel, the development of nuclear energy or environmental pollution of various kinds) and often involving an international element, collaboration or treaties, have triggered some of this activity. In other cases, much more immediate or localised concerns have at various times sufficiently caught the attention of the public or politicians or other pressure groups to have been thought to merit parties being compelled to insure against certain risks, (e.g. owners of horse-riding establishments or the keepers of wild animals) despite many comparable risks apparently meriting no such compulsion[[1]](#footnote-1). In 1972 it became compulsory for (most) employers to insure against liability for personal injury to employees, despite 90% having already previously done so[[2]](#footnote-2). From the 1970s it also became increasingly common for many, indeed most, professionals and others practising in various fields of work to be required to carry professional indemnity or wider civil liability insurance.

Given the varied nature of how any compulsion to insure has arisen it should be no surprise that the manner and extent of the provision of how any such insurance should be effected and the consequences of any failure is equally varied. In some cases a statute sets out in great detail not only what is to be insured, but also how exactly the obligation is to be discharged, by whom it may be insured, as well as provisions governing the penalties for any failure and the effect of any default in complying with these provisions or with policy conditions, or in the event of financial failure. Provision is further sometimes made concerning what rights a victim has should there be no insurance cover in place nor any identifiable insured to be pursued. In other instances, statutory provision may simply authorise licensing authorities or professional bodies to regulate those activities and it is they who impose and determine such requirements as conditions of being at liberty to practise. Their rules may commonly prescribe when insurers are at liberty to avoid or terminate cover (less often than they would otherwise).

Thought has been given to how best in these Questionnaire answers to provide details of the different types of compulsory insurance presently in effect in the UK. We have attempted to identify in our answers many areas of activity where insurance in the UK is *de facto* compulsorily required, rather than strictly statutorily required. Accordingly, although it is common for many texts in the UK to list, beyond the two most notable illustrations of Motor Third Party Liability and Employers’ Compulsory Liability Insurance[[3]](#footnote-3), the *smörgåsbord*of examples which have been the subject of specific statutory intervention, we have chosen in our answers to make reference to a still wider category of examples of *de facto* compulsion, including some where licensing or professional bodies more directly require this.

(We must stress, however, that although we have attempted to identify most, if not all, instances where there is legislation providing for compulsory insurance in the UK of some kind, no listing can attempt to include all instances where licensing or professional bodies impose obligations upon those licensed to comply with insurance obligations. There are simply too many such instances to list reliably or comprehensively.)

We summarise such examples below by reference to the categories of activity involved.[[4]](#footnote-4)

**Overview of examples**

1. **Transport**
2. Motor Third Party Liability
3. Aircraft Operators’ Liability
4. Air Travel Organisers[[5]](#footnote-5)
5. Rail, Tramways etc Liability (and Office of Rail Regulation licensing)
6. Waterways – Houseboats and pleasure craft
7. Space Travel
8. **Occupational accidents and health**
9. Employers’ Liability Compulsory Insurance

**C - Leisure and sports activities**

1. Riding Establishments Insurance

**D - Pollution**

1. Shipowners’ Liability for Oil Pollution (and other environmental damage)
2. (\*Environmental Damage)

**E- Nuclear power**

1. Nuclear installations insurance

**F - Professional activities**

1. *Health professions/activities*
   1. Doctors (and other NHS workers)
   2. Dentists
   3. Chiropractors
   4. Osteopaths
   5. (\*Independent Midwives)
2. *Building industry professionals* 
   1. Architects
   2. Surveyors and Valuers and Auctioneers
3. *The Law*
   1. Solicitors
   2. Barristers
4. *Commercial/financial activities*
   1. Accountants
   2. Insurance brokers/intermediaries
   3. Independent financial advisers
   4. Credit unions/providers
   5. Estate agents

**G - Others**

1. Dangerous Wild Animals Insurance

(*n.b. Those marked with \* and appearing in brackets - Environmental Damage and Independent Midwives - are included less as examples of actual compulsory insurance provision, as typical areas of activity where there has been considerable discussion about the introduction of this.)*

In addition to these there are a number of instances where wholly independently either of any statutory or public policy intervention or of professional or licensing body regulation, it has become customary for a contracting party, such as a landlord letting a property to a tenant, or a lender making a loan upon a property, to require insurance to be taken out by the tenant or borrower. This is simply a contractual compulsion to insure and will usually have been imposed for the more obvious reason that financial security is being specifically afforded in the event that any disturbance should arise affecting the performance of the contractual obligations assumed or the other party’s ability to discharge these[[6]](#footnote-6). Of some interest is the fact that it has been noted that mortgage providers in the UK, unlike in Ireland, for example, are unable to demand that borrowers take out life insurance cover when assuming the financial responsibility of a loan. (Life cover would of course not necessarily be the most appropriate form of protection for borrowers without dependants.)

To avoid rather tiresome length and undue repetition in many cases we have settled upon the following format for answering the questions raised.

First, we attempt to answer each question in Section 1 generically: in other words, to describe and distinguish those *groups* of risks, so far as they may be categorised, which are broadly dealt with in one way or another prompted by the specific Questionnaire answers. We first discuss identify *de facto* compulsory insurances, before identifying and briefly commenting upon (also at the end of our Section 3 answers) the impact of some insurance obligations merely contractually imposed. In view of their importance in the UK, however, we also provide in the main text specific answers to each of the questions in Section 1 for the two principal forms of compulsory insurance: Motor Third Party Liability and Employers’ Liability Compulsory Insurance.

Next, in attempting (in the main text at least) answers to all questions raised in Sections 2 and 3, we have confined these here (for the sake of convenience and length) to Motor Third Party Liability and Employers’ Liability Compulsory Insurance. More detailed information regarding the various forms of *de facto* types of UK compulsory insurance may be found in the Schedule in the order in which they have been identified above. (We have not attempted in every case to supply full answers for each type, but trust that we have supplied in the grid of questions enough information for further specific questions to be answered by reference to materials or references supplied.)

We then address the answers to Sections 4 to 6 inclusive generically, but with reference to many of the examples previously identified.

A few related issues are not dealt with in the same way.

First, although tax-funded “social insurance” is discussed at 6.4.1 below, no details are included here of **National Insurance** (NI). As a matter of national policy in the UK the state undertakes the responsibility of providing on an insurance basis benefits for unemployment, incapacity, maternity, widows and widowers, retirement, death and industrial injuries and diseases. Initially a contributory system of insurance, NI was introduced in the UK against illness and unemployment, and later also provided retirement pensions and other benefits. It was first introduced by the National Insurance Act 1911, and expanded by the Labour government in 1946.

The contributions component of the system consists of obligatory contributions, *National Insurance Contributions* (NICs), paid by employees and employers on earnings, and by employers on certain benefits-in-kind provided to employees. The self-employed contribute based upon net earnings.

The name “*National Insurance”* was adopted to distinguish it from general taxation such as income tax, although National Insurance contributions are increasingly described by the Government as a form of taxation: [www.parliament.uk](http://www.parliament.uk): *Select Committee on Social Security Fifth Report, the Contributory Principle – the relationship between tax and National Insurance*.

Second, details are not supplied here of the legislative provision by which liability insurers are affected by Government policy to recoup from those inflicting personal injury any social security payments made to victims, nor the National Health Service charges which may have been incurred by them[[7]](#footnote-7).

Finally, over and above what amounts to compulsory insurance, whether by statute, by the requirement of a ruling body or by customary contractual arrangement, there are in addition to other guarantee or other funds established in respect of particular activities or eventualities, further statutory provisions for state indemnification in the form of insurance and reinsurance against war risks of ships, aircraft and cargoes, and for insurance of goods lost or damaged in transit after discharge and between the ship or aircraft and the destination of the goods: *Marine and Aviation Insurance (War Risks) Act 1952, ss 1-3*. Also, reinsurance by the Secretary of State against acts of terrorism by which Parliament will pay out sums necessary to meet the obligations of the Treasury assumed under reinsurance agreements or guarantees made pursuant to the *Reinsurance (Acts of Terrorism) Act 1993* and subsequent legislation and provisions. Also, compensation afforded by the Government in the event of a failure of a regulated insurer to meet its obligations. These issues are all covered briefly, however, in our answers to Sections 4 to 6 inclusive.

**SECTION ONE: BASIC FACTORS**

**Generally**

|  |  |
| --- | --- |
| * 1. **THE MANDATORY INSURANCE CONTRACT OR COVERAGE REQUIREMENT IS LAID DOWN**      1. **BY LAW**          1. **BY NATIONAL LAW** | 1.1.1.1 In the following cases there is national statutory law providing either that insurance must or may be taken out or other financial provision made *and/or* (in some cases) how this might be effected:  A-1 Motor Third Party Liability : Road Traffic Act 1988, ss 143 and 145 (and subsequent regulations)  A-2 Aircraft Operators’ Liability Insurance: Civil Aviation (Licensing) Act 1960 (and subsequent regulations)  A-4 Rail, Tramway & similar transport system liability: Transport & Works Act 1992  A-5 (Inland) waterways – liability of houseboat and pleasure craft owners: British Waterways Act 1995  A-6 Space Travel : Outer Space Act 1986  B-1 Employers’ Liability Compulsory Insurance: Employers Liability (Compulsory Insurance) Act 1969 (and The Employers Liability (Compulsory Insurance) Regulations 2008)  C-1 Riding Establishments Insurance: Riding Establishments Act 1970, s1(4A) (d)  D-1 Shipowners’ Liability for Oil Pollution Insurance (and other environmental damage): Merchant Shipping Act 1995, s163 and the Oil Pollution (Compulsory Insurance) Regulations 1997 No 1820; Merchant Shipping (Pollution) Act 2006 (and Merchant Shipping (pollution) (Supplementary Fund Protocol) Order , SI 2006 No 1265. [Merchant Shipping Act 1995, s192A (and Merchant Shipping and Maritime Security Act 1997, s16) empowers the Secretary of State to make regulations requiring ships in UK waters to have liability insurance (irrespective of the strict oil pollution provisions of s163).]  E-1 Nuclear power: Nuclear Installations Insurance Act 1965, s19 (and, inter alia, Nuclear Installations Act 1970, the Atomic Energy Authority Act 1971, Energy Act 1983)  F-1.3 Chiropractors: Chiropractors Act 1994  F-1.4 Osteopaths: Osteopaths Act 1993 (and later regulations)  F-3.1 Solicitors: Solicitors Act 1974, s37, Legal Services Act 2007 (and, inter alia, later Solicitors’ Indemnity Insurance (Amendment) Rules 2009)  F-4.2 Insurance brokers/intermediaries: Financial Services and Markets Act 2000 (and other regulations)  F-4.3 Independent Financial Advisers: Financial Services and Markets Act 2000, s138  F-4.4 Credit Unions/providers: Credit Unions Act 1979, s16, since repealed and replaced by the Financial Services and Markets Act 2000, s246  G-1 Dangerous Wild Animals Insurance: Dangerous Wild Animals Act 1976, s1(6)(iv)  In one case, there *is* national statutory law providing that insurance must compulsorily be taken out, but no regulations have ever been passed to implement this:  F. 4-5 Estate Agents: The Estate Agents Act 1979  In the following cases there is *no* national statutory law, nor statutory framework expressly providing that insurance must compulsorily be taken out, *nor* how this is to be effected, but licensing or professional body concerned, which may be statutorily recognised, may determine any such arrangements as are deemed necessary:  A-3 Air Travel Organisers (a compensatory scheme at least )  F-1.1 Doctors (re non-National Health Service (NHS) work)  F-1.2 Dentists (re non-NHS work)  F-2.1 Architects  F-2.2 Surveyors and Valuers and Auctioneers  F-3.2 Barristers  F-4.1 Accountants  In the case of:  F-1.5 Independent Midwives: there is presently no such legislation, nor imposed requirement, although this was proposed (and opposed) in 2007 and at other times |
| * + - 1. **BY INTERNATIONAL LAW**     1. **SYSTEMATICALLY BY A CO-CONTRACTING PARTY**   **1.1.2.1 BANK IN CONNECTION WITH A LOAN**      **1.1.2.2 LESSOR IN CONNECTION WITH A LEASE**    **1.1.2.3 OTHER** | In a number of the cases cited above, the national legislation was implemented or modified, either in compliance with or foreshadowing EU (or predecessor) Directives (see A-1 Motor Third Party Liability and F-4.2 Insurance brokers/intermediaries) or international conventions of various kinds (see A-6 Outer Space Act 1986 and D-1 Shipowners’ Liability for Oil Pollution Insurance).  In case of A-2 Aircraft Operators’ Liability Insurance, there is no national statutory law imposing compulsory insurance as such, based upon earlier Conventions, but statutory regulations have been introduced in response to Regulations of the European Parliament and Council.  (In case of D-2 Environmental Damage, national statutory regulations were passed in 2009 to implement the EU Environmental Liability Directive, but with the EU Commission deferring until six years after the introduction of the Directive (2010) any planned moves for compulsory insurance schemes being imposed.)  Common for banks or building societies or other lending institutions to require borrowers to insure by way of income protection and/or life or health cover to protect against unforeseen failure to repay indebtedness.  Common for lessors to impose upon lessees in leases of properties obligations either that the lessee must take out comprehensive insurance against loss or damage to that property demised to it or to contribute to such part of premiums which the lessor pays in respect of cover taken out on its behalf (and that of the lessee).  Other illustrations of such imposition of a duty to insure by a co-contracting party include:   * Sports ground hire where public liability may be incurred * Contract involving other leisure/activity or hazardous pursuit involving potentially significant first- or third-party death or personal injury * Some consumer credit contracts * Some design and build contracts where contractors or sub-contractors at risk of causing or incurring significant physical injury of financial loss * Some marine or transport contracts * Partnership deeds/agreements entered between partners in professional partnerships may sometimes contain a requirement on the part of an individual partner that he will take out / participate in a mandatory form of life insurance cover (or up to a minimum amount) designed either to relieve the partnership from any moral or legal duty to make provision for the surviving spouse/dependants of a partner unexpectedly dying in service and/or to avail all partners of more favourable terms for such cover purchased for the partnership on a group basis. |
| * 1. **CONTEXT IN WHICH A MANDATORY INSURANCE REQUIREMENT WAS LAID DOWN**      1. **INSURANCE WAS MADE MANDATORY**         1. **WITHOUT HASTE**         2. **IN HASTE** | As mentioned above, early example of Motor Third Party Liability and later, Employers Liability Compulsory Insurance, were each in response to perceived, but measured need for imposed provision for welfare of victims exposed to accident or injury where risk may otherwise have been underestimated. Similar considerations have triggered ad hoc and sometimes more hasty provisions in liability sphere prompted by public or political attention. 1970s saw legislation and/or regulating bodies responding to expectation that those engaging in professional activities would have professional or civil liability cover. Latterly, requirements of EU Directives across sphere of activities and/or reliance by public authorities upon private operators to meet certain public/social needs has raised awareness of need for financial security/protection in event of mishap. For more detailed of implementation of particular statutory or other measures see relevant sections in tables in Schedule attached. |
| * 1. **NATURE OF RISK**       1. **PROPERTY INSURANCE**      2. **LIABILITY INSURANCE**          1. **PROFESSIONAL OR BUSINESS LIABILITY**         2. **LIABILITY IN PRIVATE LIFE**      3. **PERSONAL INSURANCES**         1. **LIFE INSURANCE**         2. **HEALTH AND/OR ACCIDENT INSURANCE** | As described in introduction above and more fully in tables in Schedule. Principally concentrated in liability sphere – increasingly in professional/civil liability of those in professional activities or areas where strict liability regime introduced, e.g. nuclear installations, environmental pollution etc  Coverage involving liability in private life and/or need for personal insurances, health and/or accident insurance tend to be confined to instances where a person is expecting to be exposed to a particularly heightened level of risk, if associated with an activity of a distinctive kind bringing them in to contact with potential danger and/or members of the public or both, or upon the assumption of significant and/or financial obligations to another party.  Of note is debate being generated in the UK presently regarding the potential need for all citizens to consider and/or be encouraged/compelled to take out health and/or long-term care or life cover (to help provide against anticipated over-demand upon publicly-financed health/care facilities to be made by ageing population) and/or pensions/retirement benefit protection (against similar shortfalls in benefits expected to be available to meet rising costs of care and retirement).  Other spheres where demands to be made upon public resources may be unexpectedly stringent or particularly hard to predict are thought potentially to merit compulsory insurance schemes. These include: risks of pandemics, terrorism and/or business resilience more generally. |
| **1.4 EXCLUSIONS**  **1.4.1 PERMITTED**  **1.4.2 PROHIBITED**  **1.4.3 IMPOSED** | In cases where statutory provision is expressly made for the prescribed terms and ambit of who and what is to be compulsorily insured, it is common to find types of potential insureds or areas or levels of risk which it is specified may or need not be covered. Details are to be found in the tables in the Schedules. These commonly reflect public policy considerations and/or the aspect of risk or area of exposure of greatest concern to the legislators or regulating body and/or the availability of optional additional private market cover. |
| **1.5 PENALTIES FOR LACK OF INSURANCE**  **1.5.1 CRIMINAL PENALTIES**  **1.5.2 ADMINISTRATIVE PENALTIES**  **1.5.2.1 DISQUALIFICATION FROM PRACTISING OR CARRYING ON A PROFESSION, OCCUPATION, TRADE OR BUSINESS**  **1.5.2.2 OTHER PENALTIES**  **1.5.3 CIVIL PENALTIES** | Most statutory provision prescribing what is required of anyone engaging in the activities which are the subject of legislation, including the obligation that insurance be taken out, includes the sanction of a penalty for any breach either to conform to the required regulation and/or more specifically the taking out of the insurance itself. This often makes any such failure a formal criminal offence attracting on prosecution either a fine and/or in more serious cases, imprisonment. As with the rules to this created and enforced by licensing or professional regulatory bodies, there is often also a regime of warning, reprimand or in more extreme cases, suspension or expulsion of the offending party. In some cases, but in the minority, these provisions including remedies for wronged parties are to the exclusion of additional civil remedies. (For more detailed descriptions of the penalties prescribed in various examples see the tables for Motor Third Party Liability and Employers Liability Compulsory Insurance immediately below and in the Schedules attached.) |

**Specific Examples:**

**1. Motor Third Party Liability Insurance**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations (pursuant also to EU Directive): **Road Traffic Act 1988, s 143 and s 145.** Revised to comply with European Directives and developments[[8]](#footnote-8) and more recently the **Road Safety Act 2006** has inter alia introduced measures designed to assist with the enforcement of compulsory motor insurance (see below). |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | The implementation of the Road Traffic Act 1930 and the Third Parties (Rights against Insurers) Act 1930 had previously been thought likely to meet the recognised need that anyone injured or killed in road accidents through the fault of another should be compensated. Insurers’ exceptions and warranties in motor policies (binding on insureds and third parties alike) thwarted this expectation. As a result, third party rights were increased by the Road Traffic Act (RTA) 1934, latterly replaced by the RTA 1972, then RTA 1988 and subsequent amendments, with their express provisions (and safeguards for third parties) regarding compulsory motor third party liability insurance.  It has been recognised from the outset that a compulsion by law to take out insurance will not result in 100% compliance. In 1946 the Motor Insurers’ Bureau (MIB) was established to compensate the victims of negligent uninsured and untraced motorists[[9]](#footnote-9). Each insurer which writes compulsory motor insurance is obliged, by virtue of the RTA 1988, to be a member of MIB and to contribute to its funding. |
| **1.3 NATURE OF RISK** | Motor third party liability |
| **1.4 EXCLUSIONS** | Exceptions from requirement of third party cover extend, inter alia, to vehicles owned by local authority, emergency services, invalid carriages (RTA 1988, s144) |
| **1.4.1 PERMITTED** | (1) Liability for death or bodily injury sustained in course of employment by person employed by policyholder. (Anyone killed or injured while travelling in, or getting on or off, a vehicle is only covered if so required by Employers’ Liability (Compulsory Insurance) Act 1969. A fair amount of case law has arisen over what constitutes for these purposes both an “employee” and “in the course of employment”. Also, if a “permitted driver” is named in a company’s policy, (who is not directly a party to the contract of insurance), only employees of that permitted driver may be so excluded. If there is a company policyholder the liabilities of the company may not be excluded.) (2) Liability for a sum in excess of £1,000,000[[10]](#footnote-10) for all liabilities for damage to property caused by or arising out of any one accident involving a vehicle. (3) Liability for damage to the vehicle itself. (4) Liability for damage to goods carried for hire or reward in/on any vehicle and/or trailer. (5) Liability of a person for damage to property in his custody or control. (6) Liability for any contractual liability. An insurer may also be relieved of liability to an insured for breaches of duties of disclosure, whether in common or statute law or by way of contractual term, even if this will not permit the insurer to avoid liability to an injured third party. |
| **1.4.2 PROHIBITED** | Liability (whether from negligent or deliberate act) for death, bodily injury to any person or damage arising from use of vehicle on road or in public place in Great Britain[[11]](#footnote-11), together with any need for emergency treatment *must* be covered by an authorised insurer[[12]](#footnote-12). No agreement or understanding (by way of exclusion or waiver of these provisions) made between policyholder and the user of a vehicle used subject to these provisions will be recognised or of any effect. Nor will any condition be given effect by which liability is said not to arise unless something is done or refrained from following the happening of an event giving rise to a claim. Nor will certain breaches of other conditions said to exclude liability on the part of insurers be of any effect à propos a third party: these relate, inter alia, to the age or mental condition of the driver, the condition of the vehicle, having a valid driving licence and/or permission to drive the vehicle, the number of persons carried and/or the time at or circumstances in which the vehicle was being used. More particularly, where a policy specifies that the use of a vehicle should be for social or domestic purposes only there are certain statutory safeguards which allow car sharing arrangements not to fall foul of these. |
| **1.4.3 IMPOSED** | None , save as already mentioned |
| **1.5 PENALTIES** | Traditionally, to establish that statutory offences under the RTA 1988 for failure to insure had occurred, whether by the owner or user of a vehicle, (distinct from the improper issuing of policies by an unauthorised insurer), it was necessary for such use of the vehicle on the road to be detected by the police (often at a routine check or following an accident). The requirement that a vehicle could not be licensed without the production of valid insurance was designed to help deter breaches.  The MIB has recently announced its support for the initiative of the “Continuous Insurance Enforcement” scheme, which is being developed jointly by the MIB, the vehicle licensing authority, insurers and the Dept of Transport, scheduled for completion in 2011, to make it increasingly difficult for vehicles to remain uninsured by making detection possible, like continuous vehicle registration, simply from records maintained. In this case upon a Motor Insurance Database of presently 34m vehicles, maintained and updated daily by insurers. As part of these measures the Road Safety Act 2006 introduced into the RTA 1988 – from a date still to be appointed - an offence on the part of the owner for a failure to insure, to be punishable by the service of a fixed penalty notice, which if duly acted upon will discharge any liability to conviction. |
| **1.5.1 CRIMINAL** | Meanwhile, failure on the part of a vehicle owner or user to have requisite compulsory insurance is subject to a penalty being imposed by a local authority by way of a summary conviction and a fine not exceeding level 5 (£5,000) on the standard scale (Criminal Justice Act 1991, s17(1)). Any insurer issuing policies who is not authorised to do so is in turn subject to a summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 (£5,000) on the standard scale (see above) or both. It is also a punishable offence to fail to provide particulars of insurance as required by s154 RTA 1988. |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** | Penalty points may be incurred and endorsed upon a driving licence (which may or may not lead – immediately or over time - to a disqualification from driving). |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** | Failure to insure gives rise to a civil claim for breach of statutory duty on part of injured party against party who should have taken out cover, which might be employer. Such statutory tort continues to exist despite being of negligible benefit or practical effect given the continued role of the MIB and changes effected in wake of the EC Motor Insurance Directives and changes in practice following the adoption of the MIB Agreements . |

1. **Employers’ Liability Compulsory Insurance (ELCI)**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: **Employers’ Liability (Compulsory Insurance) Act 1969** and relevant regulations (**The Employers’ Liability (Compulsory Insurance) (Amendment) Regulations 2008** whichcame into force on1 October 2008) (amending inter alia obligations re the displaying of certificates of EL cover etc.) |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | ELCI has been compulsory since 1972. (Prior to that date approx 90% of employers were believed to have EL cover voluntarily.) The scheme adopted is modelled on the earlier Road Traffic legislation in that the employer is required to take out a liability insurance policy, the terms of which are subject to statutory control, covering potential liabilities to employees, but does so in a more confined way: it is confined to personal injuries, subject to a financial cap, without any fallback by way of uninsured employers and involves far less statutory control. |
| **1.3 NATURE OF RISK** | Liability, inc liabilities to employees for personal injury/disease arising out of and in the course of their employment in Great Britain in that business, (including while using motor vehicles). |
| **1.4 EXCLUSIONS** | Does not apply to government organisations, local authorities or micro-/family businesses. Except in so far as regulations otherwise provide, **not** including injury or disease suffered or contracted outside Great Britain[[13]](#footnote-13). |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** | Regulation and enforcement is conducted by the Health & Safety Executive. Enforcement is less than strict and extent of (non)compliance is subject of largely anecdotal evidence (and issue of defaulters has been exacerbated by recent high-profile cases).[[14]](#footnote-14) A minor form of protection does exist, however, for employee if employer has breached conditions of an existing policy. |
| **1.5.1 CRIMINAL** | New fixed penalties were introduced in 2003 : up to £2,500 per day fine for each day without cover, but fines may often be lower. |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**SECTION TWO: METHODS OF EFFECTING**

**Specific Examples:**

**1. Motor Third Party Liability**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes. Legislation does not specify that insurance must be in writing, but makes reference to “policies” and requires that a certificate of insurance be supplied. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Unless strictly confined to the risks which are compulsorily insured by statute, the motor insurance contract will be a composite contract of insurance, starting invariably by reference to a particular vehicle or one of a fleet of cars, with varying degrees of lassitude regarding the type of vehicles which may thereafter be declared to the cover and/or those who may drive the vehicles or other restrictions. |
| **2.1.3 IS INSURER BOUND TO COVER?** | So far as the compulsory element of the insurance is concerned, the insurer is under an obligation to indemnify those specified under the policy as in respect of any liability owed to them, but without any cause of action being conferred directly upon injured third parties. Such obligation does not preclude insurers from being able to repudiate liability to a policyholder for voidable grounds such as a material non-disclosure or misrepresentation. The insurer is also under an obligation to issue a certificate of insurance and to keep a record of all policies and/or certificates issued for a period of 7 years from the date of their expiry. Also they are directly liable to pay for any emergency treatment delivered to injured parties by medical practitioners.[[15]](#footnote-15) |
| **IF NOT, ANY CONSEQUENCES?** | A policyholder has a direct civil cause of action lies against an insurer who fails to fulfil its obligations in these respects. A third party has no direct right against an insurer in common law, but a third party does now enjoy certain direct rights of action against insurers. A direct right of action[[16]](#footnote-16) (to the extent of the insured’s own claims) has for a long time been enjoyed against insurers if the insured becomes insolvent, (further protected as it is by the effect of certain policy compliance conditions being rendered ineffective). More recently, pursuant to the EC (Rights against Insurers) Regulations 2002, a third party will in most cases have the option of suing the insurer directly, the insurer being directly liable to the entitled party.  It is also an offence punishable on summary conviction with a fine not exceeding level 4 (£2,500) to issue a certificate known in any material way to be false. |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | As stated, motor policies must be issued by authorised insurers to meet the requirements of the compulsory third party liability legislation, but may additionally cover a vehicle against comprehensive, including first-party, risks. |

**2. Employers’ Liability Compulsory Insurance (ELCI)**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes. Legislation does not specify that insurance must be in writing, but makes reference to “policies” and requires that a certificate of insurance be supplied. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | A policy of ELCI usually provides that if any person under a contract of service or apprenticeship with the insured sustains any personal injury by accident or disease caused during the period of insurance and arising out of and in the course of employment the insurers are to indemnify the insured against all sums for which the insured is so liable. |
| **2.1.3 IS INSURER BOUND TO COVER?** | Yes. |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**SECTION THREE: FINANCIAL ASPECTS**

**Specific examples:**

**1 Motor Third Party Liability**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Unlimited in respect of death/personal injury and compulsory element is for at least £1m in respect of property damage inflicted upon third parties. |
| **3.1.2 DEDUCTIBLE: PROHIBITED/MANDATORY/OPTIONAL?** | An excess will almost invariably be imposed by insurers. It is neither prohibited, nor mandatory. Commonly younger/inexperienced motorists, those with poor driving records and/or those driving high risk or expensive vehicles may be expected to pay a higher compulsory excess figure per claim. A voluntary excess figure (of a greater sum than that imposed by an insurer) may be negotiated by a policyholder to reduce the cost of their insurance. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | Normally fixed directly by private insurers. |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes – one of factors taken into account along with : age/category of driver and/or permitted driver, vehicle type (now subject to emissions loadings) etc. |
| **REGULATED OR UNREGULATED?** | No |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | There is considerable sensitivity among policyholders about rates and a growing use of aggregator sites in search of the cheapest deal (see 3.3. below) which keeps rates competitive. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** | Many insurers regularly complain that it remains very difficult to underwrite UK motor business profitably, partly on account of the compulsory element, which at least ensures a volume of business, but carries with it the burden of the cost of uninsured/untraced drivers (which is being tackled) needing to be factored into premiums, but also the pressure on rates brought about by competition. |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** | According to market research conducted in 2009[[17]](#footnote-17): “The UK motor insurance market has been suffering from an underwriting loss for a number of years now. Fuelled by the growth of price comparison sites, the market is highly price sensitive and suffers from a distinct lack of customer loyalty. On the plus side, however, the motor insurance sector is well-insulated against the economic downturn due to the fact that motor insurance is a legal requirement. As the number of cars in the UK has continued to grow[[18]](#footnote-18), the sector should prosper, giving motor insurers time to focus on of the issues of pricing, customer retention and distribution.   Some 19% of motorists used an aggregator to arrange their last car insurance policy (compared to 12% in 2008). Clearly, price comparison sites present a big challenge for providers. Either a new pricing structure is needed in relation to the aggregator model, or a longer-term focus is required in their relationship. In addition, the rising cost of personal injury claims is a big issue for insurers, adding to the need to increase premiums. The problem is that while big premium rises are needed to increase profitability, in such a fiercely competitive and price-led industry, no one wants to be the first mover for fear of the business they will lose as a result.”  Entering 2010, however, reports are that premiums are being made subject to major increases by most carriers. |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** | Little doubt that if such insurance were not compulsory, a few categories of driver would be insurable more cheaply if insurers were freed of wider burdens regarding them and others, but in the main many drivers would find cover more expensive and a sizeable number would find cover was prohibitively expensive and/or unavailable. |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** | Any increase in cost or reduction in availability of cover would be bound to result in many more driving without cover at social/economic risk/cost to all. |

**2. Employers’ Liability Compulsory Insurance (ELCI)**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Required to be of a minimum of £5m only “in respect of claims relating to any one or more of his employees arising out of any one occurrence”[[19]](#footnote-19) (but most policies provide cover for at least £10m). |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** | Usually fixed by the parties with an insured at liberty to select its favoured carrier on an open market basis. |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Usual to relate the premium to the amount paid in wages by the employer to the employees during each period of insurance and to insert a provision for adjusting the premium at the end of the period when the figures can be accurately determined. |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** | The UK employers’ liability market saw profitability deteriorate in 2007 as the soft cycle took its toll on many competitors. Premium income fell by a further 6.9% to £1.8 billion in 2007 as insurers continued to decrease their prices amidst strong competitive elements remaining in the market. The employers liability market remained dominated by competitive pricing in 2006 and 2007, leading to unprofitable market conditions.[[20]](#footnote-20)  2003 saw the last potential crisis in the EL sector in the UK. Spiralling claims inflation between 2001-3, principally triggered by the growing cost of asbestos-related disease claims, saw withdrawals from the market and dramatic increases in premium rates, required by primary insurers as most EL UK reinsurance treaties had deductibles higher than most likely single person claims. ABI claimed at that time that between 1997 and 2001 EL insurer losses had reached £761m or the equivalent of £1.50 loss for every £1 premium earned. Also, that unless checked, the 25% proportion paid by EL insurers of all compensation claims would escalate to 60% by 2015. They sought a division in how EL risks were to be covered between short-tail and long-tail risks.  Government and Office of Fair Trading (OFT) investigations into the sector, encouraged by employers’ organisations and the ABI alike, saw no challenge to the compulsory nature of ELCI. Conclusions were to the effect that no radical change was required. The sharp increases in premium had been it was found largely justified, without improper collusion, by a private market which had sufficient capital to continue to provide EL in a cyclical climate, but with the need to address some facets of cover, such as how to alleviate pressures on very small businesses; with regard to occupational diseases; to reduce costs and claims and to improve risk assessment such as to benefit those making significant health and safety efforts (which remained successful in continuing to allow ELCI to be provided at costs lower than in most international competitor countries). |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** | Not all employers’ risks would be insurable by the private market either at economic rates or upon wide enough terms to meet longstanding and continuing social concerns regarding the meeting of the cost of injuries or accidents sustained by employees while at work. |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** | Reasonable to assume that the (relatively low) proportion of employers who presently fail to insure notwithstanding the legal obligation to do so would rise in the event of the compulsory element being removed. |

**Examples of circumstances where an obligation to take out insurance is presently often imposed in the UK by one contracting party upon another:**

1. Landlord and Tenant
2. Loans upon properties (mortgage/income protection)
3. Consumer credit
4. Design and build contracts
5. Marine / transport contracts
6. Sports ground/activity hire
7. Others

We have already commented upon the practice of landlords imposing upon tenants contractual obligations to insure against loss or damage to the property or their own possessions or of lenders insisting that borrowers take out some form of protection against the risk of their not being able in future to meet repayments. Sales of goods or services by way of consumer credit often involve insurance protection being required.

In many other instances one sees that commercial advantage is sometimes simply applied by the stronger contracting party either to reinforce with whom any contractual risks rests and/or to discourage either the insured party or any third party seeking redress or recovery from itself in the event of any insured peril occurring (such as may be seen in many instances from construction projects to the carriage of goods or people). Sometimes the motive may more obviously simply be to help effect a further sale (e.g. tied insurance or extended warranty products when selling a product or service – in the latter case such as obligatory travel insurance which was specified in recent times by one airline (Ryanair) to have to be taken out with its own insurance provider). Where such contractual obligations have been imposed as an enforced condition of sale or service they have often attracted criticism and /or intervention from consumer bodies and trading organisations.

In the ever-growing world of diverse leisure pursuits many anomalies have been noted, such as it may be made necessary for hirers of sports facilities in public places in the UK to be contractually[[21]](#footnote-21) compelled to take out public liability insurance to play a very low-key social game of mixed after-office softball, yet when hiring powerful, fast-moving marine leisure craft, for example, *not* to be required to have, nor specifically to take out, any first or third party insurance of any kind, still less to display any levels of competence or experience.

**SECTION FOUR: REINSURANCE**

* 1. Mandatory reinsurance
     1. Obligation for a private reinsurer

The reinsurance of classes of compulsory insurance in the UK does *not* involve any specific statutory obligations being imposed upon private reinsurers who must simply comply with rules governing the writing of reinsurance business more generally. Reinsurers may freely decide the terms upon which they underwrite or withdraw from such classes of business. The stance adopted by private reinsurers at any one time does however have a major bearing upon the feasibility of the provision of compulsory insurance by direct insurers (described further below).

* + 1. Obligation for a public reinsurer
       1. In the form of classic reinsurance
       2. In the form of a state guarantee fund

Reference is made in answers to 6.1.2, 6.5.8 and elsewhere about the role of public or Government-backed reinsurers (e.g. Pool Re in terrorism cases) and/or the provision of a state guarantee fund.

* 1. Attitude adopted by private insurers in your country
     1. Refusal to reinsure mandatory insurance
     2. Agreement to reinsure mandatory insurance
        1. With domestic insurers
        2. With foreign insurers

The availability (or otherwise) of (usually excess of loss) reinsurance and reinsurers’ appetite for reinsuring compulsory classes, especially for elements of unlimited liability, has often left insurers faced with little choice about what they may *choose* to reinsure. Although often preferring to have back-to-back reinsurance for compulsory risks, direct carriers have found that with growing concerns among reinsurers, especially about latent damage claims impacting upon long-term ELCI exposures, since the mid-1990s very little reinsurance has been available upon the basis of unlimited cover for non-motor classes. Reinsurance for unlimited compulsory motor cover was only made available, despite growing concerns about bodily injury claims outstripping wage inflation, while interest rates remained high, settlement periods slow and a ready general retrocession market could relieve reinsurers of concerns about unknown, unlimited liabilities. With the disappearance since 2001 of much of both the retrocession market and all but the four major reinsurance group carriers, the landscape has changed significantly.

With terrorism and pollution exclusions and the imposition of limited exposures to statutory minima since becoming the norm, the large European reinsurers have principally led the way in threatening that the provision of reinsurance of unlimited compulsory motor insurance in particular is unsustainable. With layers in excess of £5m seen by reinsurers as under-priced and the provision of unlimited liability by limited liability entities as contrary to their own trading philosophies and that of regulators’ and rating agencies’ own sense of prudent business, they have lobbied to have compulsory terms changed against the threat of withdrawal, with direct carriers often increasingly regarding themselves as “between a rock and a hard place”.

Private reinsurers’ withdrawal of support and/or the exclusion of certain elements of mandatory risks, seen as imposing too heavy or unpredictable an exposure, e.g. exposure to asbestos-related risks in EL reinsurance treaties in 2002-3, has meant that primary carriers have often themselves tried to impose similar exclusions themselves. Consequently, certain risks in this context, e.g. asbestos removal contractors, have often had to be insured by a specialist primary insurer willing to assume and able to price cover for such a sector.

Agreement to reinsure mandatory insurance exposures may often be upon terms where, even apart from exclusions imposed by reinsurers, the principal burden of some element of risks assumed must remain with the primary carrier, e.g. most UK EL reinsurance treaties now commonly involve deductibles which are greater than the most likely single person claim.

* 1. Economic aspects

With unlimited motor risk exposures no longer readily transferable to the reinsurance market and with factors already described making excess motor or ELCI cover either unprofitable or potentially unaffordable, even after making allowances for more temporary fluctuations in the hardening or softening of underwriting cycles, various efforts have been made to address business proving potentially unsustainable by direct carriers (or reinsurers). These have included attempts to improve claims management, review methods and levels of compensation, increasing the provision for rehabilitation of injured parties, the improvement of employers’ health & safety performances by linking this to premiums charged, the reduction of legal costs and the isolation from other workplace injuries, in terms of coverage, of latent claim exposures.

**SECTION FIVE: INTERNATIONAL ASPECTS**

*In order to simplify an extremely complex issue, please find below a few practical questions.*

* 1. Does your country have any law that deals with the issue of mandatory insurance in an international context?
     1. National legislation
     2. International treaty

In a number of the cases cited above, national legislation was implemented or modified, either in compliance with or foreshadowing EU (or predecessor) Directives to help address international aspects.

**Examples:**

[A-1] Motor Third Party Liability:

First Act of 1972 replaced/modified the Green Card scheme and implementation of Uniform Agreement, then Multilateral Guarantee Agreement, to relieve the need to have border checks etc and reciprocal meeting of claims by host country bureaux etc. Second (1984) and Third (1990) extended the compulsory insurance requirement (as reflected by the RTA 1988). Fourth (2000) and Fifth (2005) Directives have been further implemented, in respect of facilitating direct causes of action against insurers and/or making provisions for vehicles taken without permission and/or providing for the establishment of information centres and exchanges of information etc[[22]](#footnote-22), by supplementary regulations and voluntary agreements (MIB Agreements).

Similar treatment arose with legislation concerning other spheres, e.g. [F-4.2] Insurance brokers/intermediaries.

International conventions of various kinds apply (see [A-6] Outer Space Act 1986 – with provisions relating to third party losses in UK and wherever else arising - and [D-1] Shipowners’ Liability for Oil Pollution Insurance).

In case of [A-2] Aircraft Operators’ Liability Insurance, there is no national statutory law imposing compulsory insurance as such, based upon earlier Conventions, but statutory regulations have been introduced in response to Regulations of the European Parliament and Council.

In the case of [D-2] Environmental Damage, national statutory regulations were passed in 2009 to implement the EU Environmental Liability Directive, but with the EU Commission deferring until six years after the introduction of the Directive (2010) any planned moves for compulsory insurance schemes being imposed.

* 1. Where insurance is mandatory in your country for a given activity, are foreign persons required to carry such insurance in order to engage in that activity in your country?
     1. Yes, and they must take out the insurance locally
     2. Yes, but they may carry the insurance by taking it out in their home country
     3. No, they do not need to carry the insurance to engage in the activity

**Motor Third Party Liability Insurance[[23]](#footnote-23)**

If any vehicle is used on a road in the U.K. a foreign national driver *must* be covered by third party insurance either in the form of a green card or by a U.K. company. If a vehicle is used on the road without insurance they risk being fined and having the vehicle seized. Whether that insurance has come from a rental car agency or is their own home car insurance, they should be covered to drive the car they're driving.

[Licensing rules differ depending upon from where any foreign national is visiting and what form of licence he or she has. International agreements provide for the temporary use of a vehicle in a foreign country for a limited time, usually 6 months in a 12 month period. It is the responsibility of the driver to prove how long the vehicle has been in the country. A visitor to the U.K. may use a vehicle displaying foreign plates, provided that all taxes (including vehicle excise duty) are paid in their country of origin. Once a vehicle has been registered in the U.K. it must display a current Vehicle Excise Licence and if over three years old be submitted for an MOT test, testing its fitness.]

**Employers’ Liability Compulsory Insurance**

The obligation to maintain such insurance extends to every employer, irrespective of where they are based, which carries on business in Great Britain (and where they have a place of business) in respect of every employee save any not normally resident in Great Britain.

* 1. Is it legal to take out mandatory insurance with a foreign insurer?
     1. No
     2. Yes

In the UK compulsory insurance classes, such as motor third party and employers’ liability compulsory insurance, must be provided by EEA insurers[[24]](#footnote-24), who have satisfied the necessary requirements imposed by the FSA when granting authorisation for such specified classes of business for which the applicant has previously sought a licence.

* + - 1. In the event of litigation between the insurer and the policyholder, what law would the court apply?
         1. The law of the insurer
         2. The law of the policyholder

Following the implementation on 17 December 2009 of Rome I, which consolidated the existing rules on choice of law for insurance contracts contained in the insurance directives and the Rome Convention, the position remains for compulsory classes of insurance that where the law of the Member State in which the risk is situated and the law of the Member State imposing the obligation to take out insurance contradict each other, the latter shall prevail. A Member State may lay down that the insurance contract shall be governed by the law of the Member State that imposes the obligation to take out insurance. The earlier proposal for Rome I that this permissive provision (from Art 8 of the Second Non-Life Insurance Directive) be replaced by an obligatory one did not prevail in the absence of evidence from the marketplace that this was necessary. [[25]](#footnote-25)

All EEA insurers must appoint a representative to handle the claim of a victim of another EEA country in the language of the victim, with citizens usually appointing a specialist lawyer in their home country to advise them about the making of their claim.

In the context of compensation claims resulting from cross-border road traffic accidents in the EU, recent European law has recognised that owing to disparities in the levels of compensation available in different territories that this should be the higher of that available in the UK or in the relevant European jurisdiction.

By recital 29a) of Rome II (which came into force on 11 January 2009) all Member States were called upon to apply the principle of “*restitution in integrum*” so that when quantifying damages for personal injury cases where an accident has taken place in a State other than the habitual residence of the victim the court seized should take into account actual losses and the costs of after-care and medical attention which actually be sustained by the victim.

The European Commission has issued a consultation paper inviting comment on various proposals such as whether it is best to await the results of this before seeking to introduce other initiatives to help address problems encountered. This approach has certainly been endorsed by bodies such as the British Insurers Brokers’ Association[[26]](#footnote-26) – the leading general insurance organisation representing the interests of brokers, intermediaries and customers in the UK.

Among other options proposed by the European Commission it is of interest to note in the present context that BIBA was hostile to the idea of introducing a newly compulsory form of driver’s insurance (first-party insurance) covering also passengers travelling in a vehicle (on grounds that this would not address the problem of non-passenger accident victims and involve complications concerning any limits to be imposed and the liability owed for example to passengers who were nationals of different EU states who may be travelling in a driver’s car in the UK). Also, to the suggested introduction of an EU system whereby visiting victims would settle claims with their own third party insurer upon the presumption that the accident took place in the victim’s own country (which could lead to many disputes re recoveries of costs etc and would again not address the concerns of non-driver victims). Support was lent however to longer-term proposals to attempt to harmonise national laws upon e.g. limitation principles, rather than more adventurous proposals to seek to harmonise compensation levels themselves.

It is recognised that it may obviously often be difficult to get compensation from a (non-European) foreign driver as the insurance procedures in their countries may differ markedly or they may simply be uninsured. In that event, the Motor Insurers’ Bureau may afford help in providing details of the driver and their insurance company, provided details of a correct registration plate are known.

* 1. Particular case of mandatory coverage included in an optional contract: Where the optional contract is taken out abroad,
     1. The mandatory coverage
        1. Is included in the contract by the foreign insurer
        2. Is not included in the contract by the foreign insurer
     2. The premium (or fee or charge) for the mandatory coverage, which is to be paid to the body in charge of collecting it (insurer, guarantee fund, etc.),
        1. Is nevertheless paid to this body
        2. Is not paid to this body

No instances spring to mind where any form of UK mandatory cover is regularly taken out by way of an optional contract entered into by the policyholder abroad. Position in respect of motor third party liability insurance, including e.g. a car hire arrangement, has already been considered elsewhere.

**SECTION SIX: ASSESSMENT AND RECOMMENDATIONS**

Do you think:

* 1. The system of mandatory insurance (or coverage) should be prohibited?
     1. As a matter of principle: No coverage should be mandatory. Reasons:
        1. Violation of the freedom to contract
        2. Lack of selection of the risk

6.1.1.3. Interference with competition

* + - * 1. Among insurers
        2. Among policyholders
        3. At an international level (see 5.2)
      1. Other

One would be hard pressed to find many, if any, in the UK actively pressing for any blanket prohibition of mandatory insurance as a matter of principle. Even among the staunchest advocates of the value of the private insurance market remaining free to respond to and meet the wider needs of risk protection for business and consumer risks alike there is a passive acceptance that compulsory insurance, (if not without need for amendment), continues to play an important role, especially in now quite long-established areas such as motor third party liability and employers’ liability.

Indeed, despite various objections being raised from time to time (by insurers about the loss-making nature of such business or by policyholders about the expense) it has been observed that the private insurance market and policyholders alike might struggle to come to terms with any immediate abandonment of the principle of compulsory insurance in circumstances where premium income derived from such classes of business, albeit encompassing voluntary elements of such risks also, represent such a significant proportion of insurers’ annual premium income[[27]](#footnote-27).

It is fairly universally recognised that not all motor or employers’ risks would ever be freely insurable by the private market either at economic rates or upon wide enough terms to meet longstanding and continuing social concerns. Over time, however, the nature of any wider social ill which compulsory insurance was originally designed to address may inevitably change.

By way of example, the role of the private motor car in the UK is very different in 2010 from 1930 (but also to some extent from even 1990). Earliest car ownership involved the hazard of a potentially lethal novel plaything of the relatively wealthy few, evolving into an essential mode of transport for the majority. In very recent years, with far greater vehicle and road safety provisions and, in urban areas at least, a far greater freedom of choice about transport and variety in levels of dependence upon private car ownership and use, the assumption that all car owners *must* bear the social cost unevenly imposed by an uninsured minority takes on a slightly different hue.

(There is, however, from time to time much greater hostility expressed to both the principle and the practice of various entities imposing a contractual obligation upon consumers or business contracting parties to take out insurance, often in a designated form and from a tied or specific provider, addressed elsewhere in this response.)

* + 1. For practical reasons
       1. In the event of refusal, problem of compelling an insurer to provide coverage
       2. Reluctance on the part of reinsurers
       3. Other

We have already identified, such as in the case of employers’ liability insurance in recent years, that where at any time there are too many withdrawals by insurers from the market and/or where premiums are thought to have increased too sharply, objections have been referred to consumer protection groups and other bodies about the acceptability and viability of the private market response.

Generally speaking, it requires quite an extreme set of circumstances, often temporary in nature, for measures to be felt required to impose or withdraw the existing scope of mandatory insurance provisions.

One obvious example was legislation passed following the outbreak of the Second World War and in its aftermath concerning “war risks” insurance: first in the form of curbing by whom and how “war risks” cover could be provided and promoted and then by the *Marine and Aviation Insurance (War Risks) Act 1952* making provision for the relevant Government department to undertake the insurance of ships, aircraft and certain other goods against war risks (and certain other risks) and for the payment of compensation for loss or damage consequent upon war risks by way of the assumed reinsurance of certain risks and the establishment of a consolidated marine and aviation insurance (war risks) fund.

The threat or impact of the terrorist risk upon mainland Britain and the threatened withdrawal by insurers and reinsurers of City of London commercial property cover in the early 1980s in the face of a mainland bombing campaign by the IRA saw the immediate creation of a Government-backed reinsurer, Pool Re and mandatory reinsurance being taken up by existing commercial property cover providers, again with the creation of state-guaranteed consolidated fund (per the *Reinsurance (Acts of Terrorism) Act 1993*). With the onset of a perceived global terrorist threat ahead of the 9/11 attacks, there was an extension of the scope of this cover, with further Government-sponsored mandatory provisions being hastily put together to protect commercial property and airline carrier cover in the immediate aftermath of those attacks. In each instance, any abatement of the extreme circumstances led to pressure to reduce the level of premiums charged and to allow the private market again to compete for such business at the earliest opportunity.

6.2. The current mandatory insurance should be repealed?

6.2.1. Property insurance

Save in respect of a very narrow category of property-based risks and/or specific perils, e.g. commercial property terrorist risk, nuclear installations etc, property insurance is presently subject to no direct and very limited indirect schemes of mandatory insurance, nor is there pressure for it to be so. As was noted above, consumer group activity has identified some instances where undue commercial pressure to take out insurance was thought to have been brought to bear upon, often a consumer, customer by stronger contracting parties (and often with designated providers, e.g. borrowers using property as security, tenants etc) and which should be curbed.

* + 1. Liability insurance

Some recent examples of pressure to repeal existing mandatory liability insurance have already been identified elsewhere. Sometimes this has taken the form of lobbying by existing carriers wanting to be relieved from unsustainable results or overly prescriptive terms (e.g. solicitors’ P.I.) or perceived unfair pricing (e.g. employers’ liability compulsory insurance).

Worries about rising costs have not led to any sustained call for an abandonment altogether of the compulsory element of motor third party or employers’ liability insurance itself. Instead, other features have been tackled which were thought to be significant contributory causes.

A widespread and growing sense of dissatisfaction with the performance of the personal injury compensation system in the UK over recent years (principally about the delay as well as the cost at which settlements, primarily of motor and workplace injuries, are paid) has seen Government, consumer bodies and insurance market representatives unite in their backing of initiatives designed to facilitate faster claims processing, delivery of decisions on liability and provision of rehabilitation offers, all to reduce the disproportionate amount of money spent on legal costs, ultimately borne in the form of higher premiums by motorists and businesses alike.

Similarly, in the wake of the Fourth Bodily Injury Awards Study, published jointly by the ABI and the IUA in 2007, there were calls to minimise as far as possible legal developments which retrospectively imposed a significantly greater financial burden upon insurers than could either have been anticipated or reserved for. The Study revealed that there had been no fewer than 45 major legal developments, (whether by way of an individual decided case or changes in regulations, court procedures or guidelines), relating to personal injury claims in the period between 1997 and 2007 which caused the cost of claims, (for which premiums had long ago been collected), to escalate[[28]](#footnote-28). This was not confined to the notorious effect upon ELCI of long-term industrial diseases. The cost to motor insurance of one change alone in 1998 (the Ogden Tables, affecting the calculation of rates of compensation) was estimated to have been in the region of £500m. Unless checked, the market has expressed concern that such developments may undermine both the solvency and size of the insurance market in these sectors, as well as faith in how reliably future business may be underwritten or cases determined.

In the case of solicitors’ professional indemnity insurance, which solicitors are obliged to purchase to become authorised to practise law, the prescribed policy is highly restrictive, affording insurers very little ability to vary its terms based upon their experience of the market or the needs of the individual practitioner(s). The burdensome regulation also obliges insurers to pay claims for six years following the winding-up of a solicitors’ practice, even where that practice was wound up owing to fraud on the part of its members. Such restrictions have at times led to widespread concerns about the sustainability of the market. Some solicitors have proved unable to secure cover from the market.

* + 1. Personal insurance

See above.

* 1. Mandatory insurance should be confined to certain specific risks?
     1. Civil liability: motor vehicle, medical malpractice, etc.
     2. Property damage: disasters, main residence, business interruption, etc.
     3. Personal injury: through individual or group insurance, for children, etc.
     4. Death insurance: for borrowers, etc.
     5. Life insurance: retirement, etc.
     6. Dependency insurance

Rather like the piecemeal nature of the types of *de facto* compulsory insurance introduced in the UK, concerns about the *status quo* have largely been prompted by pragmatism rather than any over-arching principle. It is fair to say the overwhelming consensus in most quarters is still to the effect that compulsory insurance should remain the exception rather than the rule.

Generally, mandatory insurance is usually only considered when concerns are being addressed that existing social or economic provision or voluntary action may otherwise prove inadequate to deal with wider, presently underfunded, needs, viz. provision for pensions or long-term care for the elderly for an ageing UK population. It is striking to note, however, that there has at different times been evidence of a creeping, if haphazardly developing, introduction of *obliging* insurance to be carried (or at least being strongly encouraged) across certain categories of activity, even if often stopping short of amounting to a direct compelling legal duty to insure. This may arise simply from a particular concern gaining a disproportionately great political or social airing or notoriety at any given time.

A number of strengths and weaknesses of compulsory insurance, and the circumstances in which it is thought to be most beneficial, have commonly been identified. It is perhaps appropriate to make reference to the most obvious of these here.

In this context it is to be assumed that in the UK most of the essential pre-requisites necessary for compulsory insurance in certain classes can usually be met (at least as commonly identified by those who would be called upon to provide the insurance, viz. insurance professionals themselves):

* an established and experienced insurance market
* a sufficient capital base to be expected from consistently realisable profit targets
* sufficient insurance and reinsurance capacity to afford competition and support
* an affordable attractive insurance product capable of delivery

The following criteria are generally thought to need to be satisfied to justify compulsory insurance:

* existence of a serious enough known widespread risk (or homogenous group of risks) to amount to a significant social problem unless provided against
* usually involving a high degree of risk or consequence to particular parties, even if not necessarily widespread in scale or nature
* preferably involving risk where there is some degree of legal certainty and clarity and some reliable predictability in terms of claims cost and frequency
* additionally, if the risk in question is made sufficiently serious by immediate circumstances (as in the case of emergency reactions to terrorist or similar threats) or by some innovation introducing new threats or extensions to existing legal liability, then a case may possibly be made for compulsory insurance *in extremis* even if other criteria are not met.

In such cases, compulsory insurance can:

* allow the law of larger numbers to apply from the outset (by the certainty brought by a large number of insureds and an accelerated claims experience permitting technical adjustments to be implemented)
* create a “new” insurance product/market or enhance an existing one from benefits of cross-subsidisation, reduced premiums
* ensure that financial protection for high exposures is in place and offer tools for risk assessment and incentives for risk minimisation/loss prevention

but, at a risk of:

* being rendered more expensive by blanket nature of exposures to be covered
* less contractual flexibility/bespoke product/innovation than private market might have created without needing to satisfy wider class of policyholder
* potential aggravation of moral hazard problem
* added supervisory costs

Against this background, there is no *prima facie* reason why compulsory insurance should be confined to any particular sector or type of risk rather than another. As already stated, where calls or efforts have been made to introduce fresh forms of compulsory insurance, it is more often than not one or more of the practical shortcomings which has thwarted the development, e.g. too small a pool of risk to generate an interested private market appetite (e.g. independent midwives) and/or too high a likely cost to administer and/or to be paid by way of premiums (e.g. long-term care, at least at present).

In the face of governments in more recent years looking to compulsory insurance as a solution to a number of regulatory issues, the ABI[[29]](#footnote-29) established in 2004 its own principles concerning compulsory insurance in the UK. Where a decision in principle might be made to extend compulsory insurance, these principles (reflecting much of the thinking which has just been identified above) were designed to be applied in each case to help to minimise the risk of market difficulties or failure. These were:

* The reason for the obligation to purchase insurance should be well-understood and accepted by the general public and in particular by the prospective policyholders.
* The scope of compulsion should be such that a competitive and well-functioning market can offer a fairly-priced product to consumers.
* The administrative arrangements of the system should be designed to encourage compliance and minimise fraud.
* Where evasion does occur it should be dealt with swiftly and effectively to encourage future compliance.

In May 2009 the ABI reviewed these principles[[30]](#footnote-30). While regarding them as essentially still valid, they adapted them so as to emphasise and illustrate: why insurers may not be expected to serve as quasi-regulators; why in light of more stringent solvency requirements insurers would particularly face great difficulty in insuring certain novel, unquantifiable risks; and the need to assess alternative means of achieving the same end as any proposed compulsory insurance.

The principles or questions now identified as being the most critical are (with some reasons or abbreviated explanations added for each):

* Is there a clear public policy rationale for introducing compulsory insurance? Do the public support its introduction?
  + If introduced or designed inappropriately the opposite effect to that intended may result: customers being unable to access insurance at reasonable cost or at all; businesses being unable to continue trading or driving up costs.
* Is the risk insurable?
  + Given that insurance functions best when insurers have experience of risks and claims to help assess premiums and products, if asked to insure risks which are unfamiliar or not well understood the likelihood is that few will participate and those that do may, or be compelled to, operate on a safety-first, worst-case basis such as to offer to customers a small insurance market at relatively high cost.
* Are there sufficient numbers of customers to facilitate an insurance market?
  + Without the existence of a broad mixed pool of higher, lower and medium risks it is hard for any insurance to be made competitive.
* What does the compulsory insurance requirement need to include?
  + Striking a balance is important between essential elements which governments or regulators feel will sufficiently characterise the insurance and so satisfy objectives and avoiding over-prescription at the cost of dampening innovation and the ability of customers to tailor insurance best to suit their individual needs. To avoid the latter as well as regulatory conflicts emerging between specific compulsory insurance requirements and the FSA’s generic requirements it is thought preferable to confine mandatory requirements to minimum levels that customers may exceed if added protection is required and to link them to clear public policy objectives.
* Can a requirement for compulsory insurance reduce the need for state regulation?
  + As stated, the ABI considers it a mistake for governments ever to consider insurance as an alternative to effective state regulation. There are many tangible benefits often afforded by insurers but the key commercial risk factors for them may never be expected to be fully aligned with public policy interest. In the ABI’s view there are instances where compulsory insurance may even increase the need for state regulation to cater for enforcement and other issues.
* How will the compulsory insurance requirement be enforced?
  + The cost and effort of the comprehensive enforcement system devised and operated between the Government and insurers to tackle uninsured drivers serves to illustrate how disproportionately expensive and difficult any equivalent process may be for much smaller insurance markets.

* 1. Some types of mandatory insurance should be developed?

In this section, rather than identify types where it is believed that the development of mandatory insurance should positively be encouraged, we look simply at those which have been most actively promoted or considered in the UK in recent times.

We note below the recurring theme over recent years of the tension between a government seeking to encourage compulsory insurance (to quell public concerns that certain risks may otherwise see victims without an economic deep pocket to fund compensation) and private insurers not wishing to be saddled with potentially uneconomic liabilities. A further ground for resistance on insurers’ part (beyond those cited below) may be the treatment given by the courts to any disputed policy liability issue involving a compulsory insurance class[[31]](#footnote-31).

* + 1. Which ones? Disaster risks, risks to the vulnerable and those in a weak situation (the elderly, children, victims of loss or injury caused by liable third parties), etc.
* **Disaster/large-scale losses:**

Mention has already been made (at 6.1.2 above and elsewhere) of the past (and subsisting) implementation of mandatory direct insurance coverage of **commercial property against damage from terrorist acts** (or, more accurately, a prohibition against direct commercial property insurers excluding such perils from cover, but benefitting from reinsurance with a Government-backed guarantee longstop). These measures were initially created in response to the IRA bombing campaign mounted in mainland Britain in the early 1980s, but the scheme has since been extended on more than one occasion in response to a growing threat posed by global terrorism. In the immediate aftermath of the 9/11 attacks an emergency short-lived form of Government-backed insurance was provided specifically to enable the civil airlines to resume commercial flights.

Demand for other fresh forms of mandatory insurance to cater for the consequences of disaster-scale risks beyond those already in place, has tended to be prompted by concern about the impact of natural disasters (or phenomena like pandemics) or financial failure on a global scale.

Faced with a perceived growing **flood** risk to large areas of the UK, especially the Eastern coastal parts, expected to be exacerbated by the effects of climate change, reliance continues to be placed upon private insurance arrangements to protect UK property against damage caused by severe weather risks. There remains more than a 90% take-up in the UK for cover for flood, storm and/or subsidence damage (not unconnected with the condition imposed by most mortgage providers that this should be in place).

There is an increasing prospect, however, of single event losses occurring of such a magnitude as to exceed the capacity limits of most insurers, even with the fullest backing of reinsurers. Consequently, while UK insurers remain willing for the time being to provide flood insurance to all households and small businesses, they are pressing the government themselves to direct resources to the management of the growing flood risk (e.g. by the building of flood defences and the raising of public awareness) and in time are likely to be require that there be government-backed compensation schemes in place, which will be funded by taxpayers, rather than policyholders commensurate with their own perceived exposures to risk.

**Carbon Capture and Storage (CCS):** In 2008 the European Commissionproposed compulsory financial guarantees to cover liabilities brought about by the introduction of carbon capture and storage technologies. Significant underwriting challenges are presented by this new process which remains as yet largely untested. There remains little evidence of what exactly might result in the event of an accident, explosion or sudden event giving rise to emissions liabilities. Particularly challenging for those considering offering insurance, whether as a form of compulsory or voluntarily purchased product, is the fact that some of the liabilities associated with CCS are based upon the market price of carbon in the emissions trading scheme. That price is highly likely to experience significant fluctuations. Given the amount of carbon dioxide likely to be released in to the atmosphere by any one incident being very difficult to quantify, any insurance of this market presents particular difficulties. From what has been said above, this makes it hard to justify as a readily appropriate candidate for any compulsory insurance regime at the present time.

**Environmental Damage:** Similar objections have continued to be raised by the CBI, ABI and the British Government among others to the EU Commission’s proposals for compulsory insurance schemes upon the introduction of the EU Environmental Liability Directive (ELD). The ELD did not actually require Member States to make environmental liability insurance (or other financial security) mandatory, but they were required to encourage the development of appropriate financial security instruments being developed so as to enable operators so to cover their responsibilities. Concerns about the prospect of any mandatory insurance continue to centre upon the perceived difficulty of creating and enforcing the purchase of a viable insurance product at affordable premium levels.

The prospect of disaster-scale losses being suffered as a result of **financial market failures** has not seen calls for any extension of mandatory insurance directly to mitigate these, although recent troubles have seen far greater attention being paid to the protection afforded by the Government-funded Financial Services Compensation Scheme (FSCS). Over and above the compensation afforded for failed investments, compensation is payable for failed insurances. 100% compensation remains payable, without any upper limit, for any claims not met upon compulsory insurance, with protection for 90% of claims with no upper limit for non-compulsory insurance (both general and life insurance).

A further consequence or the recent financial meltdown has been the expression of grave concern by the Government to insurer bodies about the terms upon which both **payment protection insurance** (insuring credit card debts) and **trade credit insurance** came to be underwritten. Each type of product bore the full brunt of the meltdown and widespread defaults exposing the Government to significant compensation claims to add to their own enormous debt. (The prospect of making professional indemnity compulsory for claims or debt management companies, some offering to service/discharge personal debts, had been seriously considered ahead of the downturn – see immediately below.)

* **Vulnerable and weak/other:**

There has been encouragement of, or consultation about, the introduction in the UK of a number of other forms of compulsory insurance in recent times, all of which have so far foundered.

* **Professional Indemnity for claims/debt management companies:**

Already concerned ahead of the financial meltdown by a number of poor practices displayed by many claims/debt management companies, especially in their dealings with consumers themselves already in debt, the Ministry of Justice Claims Management Regulator took soundings in 2006/7 about the merits of imposing upon all claims management companies, including introducers, an obligation to take out compulsory professional indemnity insurance, along similar lines to that required by the FSA for all general insurance intermediaries, viz. for individual claims up to £650k with an aggregate limit of £1m or 10% of annual turnover if higher, with an excess of no more than £5k or 3% of annual turnover.

The result of the consultation was that while many saw merit in imposing such cover upon all such companies, if not mere introducers, no such obligation should be imposed with immediate effect. Weight was given to the claims management companies and the ABI’s shared observation that there was yet little evidence of any or many claims of negligence made and the ABI’s added view that few insurers had yet displayed any appetite to provide such cover. The layer of additional cost imposed would not in the ABI’s view be merited bearing in mind that the benefit of P.I. insurance was essentially to protect the wrongdoer against their own mistakes rather than afford direct benefit to consumers.

By late 2009 the Regulator had already withdrawn the authorisation of more than 100 such companies for malpractice of various kinds: an illustration perhaps of how a regulator is concerned not to have to bear the full brunt of compensation for bad practice; insurers concerned not to underwrite risks in an newish area of activity before the effectiveness of any Government regulation has yet been fully tested.

(An interesting fact established by a recent ABI survey is that the *average* delay between an injury being sustained (excluding claims involving latent disease) and notice being given of a claim impacting upon an employers’ liability cover, is now 400 days[[32]](#footnote-32). This raises certain important questions both about whether ELCI cover is in fact any longer serving a valuable social-economic function in protecting employees against penury caused by workplace injury as well as the impact of claims management or recovery companies upon the type and number of claims actually pursued, by their encouraging the pursuit of claims, often on a “no win, no fee” basis.)

* **Professional indemnity for independent midwives:**

In early 2007 the Department of Health announced plans to make professional indemnity insurance a compulsory requirement for the 200 or so independent midwives operating in the UK. This followed the withdrawal from the market of the last remaining private insurance provider. Private market insurers had found it increasingly difficult to offer cover at affordable rates. (Until 1994 insurance had been provided by the Royal College of Midwives. By the time the last private insurer withdrew annual premiums per midwife had risen to almost £20,000.)

Proposals for compulsory insurance have been fiercely and successfully opposed by midwives and the ABI (see below) on more than one occasion, but they have not been abandoned. The emotive and very costly nature of any claims ensuing from a midwife’s practice have meant that the practice of some midwives operating uninsured has been met as much concern as the fear that many midwives unable to afford such insurance may have to cease practice and so deprive many mothers-to-be of a valued service.

(An extract of the letter sent by Stephen Hadrill, then Director-General of the ABI, to the Scottish Parliament dated 24 October 2007 re prospective compulsory insurance for independent midwives is reproduced below as illustrative of the public articulation of opposition to compulsory insurance which has been expressed by the ABI in recent years :

***“Why don’t insurers underwrite in this market?”***

*“... Given the small numbers of independent midwives and the potentially huge liabilities involved, insurers see this as a market that cannot be viably underwritten. There are so few independent midwives that the premiums received over many years by insurers can be dwarfed by just one claim.*

***Problems of Compulsory Insurance***

*When the ABI (Association of British Insurers) met DH (the Department of Health), we warned that making insurance compulsory can have a number of undesirable consequences. Insurance ought not to be used as a form of quasi-regulation, where governments hope to assuage the need for consumer protection by making insurance mandatory. Consumers are not necessarily better protected – insurance protects the “wrongdoer”, the negligent party, from claims.*

*Compulsory insurance can price some operators out of business, especially in areas like midwifery, where there are a small number of practices and potentially large liabilities. It can lead to some in the market operating illegally, by choosing to ignore the requirement for insurance, leaving customers even more exposed. It can therefore lead to insurers being forced to act as “market policemen”, overseeing operators, a role which statutory agencies ought to fulfil[[33]](#footnote-33). Furthermore, governments are often encouraged to provide a “safety net”, in the form of a pool of money, against the possibility of some operators choosing to ignore the legal requirement for insurance. As can be seen from the motor insurance market, this leads to the problem of law-abiding operators being forced to subsidise those acting illegally, which is certainly undesirable.*

*For these reasons, the ABI opposes compulsory insurance. We recognise that when insurance is a requirement for the regulating body of a profession, there are usually different operating conditions [e.g. Doctors ... the Medical Defence Union ... and Solicitors...].”)*

* **Motorised wheelchairs:**

Periodically the Government has considered the appropriateness of making third party liability insurance cover compulsory for the ever-growing number of users of motorised wheelchairs, but has to date decided not to recommend any such compulsion. A major perceived obstacle is how any enforcement may be achieved. Police have powers to seize other vehicles where they are being driven uninsured. Similar measures are unlikely to be acceptable where disabled persons are involved.

* **(Dangerous) dogs**:

As recently as March 2010 a spate of well-publicised cases of dangerous dogs causing death or serious injury led to the Government announcing possible plans to oblige *every* dog owner in the UK to insure against their animal causing harm to others. The ABI were very quick to denounce such proposals as ill-considered and unworkable, principally owing to the extreme difficulties which would be presented by enforcement issues and the strong likelihood of many dogs simply being abandoned for those unable or unwilling to insure them.

* **Health & Protection/Life & Pensions (with ageing population, now exacerbated by huge and potentially longstanding national debt)**

“Social insurance”, funded through the tax system, continues to be provided directly by the UK Government to protect those unable to provide for themselves or to afford private insurance against recognised hardship brought on by poverty, old age, disability or unemployment. As the UK population grows older, even before Government spending was facing major cuts following the downturn, attention was being directed to any increased role which private, possibly compulsory, insurance could play. Recent estimates suggest that in the main areas of social insurance in the UK the Government currently underwrites 64% of such risks, with the balance underwritten by insurers. A 5% shift from the Government to the private sector has been estimated to require roughly £9.7bn of capital[[34]](#footnote-34).

The main products offered by the health and protection sector include: private medical insurance; long-term care cover; critical illness; income protection; accident and health; and payment protection insurance. The main products offered by insurers in the life and pensions sector are: life insurance; pensions; annuities; savings and other investment products; and bulk buyouts (akin to annuities but protecting companies against their own pension obligations).

Private insurers have encouraged active involvement with the Government in exploring how the private insurance sector may assist the Government with the major social challenges to be confronted, where it may be commercially viable for them to do so. This has led to renewed consideration being given to the full range of tools which may be utilised either to oblige or to encourage individuals best to individual responsibility to save, insure or otherwise protect their own interests.

An interesting diagram has been produced, designed to reflect the extent to which the UK Government presently compels or encourages the uptake of different insurance products with reference not only to “social insurance” but all other classes of cover also. This is reproduced immediately below:

**INSURANCE ENFORCEMENT/ENCOURAGEMENT METHODS**

Strongest to weakest (L to R) commensurate with perceived Benefit to Society/Benefit to Individual

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Compulsion** | **Soft compulsion** | **Incentivisation**  **(e.g. through tax)** | **Conditional – need**  **to purchase**  **(e.g. for mortgage**  **approval)** | **Voluntary**  **purchase** |
| **EXAMPLES**  Motor (3rd Party)  Defined contribution  pension must be  converted to a secure  income in retirement  Employers’ liability | Personal Accounts  introduced in 2012\*  (\*auto-enrolment into workplace pensions) | Savings for private  pensions | Property insurance  Public liability &  professional indemnity | Life cover  Home contents  Pet cover  Income protection  Critical illness  Private medical  insurance  Investments |
| **RATIONALE**  Public safety  Effective use of tax  incentives | Ensure basic level of  pension savings\*  Drive lower benefit  payments  (\*basic state pension based on existing National Insurance contributions being unlikely to provide adequate standard of living for most individuals.) | Higher savings  ratio and reduce  dependency on the  State | Avoid homelessness  Provide coverage for  3rd parties | Benefit perceived  to be largely to  the individual  and therefore no  support from the  State |

Given what has been said above about the perceived pre-requisites of any effective compulsory insurance product it is perhaps not surprising that in many instances it is in the creation of direct financial incentives (in the form of tax legislation etc) and “soft compulsion” measures that the greatest hope is thought to lie by many for increasing the likelihood of individuals effectively protecting themselves by taking out, inter alia, private insurance market products, and so being less dependent upon tax-funded benefits. Indeed, there is no active promotion of any further from of directly compelled insurance scheme being introduced to meet the growing concerns in these areas.

Particularly since the economic downturn and with all major political parties seeking to promote policies in the run up to a British General Election in May 2010 designed to meet obvious imminent social care funding shortcomings, (which has risen to near the top of the political agenda), there have been many proposals aired or promoted. In the summer of 2009 the Government proposed three alternative schemes for consideration in outline: each involved the state providing a basic level of funding, which could be topped up by personal contributions, an insurance scheme or a compulsory fee (the latter dubbed by its opponents as a “death tax” if, in accordance with one option, it would involve a flat fee collected and taxed upon a dead person’s estate).

In late March 2010, after due consultation, with social services chiefs, voluntary and private sector organisations which run services for councils and charities all believing it to be the best option, it has opted for a compulsory levy, although a commission is to be set up to decide how much this should be and exactly when people should pay. The main Opposition party prefers an £8,000 voluntary insurance model to cover residential care costs and is now drawing up plans for a voluntary scheme to cover aspects of domestic care (such as help with washing, eating and dressing in the home)[[35]](#footnote-35).

* + 1. At a national, international (European Union, Mercosur, etc.) or worldwide level

One objection commonly raised against the implementation of any form of existing or future form of mandatory insurance upon anything other than a national level is that differences in different countries, even between European Member states, in the propensity to claim and the level of awards may be so marked that insurers are most often reluctant to underwrite risks upon a cross-border basis. Further, in many instances, even the definitions of what constitutes professional or public liability may be very different.

By way of example, in March 2005 the ABI opposed Article 27 of the proposed European Directive designed to eliminate barriers to the freedom of establishing service providers. Although insurance was excluded from the ambit of the Directive, Art 27 required service providers to carry professional indemnity insurance upon a cross-border basis where there was a health and safety or financial risk to the service recipient.

Many such objections will at least be reduced, and increasingly over time, if there becomes greater harmonisation between many Member States at least, which may avail cross-border policies being issued.

* + 1. For moral reasons: solidarity, protection of victims, etc.
    2. For reasons of efficacy:
       1. Access to insurance facilitated by mutualisation: lower premiums
       2. Need to compel those who do not concern themselves with precaution, prevention, contingencies, etc.

These factors are presently widely considered in new areas to be overridden by concerns either about the viability or affordability of any compulsory insurance scheme being operated upon any basis and/or the absence of any sufficiently wide enough benefit to society as a whole rather than the individual to merit any implementation adopting these principles.

* 1. If you agree with the principle of mandatory insurance, do you think:
     1. Mandatory insurance should be effected
        1. By taking out a specific insurance contract?
        2. By automatic inclusion in an existing insurance contract?
        3. By developing group insurance contracts?
        4. By obliging insurers to provide insurance

Given what has been said in many instances already it is widely considered to be essential for any form of compulsory insurance to be effective for there to be a valid means by which insurance may be accurately priced and some form of risk management encouraged on the part of the insured. Accordingly, there is little support for insurers being *obliged* to provide insurance. Also, the means of ensuring that insureds do actually take out cover should less be by way of automatic inclusion in existing covers or as part of group schemes than by way of financial and other incentives to take out voluntary insurance, albeit aided by “soft compulsion” measures being introduced to help ensure certain minimum savings or other personal financial provisions are in place, such as by way of personal savings.

* + 1. A rate of premium should be
       1. Fixed by law?
       2. Fixed freely?

There is widespread aversion to any rates of premium being fixed by law.

* + 1. A Bonus-Malus system (premium reduction or increase according to the policyholder’s loss experience) should apply?

Rates being proportionate to a policyholder’s loss experience and/or propensity to risk are generally favoured. Affordability or insurability problems are quickly experienced, however, unless such factors are not tempered by other pricing or coverage considerations, such as may extend the boundaries to include, rather than exclude, certain types of policyholder being among those taking measures to protect themselves against adverse circumstances affecting their personal and/or financial well-being.

Of note is concern expressed on the part of some insurers about the extent to which anti-discriminatory legislation may impact upon an insurer’s freedom to make premiums directly proportionate to any statistical risk that policyholder may be seen to represent[[36]](#footnote-36). Two examples in the context of age discrimination have recently been cited[[37]](#footnote-37). The average cost of motor claims in the UK involving those over 80 is almost 50% more expensive than for drivers aged 60-64[[38]](#footnote-38). Similarly, older travellers are more likely to make claims than younger travellers. Without depending upon age as a measurable risk factor, the underwriting process becomes much less simple and the cost of insurance generally higher.

* + 1. The limit of cover should be

6.5.4.1. The same for everyone?

6.5.4.2. Subject to a minimum?

6.5.4.3. Freely determined by the parties?

In most instances it is considered essential to allow flexibility in any scheme to help allow coverage actually to reflect as far as possible a policyholder’s actual requirements. The imposition of a standard minimum and excess is generally favoured.

* + 1. Clauses defining the risks covered and the exclusions should be imposed by law?

There is little opposition expressed to any law governing examples of compulsory insurance providing with some particularity for what clauses should cover and what exclusions will be permitted, but instances where exact terms have been imposed by primary statutory legislation have often been considered wholly unhelpful if circumstances or other legislative changes call for scarce Parliamentary time to be found for amendment which may lead to delays and/or otherwise avoidable difficulties.

* + 1. Reinsurers operating in the relevant domestic market should be required to provide reinsurance?

Other than in the most extreme and often emergency-type circumstances (and then usually only if backed by some form of Government-backed fund, e.g. UK commercial property terrorism risk insurance) there is widespread reluctance to compel any insurers or reinsurers to provide coverage, still more to impose such an obligation confined to reinsurers operating in the domestic market.

6.5.7. The state should act as last-layer reinsurer?

As stated above, dependence upon the state as a last-layer reinsure has tended only to have been resorted to in circumstances of emergency or in the case of very high, otherwise un-reinsurable risk, but generally is not favoured.

6.5.8. A Guarantee Fund system should be established?

Mention has already been made more than once of the measures, including a Government consolidated fund, which were introduced in connection with marine and aviation war risk losses following the Second World War and from the 1990s to indemnify any shortfall being experienced in payments due in respect of mainland UK terrorist claims provided by Pool Re.

The Financial Services Compensation Scheme (FSCS) Guarantee Fund continues to afford 100% protection with no upper limit in respect of cases of compulsory insurance failure, such as motor third party and employers’ liability. As the FSCS affords levels of protection to non-compulsory insurance (and other investments etc) also there is little evidence of opposition to such a fund being in place for all forms of cover[[39]](#footnote-39).

The Motor Insurers’ Bureau (MIB) continues to serve as the resort for those injured by uninsured or untraceable motorists and there are no plans to change its operation. Under the Uninsured Drivers Agreement 1999 and the Untraced Drivers Agreement 2003 the MIB has undertaken to indemnify victims in either of the circumstances described by the respective Agreements. Neither Agreement is strictly enforceable by a third party under the Contracts (Rights against Insurers) Act 1999 or under common law, but the courts have made it clear that they would not object to a third party’s right to the benefits of the Agreements being enforceable.

In the case of Employers’ Liability Compulsory Insurance (ELCI), where difficulties have been experienced by those found to have suffered from latent diseases following exposure to hazardous materials or working conditions many years or decades previously, various schemes have been introduced to help claimants identify what coverage was in place at relevant periods which may belatedly respond to a claim. Among such initiatives has been the instigation in November 1999 by the ABI (in conjunction with the Government) of a Code of Practice to facilitate the tracing of past EL insurance policies and so “capture cover”. More recently, concerns about the shortcomings of the Code have seen pressure for the more formal development of a designated ABI EL database for this purpose.

More controversy has surrounded what should be done where any carrier is found no longer to be trading. One proposal has been the setting up of an Employers’ Liability Insurance Bureau (ELIB) along similar lines to the Motor Insurers’ Bureau (MIB). In February 2010, the Government’s Department of Work & Pensions published a consultation paper proposing such a Bureau. This has met with initial hostility from the ABI upon the basis that current law-abiding employers should not have to pay for their potentially uninsured competitors or firms that now no longer exist, and who may not have had insurance, seeing such a fund as presenting a “serious moral hazard” by encouraging some employers to dispense with insurance or take health and safety issues less seriously, knowing that a fund of last resort would pay out. This consultation is obviously still in its very early stages. Arguments over what may best be introduced may see cases made for any Fund being confined to compensation only where identified carriers are no longer in operation and/or a levy upon all EL premiums paid to fund some form of centralised compensation.

**SCHEDULE OF EXAMPLES OF COMPULSORY INSURANCE**

**A - Transport**

1. **Motor Third Party Liability Insurance**

**(see main text)**

1. **Aircraft Operators’ Liability**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Although strictly there is no compulsory insurance laid down by national law against the liability of airline operators to persons or property on the surface of the ground or water, as the implementation of provisions of the Rome Conventions of 1933 and 1952 respectively (to which the UK was a signatory) was either not completed or repealed, for practical purposes such insurance *is* mandatory as no airline operator will be issued with the necessary licence unless appropriate financial provision for such liability is made : **Civil Aviation (Licensing) Act 1960 and regulations SI 1964 No 1116.**  Moreover, insurance for liability in respect of passengers, baggage, cargo and third parties is now compulsory under Regulation 785/04 of the European Parliament and Council (April 21, OJ L/138), as supplemented by the Civil Aviation (Insurance) Regulations 2005 (SI 2005/1089). The Regulation applies to air carriers and aircraft operators flying within, into, out of or over the territory of a Member State (Art. 2(1)). |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | As above. |
| **1.3 NATURE OF RISK** | Liability to passengers, baggage, cargo and third parties. Former includes obligations under EC Regulation 261/2004 obliging airlines to provide food, drinks, hotel accommodation and transfers , if appropriate, without monetary limit for all flights starting in the EU or operated by EU carriers; for no-EU-related flights rights are owed under the Montreal Convention in respect of death, personal injury and some limited provision for delays. |
| **1.4 EXCLUSIONS** | Exemptions from the application of the European Regulations exist for state aircraft and various types of model aircraft, flying machines, balloons, kites and parachutes. |
| **1.4.1 PERMITTED** | No requirement for war risks or terrorism cover for aircraft, including gliders, with a maximum take-off mass of less than 500 kilograms and for microlights in certain circumstances. |
| **1.4.2 PROHIBITED** | Insured risks must include acts of war, terrorism, hijacking, acts of sabotage, unlawful seizure of aircraft and civil commotion (Art.4(1)). |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Yes. |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Minimum levels of cover for passengers, baggage and cargo are laid down by Art.6 of the Regulation. The minimum cover in respect of liability to third parties must be per accident for each and every aircraft. Art.7 contains a table under which the amount varies according to the maximum take-off mass of aircraft. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **Air Travel Organisers**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Although strictly there is no compulsory insurance scheme laid down by national law against the liability of air travel organisers, legislation is in place whereby all holiday companies selling air holiday packages and flights must hold a licence called an ATOL (Air Travel Organisers’ Licence). Each ATOL holder is obliged to participate in the ATOL Scheme, administered by the Civil Aviation Authority: a financial protection scheme which protects customers who have purchased air holidays and flights from ATOL holders against losing money or the risk of being stranded abroad in the event of operator failure. (This is a legal requirement and so is in contrast to similar bonding requirements imposed by trade organisations such as ABTA (the Association of British Travel Agents) or AiTO (the Association of Independent Tour Operators) upon their members, designed to provide compensation to customers for non-air holidays in the event of company failure.) |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | ATOL Scheme protection is automatically afforded when a customer purchases a package/flight from an ATOL holder, with a per passenger payment being levied. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Legislation was passed in 1971 with the aim of reducing the risk of insolvent and fraudulent businesses putting the public at risk. This followed a number of tour operator failures occurring in the 1960s after the onset of package holidays and charter flights, requiring British Foreign Office intervention. |
| **1.3 NATURE OF RISK** | Monetary loss and repatriation cost for customers denied contracted services owing to operator failure. |
| **1.4 EXCLUSIONS** | ATOL scheme does *not* extend to “DIY holidays”, i.e. those arranged by customers directly via internet or direct purchases of flights/accommodation. |
| **1.4.1 PERMITTED** | No compensation is provided for inconvenience or certain additional wasted costs such as any non-refundable cost of travel insurance placed with third parties. |
| **1.4.2 PROHIBITED** | Terms of protection automatically afforded include against insolvency of operator and/or some indirect losses resulting which may be excluded from some travel or contingency insurances. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** | The CAA has powers to take measures if an ATOL holder is operating in breach of its licence or a travel operator is operating – or holding itself out as an ATOL holder - without a licence. |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | No – not strictly insurance as such |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | N/A |
| **2.1.3 IS INSURER BOUND TO COVER?** | N/A |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | Fund protection automatically afforded at time of purchase |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Limited to cost of value of their package. Bank charges and credit card costs will not be recoverable unless forming part of initial purchase price paid to ATOL holder, although some out of pocket expenses may be recoverable. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | N/A |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | Flat per passenger payment is levied at time of purchase. The so-called ATOL Protection Contribution (APC) has been £1with a recommended increase to £3 |
| **3.2.2 FIXED BY PARTIES?** | No |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | No |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Accepted |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** | Judging by exhaustion of Fund on more than one occasion in recent years premium likely to be higher if subject to voluntary travel or other contingency insurance arrangement, voluntarily taken up by many customers booking flights/holidays directly with airlines and not covered by ATOL scheme. |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** | Significant deficits have been sustained to the Funds which have been set up, even though for periods surpluses have been established. After the initial scheme of bonds being provided solely for the cost or repatriating stranded passengers, the Fund created as a back-up to bonds also to protect those losing money on advanced bookings ran into deficit to the tune of £21m in 2007, needing to be supported by commercial loans backed by Government guarantees. |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** | Untested whether otherwise insurable, but as stated, cost likely to be greater. |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** | Pre-supposing that there was cover available, but of concern for the government and travel industry alike would be the prospect of those who had not taken out insurance cover still catching press headlines if found stranded abroad in extreme consequences, as remains risk for those dependent upon travel insurance for non-ATOL protected flights/holidays and/or when replacement flights cannot be made, such as with April 2010 volcanic ash cancellations. |

1. **Rail, Tramways etc Liability (inc Office of Rail Regulation licensing)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. The Transport & Works Act 1992 was passed to provide for the making of orders, inter alia, relating to the construction and operation of railways, tramways and other vehicle systems and inland waterways, which included the power of the relevant Secretary of State to require that such policies of insurance against causing death or personal injury are in place as may be required. Independently of such obligations in the context of rail operation, for example, the Office of Rail Regulation (ORR), lays down requirements of those seeking licences the third party (and passenger, luggage, freight and mail) liability insurance arrangements they are expected to have in place, over and above any motor or employers’ liability covers in place. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Recognised need in the context of privatised transport services being in operation for appropriate third party liability insurance being in place in addition to other forms of compulsory cover. |
| **1.3 NATURE OF RISK** | Liability to passengers and third parties against causing death and bodily injury and liability, (as well as for luggage, freight and mail carried). |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** | By ORR permit operators to cover/not terrorism risk as they see fit |
| **1.4.2 PROHIBITED** | By ORR provisions no exclusion of damage to property to apply to accompanied personal luggage. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Prosecution for rail operation in breach or outside scope of licence obligations. |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** | Revocation of licence and disqualification powers in place |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | By ORR rules default minimum level of TPLI is £155m per incident/occurrence and on costs exclusive basis, but without compulsion on any operator to participate in any Network Rail central catastrophe TPLI scheme, but proposals for such a scheme are being reviewed periodically. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | Deductible/self-insured element (including any aggregate cap) to be approved by ORR as acceptable |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Different rail operators prize and seek to benefit from bargaining power enjoyed and/or relations developed with individual insurers. For others savings might be achieved by a group rail operator approach. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** | Difficulty of imposing/introducing any central group rail operator scheme is settling upon fair, risk-reflective premium allocation between different operators. |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** | Understood to be profitable in many instances |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** | Most rail operators are presently insurable. See above re cost/terms. |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **(Inland) Waterways – Houseboats, leisure craft etc**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. British Waterways Act 1995 conferred powers on the British Waterways Board to permit them when granting licences, inter alia, to owners of houseboats or pleasure or hired craft to insist upon insurance policies being in place against liability of the owner or others in control of the vessel for a wide range of risks. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** |  |
| **1.3 NATURE OF RISK** | Liability for death/personal injury, as employer or otherwise, for damage to the vessel, goods or vessels of others, contractual liability and for cover generally in respect of any one accident at a sum to be prescribed from time to time by the Board. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **Space Travel[[40]](#footnote-40)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | National statutory law and regulations: Outer Space Act 1986, s5(f)[[41]](#footnote-41) and the Outer Space Act 1986 (Fees) Regulations 1989, SI 1989/1306. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Implemented to confer licensing powers on the Secretary of State to secure compliance with the international obligations of the UK with respect to the launching and operation of space objects and the carrying on of other activities in outer space by persons connected with the UK. |
| **1.3 NATURE OF RISK** | Liability in respect of damage or loss suffered by third parties in the UK or elsewhere as a result of licensed activities. (A more recent aspect is the question of insurance cover for “space tourists”, those paying to be passengers upon a space flight.) |
| **1.4 EXCLUSIONS** | No exclusions are expressly provided for by statute, with the Secretary of State having conferred upon him a wide discretion regarding the activities to be the subject of any licence and any conditions imposed. Among the factors expressly stated in the statute to be made the subject of such conditions are: the prevention of contamination of space or adverse environmental changes; interference with the peaceful exploration of space; breaches of UK international obligations; and preservation of the UK’s national security. It may therefore logically follow that any insurance to be obtained in any case may be expected to extend to cover such conditions, but no provision is made regarding any unavailability or failure to obtain such insurance. |
| **1.4.1 PERMITTED** | See above |
| **1.4.2 PROHIBITED** | See above |
| **1.4.3 IMPOSED** | See above |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | See above |
| **1.5.2 ADMINISTRATIVE** | See above |
| **1.5.2.1 DISQUALIFICATION** | See above |
| **1.5.2.2 OTHER** | See above |
| **1.5.3 CIVIL** | See above |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Yes – by individual contract. |
| **2.1.3 IS INSURER BOUND TO COVER?** | No |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** | At discretion of the Secretary of State exercising licensing role. No regulation of this uniformly provided. |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | See above |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | See above |
| **3.2 PREMIUM AMOUNT:** | See above |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | See above |
| **3.2.2 FIXED BY PARTIES?** | See above |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes |
| **REGULATED OR UNREGULATED?** | Unregulated |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Few providers of this specialist insurance and so commonly described as being “exorbitantly” expensive, but this covers high first party exposures also. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**B – Occupational accidents and health**

1. **Employers’ Liability Compulsory Insurance (ELCI)**

**(see main text)**

**C – Leisure and sports activities**

1. **Riding Establishments Insurance**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: Riding Establishments Act 1970 **s1(4A)(d)** adopting relevant provisions of Riding Establishments Act 1964. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | 1964 Act first introduced to regulate the keeping of riding establishments. 1971 Act conferred further powers on local authorities with respect to the licensing of riding establishments. |
| **1.3 NATURE OF RISK** | Liability to those who hire and use horses (and against their liability for injury to third parties). |
| **1.4 EXCLUSIONS** | Extends to riding schools, equestrian centres and trekking centres, but not to livery stables, nor to the keeping of horses used by the Ministry of Defence, the police, zoos or universities conducting veterinary courses. |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** | The policy must cover: liability for personal injury to anyone either hiring a horse or taking riding lessons (other than for free) and for the liability of any hirer /user to third parties. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Although there is liability on the part of a proprietor to summary conviction of any offence under the Act to a fine not exceeding [level 3/£1,000] (but level 2/£500 only for impeding an inspection) and/or to 3 months’ imprisonment, it appears not to be an offence to fail to procure or renew a policy of insurance, unless there has been a deliberate or reckless false statement made to this effect. |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** | Generally not. Cancellation of licence and disqualification for such period as court considers fit may apply where an offence under the Act has occurred so a simple failure to insure/renew a policy will not trigger this unless in aggravated circumstances – see 1.5.1 above. |
| **1.5.2.2 OTHER** | No proceedings may be commenced by anyone other than by a local authority and then only in respect of offences under the Act. |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes. No provision in statute regarding terms upon which any cover to be taken out, nor regarding manner of so effecting. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Owners of riding establishments commonly arrange their insurance either directly with a private insurer or through the British Horses Society's Register of Instructors. |
| **2.1.3 IS INSURER BOUND TO COVER?** | No |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | No |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** | No provision in statute regarding terms upon which any cover to be taken out, nor regarding manner of so effecting. |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | The British Horse Society scheme affords those who are instructing or operating riding establishments public liability cover up to a sum of £10million (provided by South Essex Insurance Brokers (SEIB) and underwritten by St Paul Travelers Insurance Company), plus personal accident cover (to £15,000), provided by Equity Red Star. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | No statutory provision |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Between approximately 2003 and 2007 there was considerable concern expressed by those running riding establishments that insurance premiums were escalating beyond viable bounds. This stemmed from a House of Lords ruling upon the interpretation of the Animals Act 1971 whereby strict liability attached to any business which had an animal which was potentially dangerous, rather than of an inherently dangerous species, leaving them highly vulnerable to being sued. Legislation was thereafter tabled designed to clarify that the Animals Act 1971 was designed to apply more narrowly to reduce the exposure to suit of riding establishments. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**D Pollution**

1. **Shipowners’ Oil Pollution / Environmental Damage (and other liabilities) Insurance**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations (pursuant also to EU Directive) and international conventions: **Merchant Shipping Act 1995 (“MSA 1995”) s163 and the Oil Pollution (Compulsory Insurance) Regulations 1997 No 1820.**  In 2002 the UK also signed the **International Convention on Civil Liability for Pollution Damage Caused by Bunker Oil** adopted by the International Maritime Organisation (IMO) in 2001. The UK acted in support of the Convention’s aims of ensuring all sources of marine pollution are covered by international strict liability and compulsory insurance regimes and passed legislation in the form of the **Merchant Shipping (Pollution) Act 2006** and the subsequent **Merchant Shipping (Pollution)(Supplementary Fund Protocol) Order 2006, SI 2006 No 1265.**  (Also, by **Merchant Shipping Act 1995 s192A**, as inserted by **Merchant Shipping and Maritime Security Act 1997 s16**, there is provision for the Secretary of State to require ships in UK waters to be obliged to insure for liability above and beyond that owed in respect of oil pollution.) |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | The provisions of the MSA 1995 providing for the compulsory insurance requirement for liability for oil pollution stemmed initially from the international agreement reached in the 1969 Brussels Convention on Civil Liability for Oil Pollution Damage, which was ratified and brought into effect in England by the Merchant Shipping (Oil Pollution) Act 1971. They also incorporate provisions initially brought into effect by the Merchant Shipping Act 1974 following the 1971 Convention on the Establishment of a Fund for Compensation for Oil Pollution Damage, such Fund being contributed to by oil cargo owners as well as shipowners. The 1995 Act took full account of further intervening Conventions and consolidated the law with effect from 1 January 1996 and has since been extended in scope following the |
| **1.3 NATURE OF RISK** | By the MSA 1995 strict liability for damage caused by oil spillage while oil being carried entering or leaving a UK port (or in certain cases a foreign port or terminal). The sufferer of the oil pollution has conferred upon them a direct cause of action against a shipowner’s liability insurers. Such liability may be limited, dependent upon tonnage of the vessel, where not the fault or direct result of the owner’s discharging of duties.  By the Merchant Shipping and Maritime Security Act 1997 the liability for which compulsory insurance is required is for such further risks of ships in UK waters as are specified by later regulations.  [Legislation also makes provision for the implementation of another international convention (The Hazardous and Noxious Substances Convention) adopted by the IMO in May 1996, extending a strict duty to insure to owners of all ships carrying any of 6,000 defined substances, including oil and gas.] |
| **1.4 EXCLUSIONS** | Compulsory in case of oil pollution only for ships carrying more than 2,000 tons of oil and in case of pollution from bunker oil ships having a gross tonnage greater than 1,000 tons (but see 1.3 above). Excluded from liability and therefore permitted to be excluded from compulsory cover is oil or bunker oil pollution which resulted from an act of war or similar hostilities or natural phenomenon; was wholly caused with intent to cause damage by someone not acting on behalf of the owner; or was wholly attributable to the failure of wrongdoing of a government or authority in providing navigational support (s155 MSA 1995) |
| **1.4.1 PERMITTED** | The insurer may limit his liability in respect of claims made against him to the same extent as the owner may limit his liability, but the insurer may do so whether or not the discharge or escape, or threat of contamination, resulting from acts done, or omitted to be done, by the owner with intent to cause damage or cost, or recklessly and in the knowledge that damage or cost would probably result. |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Any ship’s master or owner allowing a ship to be used without a certificate pursuant to s163 or s192A MSA1995 is liable on conviction on indictment or on summary conviction to a fine not exceeding £50,000. Failure to carry, produce or deliver up a certificate of insurance when required to do so – in the last case because the Secretary of State has refused or cancelled it –shall attract a liability on summary conviction of the master to a fine not exceeding Level 4 on the standard scale (£2,500). |
| **1.5.2 ADMINISTRATIVE** | The Secretary of State may refuse the issuing of a certificate if dissatisfied either with the adequacy of the cover or of the insurer. |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** | If a ship attempts to leave a port in the UK in contravention of s163 MSA 1995 or is in breach of s192A then it may be detained. |
| **1.5.3 CIVIL** | ss 153 to 156A MSA 1995 provide that the liability prescribed in the1995 Act is the only liability which may be faced by an owner. |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Individual contract |
| **2.1.3 IS INSURER BOUND TO COVER?** | Where it is alleged that the shipowner has incurred a liability as a result of any discharge or escape of oil occurring, or as a result of any threat of contamination arising, while there was in force a contract of insurance or other security to which such a certificate related, proceedings to enforce a claim in respect of the liability may be brought against the insurer[[42]](#footnote-42). It is a defence in those proceedings, in addition to any regarding the owner’s liability, to prove that any actual or threatened loss was due to the wilful misconduct of the owner himself. |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | See limitations of liability and compulsory insurance – [www.basel.int](http://www.basel.int) – re draft Protocol for cross-border transport of hazardous waste (identifying UK law re domestic transport + limits applying also). |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **Environmental Damage**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | National statutory law and regulations (pursuant also to EU Directive):  The **Environmental Damage (Prevention and Remediation) Regulations 2009** came into force in England on 1 March 2009 (with equivalent provisions for Wales on 6 May 2009; those for Scotland and N Ireland due later) implementing the  **EU Environmental Liability Directive,** but *without* anyobligation imposed regarding compulsory insurance. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** |  |
| **1.2 CONTEXT IN WHICH INTRODUCED** | EU Commission has agreed to propose compulsory insurance schemes for companies only six years after the Environmental Liability Directive was introduced (i.e. 2010) so as to address objections and allow for a harmonised approach to compensation, whether by compulsory insurance or other financial security measures.[[43]](#footnote-43) |
| **1.3 NATURE OF RISK** |  |
| **1.4 EXCLUSIONS** | Anticipated that any compulsory insurance or other financial security scheme would provide a ceiling for compensation and the exemption of a number of low-risk activities. |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** | Penalties (for breaches of Directive, so in time presumably any failure to insure/provide security) anticipated to include criminal sanctions and the prosecution of directors and senior managers. |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| * + 1. **FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**E Nuclear Power**

1. **Nuclear Installations Insurance**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: principally the **Nuclear Installations Act 1965** (“NIA 1965”) **s19,** whichconsolidated the Nuclear Installations Act 1959, as subsequently amended, and which was itself amended by the Nuclear Installation s Act 1970, the Atomic Energy Authority Act 1971, the Nuclear Installations Act etc (Repeals and Modifications) Regulations 1974, SI 1974 No 2056 and the Energy Act 1983. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No. A licensee of a nuclear reactor (licensed by the Health and Safety Executive) is strictly liable for all damage caused and – notwithstanding coverage provided by a state compensation fund - must carry liability insurance or otherwise make suitable provision for compensation claims. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | The Act, which implemented the Paris Convention on Third Party Liability in the field of Nuclear Energy 1960 (as amended) established both the regulatory regime whereby the carrying on of nuclear operations by the UK Atomic Energy Authority (“AEA”) was authorised and requires other operators to obtain licences or permits, as well as imposing absolute liability for third party bodily injury or property damage. |
| **1.3 NATURE OF RISK** | Liability of operators of nuclear establishments against any loss or damage caused. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** | Damage is excluded if: events occurred in other contracting states or damage was suffered outside the UK (s13(1)(b) NIA 1965); save by persons or on property on a ship or aircraft registered in the UK(s13(2)); is the result of any armed conflict whether within or outside the UK(s13(4). |
| **1.4.2 PROHIBITED** | Damage caused by a natural disaster (even if unforeseeable) (s13(4)) |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Liable on summary conviction to a fine not exceeding (such sum as is to be specified) and/or to imprisonment for a term not exceeding 3 months or on conviction on indictment to a fine (such sum as is to be specified)and/or to imprisonment for a term not exceeding 2 years. |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** | No proceedings against the body corporate or any director or officer deemed to have been responsible may be commenced without the approval of the relevant Minister or the consent of the director of Public Prosecutions. |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Insurance effected by a committee of insurers [Birds p 419] from the commencement of an insurance period prescribed by the Act. In the event of occurrences new periods of cover may be ordered by the Minister as a requirement of a continued licence. |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Legally required amount is for amount of statutory liability (per s16 NIA 1965) in aggregate (other than for interest and costs) of £20m per occurrence or of £5m in case of licensees of such sites as may be prescribed. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | No statutory provision or restriction. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**F Professional Activities**

1. **Health professions/activities** 
   1. **Doctors (and other NHS workers)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No. The National Health Service (NHS) indemnifies doctors, along with dentists and other health workers, so that no compulsory insurance is required while undertaking NHS work. No such protection is afforded when they are working as independent contractors, although they are customarily insured by the Medical Defence Union. The Secretary of State is empowered to require doctors to insure, but the power has not been exercised[[44]](#footnote-44). Although there is no statutory obligation upon them, their professional associations require them to do so. [[45]](#footnote-45). |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** |  |
| **1.2 CONTEXT IN WHICH INTRODUCED** |  |
| **1.3 NATURE OF RISK** | Professional liability |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| * + 1. **FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**1.2 Dentists**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No. Same as for doctors – see above. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** |  |
| **1.2 CONTEXT IN WHICH INTRODUCED** |  |
| **1.3 NATURE OF RISK** | Professional liability |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| * + 1. **FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**1.3/4 Chiropractors/Osteopaths**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: **Osteopaths Act 1993** and subsequent regulations, notably the **General Osteopathic Council (Professional Indemnity Insurance Rules) Order of Council 1998 (SI 1998 No 1329)** and the **Chiropractors Act 1994** |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** |  |
| **1.2 CONTEXT IN WHICH INTRODUCED** | The Osteopaths Act 1993 empowered the general Osteopathic Council to make rules requiring osteopaths to obtain liability insurance. The rules made by the council were approved in the SI cited above, coming into force on 9 May 1998. |
| **1.3 NATURE OF RISK** | Professional liability insurance, as well as public or product liability associated with provision of osteopathic services/products supplied and cover for liabilities owed by employees, partners, agents etc (Rule 4 of SI 1998 No 1329.) |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** | If an osteopath is also a registered medical practitioner and indemnity cover in place satisfies the needs imposed for osteopaths, there is no need for separate cover (Rule 3). Only liability for services provided in the UK required (Rule 5). |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** | Failure by an osteopath to maintain insurance cover in accordance with the Rules may be treated as constituting unacceptable professional conduct and dealt with accordingly (Rule 9). |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes. There is no provision in statute regarding exact manner in which any cover to be taken out, nor regarding manner of so effecting, save that prescribed risks must be covered and run-off cover obtained following date on which he ceases to practise. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Minimum required by statute is £2.5m (in the aggregate other than for public/product liability claims). |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | No. No other provision in statute regarding precise terms beyond risks to be covered, including run-off risks. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | Yes |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes |
| **REGULATED OR UNREGULATED?** | No |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| * + 1. **FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

* 1. **Independent Midwives[[46]](#footnote-46)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Not yet. Early in 2007 the Department of Health announced plans to make professional indemnity insurance a compulsory requirement for independent midwives. This followed opposition being mounted by independent midwives to the proposal of the Nursing and Medical Council in October 2002 to make insurance a “requirement” for registration by independent midwives, such that this became reduced to a “recommendation”, allied with an obligation to explain the position to every client. Concern remains, however, about such midwives operating without insurance when any claims against them could involve very serious sums. Conversely, midwives unable to afford very high premiums would be forced to cease practising to the obvious detriment of many mothers-to-be. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Until 1994 the Royal College of Midwives (RCM) insured independent midwives before withdrawing cover. Private market insurers initially offered cover but premiums quickly rose to approx £15,000 per midwife per year before the last provider withdrew from the market.[[47]](#footnote-47) |
| **1.3 NATURE OF RISK** | Professional liability (including for catastrophic personal injury) |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | No |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Premiums became unacceptable prior to the complete withdrawal of cover by market insurers. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** | Not insurable because insufficient numbers of midwives against potentially huge liabilities involved made the market for such risk unviable. Distinguishable from other examples of compulsory insurance helping to regulate a professional body: solicitors numbering over 60,000; and doctors satisfactorily benefitting from NHS/MDU indemnification. |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **Building Industry professionals**

**2.1 Architects**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Not as such, but architects are regulated by statute and no-one may practise in the UK as an architect unless registered under the **Architects Act 1997**. The Architects Registration Board has the power to regulate by Codes of Conduct. The Code’s Standards of Conduct and Competence state that architects shall not undertake professional work without adequate and appropriate professional indemnity insurance cover. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** |  |
| **1.3 NATURE OF RISK** | Civil liability arising out of professional practice. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** | Liability for bodily injury/sickness/disease/death, save as consequent upon failures of professional duties; war risks; nuclear accidents; claims arising in course of employment/wrongful dismissal etc; trading debts; provision of finance; fraud/dishonesty, save to indemnify innocent parties; libel/slander; express warranties/guarantees; fines/penalties etc; claims/circumstances prior to period of cover. |
| **1.4.2 PROHIBITED** | Minimum requirements are that cover should: be based upon a civil/legal liability wording (not confined to neglect, error or omission); be on a claims made basis and have an each and every claim limit if indemnity is unlimited inany one year of insurance; settlement/defence costs be in addition to any limit. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** | The Architects Registration Board has usual powers to issue reprimands, penalty or suspension or erasure/expulsion orders. |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Minimum limits of indemnity are :   * where gross fee income less than £100,000: £250,000 * £100,000-£200,000: £500,000 * More than £200,000: £1m. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**2.2 Surveyors and Valuers and Auctioneers [[48]](#footnote-48)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No – by the bylaws of the Royal Institution of Chartered Surveyors (RICS), the professional body which represents, regulates and promotes chartered and technical surveyors, and which on 1 January 2000 merged its activities with those of the Incorporated Society of Valuers and Auctioneers (ISVA), it is a requirement of membership that members are covered by professional indemnity insurance to the extent provided in those bylaws. (So far as the larger practices now also offer advice in relation to pensions and mortgages, these activities are now regulated by the Financial Services Authority.) |
| **1.2 CONTEXT IN WHICH INTRODUCED** | The Chartered Auctioneers and Estate Agents Institute (CAEAI) was one of the first professional bodies to seek an ”approved” form of professional indemnity insurance for their members in the estate agency, surveying and valuing fields. In 1956 the RICS recommended three providers of cover its members should contact for such insurance. (In 1969-70 the CAEAI and the RICS merged.) |
| **1.3 NATURE OF RISK** | Civil liability (beyond straightforward professional negligence or “errors and omissions”) so as to include liability for defamation and infringement of copyright etc. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** | Cover must be no less comprehensive in its scope than the form of RICS professional indemnity policy in force at any given time. This requires that it be on an “each and every claim” and “claims made” basis, with cover for past and present employees and run-off cover for a minimum of 6 years. It must also be in respect of claims arising from all work undertaken or performed within the UK (inc. the Channel Islands and the Isle of Man) and/or within the Republic of Ireland and that each partner or director of or consultant to any firm shall also be insured. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** | RICS by-laws contain usual powers to call to account, investigate caution, reprimand, fine, suspend or expel members for breaches of by-laws including failure to have requisite insurance cover. |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes. Until the early 1970s members had been free to arrange their own cover from market carriers. In the 1970s both the RICS and the ISVA created companies to provide definitive forms of cover for their members. Changes to such arrangements in the 1990s saw a company appointed to provide the standard RICS policy coverage with the RICS also establishing an assigned risks pool (ARP) to cater for risks otherwise deemed uninsurable. Cover under the ARP is to a maximum of £1m in the aggregate and permits the RICS to impose various terms upon their member. Subscription to the ARP was determined by the percentage of UK primary surveyors’ risks (by premium volume) written by any carrier. From 17/7/09 the managers of the ARP are Windsor Partners Ltd. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | see above |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | For policies renewed on or after 1 January 2001 the minimum amount of cover required is:   1. £250,000 for each and every claim where the gross income of the firm in the preceding year did not exceed £100,000, or 2. £500,000 for each and every claim where the gross income of the firm in the preceding year exceeded £100,000 but did not exceed £200,000, or 3. £1,000,000 for each and every claim where the gross income of the firm in the preceding year exceeded £200,000. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | For policies renewed on or after 1 January 2001 the uninsured excess under any policy shall not exceed:   1. In the case of a policy with a limit of indemnity of up to and including £500,000 a maximum of 2.5% of the sum insured or £10,000 whichever shall be the greater; or 2. In the case of policy with a limit of more than £500,000 a maximum of 2.5% of the sum required to be insured under these Regulations. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | Yes |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes. Higher premiums and higher uninsured expenses levels can result. |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**3 The Law**

**3.1 Solicitors’ Indemnity Insurance**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: **Solicitors Act 1974 s37, Legal Services Act 2007** and later **Solicitors’ Indemnity Insurance Rules,** including **Solicitors' Indemnity Insurance (Amendment) Rules 2009**. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No - it is a requirement of the rules for the professional practice of solicitors, governed by the Council of the Law Society, that solicitors have professional indemnity insurance complying with certain Minimum Terms and Conditions from a number of Qualifying Insurers, or to be admitted to the Assigned Risks Pool. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | In 1972 the Council of the Law Society, which represented and regulated the solicitors’ profession in England and Wales, decided upon the establishment of a compulsory professional indemnity scheme. In 1975, after the enactment of 1974 Act, the scheme came into operation. In the following year it became a condition of the right to practise that the solicitor was insured under the scheme. Previously some solicitors had chosen not to insure while others could not obtain insurance (at an acceptable cost). The purpose of the scheme was both to oblige and to entitle solicitors to insurance. The scheme continued in operation until 1987 when it was replaced by the Solicitors’ Indemnity Fund (SIF), a mutual, which was put into run-off in 1999 in the face of competition in a soft market and under mounting pressure following a high level of claims and perceived costs in the wake of the collapse of the property market in the late 1980s. The new arrangements, which have been in effect since 1 September 2000, allowed insurance to be effected with a managing general agency owned 51% by the Law Society and 49% by a commercial insurer. Alternatively, cover may be obtained from one of a number of approved market carriers of that class of business. If cover cannot be obtained by either method a solicitor or firm may apply to enter the Assigned Risk Pool which, if eligibility criteria are satisfied, will be immediately covered subject to certain conditions being met in respect of matters which have rendered past obtaining of cover difficult. |
| **1.3 NATURE OF RISK** | Civil liability from professional practice |
| **1.4 EXCLUSIONS** | Partnerships or sole practitioners regulated by regulators other than the Solicitors’ Regulation Authority (SRA) are excluded from the compulsory insurance scheme. |
| **1.4.1 PERMITTED** | The minimum terms include an exhaustive list of permissible exclusions. Claims attributable to another insurer or an earlier period of cover may naturally be excluded, as may liabilities incurred by an insured as a director or officer (other than in respect of legal work). Liabilities of an insured which arise from a dishonest or fraudulent act or omission committed or condone by the insured may also be excluded, while those insureds who are not culpable remain protected.  Other permitted exclusions relate to the limiting of cover for liabilities incurred in the practice of law rather than the running of a business. No liability exists for death or personal injury, save for psychological injury or stress from a breach of duty in the performance or non-performance of legal work. Liability for property damage may also be excluded but subject to a similar reservation. Liability may also be excluded in respect of partnership disputes, disputes arising under contracts of employment or in relation to trading liabilities of personal debts.  Liabilities owed by an insured arising in specified countries or under specific statutes operating there may not be excluded, (although detailed provisions exist regarding what constitutes for any firm a separate overseas practice, which may require separate cover). Nor may liability be excluded on account of an insured or any of them being in breach of policy terms.  Save as already mentioned, all liabilities incurred while a solicitor is held by a court to have been engaging in a solicitor’s practice will be covered, including acting as a trustee or administrator of an estate. |
| **1.4.2 PROHIBITED** | Cover must include each insured from civil liability to the extent that it arises from private legal practice, together with indemnity against legal costs and disbursements and related expenses of investigating claims. The insurance must provide that the insurer is unable to avoid or repudiate the insurance on any grounds based on non-disclosure or misrepresentation, whether fraudulent or otherwise, or to reduce or deny liability otherwise than upon the strength of the permitted exclusions described in 1.4.1 above. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** | Regulation by the Solicitors’ Regulation Authority. |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** | Disciplinary proceedings may be brought against any firm (or person who was a principal in that firm) that has failed to comply with the Rules, as well as to intervene in or suspend the activities of any practice carried on by that firm. |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | A policy will be issued in respect of any firm to cater for the minimum terms and conditions. Top-up cover for amounts above the minimum requirement may be freely negotiated by firms with providers of excess insurance on whatever terms may be agreed. |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** | Insurers are bound to cover those firms to whom it has issued policies notwithstanding breaches of policy terms by those firms (see above) but with rights of redress against those firms. Those participating in the Assigned Risk Pool are however bound to insure those firms so insured on the basis described below. Where insurers are permitted to avoid liability for cover on account of dishonest or fraudulent practices any victim must turn to the Solicitors’ Compensation Fund, administered by the Law Society, to which all practising solicitors contribute and payments out of which are decided on a discretionary basis by a committee appointed by the Law Society. |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Each firm which is not a body corporate is required to secure professional indemnity insurance with Qualifying Insurers to a limit of indemnity (exclusive of defence costs, not subject to an excess, upon an each and every claim basis with no aggregate limit) of £2,000,000, with most bodies corporate, such as LLPs, required to obtain insurance to a limit of £3,000,000. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | Any excess may be agreed between insured and insurer provided that this does not serve as a deduction from the amount of cover available per 3.1.1 above. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | Premium on minimum and excess cover is fixed by the parties. The premium for the Assigned Risk Pool involves an eligible firm paying a premium calculated in accordance with a prescribed method based upon the firm’s gross fees, starting at 25% of gross fees up to £500,000 and then tapering. The cost of managing the Pool and defending and settling claims falls on all those insuring solicitors in the same proportion as their premium income bears to the aggregate premium income of all such insurers. |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Prior to 1975 as noted some solicitors had chosen not to insure while others could not obtain insurance (at an acceptable cost). Since that date, particularly in the period leading up to the arrangements being introduced in 2000 whereby commercial insurers could again assume the risk in competition with the former Master Policy Scheme, the greatest dispute has been surrounding the effect of the burden upon those firms with good claims records of the cost of indemnifying those with poorer claims records. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**3.2 Barristers**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No, there is no statutory framework equivalent to the Solicitors Act 1974, but there are facilitating provisions concerning barristers in the Courts and Legal Services Act 1990 and the Access to Justice Act (“AJA”) 1999. Any self-employed barrister practising in England & Wales has a professional duty to adhere to the Bar Council’s code of conduct and with the Bar Council’s Continuing Professional Development Regulations and with the Practising Certificate Regulations, made pursuant to s.46 AJA 1999, as amended, which includes provision to the effect that they must be entered as a member of the Bar Mutual Indemnity Fund Ltd (“BMIF”) and take out professional indemnity insurance pursuant to its Rules, which are similar in nature to the SIF Rules for solicitors. Such insurance is therefore effectively compulsory by such provisions. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No - see above. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Compulsory professional indemnity insurance has been a requirement of the Inns of Court and the Bar Council since 1 October 1983. The creation of the mutual scheme and requirement that cover be effected with the BMIF arose from the rates imposed by the hard insurance market of the late 1980s. |
| **1.3 NATURE OF RISK** | Professional liability insurance |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** | Similar in nature to those permitted by the SIF Rules. No cover necessary for claims for bodily injury or death unless arising from practice as a barrister, nor for loss of, or physical damage to, property unless property in his care as a barrister. No cover for claims arising from fraudulent or malicious acts or omissions or claims arising from barrister’s role as employer or property owner, re trading debts, inter-barrister disputes or business of operating chambers. Distinctively from the terms of the SIF cover, no cover exists for claims arising from association with other lawyers, such as partnerships, nor for liability incurred as a result of entering any contract with another party unless the liabilities so incurred would already have been owed[[49]](#footnote-49). |
| **1.4.2 PROHIBITED** | BMIF as mutual insurer has no right to avoid, repudiate, nor rescind the contract of insurance save where there has been fraudulent misrepresentation or non-disclosure in the presentation of the risk or a claim, but reserves discretion to settle the claim against the barrister and to make a recovery against him. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| * + - 1. **OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Yes |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Cover is arranged for each individual practising barrister (who has an entitlement to be insured and must insure to the minimum limit) upon the same BMIF policy terms, other than the actual premium paid. |
| **2.1.3 IS INSURER BOUND TO COVER?** | Yes |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | see above |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | BMIF may provide cover over and above the minimum subject to a maximum fixed from time to time - presently £5m. |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | By BMIF |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Yes – the nature of the barrister’s practice, his income, his seniority, and claims record are all taken into account so as to create a fund which, after allowing for reinsurance purchased, will met all claims, expenses , outgoings and reserves. |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Many barristers and the Bar Council alike regarded rates as having been unacceptably high during hard market of late 1980s, hence the establishment of the mutual. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** | Once the defence for barristers of immunity from suit was removed and that of collateral attack was restricted it was felt that there may be a greater incidence of claims with attendant uncertainty about how that may affect premium rating and/or the appetite of private insurers to re-enter the market other than at excess/reinsurance levels. |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

1. **Commercial/financial activities**

**4.1 Accountants**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No – since the 1980s compulsory insurance regulations have been introduced in stages by various regulating bodies involved with accountancy and related practices. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | As compulsory professional indemnity insurance came to be expected across the professions, so those bodies concerned with accountancy took steps. The Institute of Chartered Accountants (ICAEW) introduced compulsory insurance regulations for their members: from 1 January 1989 for those conducting investment business[[50]](#footnote-50); and from 1 January 1990 for all others in public practice. From 1998 those not in public practice were also required to maintain insurance to the minimum specified level. The Association of Chartered Certified Accountants (ACCA) introduced professional indemnity insurance regulations for its members in 1984 as a condition of holding a practice certificate. The Institute of Management Accountants (IMA) required its members in public practice to have compulsory insurance since January 1996. The Institute of Taxation has required compulsory professional indemnity insurance of its members since January 1988. Insurance is to be provided from among specified private market “participating” insurers, but, as seen above with solicitors, those participating insurers also agree provide cover to an otherwise “uninsurable” risk by way of an Assigned Risks Pool (“ARP”). Such cover is provided for a 2 year period with provisions for remedial steps needing to be taken by assureds and for safeguards in the event of default. |
| **1.3 NATURE OF RISK** | Civil liability from professional practice. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** | (i) Members of each of the Institutes must have cover from one of a number of participating insurers in no less favourable terms than those offered by the minimum wording prescribed by the ICAEW. These must cover personal appointments in roles as trustee or liquidator. Also, as directors or officers of companies, but only to the extent that this is in the performance of accountancy-type services. Cover must also be provided for the dishonest acts or omissions of any former or present partner, director or employee. Cover will also not be negated by any innocent non-disclosure, misrepresentation or late notification of claims circumstances. Cover for liabilities over the past six years must be maintained and run-off cover purchased where necessary. Policy wordings must contain a “difference in conditions” clause to the effect that the ICAEW “approved wording” will take effect wherever less favourable terms have otherwise been provided. This also forms the basis of cover should an ICAEW member require insurance under the Assigned Risks Pool.  (ii) Members of ACCA are required to have a “civil liability” policy wording, together with cover for fraud or dishonesty of any members or employees etc. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | Individual contracts are taken out usually by firms covering all those operating within that firm. |
| **2.1.3 IS INSURER BOUND TO COVER?** | Insurers are not bound to provide cover other than to the extent that they have agreed to do so as part of the Assigned Risks Pool (“ARP”) arrangement discussed above. Each insurer agrees to take a proportion of the risk that reflects their market share of accountants’ PI business, with the minimum line being 1%. |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | With effect from 1 January 2008 a member of the ICAEW had to maintain a  minimum limit of indemnity (on an each and every claim basis) required by ACCA is calculated on the gross income of the practice for the preceding year:   * If gross income is less than £600,000: the minimum limit of indemnity for any one claim and in total must be equal to 2.5 times its gross fee income with a minimum of £100,000; * Otherwise: the minimum limit of indemnity must be £1.5m for any one claim and in total.   No less than £50,000 is required for each and every claim upon fidelity guarantee cover. |
| **3.1.2 DEDUCTIBLE: PROHIBITED/MANDATORY/OPTIONAL?** | The insurance market for Institute business has traditionally offered a policy excess that is a percentage of a firm’s fee income with 1% being an average figure. Where a firm has a number of offices, variable excesses can apply, dependent upon the income of those respective offices. The capping of an excess at a multiple of three times the self-insured excess is common. In the ICA requirements a maximum excess per year is specified of £30,000 for a sole practitioner or for a partnership per principal. For a body corporate the excess must not be more than £30,000 or the total of the amounts accepted by the principals as a binding personal obligation (but excluding any amount over £30,000 accepted by any principal). |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** | No |
| **3.2.2 FIXED BY PARTIES?** | Yes |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** | Underwriters take account of fee income, the claims history of the firm and partners (being long-tail risks claims files may date back up to ten years or so), type of work conducted, location and supervision status based on partner/staff ratios. |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** | Levels of claims and the costs both of PI cover and defence costs, particularly arising out of audit work, have led to various suggested changes in practice and the law. These include: the formation of LLPs to limit liability to the assets, including PI cover, of the firm; letters of engagement contractually capping liability; easing of rules preventing the release of an auditor from liability and greater dependence upon D&O among other forms of cover in lieu of PI cover. |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**4.2 Insurance brokers/intermediaries**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes, by national statutory law, principally the **Financial Services and Markets Act 2000**, and other regulations (effected pursuant also to the implementation of various EU Directives, including the **Insurance Mediation Directive/2002**). |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Insurance brokers were formerly required to insure against liability (under the Insurance Brokers (Registration) Act 1977 s12. Following the coming into force on 30 April 2001 of the Financial Services and Markets Act 2000, the carrying on of insurance business is regulated by the FSA. Now by the rules and guidance laid down in the FSA’s Insurance Conduct of Business (ICOB) part of the FSA Handbook. Authorised insurance brokers/intermediaries must comply with the FSA’s Prudential Sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) and take out and maintain professional indemnity insurance cover in respect of claims for which the firm may be liable as a result of its own conduct or that of its employees or appointed representatives. |
| **1.3 NATURE OF RISK** | Professional liability insurance |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** | Cover must make provision for continuous cover for claims arising from work carried out since the broker became authorised by the FSA and for awards made against the broker by the Financial Ombudsman Services. |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| * + 1. **UNLIMITED OR LEGALLY REQUIRED MINIMUM?** | Minimum limit: if indemnity for a single claim: 1m Euros, and in the aggregate the higher of 1.5m Euros or 10% annual income up to £30m. **(MIPRU, 3.2.7R)** |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** | For a broker not holding client money/assets, insurance excess must not be more than the higher of £2,500 and 1.5% annual income. If client money/assets are held: not more than the higher of £5,000 and 3% annual income. |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| * + 1. **FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**4.3 Independent financial advisers**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes, by national statutory law (**Financial Services and Markets Act 2000, s138)** the regulator, the FSA, requires IFAs to carry compulsory liability insurance. (See www.fsa.gov.uk/pubs/cp/cp193.pdf.) |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** |  |
| **1.2 CONTEXT IN WHICH INTRODUCED** |  |
| **1.3 NATURE OF RISK** | Professional liability insurance. |
| **1.4 EXCLUSIONS** |  |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** |  |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETER MINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**4.4 Credit unions (credit/savings providers)**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes. National statutory law and regulations: s16 Credit Unions Act 1979 [Birds p419] (s15, re compulsory insurance against fraud, having been repealed by the Financial and Services Act (“FSMA” 2000) and subsequent statutory instruments, with effect from 2 July 2002, as part of provisions recognising the role of the FSA going forward to make rules governing what credit unions inter alia should / not do). [see s246 FSMA 2000 and FSMA 2000 (Conseq Amends + Trans Prvsns) (Credit Unions) Order 2002, SI 2002/1501, art 2(1), (14) sbjct to transitional prvsns) and Regulatory Reform (Credit Unions) Order 2003 – SI 2003/256. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No |
| **1.2 CONTEXT IN WHICH INTRODUCED** | At time of passing of the Credit Unions Act 1979 (5 April 1979), there were approximately 50 credit unions (special forms of co-operative societies) in Great Britain. Of these ten only were registered under the Companies Act 1948; four under the Industrial and Provident Societies (IPS) Act 1965; and the rest were unregistered.  The Act was designed to provide a supervisory system for credit unions, including the maintenance of a general guarantee fund and the requirement to maintain insurance in respect of the dishonesty of its officers and employees (since repealed by the FMSA) and empowers credit unions to protect deposits through arrangements with insurance companies or with other credit unions.  There are now some 500 credit unions in Great Britain with approximately 650,000 members and close to £500m in assets[[51]](#footnote-51). The government has been carrying out a wide-ranging review of GB credit unions and IPS legislation since 2007, with FSA measures designed to raise prudential standards. As authorised deposit-takers, credit unions are part of the Financial Services Compensation Scheme (described elsewhere). |
| **1.3 NATURE OF RISK** | Liability for loss to depositors/borrowers |
| **1.4 EXCLUSIONS** | No longer any imposed compulsory cover re insurance against fraud, nor active provision re exclusions, but provision for guarantee of funds to be subject to the approval of the FSA. |
| **1.4.1 PERMITTED** | see above |
| **1.4.2 PROHIBITED** | see above |
| **1.4.3 IMPOSED** | see above |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Breaches by unions and/or officers punishable by fine or up to 2 years’ imprisonment. |
| **1.5.2 ADMINISTRATIVE** | Under regulation of the FSA which has wide powers concerning disqualification and other orders. |
| **1.5.2.1 DISQUALIFICATION** |  |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | No provision in statute regarding terms upon which any cover to be taken out, nor regarding manner of so effecting. No compulsory cover required however against fraud. Guarantee fund arrangements subject to the approval of the FSA. |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** | see above |
| **2.1.3 IS INSURER BOUND TO COVER?** | see above |
| **IF NOT, ANY CONSEQUENCES?** | see above |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | No |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** | No provision in statute regarding terms upon which any cover to be taken out , nor regarding manner of so effecting. Guarantee fund arrangements subject to the approval of the FSA. |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** | N/A |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**4.5 Estate agents[[52]](#footnote-52)**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | No. The Estate Agents Act 1979 was passed intended to regulate the minimum standards of competence, qualifications and financial safeguards (including provision for compulsory insurance against liability for failing to account for clients’ money, rather than a general obligation to procure liability cover) for all conducting estate agency work, (distinct from the work of solicitors or surveyors). Although the Estate Agents (Accounts) Regulations 1981 subsequently came into effect there have been no regulations giving effect to the requirement for compulsory insurance. |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No. Neither the National Association of Estate Agents (NAEA), nor the Association of Residential Letting Agents (ARLA), each of which forms part of the National Federation of Property Professionals (NFOPP), requires by bylaw or its Code of Practice/Rules of Conduct that estate agents carry indemnity insurance, but provisions are in place, inter alios, requiring that adequate financial security be in place to meet obligations assumed. There is an NFOPP/NAEA scheme designed to reimburse clients of members who have suffered financial loss due to the dishonesty of a member or a firm. As the NFOPP/NAEA have made a promise to clients to reimburse clients up to a designated limit, the NFOPP/NAEA has insurance cover to the same limits, but the only party insured under the policy is NFOPP/NAEA. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | Legislation (first prepared in 1975) made provision to afford a licensing scheme to be administered by the Office of Fair Trading (OFT) akin to that in place for consumer credit: more provision for consumer protection than the regulation of a professional grouping. Emphasis on protecting against dishonesty and sharp practice (and turned into a regime of negative licensing), rather than against incompetence and/or the maintenance of professional standards.[[53]](#footnote-53) In 2010 the OFT reported again upon estate agents concluding that the implementation of the estate agency ombudsman scheme and the passing of the Consumers, Estate Agents and Redress Act 2007 (which amended some provisions of the Estate Agents Act 1979 in terms of redress and accountability to consumers) had sufficiently helped to stem the worst abuses such that formal licensing, for which consumer groups and some estate agents themselves had lobbied, was unnecessary. |
| **1.3 NATURE OF RISK** | Liability for failure to account, (i.e. dishonesty), for client’s money (received by way of contract or pre-contract deposit), rather than professional liability insurance. |
| **1.4 EXCLUSIONS** | Although by s16 of the Estate Agents Act 1979 provision was made for regulations to be passed to determine who may be exempt from this requirement, as well as what exclusions might be permitted, no such regulations have been made. By s17 there was provision for an application for exemption to be made to the Office of Fair Trading (OFT). |
| **1.4.1 PERMITTED** | see above |
| **1.4.2 PROHIBITED** | see above |
| **1.4.3 IMPOSED** | see above |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Insurance itself is not compulsory, but penalties were put in place by the Act rendering estate agents guilty of offences liable on conviction on indictment or on summary conviction to a fine which, on summary conviction, shall not exceed the statutory maximum (£5,000). |
| **1.5.2 ADMINISTRATIVE** | Provisions in the Act – not implemented – also included various powers to be exercised not only against an individual but also against a body corporate and personally against any managers who connived or failed adequately to supervise. |
| **1.5.2.1 DISQUALIFICATION** | The OFT may prohibit estate agency work or some particular kind of it being done in light of conduct, but not the failure to have insurance. Similarly, the Rules of the NAEA and ARLA make provision for suspension or expulsion from membership for breaches of their Rules. |
| **1.5.2.2 OTHER** | Other sanctions of the NAEA/ARLA include cautions, reprimands, fines or the re-classification of membership. |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** | Not provided for in legislation –see section 19. below |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** | Not provided for in legislation –see section 19. below |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** | Although by s16 of the Estate Agents Act 1979 provision was made for regulations to be passed to determine the more specific requirements of any insurance to be in place, no such regulations have been made. For what happens in practice, see section 19. below |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**G Others**

1. **Dangerous Wild Animals Insurance**

**BASIC FACTORS**

|  |  |
| --- | --- |
| **1.1.1 LAID DOWN BY LAW?** | Yes, by national statutory law and regulations: **Dangerous Wild Animals Act 1976 s1(6) (iv)** |
| **1.1.2 SYSTEMATICALLY BY CO-CONTRACTING PARTY?** | No. A keeper of a dangerous wild animal (as scheduled in the Act) may only do so under licence, a condition of which is the existence of such insurance. |
| **1.2 CONTEXT IN WHICH INTRODUCED** | In response to perceived need to regulate the keeping of certain kinds of dangerous wild animals. |
| **1.3 NATURE OF RISK** | Liability for any damage caused by the animal. |
| **1.4 EXCLUSIONS** | Does not apply to zoos, circuses, pet shops or premises designated as ones holding animals for scientific purposes. |
| **1.4.1 PERMITTED** |  |
| **1.4.2 PROHIBITED** |  |
| **1.4.3 IMPOSED** |  |
| **1.5 PENALTIES** |  |
| **1.5.1 CRIMINAL** | Liable on summary conviction to a fine not exceeding level 5 (£5,000). |
| **1.5.2 ADMINISTRATIVE** |  |
| **1.5.2.1 DISQUALIFICATION** | Court may cancel a licence and disqualify from holding a licence for such period as thought fit. |
| **1.5.2.2 OTHER** |  |
| **1.5.3 CIVIL** |  |

**METHODS OF EFFECTING**

|  |  |
| --- | --- |
| **2.1 CONTRACT FOR COVER TAKEN OUT?** |  |
| **2.1.2 IF YES, BY INDIVIDUAL OR GROUP CONTRACT?** |  |
| **2.1.3 IS INSURER BOUND TO COVER?** |  |
| **IF NOT, ANY CONSEQUENCES?** |  |
| **2.2 COVERAGE AUTOMATICALLY INCLUDED IN VOLUNTARY CONTRACT?** |  |

**FINANCIAL ASPECTS**

|  |  |
| --- | --- |
| **3.1 AMOUNT OF COVER:** |  |
| **3.1.1 UNLIMITED OR LEGALLY REQUIRED MINIMUM?** |  |
| **3.1.2 DEDUCTIBLE : PROHIBITED/MANDATORY/OPTIONAL?** |  |
| **3.2 PREMIUM AMOUNT:** |  |
| **3.2.1 FIXED BY STATE? NO/IF YES - % OF PREMIUM OR FLAT RATE?** |  |
| **3.2.2 FIXED BY PARTIES?** |  |
| **3.2.3 BONUS-MALUS PER CLAIMS HISTORY?** |  |
| **REGULATED OR UNREGULATED?** |  |
| **3.2.4 POLICYHOLDER REACTION TO RATES – (UN)ACCEPTABLE?** |  |
| **3.2.5 IF NOT COMPULSORY: WOULD PREMIUM BE SAME/MORE?** |  |
| **3.3 FINANCIAL DATA:** |  |
| **3.3.1 DETERMINING IF PROFITABLE OR LOSS-MAKING?** |  |
| **3.3.2 (IF NOT COMPULSORY) OTHERWISE INSURABLE, UNINSURABLE OR ONLY AT HIGHER PREMIUM/LESS COVER?** |  |
| **3.3.3 FEW/MANY EXPOSED WOULD OTHERWISE INSURE?** |  |

**ENDNOTE**

This response was prepared on behalf of BILA by Tim Hardy, Vice President of BILA, largely from publicly available sources and principally for the personal benefit of Professor Jérôme Kullmann in his preparation for the World Congress theme session.

Every effort has been made to attribute facts, opinions and sources wherever possible and to ensure their accuracy so far as possible, but with such a wide-ranging review it is perhaps inevitable that a number of inaccuracies may have crept in and/or some provisions or statistics may well have been overtaken by events between the commencement of the preparation of these answers and April/May 2010 when final consideration is to be given to them. The incompleteness of some of the Schedule material has already been noted.

No reliance should therefore be placed upon anything contained in this response without further corroboration of facts and the law. No expert opinion is expressed. Nor are any personal opinions volunteered herein by me, nor held out as being those of BILA or any other body.

Personal thanks are acknowledged for assistance received from Matthew Young and Nick Starling of the ABI and the Library staff of the Chartered Insurance Institute during the preparation of this response.

Tim Hardy

London, April 2010

1. For an interesting discussion of some of the anomalies see “The Duty to Insure” by Richard Lewis, Professor of Law, Cardiff University, *Journal of Insurance Research and Practice*, 19(2004) 57-61 ISSN 14691000 [↑](#footnote-ref-1)
2. Motoring and looking after the well-being of one’s employees are two areas where insurance has obviously been made compulsory because Parliament has become convinced that most people underestimate and underprovide for the risk involved and that the cumulative actual loss and damage to the community is unacceptably great. Elsewhere, there is no clear pattern of public policy regarding compulsory insurance, but there is a trend in society towards compulsory insurance. (Malcolm A Clarke, *Policies and Perceptions of Insurance Law in the Twenty-First Century*, OUP, 2004.) [↑](#footnote-ref-2)
3. Road and work accidents interestingly predominate in consequence in terms of the number of claims pursued in the UK (of all personal injury cases in 2004-5, 53% concerned motor claims and 33% employer liability), despite their representing potentially only half of all accidents occurring, many of which took place at home or playing sport, often neither insured, nor made the subject of a claim (*Richard Lewis: How Important are Insurers in Compensating Claims for Personal Injury in the UK, The Geneva Papers 2006*). [↑](#footnote-ref-3)
4. We have largely adopted (and slightly adapted) the helpful categorisations for this purpose employed by Marcel Fontaine and Hélène de Rode in their compilation and commentary, “*Mandatory Insurance in OECD Countries*”, OECD Proceedings 1997, “Insurance Regulation and Supervision in Economies in Transition”, pp 73 -138 inc. [↑](#footnote-ref-4)
5. Not strictly an example of compulsory insurance against a tortious liability, but the imposed provision of a bond/industry levy scheme against insolvency of operator. (In cases where the tortfeasor becomes insolvent, legislation does also afford some protection to the claimant.) [↑](#footnote-ref-5)
6. See diagram at 6.4.1 (below) taken from *Vision for the Insurance Industry* in 2020 (Report of H M Treasury Insurance Industry Working Group (IIWG) 27 July 2009) identifying and distinguishing examples of insurance which individuals are either compelled (directly by law) or encouraged (by other means) to take out or have provided. [↑](#footnote-ref-6)
7. Pursuant to the Social Security (Recovery of Benefits) Act 1997 and the Health and Social Care (Community Health and Standards) Act 2003. For easy reference to provisions of the latter and much of the legislation imposing compulsory liability insurance and comments thereon see Robert Merkin and Johanna Hjalmarsson, *Compendium of Insurance Law*, Informa, 2007, Chaps 6 and 7. [↑](#footnote-ref-7)
8. For a full description of the passage of domestic and EU legislation and provision see *Compendium of Insurance Law* , Chap 7, *ibid.* [↑](#footnote-ref-8)
9. On 20 January 2009 the MIB reported that more than 1.6m uninsured vehicles were still being driven on roads in the UK, with untraced drivers killing 160 people and injuring 23,000 each year, resulting in compensation payments in excess of £500m , adding £30 to the cost of each motor insurance premium. [↑](#footnote-ref-9)
10. Increased from £250,000 by Motor Vehicles (Compulsory Insurance) Regulations 2000, SI 2000/726 [↑](#footnote-ref-10)
11. Great Britain (GB) meaning England, Scotland & Wales. Vehicles normally used in GB must also be covered for liability to third parties in other EU countries, as must vehicles normally used in such countries be covered for liability in GB. [↑](#footnote-ref-11)
12. Although strictly there is no need for compulsory insurance if security is provided in lieu of a policy by designated insurers or others or a deposit is made in amounts and forms provided for under the Road Traffic Act 1988 provisions. [↑](#footnote-ref-12)
13. Most notably, employee has no action in tort against an employer for failure to insure employee against irrecoverable damages following road accidents sustained while abroad on business (*Rush v Reid & Tompkins Group* [1989] 3 All ER 228. [↑](#footnote-ref-13)
14. Dept of Works & Pensions, *Review of Employers’ Liability Compulsory Insurance: Second Stage Report* (2003)suggested only 1 in 200employers fail to have requisite cover. An earlier Small Business Service telephone survey in 2002 suggested the figure was nearer 1 in 14. (Figures courtesy of Richard Lewis “The Duty to Insure” *ibid*.) More recent anxiety about defaulting employers – in the wake of perceived inadequate compensation for workers affected by exposure to asbestos - has seen an All-Party Parliamentary Group on Occupational Health & Safety call for an Employers’ Liability Insurance Bureau. Lobbying in June 2009 they assert that (with research finding that with 99.5% of employers complying), the absence of a central database (merely a voluntary ABI Tracing Code with a reported 35% success rate) or levy or insurer of last resort this still leaves some victims (especially historically some exposed to asbestos – the largest occupational disease) improperly left without recourse (in contrast with the existence since 1946 of the Motor Insurers’ Bureau, which pays out claims in the case of victims of motor claims involving uninsured or untraced drivers). [↑](#footnote-ref-14)
15. The statutory scheme is reinforced by two agreements made by the government with the Motor Insurers Bureau (MIB) on behalf of UK motor insurers. Under the Uninsured Drivers Agreement 1999 and the Untraced Drivers Agreement 2003 the MIB has undertaken to indemnify victims in either of the circumstances described by the respective Agreements. Neither Agreement is strictly enforceable by a third party under the Contracts (Rights against Insurers) Act 1999 or under common law, but the courts have made it clear that they would not object to a third party’s right to the benefits of the Agreements being enforceable. [↑](#footnote-ref-15)
16. Pursuant to the Third Parties(Rights against Insurers) Act 1930 [↑](#footnote-ref-16)
17. Report published on 1 May 2009 by Mintel International Group Limited (marketresearch.com) [↑](#footnote-ref-17)
18. But in August 2009 it has been reported (by Aon Market Pulse upon market trends) that as a result of the downturn there has been a reduction in commercial motor fleet policyholders causing some established motor insurers being forced to raise premiums to offset loss-making. [↑](#footnote-ref-18)
19. Employers’ Liability (Compulsory Insurance) General Regulations 1998 (SI 1998/2573, reg 3) (and later regulations) [↑](#footnote-ref-19)
20. www.researchandmarkets.com [↑](#footnote-ref-20)
21. Although as noted by Richard Lewis, “*The Duty to Insure*”, supra, there remains no general duty (outside of contract or trust) to insure in English law either by way of taking out first party insurance for others or for oneself. Accordingly, no liability rests with an employer who fails to insure his employee against injury while working abroad (beyond the scope of ELCI) or on the part of a school for not insuring against its children being injured while playing sport (parents having no such obligation either). Conversely, nor are defendants deemed to have been contributorily negligent for any failure to insure their property if the losses negligently caused, such as by a tenant to a landlord’s uninsured premises, are not mitigated by an insured recovery. [↑](#footnote-ref-21)
22. Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 [see Compendium of Insurance Law, Para 7.31 p 982] [↑](#footnote-ref-22)
23. It has been estimated from published road accident statistics that as many as 18,000 accidents a year involve drivers from foreign countries, especially drivers of heavy goods vehicles. [↑](#footnote-ref-23)
24. That is EU member states plus Norway, Iceland and Liechtenstein, but not Switzerland. [↑](#footnote-ref-24)
25. It has been recognised that compulsory insurance can in principle become an impediment to the functioning of the internal market if the cost and complexity of establishing a business in another Member State, or increasing the costs of providing cross-border services, reduce incentives for cross-border competition. [↑](#footnote-ref-25)
26. BIBA’s membership includes 1700 regulated firms, distributing nearly two-thirds of all UK general insurance ([www.biba.org.uk](http://www.biba.org.uk)); 29 May 2009 date of BIBA response. [↑](#footnote-ref-26)
27. £10.7bn (of an annual total of £33.8bn) of premium income earned by the UK insurance market in 2008 was for motor business, even if this also accounted for £8.7bn (of a total of £8.7bn (of an annual total of £22.0bn) in claims (ABI- UK Insurance – Key Facts, September 2009) [↑](#footnote-ref-27)
28. Bodily injury costs rose by 9.5%pa between 1996 and 2006, more than double the growth in average earnings, with instances of both insured and uninsured claims involving claims in the region of £15m to £20m each. [↑](#footnote-ref-28)
29. Founded in 1917 as UK insurers’ trade association to respond to potential changes in the law, the Association of British Insurers (based at 51 Gresham Street London EC2V 7HQ Tel: 020 7600 3333 Email: info@abi.org.uk Web: [www.abi.org.uk/](http://www.abi.org.uk/)) is now both powerful and effective in its representation of the collective interests of the UK’s insurance industry. “It is consulted regarding any government proposals to change the law not necessarily confined directly to tort or insurance. It is specifically asked to estimate the effect of any proposed reforms upon insurance premiums, reflecting how insurability is regarded as a relevant consideration whenever statutory tort reform is being considered.” (*Richard Lewis, The Geneva Papers 2006, supra*). [↑](#footnote-ref-29)
30. The ABI’s policy work is organised around four main departments: General Insurance, Life and Pensions; Financial Regulation, and Taxation & Investment Affairs. In addition, the ABI has an expert Research and Statistics Department, and represents the insurance industry to external audiences through its Media and Political Affairs and European and International teams. [↑](#footnote-ref-30)
31. An interesting observation is made in ***The Law of Insurance Contracts*, (Fourth Edition), Malcolm A Clarke (and others), LLP, 2002, 5-8E, pp 204-5:** “In 1933 a judge said “Courts of law unless constrained by the most unambiguous legislation, would ... be slow to fix upon ... insurers an obligation, even of limited indemnity, in cases in which the insurers should establish that they had entered into no indemnity”... Today there is a real tension between a tradition of non-interference with private contract and with the insurance market, on the one hand, and concern to compensate victims, on the other. The cases for the latter and for (what the market sometimes sees as) interference is stronger when insurance is compulsory. When it is **not** **compulsory**, insurance is just like any other asset which the debtor happens to have, a matter of chance and so, it might still be said, the claimant takes his debtor and his assets as he finds them. When the insurance **is compulsory**, Parliament has signalled its concern with the victim and with compensation. Moreover, by making insurance compulsory Parliament has made business for insurers and provided less ground for any objection to a bottom line of cover that ensures compensation. As the law now stands, however, defences are available to the insurer and these can be a very real obstacle to the compensation of third party victims. The most troublesome have been those concerning arbitration..., notice..., lack of co-operation... and “pay first” clauses...” [Emphasis added.] [↑](#footnote-ref-31)
32. Delays between claim and settlement have also been the subject of criticism: according to the ABI Report: “*Adding Insult to Injury: the need for reform of the personal injury compensation system*” (March 2008) a claim arising from a motor accident was found to take on average 2 years to settle; compensation for an injury at work on average 3 years to settle. [↑](#footnote-ref-32)
33. Richard Lewis (*Journal of Insurance Research and Practice*, 19 (2004) supra, p9 onwards) has noted the problems of actually providing protection even where insurance is compulsory, such as the lack of ELCI records/certificates etc and enforcement difficulties of motor third party and the need for the MIB re untraced/uninsured drivers, as well as the need always to consider in contrasts the enforceability of the taking up of voluntary insurance... (e.g. sporting activities, clubs, involvement of children). [↑](#footnote-ref-33)
34. Vision for the Insurance Industry in 2020, p43 (Report of H M Treasury Insurance Industry Working Group (IIWG) 27 July 2009:

    www.hm-treasury.gov.uk/d/fin\_**insuranceindustry**270709.pdf) [↑](#footnote-ref-34)
35. In the run-up to the General Election each of the major political parties has admitted that the scale and long-term nature of the problems faced transcend familiar party political divides. Some rare humility has even been expressed by political leaders about what may actually be done at the present time beyond measures to alleviate some obvious and confined examples of hardship! [↑](#footnote-ref-35)
36. In January 2010 however insurers were relieved to learn that in the draft Equalities Bill before Parliament a specific exception was incorporated to allow financial services providers to treat people of different ages differently (reflecting awareness that particularly in cases such as motor and travel such age-related practices were legitimate and not arbitrary or improperly discriminatory) [↑](#footnote-ref-36)
37. In the *Vision for the Insurance Industry in 2020* Report, *supra* [↑](#footnote-ref-37)
38. CRA International (2009) [↑](#footnote-ref-38)
39. In 2008 there were objections voiced however to extension of the FSCS Guarantee Fund to cover EEA risks written under long-term or general insurance policies issued through EEA branches of UK insurers. These centred upon double coverage and inconsistencies in application and effect, absent wholesale EU harmonisation of regulations and existing different compulsory schemes in operation across different classes. [↑](#footnote-ref-39)
40. Insurance here is not so much compulsory or mandatory as such, but one where by statute, the Secretary of State as the licensing authority, is permitted, at his discretion, to require any licensee to obtain third party liability insurance suffered in the UK or elsewhere. [↑](#footnote-ref-40)
41. This applies to all UK nationals, Scottish firms and bodies incorporated under the law of any part of the UK. (Regulation of activities in outer space is a “reserved matter” for the purposes of the Scotland Act 1998, which concerned the devolution of power to the Scottish Parliament. Reserved matters fall outside the legislative competence of the Scottish Parliament.) [↑](#footnote-ref-41)
42. s165(1)and (2) Merchant Shipping Act 1995 [↑](#footnote-ref-42)
43. In 2003, the CBI commented that compulsory environmental liability insurance would be a non-starter as the market for such a product was virtually non-existent in the UK. (CBI quoted in 'Environmental Directive 'will let polluters off the hook', The Guardian, 14 June 2003 at <http://business.guardian.co.uk/story/0,3604,977424,00.html>) but the transposition of the Directive into UK Law, is likely to result in the launch of many environmental insurance policies to cover the risks imposed by it. There has since been an increase in environmental liability insurance products in response to the demand for such products in the UK, but compared with the US, the market for environmental liability insurance in the UK remains small and in its infancy. Willis Insurance Brokers estimated the worldwide premium income from environmental insurance exceeded $2.75 billion (£1.56 billion) for 2004, but at least 90% of which was generated in the US. ('Environmental Insurance Market', 2005 (Willis, 2005), at  
    [www.willis.com/Services/Documents/Environmental%2OROW/](http://www.willis.com/Services/Documents/Environmental%252OROW/) 2846\_ENVIRONMENTAL.pdf) Farmers in the UK were particularly relieved that compulsory financial insurance has not yet been introduced. Estimates in the UK were that the insurance premium paid by some farmers could be as high as £ 10,000 per annum. (Agriculture and environmental liability', Farm Law, 2004, 98, 5,7-11 at 10)

    The debate about whether to introduce compulsory financial provisions has been seen before in the UK in the context of product liability. When strict liability was imposed on manufacturers for death or injury caused by defective products the Royal Commission on Civil Liability and Compensation for Civil Injury (1978), chaired by Lord Pearson, concluded that compulsory insurance was not a practical proposition. The Commission's reasons were only briefly stated but included:

    * a reluctance to require insurance if no insurers could be found to accept the risk;
    * even if insurers could be found the cost of securing cover could be prohibitive; and
    * compulsory insurance would need to be enforced - the cost of doing this in money and manpower was likely to be disproportionate to the benefit.

    Therefore, it is not surprising that the UK government has opposed the introduction of compulsory financial security and insurance under the Environmental Liability Directive as some of the reasons raised by the Royal Commission chaired by Lord Pearson are also valid in the context of the Directive. (Georgina Crowhurst, Clyde & Co, 1 Oct 2006) [↑](#footnote-ref-43)
44. The Health Act 1999, s9 [↑](#footnote-ref-44)
45. A Bill requiring both doctors and dentists to arrange an indemnity against liability (the Medical Practitioners and Dentists (Professional Negligence Insurance) Bill 2003) failed to pass through the necessary Parliamentary stages in 2003. [↑](#footnote-ref-45)
46. The NHS continues to indemnify health workers, including midwives working in hospitals, (such that no compulsory insurance is required), while they are undertaking NHS work. Independent midwives were reported in 2007 to number between 100 -200, assisting with approximately 4-5,000 home births. [↑](#footnote-ref-46)
47. Letter from Stephen Hadrill, Director-General of the ABI to the Scottish Parliament, 24 October 2007 (quoted more fully above) [↑](#footnote-ref-47)
48. Auctioneers to be considered in this context are essentially those concerned with the sales of freehold and leasehold properties and perhaps the contents of premises and/or the sale of plant and machinery. Specialist auctioneers also operate in connection with the valuations and sales of chattels often of a highly specialised nature, such as fine art, furniture, livestock and bloodstock. The primary relevant, but not compulsory, professional qualification for auctioneers, involved with property, is to be a fellow or member of the Royal Institution of Chartered Surveyors (RICS). [↑](#footnote-ref-48)
49. No contractual relationship traditionally exists between a barrister and his client, nor between the barrister and his instructing solicitor. It is of note however that changes in practice are seeing many barristers engaging increasingly in the roles of mediators and alternative dispute resolvers and advising professional clients directly. [↑](#footnote-ref-49)
50. Investment activities are regulated under the Financial Services Act 1986. Some accountants may also conduct insurance-related activities and so may need to comply with ABI guidelines . [↑](#footnote-ref-50)
51. http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/creditunionstats\_06.pdf [↑](#footnote-ref-51)
52. where the role of the estate agent includes the work of surveyors, valuers or auctioneers more see 19. below for the forms of professional indemnity insurance “approved” by the relevant professional body. [↑](#footnote-ref-52)
53. p359 Professional Liability, Ray Hodgin, LLP, 1999. [↑](#footnote-ref-53)