



LUCAS FETTES
& PARTNERS

Arena

Exclusively for Clients of Lucas Fettes & Partners

Contents

Page 2 & 3

Recession Special

Richard Heighton discusses the impact on the insurance market.

Insurance Feature

Electrical inspections.

Page 4 & 5

2012 - just the year of the Olympics?

Radical changes in pension Reform.

Lucas Fettes focus

Keeping you updated with news and developments from across the group.

Page 6

Intelligent due diligence

Does it need to feature on your agenda?

Page 7 - Partner Comment

Budget 2009 - In depth review

Holiday home Tax changes

Welcome to the latest edition of Arena, our client newsletter.

We have a new look to our Arena which we hope you will feel is an improvement. What we are trying to do is to shorten the content and increase the frequency, thereby ensuring regular and topical information.

Our London office has had a much needed face-lift – has it really been 20 years since the last refurbishment ? – and looks all the better for it.

Our Lloyd's office is moving to Folgate Street to allow us more space; this takes place over the late summer.

Whilst we have an article on "The Recession", business although slow seems to be steady. This is allowing us to concentrate on our core activities i.e. professions, charities, education and media. We have agreed to partner a select number of insurers in concentrating on "Sector Specific" areas, and this is again generating a steady stream of interesting enquiries.

All in all, new business is the name of the game; we are all focused on production whilst mindful not to neglect existing friends and clients.

Robin Lucas, Managing Director



Recession Special

Richard Heighton considers how the recession is affecting the insurance market.

Many areas of the economy are suffering in the current economic climate, especially property/construction and motor industry related concerns. Most clients are having a difficult period and are looking to cut costs. For many commercial organisations, insurance is a necessity and therefore demand is for protection at a lower cost.

Insurance Market

The insurance market is notoriously cyclical with long periods of cut throat competition and reducing premiums usually followed by a knee jerk reaction to unacceptable underwriting losses. Competition for insurance business is the result of over capacity in the London market. General premium increases can only be applied when there has been a significant reduction in premium capacity as happened following the events of 9/11/2001.

During 2008 and the first part of 2009, all insurers have talked about a deterioration in their underwriting results due to a combination of static or lower premiums and rising claims costs. Insurers are not willing to reduce their premium capacity as they have large fixed costs, which would then rise as the percentage of premiums written. However, the recession has reduced overall demand and so we face a lower demand and static over-supply.

In this situation underwriters will look for selective premium increases or selective reductions in capacity. We are therefore

experiencing a reduced market for some risks resulting in significant premium increases in these areas. These increases have affected areas such as Surveyors' Professional Indemnity, unoccupied properties and high risk liability covers.

Increased Claims

An increase in fires in unoccupied properties has been a feature of every property slump and we have already seen some significant claims.

In respect of Professional Indemnity, Markel Claims Department recently gave this summary:

"Construction - the recession has hit this industry hard and we are seeing claims where original designs have been 'modified' or corners cut to meet ever tightening budgets. Similarly, where multiple contractors and consultants have been involved with a contract there have been examples of a 'last man standing' approach to claims. This is when a number of the consultants or contractors (or their sub-contractors/sub-consultants) who were a party to a contract have subsequently ceased to trade and our Insured has been left 'holding the baby'.

Particularly serious situations include circumstances where our Assured has engaged the services of a specialist sub-contractor to undertake some specific work and the sub-contractor has subsequently ceased trading. We are also seeing an increasing

number of counterclaims being made against insureds following their pursuit of outstanding fees.

The usual rush of over-valuation claims have materialised for **Surveyors & Estate Agents** as claimants look to recoup financial losses.

Due to a downturn in investment returns, we are seeing a number of allegations against **Financial Advisers**, as to the suitability of the investments selected, and concerns in terms of the balance of their investment portfolio.

The recent spate of broker consolidations has (unfortunately) resulted in an increasing number of claims against **Insurance Brokers** as the new owners wrestle to integrate the new acquisition into their own business."

At Lucas Fettes we were interested in Markel's comment on insurance brokers. It seems some of our competitors have been so wrapped up in their M&A activity their quality control has suffered. This is bad news for us because it has an effect on the market rate for our Professional Indemnity insurance. Recessions bring increased claims against all professionals and some will face costs rising above 2% of fee income. We have observed rates as high as 5% in difficult periods, at which point the firm in question is usually too weak to survive and seeks to merge into a stronger rival.

Management Risks

An increasing number of allegations arising from insolvencies and "over-trading" have resulted in both Directors' & Officers Liability claims and Employment Law claims.

This trend is unlikely to slow in the immediate future and insurers will be called upon to defend a number of allegations against company directors.

Looking Ahead

The current mood in the insurance market and indeed many other areas of industry and commerce is to batten down the hatches, make decisions on a daily/weekly basis and wait for the climate to improve. We expect the current conditions to last at least until the end of this current year at which point the figures published by the large insurance companies will be pretty grim. Projecting current trends forward would mean some serious casualties if the climate does not improve fairly quickly.

We have had our credit crunch but looking ahead it is likely we will have an insurance crunch.

Recession Shapes

Expert economic commentators are likely to predict the shape

of the recession with V, U or W being favourite predictions. More recently I have seen mention of the Nike Swoosh or a Saxophone shape. The more you read the more you begin to think the experts have not got a clue.

I can understand how the over-exuberant lending got us into this mess but I cannot see an obvious stimulus that will lead us out of it.

The state of Government finances and the pension/demographic time bombs are reasons not to be too optimistic. When planning for the future I suggest we do not rely on the recession being V, U or even W shaped. To quote from one of my favourite films - "What if this is as good as it gets?"

Insurance Feature

Electrical Inspection of Communal Areas in Blocks of Flats

Whilst a large number of claims such as escape of water can be most inconvenient, a loss following a serious fire can be extremely stressful. Although cover will no doubt be in force to reinstate the damage, together with the cost of alternative accommodation, the ramifications are immense due to the massive upheaval involved. There will be many added complications, but also related matters such as a large number of residents who do not effect any contents insurance, so all those personal items will be lost but still need to be replaced.

The solution is to minimise the likelihood of a fire wherever possible. Whilst incidents such as chip pan fires are difficult to eradicate entirely, despite public awareness campaigns, one of the most common reasons; faulty electrical wiring, can be minimised significantly. This means it's important to arrange regular electrical inspections of the common parts in your block as part of your health and safety responsibilities.

Through our flexible and cost-effective approach to electrical inspections, we can help protect your property and meet your duty of care under the Electricity at Work Regulations 1989. An employer is responsible for ensuring electrical installations and equipment operate safely and are suitably maintained.

Regular inspection is an integral part of meeting this duty because it will identify defects that pose a risk of injury to people or property. Typically, electrical installations are hidden from everyday view - by exposing them, inspections can uncover potential hazards caused by wear and tear and unseen areas of damage.

To find out more please contact **John Tillett** at Lucas Fettes and Partners, telephone number **020 7413 2719**, e-mail john.tillett@lucasfettes.co.uk.



2012 - Just the year of the Olympics? Radical pension reforms to be considered.

Ask what the big event of 2012 is going to be and people will automatically think of the Olympics. Not surprising really when you look at all of the media coverage.

But there is something else looming, which all employers will need to get themselves into shape for, and that is another round of Pension Reforms.

These are radical changes, so you will need to “plough”, excuse the pun, through the details.

Many of you may remember the introduction of Stakeholder Pensions in 2001.

The requirement then was for employers to put a pension scheme in place, however, there was no requirement to contribute. That is about to change!

The Government wants employers to provide Quality Workplace Pension Schemes (QWPS). Therefore from 2012 the law will require all employers in the UK to offer a private sector workplace pension scheme to their eligible employees.

The benchmark for a QWPS will be known as Personal Accounts.

Under the new regime employers will be required to auto enrol into a pension scheme all employees, aged between 22 and State Pension Age, who earn more than the lower earnings limit and who are not already in a quality qualifying pension scheme or QQWPS (more on these later).

Once auto-enrolled, individuals can choose to opt out, however, employers will need to re-enrol them in the scheme at least every 3 years until they either decide to stay in the scheme or leave employment.

Although the minimum age would seem to be 22, employees aged between 16 and 22 can choose to join and, if they do, employers will need to pay at least the minimum contribution on their behalf.

The Government has set a minimum contribution target for Personal Accounts and qualifying schemes, which will be phased in between 2012 and 2014. Table 1 on the next page indicates the proposed contribution shape in 2014.

As previously mentioned, where employers already run a scheme it may be to gain an exemption from having to auto-enrol in Personal Accounts. If the scheme meets set criteria, it can be regarded as a QQWPS. For example:

- It must permit auto enrolment. Currently, UK legislation doesn't allow employers to automatically enrol employees into a contract-based scheme such as a Group Personal Pension, Group Stakeholder or Group Self Invested Personal Pension Scheme. However, the UK Government has agreed with the EU that employers operating workplace pension schemes (an employer sponsored pension scheme to which the employer contributes) will be allowed to use automatic enrolment.
- Contribution levels must at least match the minimum contribution to a personal account, monetary wise. Where contributions are based on total salary as opposed to banded earnings, this means the % may be lower.
- If the scheme is a Money Purchase, Stakeholder or Group Personal pension Plan, it must have a default investment fund.
- It must deliver a minimum accrual rate of 1/80th of pensionable earnings if it is a contracted-out final salary scheme, or
- A minimum of 1/120th if it is a contracted-in final salary scheme.
- Any employees who have previously opted out of any existing pension scheme which permitted auto enrolment will need to be auto enrolled again (although they do have the choice to opt out).

So what will automatic enrolment mean in practice?

Pension schemes which currently operate automatic enrolment achieve substantially higher take-up rates than schemes operating on an 'opt-in' basis. This is due to members “not getting around” to opting themselves out.

This is ultimately what the Government are hoping to achieve. Increased private provision through apathy.

However, this will mean a greater cost to employers, not just in terms of contributions but also the administration of the auto enrolment process.

Every thing now clear? As mud maybe.

As things evolve, we will keep you updated, but in the meantime you may need to give some thought to how will this affect your business.

Will your current scheme give you an exemption? If you have no scheme, what will you need to do? What are the costs?

If you don't know the answers we would be happy to help.

Table 1 - The 2014 contribution shape

Minimum Contribution	Employer Pays	Employee Pays	Tax Relief
8%	3%	4%	1%

Contributions will be based on “Band Earnings” – i.e. earnings between the lower and upper earnings limits.

To find out more please contact Beverley Lee at Lucas Fettes and Partners, telephone number 01603 706 832, e-mail beverley.lee@lucasfettes.co.uk.

Lucas Fettes focus

Keeping you updated with news and developments from around the group.

London offices

Our London based Insurance and Financial Services divisions have always been based in separate offices at 22 and 27 Rathbone Street respectively. We have recently refurbished our 22 Rathbone Street office enabling us to have both divisions in the same building creating improved communications and a better working environment for staff.

In addition we have taken a lease on an office in Folgate Street to provide more space for our existing Lloyd's office.

New Head of Financial Services

We are pleased to announce that Mark Brown will now be heading up our Financial Services Division as Director and Head of Financial Services. Mark, an existing director based in Norwich, will bring a wealth of experience and knowledge to the role and is well positioned to capitalise on opportunities arising across the group.

Charity fundraising activity

We remain focused on our objective of raising considerable annual donations for our chosen charity, To Kenya With Love (TKWL). Consequently, we again propose to send another intrepid staff team on a further parachute jump.

TKWL aims to improve educational opportunities for young people in rural Kenya, by providing better school buildings and teaching materials. The project aims to develop the capacity for self led growth, primarily through equipping schools with a solid resource base.

Previous fundraising efforts have enabled three of our staff to visit Kenya to experience the charity's vision and assist in the building of a classroom for orphaned and deprived children.

For more information on assisting us with fundraising, please contact Katherine Hale on 01603 706 857.

Intelligent due diligence

Does it need to feature on your agenda?

Insurance due diligence is something that hasn't always featured high on a company's agenda, but it is something that is vitally important to anyone involved in buying or selling a business.

Inadequate due diligence can lead to serious consequences and it is therefore important that you have access to specialists with the knowledge and expertise of the insurance solutions available, and who can offer independent advice and analysis to minimise risk and exposure.

We are specialists in this area and have experienced and qualified personnel who bring an innovative approach to problem solving. We can offer a full range of insurance due diligence services for both general commercial insurances and life and pensions.

Our services for general commercial insurance risks include:

- A full review of the current insurance policy documents, schedules, conditions and warranties.
- An on-site visit to assess the risk first hand and an in-depth review meeting to establish the adequacy of sums insured, estimates, wage rolls etc., together with the covers required.
- A full written report on the adequacy of existing covers, possible gaps in cover, with suggested additional covers that need to be considered. This will generally include comment on:
 - The possible effects of non-compliance with onerous policy conditions or warranties.
 - The cost effectiveness of the covers in place.
 - The possible effects of placing a new company into an existing group arrangement.

- The claims experience and the possible effects past liabilities may have on a newly acquired company going forward.
- The suitability and security of the existing insurers.
- Current risk management and health and safety procedures.

We also highlight areas where we believe it important to involve other professional advisers.

Other Financial Risks – Life and Pensions

Pay and conditions in acquired companies is a further area which needs to be carefully and professionally assessed. If a target business maintains a final salary pension scheme, this can often be in deficit and whilst it is clearly important to identify this, all too often the wide-ranging choice of solutions are overlooked. Such schemes are typically viewed as "deal breakers", but this is not always the case.

Also, defined contribution pension schemes are often overlooked entirely, with conventional due diligence, simply noting their existence and level of financial exposure. A badly run defined contribution scheme carries significant financial risk and lack of proper governance and advisory structure is something that the Pensions Regulator is presently focusing on.

Adopting a simple "existence testing" regime is not sufficient and cannot achieve the appropriate negotiating position that robust, forensic due diligence procedures bring about.

For further information, please speak to your usual office or contact Ian Benson (ian.benson@lucasfettes.co.uk) on 020 7413 2721 for general insurance enquiries or Beverley Lee (beverley.lee@lucasfettes.co.uk) on 01603 706 832 for life and pension enquiries.

Budget 2009 - in depth review

Holiday home tax changes

Mike Wakeford, a Tax Partner at **Moore Stephens Chartered Accountants** gives comment on one of the most unexpected changes to emerge on budget day 2009. If you require further information, Mike can be contacted on 01243 531 600.

One of the most unexpected changes to emerge on budget day was a change to the tax status of holiday homes that are currently given favourable treatment under the furnished holiday lettings regime.

This change has been forced on the UK Government by the EU. Given a choice between extending the relief to properties throughout the European Economic Area (EEA) or abolishing the relief completely, the government has decided to abolish it.

From 6 April 2010, the furnished holiday lettings regime comes to an end, with adverse effects for anyone affected. For those with properties on which they make a profit, there is little change for income tax purposes, except that it will no longer be possible to use the income to support pension contributions. The changes will have a real impact on those making losses, as it will no longer be possible to offset these losses against any other income, but only against profits arising on other rental properties.

On a sale of the property, it will no longer be possible to claim entrepreneur's relief and pay capital gains tax at only 10%. It will also not be possible to claim hold-over or roll-over relief on disposal of the property, or purchase a property in order to roll-over a gain already made on another qualifying business asset.

The only good news is for owners of holiday homes elsewhere in the EEA that would have qualified as a furnished holiday letting if they were in the UK. For such properties, but only up until 5 April 2010, they will be treated as qualifying, with retrospective effect, and it will be possible to make claims to have them treated as such by amending previously submitted tax returns. For claiming losses, it will be possible to amend tax returns for 2006/07 and 2007/08, with any claims for 2006/07 having to be made by 31 July 2009. Claims relating to capital gains tax reliefs may be made in writing to HMRC, generally at any time up to 5 years and 10 months after the end of the tax year for which relief is being claimed.

Finally, for anyone who is thinking of selling their holiday home, serious consideration should be given to exchanging contracts on a sale before 5 April 2010 to take advantage of the current capital gains tax reliefs before they are withdrawn.

General comment on 2009 budget

The 2009 budget contained very few tax changes that come into effect during the current tax year and those that did were all announced well before budget day. Instead, the real impact of the changes announced on budget day will be felt from 6 April 2010 onwards.

The most important changes were the increase in the highest rate of income tax from 40% to 50% for those with incomes of more than £150,000 a year, the withdrawal of the personal allowance from those with income of more than £100,000 a year and the drastic curtailment of the amount of higher rate tax relief it is possible to obtain on pension contributions.

The effect of these changes is to produce tax rates through the income scale as follows, assuming that allowances and tax bands remain the same as they are at present.

Income	Tax Rate	Nil Rate*	Combined Rate
£0 - £5,715	0%	0%	0%
£5,715 - £6,475	0%	11%	11%
£6,476 - £43,875	20%	11%	31%
£43,875 - £100,000	40%	1%	41%
£100,000 - £112,950	60%	1%	61%
£112,951 - £150,000	40%	1%	41%
£150,000 and above	50%	1%	51%

* This assumes the taxpayer is in employment. For the self-employed the NI rate income between £5,715 and £43,875 is 8% rather than 11%.

For those with incomes of more than £150,000 the amount of tax relief available in future on pension contributions will be restricted. From April 2011 the rate of relief will taper so that it reduces from 40% to 20% on incomes between £150,000 and £180,000 and will be limited to 20% on all incomes over £180,000. In the meantime, special rules brought in for 2009/10 and 2010/11 will result in restrictions on tax relief for contributions of more than £20,000 per annum in many cases for those earning more than £150,000.

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All references to taxation are based on our current understanding of UK Law and Inland Revenue practice.