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RAG

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Offshore and out of sight

We've just seen another significant failure in the After the Event insurance market that has left many law firms and their clients not knowing how the costs in their case will be funded.

LAMP Insurance Company Limited (LAMP) was a significant provider of ATE insurance, including for clinical negligence cases, and last month's announcement that the company was to be placed in liquidation leaves solicitors and policyholders in a vulnerable and uncertain position.

We have been here before, of course. In 2016, it was the smaller ATE insurance specialist, AU Insurance Services, that was forced into administration. That was followed, a year later, by Elite Insurance Company going into run-off. Last year, New Zealand's CBL Insurance collapsed, leaving the Danish insurer bankrupt after becoming insolvent. There have been others too.

The precise causes of each of these providers' market departures may differ, of course. All, however, will have struggled with the same challenges and, together, they demonstrate that offering a successful and dependable ATE solution to law firms demands not just expertise, but financial strength and security as well.

These failures collectively highlight another important issue, that may not have been immediately apparent to the firms that used them.

While it was a high-profile name with a significant share of the UK After the Event insurance market, LAMP was domiciled in Gibraltar, where the controls and oversight of insurance underwriting are nowhere near as stringent as they are in the UK.

The lack of transparency that offshore underwriters can benefit from is obviously problematic and inevitably contributes to the situation where such sudden developments can come as a complete surprise, even to closely interested parties.

Financial security ratings are hard-earned and just as hard to maintain. They may not be perfect indicators of fiscal health, but they do provide a clear and independent assessment of an underwriter's ability to meet its obligations.

Our system of financial regulation may also be imperfect, and insurers can certainly be heard complaining from time to time. But this is precisely because our regulatory regime is among the toughest in the world, which obviously works in the clients' interests and helps to protect them.

Of course, not all unrated carriers should necessarily be cause for concern. Strong capital adequacy, sustainable competitive advantage, proven track-record, risk appetite and the quality and depth of its management are all factors that should contribute to and drive any solvency assessment of an insurer, whether rated or not. Indeed, the FCA offers some guidance on the level of due diligence it expects brokers to perform when recommending products to their clients.

<https://www.fca.org.uk/firms/insurance-brokers-due-diligence-insurers>

In an ideal world, all insurance products would be equally regulated and offer the same level of guarantee that claims would be paid, securely and fairly. In the real world, however, LAMP probably won't be the last underregulated, offshore provider to offer After the Event cover to law firms and their clients, nor is likely to be the last to fail.



MD Tony Buss

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AVIATE



David Haynes
Underwriting and
Marketing Director

ACSO to stand up for justice

At the end of March, ARAG was proud to join like-minded businesses and other organisations that share a common goal in preserving access to justice in the UK as a founder member of ACSO, the Association of Consumer Support Organisations. Underwriting & Marketing Director David Haynes explains why.

While there are numerous industry bodies that have an interest in preserving the rights of everyday people to seek and secure justice through our embattled legal system, they are diverse in both their objectives and their constituencies.

From the Legal Action Group to the Law Society, the Motor Accident Solicitors Society (MASS) to various trade unions, there is no shortage of will to stand up for consumer rights in the civil justice system. Important as all of these bodies are, some have questioned whether their number and diversity converts that will into action as effectively as it might.

There is no question that access to justice has declined enormously in recent years. Severe cuts to Ministry of Justice budgets have closed courts, tribunals and law centres while slashing Legal Aid. At the same time, the legislative agenda has tipped the scales

of justice away from individual consumers in favour of employers, insurers and their shareholders.

The Civil Liability Act is just the latest example of legislation that will significantly inhibit access to justice, in this case for motorists.

ACSO's core purpose is to represent the interests of consumers in the civil justice system and to engage with policymakers, regulators, industry and the media to rebuild a functioning, competitive and sustainable justice system that works for honest citizens.

At the same time, ACSO will drive best practice that improves service to all of those consumers who find themselves engaged with the justice system.

The starting agenda for ACSO is one full of items in which ARAG has a strong interest: the implementation and proper assessment of the Civil Liability Act; fixed fees in clinical negligence; best practice in claims management; as well as a legal expenses insurance working group in which we are already playing an active part.

These are subjects that affect our policyholders and every other consumer, often when they are at their most vulnerable. Preserving access to justice for all citizens has always been at the very heart of what ARAG does. ACSO shares that commitment and will help us and like-minded organisations to be heard.





“Whatever class of business you transact, it is always best to insure every single case from day 1.”

Action underway on adverse cost liability risks

The principle of insurance is that a spread of risks allows premiums to be averaged with poor risks balanced by better ones. With ATE business, this means insuring a basket of cases from the outset. The system begins to fall apart if there is a long gap between accepting a Conditional Fee Agreement (CFA) and getting the case insured. There is a clear link between the insurer’s liability to pay claims and delays in insuring cases after the CFA has been entered into.

Cherry-picking the good risks out of the basket means that those remaining later

in the process turn out to be the ones that are more likely to incur higher claims costs. We are therefore changing our practice by reducing the acceptance criteria from new firms for both Public Liability and Occupier’s Liability, thus ensuring premiums can be retained at a level that reflects the entire basket of cases. We therefore require all new firms to insure cases within 4 weeks of entering into a CFA with the claimant. Whatever class of business you transact, it is always best to insure every single case from day 1.

A new approach to setting premiums

There are also some rating changes in the pipeline. In a further move to keep premiums competitive, PL and OL cases will attract a new rating structure based on three bands of damages: details will be finalised shortly and plenty of notice will be given on a proposed implementation date. Anticipate a damages based rating scale that will determine premiums. Most likely these will be for cases below £10,000, from £10,000-£25,000 and for those over £25,000.



LAMP failure highlights pressures on ATE sector

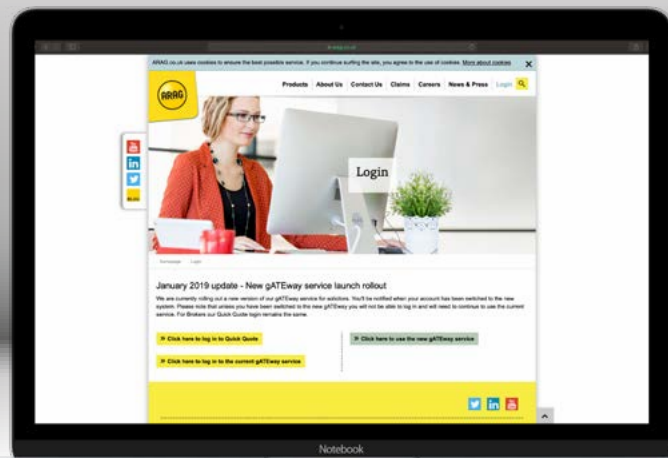
The news that Lamp Insurance Company (LAMP) has been forced into liquidation (see Offshore and Out of sight on page 1) will certainly have come as a surprise to most of the law firms that were using the company's After the Event insurance products, but the pressures on the sector have been so great for so long, that it was only a matter of time before we saw another ATE provider leave the market.

While it is not yet clear precisely what brought LAMP to the point of insolvency, there is no doubt that the uncertainty in the clinical negligence market and the sometimes extreme delays in the recovery of ATE premiums has put great pressure on cash flow, especially for some smaller providers.

The consistent challenging of ATE premiums in clinical negligence cases has been continuing for many years. ARAG policies have themselves been challenged on numerous occasions and two cases have recently been the subject of a test cases in the Court of Appeal. Judgment is expected before the summer recess.

While it is only right that the validity of ATE policies should be tested and confirmed in the courts, as they have been many times, the repeated challenging of every possible aspect of policy and premium is a tactic that only really serves to drive up costs on all sides.

The result is that all but the most determined, secure and financially resourced providers will struggle, ultimately reducing market choice for solicitors and their clients. ARAG remains resolute in our commitment to deliver access to justice for all people, whether they can afford it or not, whatever challenges the ATE sector may present.



Entering the new portal

The Time Lords of ARAG have opened a new portal to the future. Real-time testing with some partners this spring saw an upgrade to the online gATEway system, opening with some crucial new features. It was a long and involved process and ARAG would like to thank everyone for bearing with them through this period of change. The new system which is now available to all solicitor partners, is part of an ongoing digitisation initiative aimed at maximising advances in technology to improve workflow.

We are always looking to improve our technology to keep ahead of any trends, while at the same time taking note of what our partner firms suggest. The result is a significant improvement to the online experience that brings performance enhancements for users, clients and ARAG alike. The good news is that everything works in the familiar way with no new training needed for users to get the maximum benefit from the changes.

With the new system, you can now see any applications and policies that colleagues have with ARAG. There is also the option to be able to access and update policy documents on their behalf. Additionally, supporting documents can be uploaded to gATEway during the application process or at a later stage when updating an on-going case. The application form varies between case types to make the process more efficient for complex cases.

There should be no issues arising from the switch to the new system but just in case, support documents have been issued. In addition, there is a dedicated IT team on stand-by and our ATE Account Managers are available to help with any queries or concerns.

www.arag.co.uk/contact/ATE-sales



Civil Liability Act update

The Civil Liability Act is just the latest in a succession of legislative and budgetary constraints that have steadily made it more difficult for everyday people to access the justice system. Motorists are obviously in the firing-line this time, but the future claims landscape looks increasingly difficult for anyone unlucky enough to be injured in a car, an operating theatre or anywhere else.

The measures introduced by the Civil Liability Act are still scheduled to come into force in April 2020. A consultation on the Future Provision of Medical Reports in Road Traffic Accident related personal injury claims closed in mid-May, the submissions to which the Ministry of Justice is currently considering.

There have been few other developments announced that would indicate significant progress towards implementation. The new IT portal which will enable all claimants, including those unrepresented to process road traffic accident related injury claims under the new £5,000 small claims track limit is currently being built by a US IT firm. The fact that all claimants are to use the new system does raise questions over its overlap with the current system".

There appears to have been no further mention of when the portal will be publicly tested, though it was originally suggested that such a pilot would take place in October this year.



EMPLOYEE SPOTLIGHT



Tom Hunt, ATE Senior Underwriter

Winner of the 'Young Achiever of the Year' at the Personal Injury Awards 2017, Tom works as a technical underwriter on ARAG's After the Event portfolio, a particularly challenging niche with often high-value claims and a frequently shifting legal and regulatory landscape. Tom joined ARAG in August 2016.

Q What attracted you to the legal expenses insurance field?

A During my law degree, I worked part-time with an insurer in Bristol. Seeing how law could be applied was fascinating. After graduation I carried on as an Assistant Underwriter in legal expenses which gave me new opportunities to explore the complexities of insurance.

Q How has ARAG helped in your career development?

A I am now closing in on my ACII (Chartered) status and have completed my CII Award in London Market Insurance. I am now focusing more on becoming formally trained in management and leadership skills, through the ILM whilst keeping up with legal CPD through training seminars and conferences, in key areas such as clinical negligence and costs.

Q What are your main responsibilities at ARAG?

A I work with senior lawyers to create bespoke solutions, manage the technical relationship with new and existing business partners and have oversight of all scheme performance management. I work closely with our IT department to deliver key projects, such as the launch of our new online portal for business partners. I also manage our large aggregated exposures such as GLO's or mass claims. Leading a team of Underwriters, I am responsible for managing performance, monitoring workflow and acting as a key point of referral.

Q What do you find most challenging?

A The ATE market is a challenging place, often we are required to make judgement calls on new opportunities or existing business with incomplete sets of data due to the time in which cohorts of cases take to fully develop. This has allowed me to greatly develop my core underwriting and pricing skills.

Q What is your favourite part about working at ARAG?

A It's a great place to work; you feel you can make a significant contribution in a supportive and enjoyable environment. We have regular social and charity events which I'm always keen to take part in, most recently I've taken part in Dragon Boat Racing and the Bristol 10K to fundraise for our charity of the year.

Q What next?

A I want to help drive ARAG in maintaining its position as a leading player in the ATE market by developing market leading solutions for our business partners, particularly in light of the upcoming reforms that are on the horizon. I am motivated by continuing my professional development through formal qualifications whilst taking on further responsibility within the business. There is always something new or different when underwriting ATE business and passing on that knowledge base, as it was to me, is very rewarding.



OUR
ACHIEVEMENTS

ARAG & Auto Claims Assist Golf Day

On Thursday 18th July the first ever ARAG & Auto Claims Assist Golf Day will take place at Wychwood Park! Taking place on the day of The Open from Portrush, you are welcome to join us for 18 Holes of golf on a championship course Wychwood Park.

Money raised on the day will go towards the fantastic charity, Childs Brain Injury Trust (CBIT).



For more details and to book your space please contact Jonathan Bassey, ATE Account Manager, on 07795 458 719 or jonathan.bassey@arag.co.uk



New building renovations complete

To accommodate a growing team, we have now moved a number of our employees into our newly acquired building.

Currently headquartered in 7-9 Whiteladies Road, where the majority of our 126 employees are based, we acquired neighbouring number 6 and the interior refurbishments are now complete.

Despite the rainy start to June, we held a welcome BBQ for staff in the courtyard at the new office.



Events CALENDAR 2019

28th – 29th June

AvMA Clinical Negligence Conference

18th July

Golf Day

2nd – 3rd October

APIL Clinical Negligence Conference

27th November

Personal Injury Awards

ARAG NEWS

A wet, but busy start to summer

Our ATE sales team are used to travelling around the country meeting existing and prospective partners, but there is also the opportunity for you to go to them. If you missed them at the APIL Brain & Spinal Injury in Newport, they will be at the AvMA Clinical Negligence conference in Leeds and the APIL Clinical Negligence Conference in Brighton. These events provide an invaluable opportunity for us to connect with new prospects and re-connect with our current partners, make sure you come and say hi.

For more than a decade, ARAG has led the way in delivering innovative after-the-event insurance solutions to law firms throughout the country. Many will talk of 'access to justice', but ARAG is still driven by its founding principle, more than 80 years old, that "...every person should be able to assert their legal rights, not just those who can afford it."

Our team always enjoy attending events like those put on by AvMA and APIL as they offer a perfect mix of business and networking, but they are also extremely busy. So, if you would like to discuss your ATE insurance requirements but didn't have the opportunity, then please speak to **Mike Knight, UK Sales Manager.**



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9am-5pm, Monday-Friday
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