

ENTERPRISE INSURANCE COMPANY PLC (IN LIQUIDATION)

LIQUIDATOR'S PROGRESS REPORT

as at 13 April 2023

By order of the Supreme Court of Gibraltar dated 26 October 2016 (“the Order”) I was appointed liquidator of Enterprise Insurance Company PLC (“the Company”) under section 160 of the Insolvency Act 2011.

A liquidation website was established at www.eigplc.com as a means of communicating effectively with policyholders and creditors.

Section 259(1) of the Financial Services (Insurance Companies) Regulations 2020 require liquidators, in an appropriate manner, to keep creditors regularly informed on the progress of the winding up¹. Section 176 (2) of the Insolvency Act, 2011 in relation to the general duties of a liquidator, allows a liquidator, subject to the Act and Rules, to use his own discretion in undertaking his duties. I therefore proposed to report on the progress of the liquidation of the Company after the 30 June and the 31 December of each calendar year with receipts and payments accounts made up to those dates. My reports along with the receipts and payments accounts will be published on the liquidation website.

This is my twelfth such report. A receipts and payments account for the period from 26 October 2016 to 31 December 2022 is attached. Certain matters included in my previous reports are also included in this report.

Insurance Business of the Company

1. The Company wrote insurance business in the following main classes; motor, third party liability, miscellaneous financial loss – warranty, miscellaneous financial loss- other and legal expenses. While most policies were issued to policyholders in the United Kingdom motor insurance policies were also issued in the Republic of Ireland, Italy, France, and Greece under the freedom of services provisions.
2. As a result of the Court’s decision to open winding-up proceedings the Gibraltar Financial Services Commission (“GFSC”) issued a direction dated 26 October 2016 that the Company cease to be authorised to carry on insurance business, pursuant to section 156(1) Financial Services (Insurance Companies) (Solvency II Directive) Act and section 106 Financial Services (Insurance Companies) Act. As liquidator I am allowed to pursue activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of the winding up and which activities are pursued with the consent and under the supervision of the GFSC.² These activities involve the administration, management and adjudication of claims arising from the indemnities provided by insurance policies issued by the Company for the purpose of admitting these claims as insurance claims in the insolvent estate. I conduct these insurance activities with the consent of and under the supervision of the GFSC.
3. Insurance claims take precedence over other claims subject to relevant statutory provisions.³ With regard to assets representing technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking under section 250(2)(a) of the Financial Services (Insurance Companies) Regulations 2020 Act and with regard to the whole of the assets of the insurance undertaking under section 250(2)(b) of the Financial Services (Insurance Companies) Regulations 2020, insurance claims take precedence over any other claims other than:

¹ Previously under Section 161 (1) of the Financial Services (Insurance Companies) (Solvency II Directive) Act

² Previously under section 156(2) of the Financial Services (Insurance Companies) (Solvency II Directive) Act and now provided for under section 254(2) of the Financial Services (Insurance Companies) Regulations 2020.

³ These were previously governed by section 152 of the Financial Services (insurance Companies) Solvency II Act and are now set out in section 250(2) of the Financial Services (Insurance Companies) Regulations 2020

- 3.1 Claims by employees arising from employment contracts and employment relationships.
- 3.2 Claims by public bodies on taxes.
- 3.3 Claims by social security systems, and
- 3.4 Claims on assets subject to rights in rem.

Given the priority afforded under Gibraltar's insurance legislation to insurance claims there is in my view no realistic prospect that creditors other than insurance creditors and the other creditors mentioned in section 250(2)(b) as referred to above will have any economic interest in the liquidation of the Company.

Publication of Decision on Winding up Proceedings

4. Notice of the decision to open winding up proceedings and my appointment as liquidator was published by the GFSC in the Gibraltar Gazette and the Official Journal of the European Union as required by section 157(1) of the Financial Services (Insurance Companies) (Solvency II Directive) Act.

Information to Known Creditors

5. Section 158 of the Financial Services (Insurance Companies) (Solvency II Directive) Act required each known creditor whose habitual residence, domicile or head office is situated outside Gibraltar and in an EU Member State to be informed by written notice of the opening of winding up proceedings. The Order of 26 October 2016 allowed me to affect this notice as follows:
 - a. By email where the Company has the email address of the creditor concerned.
 - b. By sending to the Creditor's address where the Company has a record of the creditor's address.
 - c. By email to the insurance broker in respect of policyholder creditors where the Company does not have the email or postal address of the policyholder concerned.

The notice also informed creditors that future notices under the Insolvency Act (except for any notice of disclaimer) and any reports by the Liquidator would be published on the Company's website.

The Company's distribution network via brokers and intermediaries along with the nature of certain warranty policies issued by the Company meant that a policyholder database containing contact details for the more than 760,000 live policies was not available to me. The IT staff of the Company retained along with my staff worked to create an updated policyholder database to allow compliance with the requirements of the Financial Services (Insurance Companies) (Solvency II Directive) Act and the order of appointment.

First Meeting of Creditors

6. Given the nature and circumstances of the liquidation and the assets and liabilities of the Company, I considered it was not practical or necessary for a first meeting of creditors to be held. The Court also dispensed with the requirement to send out claim forms to creditors at this juncture. There is therefore currently no time limit for the filing of claims in the liquidation by creditors. Notice of the decision not to hold a meeting under section 174 of the Insolvency Act 2011 is published on the Company website and was advertised in the Gibraltar Gazette in accordance with the Order.

Disclaimer of Policies

7. Section 209 of the Insolvency Act 2011 allows a liquidator to disclaim onerous property. Insurance policies issued by the Company allowed liabilities to continue to accrue on the insolvent estate. The disclaimer of policies terminated the policies and prevented insurance claims arising under the policies following the date of the disclaimer. These are as shown in Schedule 1 to this report.

The disclaimers do not affect claims which have arisen under a contract of insurance underwritten by the Company prior to the date of disclaimer. The disclaimer may also give rise to a claim for damages which may be calculated as a return of premium claim. As of 30 June 2022, return of premium claims amounting to £18.3 million have been admitted in the liquidation estate.

Policies not Disclaimed

8. Certain classes of warranty policies have not been disclaimed. Policies providing warranties in relation to building installation works and referred to as the Insurance Backed Guarantee scheme have not yet been disclaimed.
In relation to the After the Event (“ATE”) legal expense policies arrangements have been put in place to run off this book of business as I am advised that this course of action will reduce insurance claims accruing on the estate as opposed to claims resulting from a disclaimer.

Ozon Solicitors Limited

9. Prior to my appointment Ozon’s acted in respect of litigated motor claims arising under the indemnities provided by UK motor insurance policies issued by the Company. As of 25 July 2016, there were approximately 1,300 outstanding claims which had been notified under those policies. Having consulted with the reinsurers I took the view as liquidator of the Company that Ozon’s retainers should be terminated, insofar as they had not already been, and I therefore terminated the retainers in respect of the motor insurance claims on behalf of the Company and its policyholders on 19 October 2016 as I was entitled to do. Ozon’s refused to relinquish the Company’s claims files and consequently, I made an application to court in England for an Order compelling them to do so. This Order was granted on 3 February 2017 with Ozon’s ordered to pay my costs. In my second report to creditors, I stated that Ozon Solicitors had presented a claim for outstanding fees in the sum of circa £9 million. This claim by Ozon was settled on confidential terms which reflect what I consider was properly due. The attached Receipts and Payments account to 30 June 2022 includes a payment to Ozon of £791,000 in respect of fees and disbursements. The amount of £677,218 including interest accrued since 28 March 2018 previously held by Ozon in their client account and paid into Court following applications which were heard on 3 February 2017 was paid to the liquidation estate on 10 July 2018. This amount is included within the £7.2 million recorded as monies recoverable by legal actions.

Administration and Adjudication of claims

10. To prevent the escalation of claims I have devoted resources of the estate to administering and adjudicating claims arising from the indemnities provided under insurance policies issued by the Company which may properly be admitted as insurance claims in the estate. To assist me in this process I have appointed:
Quest Consulting (London) Ltd as claims managers along with Gallagher Basset International Ltd to manage United Kingdom (“UK”) motor claims,
Keoghs to manage UK litigated motor claims and DAC Beachcroft to manage UK large loss motor claims.
I will set out the arrangements I have put in place for the management of claims in Ireland, Italy, France, and Greece later in my report. Depending on the rules of the compensation schemes operating in the different countries in which the Company conducted insurance business, insurance creditors may be eligible for compensation.
I and my agents in prior years met regularly with the compensation schemes in UK, France, Italy, and Greece and established the processes whereby, after admission as an insurance claim in the

liquidation, claims are submitted for payment from the relevant compensation scheme. The compensation schemes take an assignment of the insurance claims or obtain subrogated rights and will, therefore stand as the largest insurance creditors in the liquidation.

As most of the insurance business was undertaken in the UK the Financial Services Compensation Scheme ("FSCS") will be the largest single insurance creditor. The FSCS has been proactive in assisting with the administration of insurance claims and their submission for compensation payment. I, along with the FSCS, entered into several tripartite agreements with certain large brokers to enable block transfers of policies to new insurers at the date of the policy disclaimers. The disruption caused by the Covid-19 pandemic had some impact on the collection of claims information. To counter these restrictions, I implemented and enhanced remote access processes to facilitate information collection and review and audit of claims files.

United Kingdom insurance claims

11. As at 31 December 2022 admitted insurance claims for all lines of UK business gross of reinsurance amounted to £138.0 million. Reserves attributed to notified but not yet admitted claims gross of reinsurance amount to £59.4 million. In respect of claims arising from UK motor insurance policies as at 31 December 2022 admitted claims amounted to £120.8 million with notified and reserved claims of £22.6 million to arrive at a total incurred claims figure of £143.4 million. Total incurred represents a very slight improvement of £0.4 million from the £143.8 million reported at 30 June 2022. This shows a continuing trend of effective claims management.

In respect of Solicitors PI there has been no activity within the period, however, there are a number of remaining dormant claims that may develop in the next period. It is not anticipated that any new claims will now arise as primary limitation has expired.

In respect of the ATE account there are 3 live policies remaining and as such there should be limited further exposure although remaining cases are likely to be complex and if claims arise, they could be significant.

Icebreaker

12. Following my determination that these claims are admissible as insurance claims in the Estate, thirty-four claims totalling £5.3 million have now been adjudicated upon. The reserve for such claims is reported in the total United Kingdom claims figures referred to above. It is anticipated that the remaining claims totalling circa £26 million will eventually be accepted into the liquidation estate.

Republic of Ireland insurance claims

13. As at 31 December 2022 admitted claims and reserves attributed to notified Republic of Ireland ("ROI") motor insurance claims gross of reinsurance amounted to €10.8 million. I appointed Wrightway Underwriting Ltd to manage claims arising in the ROI. The Company is registered in Ireland with the Central Bank under the Temporary Run Off Regime. I have to date made eight successful applications to the Irish High Court for payments from the Insurance Compensation Fund of Ireland. Claims are now settling within the case reserves and the overall claims development is positive.

French insurance claims

14. As at 31 December 2022 admitted claims and reserved French motor insurance claims gross of reinsurance amounted to €49.4 million and there was therefore no change on claims reported as at 30 June 2022. Following the appointment of WTC in January 2019, who are managed and monitored by Quest, the inherited backlog of work has been cleared however there continues to be some delays due to postponements by the Courts and third parties and the scarcity of experts which affects many litigated and injury cases. An exercise is underway to streamline and improve the efficiency of claims reporting, which will be combined with a review of all open claims. This is expected to be concluded by Q2 2023.

Greek insurance claims

15. As at 30 June 2022 admitted and reserved Greek motor insurance claims gross of reinsurance amounted to €29.9m. Assisted by Quest and Grant Thornton, Greece, a claims management office was established in Athens to administer and adjudicate on claims arising from motor insurance policies issued by the Company in Greece. I cooperated closely with both the compensation fund, the Greek Auxiliary fund and the regulator, the Bank of Greece, in establishing this office. Subsequently, the Auxiliary fund agreed to both take on the current claims handling function at no cost to the liquidation and accelerate payment of compensation in respect of claims. I am currently operating with two full time claims managers and anticipate that this team will be sufficient to see the account through to its conclusion. During the latter stages of 2022, a review was undertaken on the motor book to identify claims where dormancy protocols could be applied in line with application of Greek limitation rules. This has produced a circa €1million reduction to the value of insurance claims. A detailed review of all open claims will be conducted during 2023.

Italian insurance claims

16. Under the Italian insurance code, claims arising in Italy under policies issued by a failed insurer are administered by Italian insurance companies appointed by the Italian compensation scheme the FGAV managed by CONSAP the public insurance body. I have an agreed protocol that enables me to audit and review paid claims submissions. As at 31 December 2022 under this protocol I have admitted claims with a paid value of €2.78m into the Liquidation. Claims data is still being provided to me and I am aware that the development trend appears favourable, however my information in respect of reserves to be applied to notified insurance claims remains incomplete. I have therefore instructed a third party Italian motor claims specialist to work with my team and undertake a reserve audit of each insurer as at 31 December 2022. This exercise is ongoing and will be completed when the claims reserves have been verified for confirmed open claims from each insurer. However as a precaution until I am satisfied that the reserve audit is complete, I will continue to maintain incurred reserves attributed to notified Italian motor insurance claims gross of reinsurance amounting to €24 million.

Reinsurance

17. The Company operated an extensive program of reinsurance for the motor line of business. This included quota share reinsurance and excess of loss contracts. The program is largely placed with highly rated London Market and European reinsurers with whom I maintain excellent communication and retain their support. Applications for recoveries under contracts of reinsurance have been submitted and as at 31 December 2022 reinsurance payments of £65.0 million had been received, with future anticipated further receipts of £37.8 m during the course of the liquidation.

Legal Advisors

18. The situation of the Company as an insurer in liquidation has given rise to numerous practical, technical, and legal issues on which I have required authoritative specialist advice and appropriate legal representatives to assist me.

18.1 I have retained Messrs Triay Lawyers as solicitors to act for me in Gibraltar and generally.

18.2 I have retained Messrs Horwich Farrelly and Messrs Clyde & Co as solicitors to advise me on issues arising under English law and on technical legal insurance matters generally.

18.3 I have been advised and represented by Mr Nigel Jones QC and Ms Sarah McCann of Gatehouse Chambers, London in respect of litigation in England (and an ongoing claim in Gibraltar) and technical legal insurance matters generally.

18.4 I have retained Messrs Kennedys AARPI as solicitors to act for me in France.

18.5 I have retained Messrs Orrick, Herrington & Sutcliffe as solicitors to act for me in Italy.

18.6 I have retained Messrs Bernitsas as solicitors to act for me in Greece.

18.7 I have retained Messrs Maples Group as solicitors to act for me in Ireland

Claims for Recoveries

19. My investigations indicated certain claims available to the Company and included a substantial claim in the Supreme Court of Gibraltar for misfeasance against certain former directors of the Company and other parties. The trial of this Claim commenced in the last week of January 2022. Prior to the commencement of trial, I settled with a number of the Defendants and agreed settlement of claims out of Court which have resulted in receipts of £5.1 million as at 31 December 2022 with further material recoveries expected over a period of time. The case proceeded to judgment dated 17th February 2023 against Mr Andrew Flowers. Mr Flowers was the Managing Director of the Company from 1 July 2004 to 24 April 2014. The judgment gave rise to an Order dated 17 February 2023 and Mr Flowers has been found in the judgment of Mr Justice Restano, a Supreme Court judge, to have:

19.1 Breached his fiduciary duty to act honestly and in good faith in the best interests of the Company and has breached his non-fiduciary duty to exercise reasonable care and skill in relation to the Marketing Services Agreement entered into between the Company and EIG Services Ltd (“EIG”) on 25 June 2004.

19.2 Breached his fiduciary and common law duties when he allowed a payment of a £300,000 arrangement fee to EIG in relation to a transaction concerning a reinsurance to close agreement with a company called Echelon.

19.3 Breached his fiduciary duty and the common law duty when overpayments were made in relation to the payments for a computer software system known as PIE from around 2009 onwards.

19.4 Breached his common law duty to exercise reasonable care and skill when the Company wrote the business known as the “Icebreaker” business.

19.5 Breached his duty to have regard to the interests of creditors and to keep the Company’s solvency under review from 30 June 2010 as the Judge found that the Company was insolvent from that date onwards.

Mr Flowers has appealed the whole of the decision of the learned Judge. It is expected the Appeal may be heard during October 2023. A copy of the Judgment will be uploaded to the liquidation website.

As at 31 December 2022, £2.1 million had also been received as a result of other recovery actions with total receipts of £7.2 million arising from all recovery actions at that date.

Projected Liquidation Outcome

20. While emphasising the continuing uncertainty at this time as to the total amount insurance creditors, and consequently the related reinsurance recoveries might ultimately be, current best estimates indicate that total incurred insurance claims (gross of reinsurance) might amount to £317 million (excluding IBNR provisions). If such claims figures were to materialise with corresponding reinsurance recoveries, an estimated dividend of circa 30% could be available to insurance creditors.

Receipts and Payments Account

21. I have attached to this report a copy of my receipts and payments account from 26 October 2016 the date of my appointment as Liquidator, to 31 December 2022. Items included in the receipts and payments account are for the most part self-explanatory, but I offer further information and explanation as set out below:

- (i) Outstanding premium recovered from insurance brokers amounted to £9,284,506.
- (ii) Disposal of the investment properties and the Queensway Quay offices has realised a total amount of £4,077,918.
- (iii) Provisional liquidator's fees, legal and actuarial expenses outstanding at 26 October 2016 were paid during the liquidation period from the funds taken over from the provisional liquidation.

Creditors should contact me if they have any queries on this report or require any further information.



Frederick White
Liquidator

ENTERPRISE INSURANCE COMPANY PLC (IN LIQUIDATION)

LIQUIDATOR'S REPORT AS AT DECEMBER 2022

SCHEDULE 1

In accordance with the powers provided by Section 209 of the Insolvency Act, 2011 the Liquidator has disclaimed:

September 21 and June 27th, 2017

All remaining policies for solicitor's professional indemnity insurance with the Company as insurer with effect from 0:00 on 21 September 2017 and 0:00 27 June 2017.

January 3, 2017

All furniture care insurance policies for 2- or 3-year structural defect and accidental damage cover placed by the broker Kainos Associates LLP with the Company as insurer with effect from 0:00 on 3 January 2017. Kainos Associates LLP had arranged alternative cover for its clients.

December 14, 2016

All contracts placed by the broker NCI Vehicle Rescue plc with the Company as insurer with effect from 0:00 on 14 December 2016. NCI Vehicle Rescue plc had arranged alternative cover for its clients.

December 14, 2016

All contracts placed by the broker Motorway Direct plc with the Company as insurer with effect from 0:00 14 December 2016. Motorway Direct plc had arranged alternative cover for its clients.

October 27, 2016

All and any teacher absence contracts issued in the UK with the Company as insurer with effect from 0:00 on 27th October 2016.

October 27, 2016

All and any motor insurance contracts issued in the UK, Republic of Ireland, France, Italy and Greece under which the Company was an insurer with effect from 0:00 on 27 October 2016.

ENTERPRISE INSURANCE COMPANY PLC (IN LIQUIDATION)
(in Liquidation by the Court)

SCHEDULE 2

Liquidator's Receipts and Payments Account for the Period
26 October 2016 to 31 December 2022

	£	£
Receipts		
Bank balances taken over from provisional liquidation		16,327,425
Reinsurance recoveries		67,417,569
Premium debtor from brokers		9,284,506
Third party recoveries - claims		915,303
Proceeds - disposal investment properties		4,077,918
Monies recoverable by legal actions		7,217,947
Monies held on account - returned		1,860,431
Bank interest receivable		2,241,883
ATE premium receivable		263,766
Sundry income		187,930
Rent receivable		12,999
Total Income		<u>109,807,677</u>
Payments		
Claims management services : CCSL	802,955	
Claims management services : Quest	3,861,360	
Claims handling costs : Gallagher Bassett	1,962,115	
Claims handling costs : Gallagher Bassett (TUPE)	574,370	
Claims handling costs : Greece	1,965,257	
Claims handling costs : France (WTC)	719,283	
Claims settlement costs	791,000	
Claims - defence costs UK	156,732	
Claims - defence costs Ireland	1,362,401	
Claims - defence costs France	686,826	
Claims - defence costs Greece	744,808	
Claims - defence costs Italy	138,442	
Claims - defence costs- recoverable	15,966	
Claims handling costs - other	<u>555,203</u>	
Claims handling costs		14,336,718
Sundry underwriting costs		12,097
Staff Salaries		1,135,601
IT services costs		442,911
Office costs - rates and service charge		105,138
Office costs - water & electricity		18,249
Office costs -pc/printer consumables		4,212
Office costs -telephone		19,839
Office costs - general		44,370
Investment property costs -rates, service charge		12,033
Investment property costs - improvements		7,809
Bank Charges		56,926
Provisional liquidator's fees		220,327
Provisional liquidators costs - legal fees to include Counsel		112,851
Provisional liquidators costs - actuarial fees		60,955
Provisional liquidators general costs		807
Liquidators fees		3,975,374
Liquidators costs - legal fees to include Counsel		7,203,837
Liquidators costs - professional fees to include trial costs		3,277,484
Liquidators costs - general costs		334,195
Foreign exchange movement		692,901
Total expenses		<u>32,074,634</u>
BALANCE IN HAND		<u>77,733,043</u>
Represented by:		
NatWest		74,260,469
Coutts & Co		3,438,344
National Bank of Greece		4,943
Cash held in claims floats		<u>29,287</u>
		<u>77,733,043</u>