

AN OVERVIEW OF THE GRIFFIN INSURANCE ASSOCIATION LIMITED

BACKGROUND

In the mid-1980s many Lloyd's brokers became seriously concerned about the cost and ongoing availability of insurance to cover their professional liabilities. One of the results of this was that in late 1985 Tindall Riley was approached by a number of firms who expressed interest in the formation of a mutual to cover these risks.

In December 1985 Tindall Riley submitted a short paper to the Professional Indemnity Working Group of Lloyd's Insurance Brokers Committee (LIBC), which concluded that a mutual approach had much to commend it. It was recognised, however, that the mutual would only succeed if members were compatible and shared the same concerns about the problems of the Professional Indemnity market. This naturally brought together the small and medium sized broking firms and the result of this collaboration was the creation of the Griffin Insurance Association Limited, which commenced underwriting in March 1987

GRIFFIN'S OBJECTIVES

The original (and continuing) objectives of Griffin were established in response to the principal concern of the brokers involved, which was that they had no control over this element of their business whose existence was essential to their continuing ability to trade, and whose cost was a major and fluctuating overhead. It was also expected that, due to the efficiency of the mutual mechanism, savings in the cost of professional indemnity insurance should be made in the long term.

The current objectives are:

- Through the appropriate management of the Members' professional indemnity risk to provide the Members with control over an important aspect of their business;
- Secure the continuing availability and continuity of cover that meets the Membership's requirements;
- Achieve stability in the cost of cover;
- Avoid the inherent conflict of interest in maintaining professional indemnity insurance in the same market in which the Members trade;
- Provide confidentiality in a sensitive area of business;
- Ensure that the relationship between the Members and the Griffin is based on a spirit of partnership and mutuality; and

- Raise awareness of the Association as an alternative provider of professional indemnity cover to the commercial market, drawing attention to the particular benefits offered through membership, with a view to maximising opportunities for sustainable growth.

Through these objectives Griffin provides its Members with a non-market solution without conflicts of interest, confidentiality in a sensitive area of their business and control over the scope and cost of cover.

THE CURRENT MEMBERS

Today Griffin has over 40 Members with a combined commission income of over £700m, a third of which is earned by MGAs or in-house coverholder operations. Griffin is not for everyone – it does not insure the mega-brokers as they tend to have their own captives or high excess arrangements which are non-mutual. Griffin also does not tend to insure firms with turnover less than £2m, unless they are a start-up, as the Call (premium) paid needs to cover the services provided by the mutual – risk management, liability advice and Risk Bulletins, Technical Forums and training.

THE CONCEPT

The fundamental distinction between a commercial insurance company and a mutual is that a mutual is not trying to make a profit, has no shareholders, and exists purely for the benefit of its Members. Any funds held to meet future claims or held as a reserve are invested and the income from investments is used to benefit the Members. Collective self-insurance in a mutual association operates at cost and is therefore particularly suitable for long-tail business, where the claims tend to be complex and therefore best handled where there is a long-term relationship with the insurer.

Griffin provides insurance on a claims made basis. The objective is to call enough money by way of advance call in each policy year, to cover the claims that become payable as a result of the notifications in the ensuing policy year or circumstances that are likely to give rise to a claim (as and when these circumstances develop into claim payments).

It is impossible to estimate precisely the sum required. For that reason it is desirable that, rather than return all the surplus funds to Members insured in those policy years which eventually show a surplus, some of such surpluses should be set aside in a general reserve fund, contributions from which may be made towards policy years that may show a deficit.

As deficits have to be made up by the very Members who contributed the premiums or calls in the first instance, there is no motivation to cut rates to below cost either for new or for existing insureds.

DIRECTORS

The Association's Board of Directors comprises nine Directors from the Membership, two Manager Directors and an Independent Chairman.

The Directors of the Association are ultimately responsible for its proper management, and these responsibilities are the same as those of any director of a company incorporated under the UK Companies Act. Under the Articles of Association, the Directors have complete freedom to entrust any of their powers to the Managers, and in practice the Managers are required to handle all aspects of day to day management whereas the Directors concern themselves with matters of strategy.

THE MANAGERS

The day to day management of the Association is carried out by Tindall Riley & Co Limited under the trading name Griffin Managers.

The management service provided falls into five major areas:

- Claims handling
- Risk management/loss prevention
- Underwriting
- Regulatory
- Investment

Claims Handling

The core service that insureds in a mutual require is to have their claims handled professionally. In its capacity as insurance mutual managers, Tindall Riley has traditionally regarded itself as primarily a claims handling organisation and it employs a high proportion of legally qualified staff. The individuals currently handling claims for Griffin are all qualified solicitors with experience of insurance disputes both in London and other jurisdictions, and the practice of the London Market. They only handle intermediaries' professional indemnity claims and so have considerable expertise in this area.

The policy of the Managers is to handle claims in-house as far as is possible and to take a hands-on approach with a view to minimising the cost of claims. This in-house handling also has the effect of minimising the legal fees often associated with the defence of professional indemnity claims.

On those occasions when outside legal advice is necessary, the Managers will instruct an individual lawyer who has suitable experience in relation to the matter at hand. The lawyer's performance will be closely monitored to ensure that it is well directed and cost effective.

In addition to handling claims, the Managers provide an advisory service on legal issues relating to liability. Insureds are encouraged to consult the Managers concerning areas where they see that professional indemnity problems *could* arise, and also situations where they foresee that an ill-considered response could increase the potential for a claim. This service has recently been extended to provide some risk and compliance support.

The legal team also participate in the Risk Management reviews and Presentations described in the next section. This has also included reviewing (from a professional indemnity risk management perspective) agreements that Members have been asked to enter into.

Risk Management/Loss Prevention

Whilst it is accepted that in any insurance vehicle the cost of insuring is related to the loss experience, in a mutual the relationship between the cost of insuring and the claims experience is explicit and direct.

When Griffin was created it was felt by those firms involved that, in addition to the liability advisory service provided above, it was necessary to take further active steps to minimise the incidence of circumstances which might give risk to a claim.

Members of the Association are expected to place a high priority on developing and maintaining sound internal systems to reduce their exposure to claims, thereby helping to lower their insurance costs over the longer term. All Members participate in a risk management programme which is run by the Managers.

The programme begins before a firm joins the Association when, as a prospective Member, it is visited by the Risk Managers. This preliminary investigation plays a part in the assessment of the firm's suitability for membership of the Association.

Once a firm has become a Member, it participates in an ongoing process which is based on the Association's 'Risk Management Guidelines'. The programme is structured around regular review visits, both in the UK and overseas, and reports to Members. Planning meetings are held with Members before review visits, to ensure that any areas of potential risk are considered during the review.

After each risk management visit a report is issued detailing the results of the review and containing recommendations. These are discussed with the Member at a summary meeting and a plan agreed with the Member to address them. Support is provided in implementing the recommendations and will often include tailored workshops and presentations to Members' staff. Implementation of recommendations is specifically tested at a subsequent visit to the Member.

The results of the reviews (and other visits) are fed back to the underwriting department and form an important part of the underwriters' assessment of risk exposure.

The review team consists of specialist risk managers assisted, where appropriate, by members of the Managers' legal staff. This combination of technical and legal expertise and experience has proved to be successful.

The liability advice service offered by the Managers' in-house legal team referred to above represents an important element of the Association's risk management effort.

In addition to bringing benefits to the Association in terms of claims experience, the risk management programme provides individual Member Firms with both management information on their departmental operations and the opportunity to enhance their operational efficiency.

Underwriting

As outlined above, the objective is to call enough money by way of advance call in each policy year to cover the claims developing out of notifications made in that same policy year. The underwriting function consists of making an assessment of the sum required, and then dividing this sum equitably amongst the membership by making individual assessments of the exposure or risk that each firm brings to the Association.

In order to make these assessments, the Managers use all the relevant information at their disposal about the Member firms. Although notice is taken of an individual firm's claims record, it is felt that, in most cases, other factors, including the results of its risk management reviews, give a better indication of the current risk to the Association.

Frequency of notification on its own is unlikely to be a factor in assessment of a firm's risk. Indeed, because almost all precautionary notifications would be handled in-house (and therefore within the Managers' fee), there is no cost attributable to the insured in dealing with such notifications, and therefore no motivation to increase its rates as a result. It is an important part of Griffin's approach that Members should feel comfortable about notifying their insurer of circumstances which could give rise to a claim, so that the appropriate steps to either pre-empt or mitigate a claim can be taken at the earliest possible stage.

There is no reason for a mutual insurance association to grow unless the addition of a new insured is of benefit to the mutual. Therefore, there is no point in cutting rates merely to attract new firms. The membership seeks to attract suitable new Members who will add strength to the mutual and:

- are compatible with the rest of the membership;
- believe in the long term philosophy of the Association, and
- have satisfied the Managers by means of a preliminary risk management review that their standards of operation are acceptable.

Regulatory

Both The Griffin Insurance Association Limited and Tindall Riley & Co Limited are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority. It is the Managers' responsibility to ensure that Griffin complies with the regulations and that directors of the Association have sufficient information to satisfy themselves that this is the case.

Investments

The investment of Griffin's funds is contracted out to independent investment managers, who invest the funds in accordance with a strategy set from time to time by the directors of the Association.

THE CURRENT CLIMATE

COVID-19

The Association's exposure to COVID-19 claims is low.

At the time of writing (11 August 2020) the Association only has three COVID-19 notifications, all currently assessed as low risk. In addition, there are sound reasons why (i) a surge in COVID-19 claims against Members is not anticipated and (ii) even if there is an increase in claims, they should not result in the Association making significant claim payments.

(I) Current Notifications

Only three COVID-19 notifications have been made. These notifications are not anticipated to result in significant payments by the Association.

One notification is, at most, only worth approximately £11,000. It concerns specific advice given to an individual, during a telephone call, on whether a holiday could be cancelled due to COVID-19 travel restrictions.

Another notification does not concern claims being made directly against the Member. The Association has been advising the Member on how to deal with insured clients whose policies actually cover business interruption losses caused by infectious diseases. These policy issues are now the subject of an FCA test case in the High Court. It is anticipated the Court will find in favour of such insureds. However, even if that is not the case, claims against the Member may not follow. This is because it is unlikely the Member was negligent - it is arguable the policies represented the extent of cover for infectious diseases that was generally available in the market at the time. No loss is currently claimed against the Member and this notification may, ultimately, only have a nuisance value.

The remaining notification concerns a specific group, of about 30 insureds, who may have been told, by one Member, they had cover for COVID-19 business interruption losses. However, the Member should have sound defences on the basis it was accurately relaying information provided by the insurer who should cover these losses. Also, it seems unlikely the Member was negligent if these policies represented the extent of cover generally available in the market at the time. No loss is currently claimed against the Member and this notification may also, ultimately, only have a nuisance value.

(II) Potential Future Notifications

The risk of future COVID-19 notifications is also considered to be low.

Many insureds will have known, since March 2020, that they have no cover for COVID-19 business interruption losses. Given the urgency of the situation for most insureds, it is reasonable to expect them to have, at least by now, made some form of complaint over the

last five months if they intended to claim against Members. The lack of such complaints may be due to most insureds accepting that pandemic cover was not generally available, so there are no reasonable grounds to complain against the intermediary.

Even if COVID-19 claims are made against Members, it is not anticipated they will result in significant payments by the Association. This is because intermediaries are likely to have robust defences. Firstly, the Court's judge professionals by what most reasonably competent professionals were doing at the relevant time. Accordingly, as pandemic risk was not seen as high until relatively recently and, as most intermediaries did not routinely obtain pandemic cover for clients, it seems likely most were acting competently in not obtaining such cover. Secondly, even if there are occasional cases where wide pandemic cover may have been available, its additional cost may have been prohibitive for many insureds. Thirdly, insureds may be very cautious about the risks of incurring legal fees to bring speculative E&O claims against intermediaries.

Summary

The Association's claims team regularly reviews the situation and meets, monthly, with the Association's underwriters and risk managers to review the position: these meetings are the Association's de facto COVID-19 claims exposure committee. We continue to regularly update our Members on the Risk Management of COVID-19 issues with five Bulletins on the topic having been circulated to Members since March 2020. The feedback from the membership is also encouraging with remote working not presenting any significant issues for our membership.

Griffin Members have a wide range of support available to them, as has been outlined above, through the liability advice and risk management services and the associated training available. These should help to ensure that such pressures do not translate into an increased professional indemnity exposure.

The distinct lack of notifications and the compelling reasons above, all indicate the ongoing risk to the Association is low. For this reason the Association will not be introducing any COVID-19 exclusion in its cover from renewal at 1 October 2020.