

# CONSUMER WORDINGS GUIDANCE

V6.0

29 April 2020

CLYDE&CO



<b>CONTENTS</b>	<b>Page</b>
<b>PURPOSE &amp; SCOPE</b>	<b>1</b>
<b>INTRODUCTION</b>	<b>2</b>
• The insurance contract	2
• The Basics...	2
• Policy Layout / Format	4
• Who should 'consumer' wordings be used for?	5
<b>GUIDANCE</b>	<b>7</b>
• <b>Preamble / Introduction</b>	<b>8</b>
• <b>Important Information</b>	<b>10</b>
○ Important Information	10
○ Information You Have Given Us (i.e. Pre-contractual Disclosure)	12
○ Important Information (i.e. Notices)	14
▪ Cancellation	14
▪ Claims Handling	16
▪ Complaints	22
▪ Compensation Clause	25
▪ Data Protection	26
▪ Rights of Third Parties	28
▪ Law & Jurisdiction	29
▪ Sanctions	30
• <b>Definitions</b>	<b>31</b>
• <b>Insuring Clause</b>	<b>33</b>
• <b>Conditions</b>	<b>34</b>
○ General terms / conditions	34
○ Conditions precedent and warranties	36
• <b>Exclusions</b>	<b>38</b>

• Endorsements	40
• Schedule	41
• Policy Cover / “Jacket”	42
<b>OTHER DOCUMENTATION</b>	<b>43</b>
• Insurance Product Information Documents (IPIDs) and Policy Summaries	43
• Proposal Forms	45
• Renewal Documentation	46
<b>OTHER THINGS TO CONSIDER....</b>	<b>47</b>
• The importance of a feedback loop	47
• Other practical considerations	48
○ Equal Opportunities	48
○ Other ‘Incidental’ Legislation	49
○ Internal Review	50
○ Plain English	51
<b>CONTACTS</b>	<b>52</b>
<b>APPENDICES</b>	<b>53</b>
1. Table of Statutes / Regulations	53
2. Lloyd’s Minimum Standards (MS9 - Customer)	56
3. FCA Rules / High Level Principles	60
4. Unfair Terms in Consumer Contract Regulations 1999 / UTCCR	63
5. FCA Guidance and Insurer Undertakings / FOS Reports	65
6. Consumer Insurance (Disclosure and Representations) Act 2012 /CIDRA	68
7. Insurance Act 2015 (as amended by the Enterprise Act 2016)	70
8. Sanctions - Lloyd’s Sanctions Guidance	73
9. Use of Plain English - Guidance Note	74
10. Consumer Rights Act 2015 (CRA 2015) / FCA Finalised Guidance FG18/7	76
11. EU Online Dispute Resolution	86
12. Third Party (Rights Against Insurers) Act 2010	87

13.	Renewals Transparency - FCA Policy Statement PS16/21	90
14.	Insurance Distribution Directive (IDD)	93
15.	General Data Protection Regulation (GDPR)	98

**DOCUMENT REVISION / CHANGE HISTORY** **104**

# PURPOSE & SCOPE

## Purpose

- This LMA/Clyde & Co Joint Guidance has been drafted as general guidance, intended to assist managing agents with the drafting of new ‘consumer’ products and/or the adaptation of existing ‘commercial’ wordings to produce ‘consumer’ versions that reflect current UK regulatory requirements and best practice.
- Where we refer to “managing agents”, this includes the syndicate(s) it manages, where the context requires.
- Throughout this Guidance we give some examples of clauses but not in the context of specific wordings for a particular product. Managing agents should obtain their own professional advice on specific products and wordings, where appropriate.
- Further advice should be taken before relying on the contents of this Guidance. The LMA and Clyde & Co LLP accept no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this Guidance. Clyde & Co LLP is a limited liability partnership registered in England and Wales, which is authorised and regulated by the Solicitors Regulation Authority.

## Scope

- Consumer Legislation is a constantly changing landscape. This Guidance is not, and cannot be, an exhaustive list of considerations. There is no “magic list” of issues to be addressed, but we have tried to provide practical guidance to assist managing agents in meeting current UK regulatory requirements and expectations in the creation of new/revision of existing consumer policy wordings.
- Each policy wording should be considered as a whole, to meet the underlying principles for consumer policy wordings - that they should be **clear, fair and not misleading**.
- This Guidance broadly follows the approach the LMA has taken in reviewing LMA model wordings - i.e. the same format for review - but it is not possible to develop a “one size fits all” solution across all classes / types of consumer groups.
- The LMA publishes ‘LMA’ referenced clauses/wordings as ‘models’ which are purely illustrative and established and distributed for the guidance of its Members, who are free to agree to different conditions / amend as they see fit. It is for managing agents to decide whether or not any contractual language is acceptable on any given risk. Although managing agents may place reasonable reliance on LMA ‘model’ wordings (MS9 - CS 5.3), the use of such models does not absolve managing agents of their responsibilities to review the policy wording and adapt it to meet the needs and reasonable expectations of the intended customer group (MS9 - CS 5.2), this is especially the case for “vulnerable consumers”.
- Managing agents should also remember that they remain responsible for the appropriateness of policy documentation, even when such documentation is designed (and distributed) by coverholders or brokers.
- This Guidance refers to ‘consumers’ throughout. For further information, see the “Who should consumer wordings be used for?” section below. Where the Lloyd’s Customer is considered to be a ‘consumer’ (having regard to the regulatory definition of consumer, or the equivalent term, in the territory in which the product will be sold), they will generally represent a high Customer Risk, and products sold to consumers will therefore generally be considered a High Product Risk (MS9 CS 5.1 - Assessment of Customer Risk).

# INTRODUCTION

## The insurance contract

- Insurance policies are legally enforceable contracts and, historically, Lloyd’s focus has been on commercial insurance where such contracts and their associated terms and precedents are vital.
- However, consumers are unlikely to receive professional advice or to employ a lawyer to review a contract and explain its meaning. Furthermore, consumers generally do not follow grievances through the courts, preferring to seek “free” mediation via the Financial Ombudsman Service (FOS).
- The FOS is not bound to follow strict legal principles and reaches its decisions based on what it believes is fair and reasonable; an approach which complements the consumer protection objective of the Financial Conduct Authority (FCA).
- NB. With effect from 01 April 2019, the remit of the FOS was extended. The definition of ‘eligible’ complainant now includes SMEs with an annual turnover of less than £6.5m and one of either a balance sheet of less than £5m or fewer than 50 employees. The maximum award that the FOS can award increased from £150,000 to £350,000.
- Therefore, in the creation of consumer (and small commercial) wordings, managing agents should limit their reliance on legal terminology and concepts to those necessary to meet statutory requirements.

## The Basics....

There are several things that should be borne in mind throughout any policy review:

- Throughout this Guidance we refer to Acts, FCA principles and rules Lloyd’s Minimum Standards (MS9 - Customer), and other relevant legislation. Summaries of these rules, legislation and standards are provided in the Appendices. [NOTE: MS11 was replaced by the new MS9 Standard with effect from 01 January 2019 - please see <https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards>.]
- The underpinning FCA ‘rules’ and FOS recommendations constitute ‘principle based rules and regulations’ and are not necessarily prescriptive. As such, the FCA’s and FOS’ approach can evolve over time. For example, the FCA Smarter Consumer Communications Initiative (<https://www.fca.org.uk/publications/discussion-papers/smarter-consumer-communications-further-step-journey>).
- Below are examples of some of the rules and regulations and Lloyd’s standards which go to the heart of how managing agents should approach consumer policy wordings.

<b>Unfair Terms in Consumer Contracts Regulations 1999 - regulation 7</b>	Regulation 7 states that a firm 'shall ensure that any written term of a contract is expressed in plain, intelligible language' and 'if there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail'.
<b>Consumer Rights Act 2015 - 64(3) and 69(1)</b>	A term is transparent for the purposes of this Part if it is expressed in plain and intelligible language and (in the case of a written term) is legible.  If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail.

<b>FCA PRIN 2.1.1 R 7 - communications with clients</b>	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
<b>FCA ICOBS 2.2.2 R</b>	When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.
<b>FCA TCF Outcome 3</b>	Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
<b>Lloyd's MS9 - CS 5.2</b>	A managing agent must give careful consideration to - <ul style="list-style-type: none"> <li>• Preparing appropriate Product Documentation that is clear, fair and not misleading</li> </ul>

- The above rules all point to the same three-pronged requirement for policy wordings: that they should be **clear, fair and not misleading**. The following sections of this Guidance are designed to help managing agents meet these and other legal and regulatory requirements.
- There are certain things which can adversely affect the operation of a consumer's policy. Perhaps most notably:
  - inaccurate/insufficient pre-contractual disclosure by the policyholder;
  - breach of conditions, both general and claims related; and
  - lack of understanding of the limits of cover/extent of exclusions.
- The Consumer Rights Act 2015 provides that "A term is unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer" (CRA 62(4)). As such, managing agents should ask themselves the following questions (MS9-CS 5.1/CS 5.2/CS 1.4):
  - are consumers likely to be aware of the important policy terms?
  - if yes; can they be expected to understand them?
  - having read the policy documentation, would you personally be able to explain the key aspects to the consumer in a clear and understandable way?
- Before reading any policy documentation, consumers can be at a disadvantage due to the imbalance of understanding between the parties. Appropriate policy documentation should assist in redressing that balance.
- Therefore, the terms in consumer wordings should be written with the intention of clarifying coverage and conditions in order to assist consumer understanding. Managing agent protection is achieved by promoting consistent understanding between the parties (MS9 CS 5.1/CS 5.2/ UTCCR 5(1) / CRA 62 / ICOBS 2.2.2R). This approach should, in turn, lead to reductions in:
  - invalid claims;
  - other rejected claims;
  - associated complaints;
  - FOS decisions which cite or imply deficiencies in managing agents' consumer wordings.
- Managing agents should pay particular attention to the FCA powers and unfair contract terms, which provide examples of good and bad practice (refer Appendices 3, 4 and 10). The FCA also publishes other guidance materials, Policy Statements and speeches, which can assist managing agents in the development of their wordings.
- The FCA additionally publishes 'Notices of Undertakings' by insurers and other financial service firms. These are where firms undertake to amend contract terms which the FCA has considered likely to be unfair. Managing agents should consider if, and how, any such undertakings could apply to their own policy wordings, and amend them as necessary (refer Appendix 5).

- As a general rule of thumb, if a term looks unfair on first reading, it would probably be deemed unfair to a ‘consumer’.
- Lloyd’s Minimum Standards (MS9 - Customer) touch on management of claims, delegated authority, conduct risk and complaints. Therefore, policy wordings is just one facet of a conduct risk framework and it should not be considered in isolation. Examples of other factors managing agents should consider are provided at the end of this Guidance (see section on “Other Practical Considerations”).

## Policy Layout / Format

- Perhaps as important as the words themselves (in plain and simple language), is the overall ‘look and feel’ of the documentation. It should be designed to assist the understanding of the consumer - easy to read and easy to follow.
- The majority of consumer insurance policies advise consumers to read all documentation carefully. However, engaging consumers can be challenging and therefore, in terms of style, consideration should be given as to how the presentation of text could assist. For example:
  - regardless of the words used, short lists in text boxes may be easier to read and understand than long, unbroken sections of text, e.g. “What is covered...” and “What is not covered...” presented in a side-by-side table format;
  - clear and consistent numbering is easier for a consumer to follow than bullet points;
  - different font sizes and colour can also be used to focus consumers’ attention on important information;
  - the use of full justification can make the text more difficult to read and alternative layouts should be considered;
  - clear ‘signposting’ should be used to highlight important information or key conditions, so they do not end up ‘buried’ within the document.
- In terms of presentation, managing agents should consider the “running order” of a consumer policy wording.
  - Many consumer policy wordings contain an introductory welcome statement which sets out, at a high level, the main features of the product the consumer has purchased.
  - As many consumers will consult their policy documentation only in the event of claim, providing a short “How to make a claim” section at the front, with a prominent contact number, can be helpful.
  - Where defined terms are used throughout the wording, grouping the related definitions together in one “general definitions” section may be helpful. For those defined terms which are only used within a certain section of the wording, consideration should be given as to whether the associated definitions should be set out both at the start of the section in which the defined terms are used and in a “general definitions” section. All definitions should be clearly signposted.
- There is no definitive style or running order that managing agents should follow, and it is up to managing agents to decide how they want to present their documentation. However, documentation that has the look and feel of a “user guide” or “owner manual” is likely to be more beneficial to consumers than a document with the look and feel of a legal contract.

## Who should ‘consumer’ wordings be used for?

- The definition of consumer will vary depending on the territory/domicile of the policyholder. In the UK, consumers, i.e. “private individuals acting for purposes outside their trade, business, or profession”, are traditionally thought of as ‘personal lines’ business.
- The Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) defines a ‘Consumer Insurance Contract’ as “a contract of insurance entered into by an individual wholly *or mainly* for purposes unrelated to the individual’s trade, business or profession.”
- In addition, micro-enterprises have the same FOS referral rights as consumers meaning that their contractual disputes are considered by the FOS in the same way. Therefore, it may be beneficial to provide micro-enterprises with consumer type wordings. However, it should be remembered that micro-enterprises remain ‘commercial’ policyholders and their insurance contracts are subject to the Insurance Act 2015 in its entirety.
- FCA currently defines ‘micro-enterprise’ as:

an enterprise which:

(a) employs fewer than 10 *persons*; and

(b) has a turnover or annual balance sheet that does not exceed €2 million.

In this definition, “enterprise” means any *person* engaged in an economic activity, irrespective of legal form and includes, in particular, self-employed *persons* and family businesses engaged in craft or other activities, and *partnerships* or associations regularly engaged in an economic activity.

- Furthermore, with effect from 01 April 2019, the FCA extended the jurisdiction of the FOS to include ‘small businesses’. This means that such small businesses now have the same referral rights to the FOS as consumers and micro-enterprises. Again, while ‘small businesses’ are ‘commercial’ policyholders, it may be prudent to provide such a business with a consumer type wording.

FCA currently defines ‘small business’ as:

an enterprise which:

(a) is not a *micro-enterprise*; and

(b) has an annual turnover of less than £6.5 million (or its equivalent in any other currency); and

(i) employs fewer than 50 persons; or

(ii) has a balance sheet total of less than £5 million (or its equivalent in any other currency).

See [FCA PS 18/21](#) for further details.

- Although both the FCA’s and FOS’ remits include overseas policies underwritten in the UK, their focus is, understandably, on UK consumers.
- Similarly, although some of the Lloyd’s Minimum Standards (MS9 - Customer) apply to a wider jurisdiction than the UK, the majority of Standards apply to “High Risk Products” provided to UK consumers.
- Therefore, this Guidance is aimed at consumers in the UK. Policies written for other territories will be subject to local regulations which are beyond the scope of this Guidance and under which different definitions of “consumer” may apply. However, in terms of ensuring that policy wordings are clear, fair and not misleading, many of the ideas discussed in this Guidance can be read across consumer policies generally.

- For larger commercial entities, managing agents should still have regard to the financial sophistication and expertise of the Lloyd's Customer (MS9 - CS 5.1). Although larger organisations might prefer the legal certainty that a 'commercial' contract offers, as noted above, smaller businesses may find 'consumer' style wordings easier to understand. The use of standard commercial wordings can make differentiation difficult at the underwriting stage. However, the sophistication of the policyholder is something that should be considered at the claims stage.

# GUIDANCE

## Format of this Guidance

Whilst all policy documents differ, particularly across classes of business, they tend to follow a similar format and contain common sections; Definitions, Conditions, Exclusions, etc.

This Guidance has been drafted to follow the traditional “format” of a policy document, and the sections appear in the order that the LMA has generally followed when reviewing existing LMA model wordings, as follows:

- Preamble / Introduction
- Important Information (i.e. Policyholder ‘Notices’) - a ‘new’ section from traditional policies
- Definitions
- Insuring Clause
- Conditions
- Exclusions
- Endorsements

Managing agents may wish to adopt a different policy order / layout, as discussed in the Introduction. For example, a managing agent may wish to consider combining Conditions and Exclusions into a “General Terms” section, to make the policy easier to follow.

## Structure of this Guidance

This Guidance identifies the key features of, and salient clauses within, a policy document / wording for a consumer policy to meet current regulatory requirements and identifies, where appropriate, the applicable underlying ‘regulation’. Example clauses are provided, where applicable (Note - unless indicated by the presence of an LMA reference, they are not LMA ‘models’, merely examples).

Rather than restating them in the Guidance itself, the Appendices contain summaries of / links to relevant Acts, Regulations, FCA rules and principles, Lloyd’s Minimum Standards (MS9 - Customer), etc. and other relevant legislation cited in the Guidance.

# Preamble / Introduction

## Regulatory Framework:

- A managing agent must give careful consideration to preparing appropriate Product Documentation (MS9 - CS 5.2).
- A managing agent must communicate information to its clients in a way that is clear, fair and not misleading (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R).
- A managing agent should have careful regard to the financial sophistication of the Lloyd's customer (MS9 - CS 5.1).
- Particular attention should be given to setting out which syndicate or syndicates have underwritten the Product (MS9 - CS 5.2).
- "Basis of Contract" Clauses are not permitted (CIDRA 2012).

## Key Policy Features:

- This will include the traditional policy "preamble", i.e. the legal Offer / Acceptance / Consideration words, setting out the "promise" in return for the premium. Hence, this part may also contain the overall "insuring clause" (individual insuring clauses being located within the relevant sections in a sectionalised policy - all of which should refer to the period of insurance).
- This part should contain a 'signpost' indicating what it is (e.g. 'The insurance contract') and set out, in simple English, the parties to the contract - e.g. use of "we/us" and "you" in preference to "Underwriters" and "Insured". It may also indicate who the underlying Insurers (Security) are.

*Example Introduction Clause (taken from LMA3127A):*

### **The insurance contract**

In return for payment of the premium shown in the **schedule**, **we** agree to insure **you**, subject to the terms and conditions contained in or endorsed on this insurance, against loss or damage **you** sustain or legal liability **you** incur for accidents happening during the **period of insurance**.

- Based on research carried out across UK insurance carriers, it is quite common to also include a 'Welcome' section, introducing the insurance policy / contract, and may be titled "Understanding your insurance policy", or similar.
- This part may also include reference to the words 'in bold' having the meanings shown in the 'Definitions' section of the policy, where there is such a 'Definitions' section. Individual managing agents may prefer to leave this description to the Definitions section itself, depending on how far through the policy document the Definitions section appears. Based on research carried out across UK insurance carriers, it is quite common to title the Definitions section as "Words with Special Meanings", which is more descriptive.

## Example Clause:

Wherever words appear in bold in this policy they will have the meanings shown in the Definitions on pages ...

- Consider also whether this is the place to indicate that the policy may consist of more than one document (e.g. including the schedule and endorsements) and highlight the importance of the consumer taking the time to read all of the document(s) carefully.

**Example Clause:**

This document, the schedule and any **endorsement(s)** attached form **your** policy. This document sets out the conditions of the insurance between **you** and **us**. Please read the whole document carefully and keep it in a safe place.

- Consider also whether this is the place to include the law applicable to the policy (see later notes under Guidance titled “Important Information” - i.e. Notices).
- Similarly, this may be the place to include important information, up front, about “How to get help...”. e.g. how to make a claim, or indeed, a complaint (see later notes under Guidance titled “Other Important Information” - i.e. Notices).
- Likewise, this may also be the place to show that the policy is issued by an entity that is authorised by the Prudential Regulation Authority (PRA) and regulated by the Financial Conduct Authority (FCA) and PRA (see later notes under Guidance titled “Schedule”).

# Important Information

## Regulatory Framework:

- A managing agent must give careful consideration to preparing appropriate Product Documentation (MS9 - CS 5.2).
- A managing agent must communicate information to its clients in a way that is clear, fair and not misleading (MS9 - CS 5.2/ FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R).
- Among other things, particular care (MS9 - CS 5.2) should be taken with regard to:
  - Explaining the main benefits of the Product and what is covered;
  - Explaining what is not covered or is excluded;
  - How claims may be made;
  - How complaints may be made;
  - How the product may be renewed, switched or cancelled;
  - Which law the Product is subject to.

## Key Policy Features:

- Engaging consumers with policy documentation can be challenging. Therefore, managing agents need to ensure that any important information is provided **early in the document** and **properly signposted** to bring it to the attention of the consumer.
- Important information is that which the consumer needs to be aware of to ensure continued coverage. It should set out, **clearly and simply**, what the consumer needs to do (consider the words “you must” rather than “it is important that you”), and also signpost other sections of the policy which provide more detailed information on conditions, etc. Any remedy language must also be clearly and simply expressed.
- Other sections should be headed with **simple, intuitive titles** and the document should continue the use of signposting, where necessary, to ensure that no important information is left “buried”. Any titles used must **accurately** reflect the cover/exclusion/condition etc. to which it relates. This is because, when making a judgment as to what coverage a policy provides, the FOS would likely take the view that a customer is entitled to rely - at least to some extent - on the policy headlines.
- Managing agents should note that the FOS is unlikely to accept a managing agent’s reliance on a breach of a condition (or any other term) if such a term is not sufficiently **brought to a consumer’s attention**.
- It should, however, be noted that merely emboldening a term, to bring it to the consumer’s attention, may not be enough if the term itself could still be deemed “unfair” (UTCCR 5(1) / CRA 62(4)).
- Therefore, it is useful to advise consumers of any actions they need to take at the beginning of the policy.

## Example Clause:

### You must:

- check that the sections **you** have requested are included in the schedule;
- check that the information **you** have given us is accurate - see the “information **you** have given **us**” section;
- notify **your broker** as soon as practicable of any inaccuracies in the information **you** have given **us**;
- comply with **your** duties under each section and under the insurance as a whole.

- The order in which this Guidance addresses ‘Important Information’ sections broadly follows the approach the LMA has taken in reviewing LMA ‘model’ wordings, although managing agents may wish to adopt a different order:
  - **Important Information - information you have given us** - i.e. requirements for pre-contractual disclosure and misrepresentation
  - **Other Important Information** - i.e. Policyholder ‘Notices’
    - Cancellation
    - Claims Handling
    - Complaints
    - Compensation Clause
    - Data Protection
    - Rights of Third Parties
    - Law & Jurisdiction
    - Sanctions
- Managing agents may prefer to set out some of these items of important information / important terms in their own separate (well signposted) sections or group all the ‘Notices’ together under one signposted and appropriately titled section; each ‘Notice’ in itself then being appropriately titled. Similarly, managing agents may wish to include some or all of this important information in a general “Welcome ...” section.

## Important Information - Information You Have Given Us ...

### Regulatory Framework:

- Consumers' pre-contractual disclosure and misrepresentation duties are outlined under the Consumer Insurance (Disclosure and Representations) Act 2012 / CIDRA (see Appendix 6).
- CIDRA came into effect on 6 April, 2013 - it applies to all 'consumer insurance contracts' entered into or varied after 6 April 2013.
- The FCA has incorporated CIDRA into its Rulebook in ICOBS 8.1 (see Appendix 3).
- CIDRA removes the previous duty on consumers (under the Marine Insurance Act 1906, "MIA") to disclose all material circumstances which would influence a prudent insurer, and replaces this with a duty on consumers to take "*reasonable care*" not to make a misrepresentation during pre-contractual negotiations (and any subsequent variations, i.e. endorsements).
- Therefore, in any pre-contractual documents (e.g. a proposal form), managing agents should remove all general reference to "material circumstances" (unless it is specifically related to a specific question on the proposal form) and remove reference to a consumer's "Duty of Disclosure" (using the old language of the MIA) since this no longer applies under CIDRA. The onus is now on the insurer to ask clear, relevant and specific questions and the consumer must answer these honestly and reasonably. The insurer must consider the type of consumer when asking the questions.
- Insurers can no longer rely on "Basis of Contract" clauses since these are ineffective under CIDRA. Such clauses were often found in the Proposal Form and turned representations made by the Insured into warranties, allowing the insurer to discharge the policy, without return of premium, if the warranty was breached and even if the warranty was not connected to the loss.
- Any "change in circumstances" clause or provision during the policy period needs to be specific about what type of changes should be advised to insurers - provide examples.
- An insurer's remedy for breach will depend upon whether the misrepresentation was deliberate, reckless, or careless. In the event of a claim, where there is a suspected misrepresentation, the insurer needs to begin an investigation to determine into which category the claim belongs.
- The previously published LMA / Clyde & Co Joint Guidance on CIDRA sets out the possible outcomes. This is provided within Appendix 6, and is also available on the LMA website.

### Key Policy Features:

- Suggested clause titled "Important information you have given us...".
- Consumers only need to take "reasonable care" not to misrepresent so no reference should be made to "material facts".
- No reference should be made to "Basis of Contract" clauses as these are not permitted under CIDRA.
- Within the policy, managing agents should advise consumers of the remedies which are available (to the managing agent) if the consumer makes a misrepresentation.
- Due to the nature of the remedies, consumers should be made aware of the importance of providing accurate information, and also checking that the policy schedule accurately reflects their circumstances and the level of cover requested.
- Managing agents should also ensure that consumers are aware of the need to rectify inaccurate information and/or notify the managing agent of any changes to the information previously provided in response to the managing agent's questions.

- Consumers may be encouraged to make such notifications promptly to reduce any risk of non-coverage. However, managing agents should avoid using the word “immediately” or stipulating a timescale. Notification “as soon as reasonably practicable” would usually be a proportionate requirement.
- The above are actions that the consumer should take on receipt of the policy and so it is important that they are listed towards the beginning of the document.
- In addition, any “change in circumstances” clause (relating to post inception changes) requires some examples of what type of changes need to be advised to managing agents.

**Example Clause:**

**Information you have given us**

In deciding to accept this policy and in setting the terms and premium, **we** have relied on the information **you** have given **us**. **You** must take care when answering any questions **we** ask by ensuring that all information provided is accurate and complete.

If **we** establish that **you** deliberately or recklessly provided **us** with false or misleading information **we** will treat this policy as if it never existed and decline all claims.

If **we** establish that **you** carelessly provided **us** with false or misleading information it could adversely affect **your** policy and any claim. For example, **we** may:

- treat this policy as if it had never existed and refuse to pay all claims and return the premium paid. **We** will only do this if **we** provided **you** with insurance cover which **we** would not otherwise have offered;
- amend the terms of **your** insurance. **We** may apply these amended terms as if they were already in place if a claim has been adversely impacted by **your** carelessness;
- reduce the amount **we** pay on a claim in the proportion the premium **you** have paid bears to the premium **we** would have charged **you**; or
- cancel **your** policy in accordance with the Right to cancel condition below.

**We** or **your** insurance broker will write to **you** if **we**:

- intend to treat **your** policy as if it never existed; or
- need to amend the terms of **your** policy.

If **you** become aware that information **you** have given **us** is inaccurate, **you** must inform **your** broker as soon as practicable.

### Cancellation

#### Regulatory Framework:

- For general insurance products, the FCA rules require that, with the exception of some short term policies (e.g. short term travel, or event cancellation policies), consumers receive a 14 day cooling off period. Within this timeframe, consumers can cancel their policies for any reason, and by any means (ICOB57.1.1).
- If a consumer cancels a policy within the cooling off period, managing agents are entitled to charge a pro-rata amount for any time that the consumer has been on cover (ICOB57.2.4 G). However, administration fees, or other cancellation charges, **are not allowed**.
- If a consumer cancels a policy outside the cooling off period then, in addition to the pro-rata charge for the time on cover, managing agents can also charge an administration fee to cover the cost of providing the policy. However, that administration fee must be proportionate and reasonable and must **not** represent any form of “penalty”.
- So called “short term rates” are generally not appropriate (CRA Schedule 2, Part 1, items 4 and 5).
- Managing agents may cancel a consumer’s policy, but **only** for a valid reason (see the Undertaking below). There is no requirement to provide an exhaustive list of reasons. However, a non-exhaustive list of the most common reasons can be helpful, e.g.:
  - non-payment of premium;
  - a change in risk, where cover can no longer be provided;
  - non-cooperation or failure to supply information/documentation;
  - threatening or abusive behaviour.
- The FCA published a notice of undertaking regarding the above (refer to Appendix 5 - “Esure Undertaking”). The LMA published guidance for members which can be found in LMA Bulletin LMA14-007-SM (refer to Appendix 1 for link).
- The FCA rules concerning cancellation rights for consumers can be found in Appendix 3, and cancellation provisions that might be considered “unfair” under the Consumer Rights Act 2015 are outlined in Appendix 10 (CRA Schedule 2, Part 1, items 4, 5, 7 and 15).

#### Key Policy Features:

- Signpost the “Notice”, using a title such as “How to cancel this policy” or “Your cancellation rights”.
- Include a 14 day cooling off provision.
- Explain in simple terms how any return premium and/or administration fees apply (CRA Schedule 2, Part 1, Item 6).
- Provide a list of examples of valid reasons for policy cancellation by the managing agent (outside of the cooling off period).
- Consider whether the number of days’ prior notice is ‘reasonable’ (CRA Schedule 2, Part 1, item 8).
- If the policy contains an automatic (tacit) renewal, does the policy allow the consumer sufficient time to cancel in advance of the automatic renewal? (CRA Schedule 2, Part 1, item 9.)
- Care should be taken to avoid any onerous requirements on the consumer (e.g. having to return a policy certificate, or use recorded delivery, etc.) as these could be seen as a barrier to cancellation.

- Consider also including an explanatory note about CIDRA (see example below).

#### Example Clauses:

##### **Cancelling this insurance**

You can cancel this insurance at any time by writing to **your broker**.

**We** can cancel this insurance by giving **you** thirty (30) days' notice in writing. **We** will only do this for a valid reason (examples of valid reasons are as follows):

- non payment of premium;
- a change in risk occurring which means that **we** can no longer provide **you** with insurance cover;
- non-cooperation or failure to supply any information or documentation **we** request; or
- threatening or abusive behaviour or the use of threatening or abusive language.

##### **Refund of premium**

This insurance has a cooling off period of fourteen (14) days from either:

- the date **you** receive this insurance documentation; or
- the start of the **period of insurance**

whichever is the later.

If this insurance is cancelled then, provided **you** have not made a claim, **you** will be entitled to a refund of any premium paid, subject to a deduction for any time for which **you** have been covered. This will be calculated on a proportional basis. For example, if **you** have been covered for six (6) months, the deduction for the time **you** have been covered will be half the annual premium.

If **you** cancel this insurance outside the cooling off period, there will be an additional charge, as stated in the **schedule**, to cover the administrative cost of providing the insurance.

If **we** pay any claim, in whole or in part, then no refund of premium will be allowed.

##### **Your cancellation rights**

**You** have a statutory right to cancel **your** policy within fourteen (14) days from the day of purchase or renewal of the contract or the day on which **you** receive **your** policy or the renewal documentation, whichever is the later.

If **you** wish to cancel and the insurance cover has not yet commenced, **you** will be entitled to a full refund of the premium paid. Alternatively, if **you** wish to cancel and the insurance cover has already commenced, **you** will be entitled to a refund of the premium paid, less a proportional deduction for the time **we** have provided cover.

To cancel, please contact .....

If **you** do not exercise **your** right to cancel **your** policy, it will continue in force and **you** will be required to pay the premium

For **your** cancellation rights outside of the statutory cooling off period, please refer to the General Conditions section of this policy.

##### **Important Note**

The Consumer Insurance (Disclosure and Representations) Act 2012 sets out situations where failure by a policyholder to provide complete and accurate information requested by an insurer allows the insurer to cancel the policy, sometimes back to its start date, and to keep any premiums paid.

## Claims Handling

### Regulatory Framework - Documentation:

- When preparing the Product Documentation, it must be clear, fair and not misleading, and therefore a managing agent should also take particular care to explain clearly how claims may be made (MS9 - CS 5.2).
- Managing agents must handle claims from Lloyd's Customers fairly; this must include providing reasonable guidance to the customer about how to make a claim (MS9 - CS 7.2).
- Managing agents should also take particular care to ensure that there will be no unreasonable post-sale barriers for the Lloyd's Customer to make a claim (MS9 - CS 5.2/ CS 7.2 / FCA TCF Consumer outcome 6).
- With regards to breaches of policy terms, ICOBS 8.1.2 R states that, for a consumer, rejection of a claim is unfair unless the circumstances of a breach are connected to the claim.

### Regulatory Framework - Claims Handling:

- When a claim is made and there is a suspected misrepresentation, or non disclosure problem, an investigation needs to determine its nature. The category into which this falls will, in turn, determine the remedy available to managing agents under CIDRA (see Appendix 6). CIDRA is carried through into the three part FCA classification:
  - Honest and Reasonable: The managing agent has no remedy and must pay the claim.
  - Careless: The managing agent has a compensatory remedy, which is based on what the managing agent would have done had the question been answered accurately/completely.
  - Deliberate or Reckless: The managing agent may treat the policy as if it had never existed and decline claims.
- It is for the managing agent to show that a misrepresentation is deliberate or reckless, failing which the misrepresentation is regarded as being careless. Showing a misrepresentation as deliberate or reckless is likely to prove challenging in many cases and managing agents need to adopt proportionate approach.
- Although the majority of claims may be "standard" and therefore straightforward to assess, some claims may have peculiarities where the circumstances were not contemplated when the policy was designed. Also, no matter how clear model wordings are, a managing agent cannot assume that every consumer will interpret policy terms in the same way.
- It is suggested that claims handlers should consider adopting a flexible, rather than binary, approach to claims assessment. When faced with non-standard claims, handlers should be aware of what their firm's intentions were when the product was designed and sold when deciding their approach.
- The effect of ICOBS 8.1.2 R is that a consumer claim cannot be rejected unless the circumstances of a breach of condition are connected to the claim (see also section on Conditions precedent and warranties).

## Key Policy Features:

- Claims information should feature prominently in the policy.
- Clearly identify the process that the consumer should follow in order to make a claim.
- Use simple language and titles to signpost, for example:
  - How to make a claim....
  - Things you must do....
  - How we deal with your claim....
- The following points should be addressed as a minimum:
  - Contact details in the event of claim;
  - Expectations regarding claims notification (see below);
  - Remind consumers to use due diligence and carry out all reasonable measures to mitigate the loss *[whilst the duty to mitigate is not an enforceable duty, it is a recognition that, if the claimant fails to take reasonable steps to minimise its loss and/or to avoid taking unreasonable steps that increase its loss, its damages recovery may be affected by that failure]*; their responsibility to prove their loss and retain receipts, photographs & guarantees where possible;
  - Avoid the word “reasonable” for claims costs for a consumer policy (the FSA (now the FCA) published an “undertaking” in December 2011 to indicate that such subjective words gave insurers the power to decide what was “reasonable”);
  - Provide details of the paperwork to be submitted in the event of a claim.
- Managing agents should avoid requiring “immediate” notification of claims. Any timescale stipulated should be reasonable (consider using “as soon as practicable”).
- LMA model wordings are designed to be used as a template for any managing agent and a wide consumer demographic. When using LMA models or in designing their own policy documentation, managing agents must always consider the consumer group for whom the product is intended and care should also be taken to ensure that other claims conditions are not overly onerous or burdensome, otherwise they could be considered barriers to making a claim.

## Example Clauses:

### How to make a claim

If **you** want to make a claim under this policy, contact **us** on:

*[Contact details - relevant postal / email addresses and telephone numbers]*

### Things you must do...

**You** must comply with the following conditions. If **you** fail to do so, **we** may not pay **your** claim, or any payment could be reduced.

1. **You** must notify **your broker** as soon as possible giving full details of what has happened.
2. **You** must provide **your broker** with any other information **we** may require.
3. If a claim for liability is made against **you**, **you** must forward to **your broker** as soon as possible, but no later than {response} days, any letter, claim, writ, summons or other legal document **you** receive.

4. **You** must inform the Police as soon as possible following any loss caused by malicious acts, violent disorder, riots or civil commotion, theft, attempted theft or lost property.
5. **You** must not admit liability or offer or agree to settle any claim without **our** written permission.
6. **You** must take all reasonable care to limit any loss, damage or injury.
7. **You** must provide **us** with reasonable evidence of value or age (or both) for all items with a value of more than GBP *{response}* involved in a claim.
8. **You** must retain ownership of **your** property at all times. **We** will not take ownership of, or accept liability for, any of **your** property unless **we** agree with **you** in writing in advance to do so.

#### **How we deal with your claim**

If **you** claim for loss or damage to the **contents** **we** will at **our** option repair, replace or pay for any article covered under section two.

For total loss or destruction of any article **we** will pay **you** the cost of replacing the article as new, as long as:

- the new article is as close as possible to but not an improvement on the original article when it was new; and
- **we** have authorised the cost of replacement.

The above basis of settlement will not apply to: .....

#### **Defence of claims**

**We** may, at **our** discretion:

- take full responsibility for conducting, defending or settling any claim in **your** name; and
- take any action **we** consider necessary to enforce **your** rights or **our** rights under this insurance.

#### **To help us settle your claim**

It is **your** responsibility to prove any loss and therefore **we** may ask **you** to provide receipts, valuations, photographs, and any other relevant information and documents and assistance **we** may require to help with **your** claim.

## Regulatory Framework for Fraudulent claims:

The Insurance Act 2015 (refer Appendix 7) came into force on 12 August 2016 and contains provisions relating to fraudulent claims and remedies:

- Previously, a managing agent was not liable to pay a fraudulent claim and could recover any sums already paid in respect of it. It was not clear whether a managing agent could refuse to pay genuine claims for losses suffered after the fraudulent act but before discovery/termination of the policy.
- Under Section 12 of the Insurance Act, a managing agent has the right to terminate the insurance contract from the time of the fraudulent act (not the discovery of it), and need not return premium. The managing agent will not be liable in respect of relevant events which occur after the fraudulent act (but will remain liable for legitimate claims before the fraud).
- The Insurance Act does not define fraud, so there is no distinction between someone who presents a completely fraudulent claim (e.g. claims for something that never happened) and someone who has genuinely suffered a loss but has used a fraudulent device to increase his chance of being paid.
- The advent of the Insurance Act 2015 has meant that the fraud checks within the Lloyd's Quality Assurance (QA) Tools (Open Market) have been reviewed. Information about, and access to, the QA Tools can be found via this link, <https://www.lloyds.com/tools-and-systems/quality-assurance-qa-tools>, and the revised Lloyd's Advisory (LA) check for Non-Marine business now reads as follows:

**CONDITIONS:** Check the position under the contract with regard to fraudulent claims. Where it does not already address this matter, it is recommended that the contract defines what will occur in the event of a fraudulent claim. Such provisions may form part of the policy form or wording, or may be included separately (for example by incorporating LMA5256, LMA5062, LMA5120 or AVN100, where appropriate). Where the decision is taken to include such provisions, ensure that they are compliant with local legislation (for example, if the policy is concluded on or after 12 August 2016 and subject to the laws of England and Wales, Scotland or Northern Ireland, LMA5256 may be used if the intention is to reflect the (UK) 'Insurance Act 2015' and not contract out of this - LMA5062 may only be used where the parties wish to contract out of the Act and this is permissible).

## Key Policy Features:

- Managing agents should include a statement on how they view and address fraudulent claims. Alternatively, this may appear elsewhere within the General Conditions section of the policy.
- The LMA has produced a 'model' clause in light of the Insurance Act 2015 which may be used on 'Consumer Insurance Contracts' - LMA5256 - which is available on the Lloyd's Wordings Repository [www.lloyds.com/wordings](http://www.lloyds.com/wordings). This clause explains the managing agent's rights in the event that the Insured makes a fraudulent claim under the policy. Like the Insurance Act 2015, the clause refers (in 1(c)) to the Insurer's right to treat the contract as having been terminated with effect from the time of the "*fraudulent act*" - which could mean the fraudulent claim itself, or the use of a fraudulent device after an honest claim is made (such as the falsification of evidence to support a genuine claim). The LMA anticipates that this clause would replace LMA5062 (or equivalent) for contracts governed by English Law which are concluded on or after 12 August 2016.

## Example Clauses:

### Insurance Act 2015 - Fraudulent claims clause

- 1) If the Insured makes a fraudulent claim under this insurance contract, the Insurer:
  - a) Is not liable to pay the claim; and
  - b) May recover from the Insured any sums paid by the Insurer to the Insured in respect of the claim; and
  - c) May by notice to the Insured treat the contract as having been terminated with effect from the time of the fraudulent act.
- 2) If the Insurer exercises its right under clause (1)(c) above:
  - a) The Insurer shall not be liable to the Insured in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to the Insurer's liability under the insurance contract (such as the occurrence of a loss, the making of a claim, or the notification of a potential claim); and,
  - b) The Insurer need not return any of the premiums paid.

### Fraudulent claims - group insurance

- 3) If this insurance contract provides cover for any person who is not a party to the contract ("a covered person"), and a fraudulent claim is made under the contract by or on behalf of a covered person, the Insurer may exercise the rights set out in clause (1) above as if there were an individual insurance contract between the Insurer and the covered person. However, the exercise of any of those rights shall not affect the cover provided under the contract for any other person.

Nothing in these clauses is intended to vary the position under the Insurance Act 2015.

LMA5256  
16 March 2016

- According to the context of the policy within which it is being used (i.e. consumer versus small commercial), a managing agent may wish to adapt the wording of the model clause to use "we" and "you" in place of "insurer" and "insured" respectively. The LMA would recommend the use of "we" and "you" (and "us", "our" and "your") throughout a consumer wording. For example:

### Fraudulent claims clause

- 1) If **you** make a fraudulent claim under this insurance contract, **we**:
  - a) are not liable to pay the claim; and
  - b) may recover from **you** any sums paid by **us** to **you** in respect of the claim; and
  - c) may by notice to **you** treat the contract as having been terminated with effect from the time of the fraudulent act.
- 2) If **we** exercise **our** right under clause (1)(c) above:
  - a) **we** shall not be liable to **you** in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to **our** liability under the insurance contract (such as the occurrence of a loss, the making of a claim, or the notification of a potential claim); and,
  - b) **we** need not return any of the premiums paid.

Fraudulent claims - group insurance

- 3) If this insurance contract provides cover for any person who is not a party to the contract (“a covered person”), and a fraudulent claim is made under the contract by or on behalf of a covered person, **we** may exercise the rights set out in clause (1) above as if there were an individual insurance contract between **us** and the covered person. However, the exercise of any of those rights shall not affect the cover provided under the contract for any other person.

Nothing in this clause is intended to vary the position under the Insurance Act 2015.

## Complaints

### Regulatory Framework:

- The FCA requires that Lloyd's establishes and maintains appropriate and effective procedures for handling complaints by policyholders against members of the Society (DISP 1.11.1R).
- When preparing the Product Documentation, a managing agent must take particular care to ensure that it is clear, fair and not misleading. Particular care should be taken with regard to how complaints may be made (MS9 - CS 5.2).
- Managing agents must take particular care to ensure that there will be no unreasonable post-sale barriers for the Lloyd's Customer to make a complaint (MS9 - CS 7.3 / TCF Consumer Outcome 6).
- A managing agent must comply with the Lloyd's Code for Underwriting Agents: UK Personal Lines Claims and Complaints Handling ("the Code") and any other country specific complaints handling requirements which Lloyd's may issue from time to time (MS9 - CS 7.3).
- In determining what does and does not constitute a complaint, managing agents shall have regard to the definition of complaint (or the equivalent term) in the territory in which the complainant is domiciled.
- The FCA Handbook definition of a "complaint" is "any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which (1) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience and (2) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service."
- The Code was originally stated in Market Bulletin Y4905. The Code has since been updated by Lloyd's under Market Bulletins Y4924, Y5000 and Y5200 (see Appendix 1 for links to these Bulletins).
- Managing agents should note and ensure compliance with the European Union's ("EU") Online Dispute Resolution ("ODR") Regulation (see Appendix 11), which establishes an ODR platform.
- With effect from 15 February 2016, the European Commission set up an online dispute resolution platform to allow consumers who have a complaint about a product or service **bought online** to submit the complaint via the online platform. This ODR platform allows consumers to submit complaints to a trader based in that or another EU member state. The ODR platform is intended to be additional to existing Alternative Dispute Resolution ("ADR") arrangements provided by traders in the EU. Please note that, with effect from 01 January 2021, UK businesses and consumers will no longer be able to use the ODR platform.
  - To ensure compliance with the ODR regulations, managing agents must now also provide consumers with specific information.
  - The requirements to provide the information apply to all managing agents and coverholders where insurance policies are ***sold online***. Please note that the definition of online selling is a wide one.
  - The Code includes a reminder to managing agents of the main points of the EU ODR and states that it is the responsibility of managing agents to ensure they comply with the applicable rules (see Appendix 1 of Market Bulletin Y5200).

## Key Policy Features:

- Clearly identify to the consumer “How to make a complaint”.
- Use simple language for a title to ‘signpost’.
- Include transparent instructions, which reflect the complaints handling procedure as set out in the Code:
  - Include a provision for the consumer to contact their agent / broker / coverholder (whoever sold the policy to them).
  - The consumer may complain directly to the managing agent or to the Complaints Team at Lloyd’s. Full contact details must be provided in the policy.
  - If this does not resolve the issue, the consumer may refer the complaint to the Financial Ombudsman Service (FOS). Again, full contact details must be provided in the policy.
- For policies sold online, include details of the EU ODR Platform (see Appendix 11).
- Lloyd’s UK Personal Lines Claims and Complaints Handling Code refers to two LMA model wordings for complaints (LMA9123 and LMA9124), one of which (LMA9123) is the UK Complaints Notice for consumer business. These new model clauses have been deemed by Lloyd’s as suitable for inclusion on contractual documentation. Where a coverholder is involved, the information should also be provided on the coverholder’s website (where such a website exists).

## Example Clause:

- The LMA has produced a ‘model’ clause for use on ‘Consumer Insurance Contracts’ - LMA9123 - which is available on the Lloyd’s Wordings Repository [www.lloyds.com/wordings](http://www.lloyds.com/wordings). Lloyd’s has confirmed to the LMA that the London address of the Complaints team should be specified within LMA9123.

### How to make a complaint

Our aim is to ensure that all aspects of **your** insurance are dealt with promptly, efficiently and fairly. At all times **we** are committed to providing **you** with the highest standard of service.

If **you** wish to make a complaint, **you** can do so at any time by referring the matter to either **{insert name and contact details of managing agent/coverholder as applicable}** or the Complaints team at Lloyd’s.

The address of **{insert name and contact details of managing agent/coverholder/as applicable}** is:

**{insert contact details, including email address, to contact the managing agent/coverholder as applicable}**

The address of the Complaints team at Lloyd’s is:

Complaints  
Lloyd’s  
One Lime Street  
London EC3M 7HA

Telephone: 020 7327 5693  
Fax: 020 7327 5225  
E-mail: [complaints@lloyds.com](mailto:complaints@lloyds.com)  
Website: [www.lloyds.com/complaints](http://www.lloyds.com/complaints)

Details of Lloyd’s complaints procedures are set out in a leaflet “Your Complaint - How We Can Help” available at [www.lloyds.com/complaints](http://www.lloyds.com/complaints) and are also available from the above address.

If **you** remain dissatisfied after Lloyd's has considered **your** complaint, **you** may have the right to refer **your** complaint to the Financial Ombudsman Service (FOS).

The contact details for the FOS are: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0800 023 4567 (calls to this number are free from "fixed lines" in the UK) or 0300 123 9123 (calls to this number are charged at the same rate as 01 and 02 numbers on mobile phone tariffs in the UK). Email [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk).

The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. **You** can find more information on the FOS at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

If you have purchased **your** policy online **you** can also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is: <http://ec.europa.eu/odr>

LMA9123  
20 May 2016

## Compensation Clause

### Regulatory Framework:

- The Financial Services Compensation Scheme (FSCS) is the UK statutory compensation scheme for authorised financial services firms, and was established in 2001 by the Financial Services & Markets Act 2000.
- The Scheme is funded entirely by the authorised firms and is free for consumers. All managing agents are covered by the Scheme under the umbrella of Lloyd's.

### Key Policy Features:

- Consumer policies should contain a suitable 'Compensation Clause'.

### Example Clause:

#### Financial Services Compensation Scheme (FSCS) Clause

Lloyd's Underwriters are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from FSCS if a Lloyd's Underwriter is unable to meet its obligations to you under this insurance.

If you are entitled to compensation from FSCS, the level and extent of compensation will depend on the nature of this insurance. Further information about FSCS is available on their website: [www.fscs.org.uk](http://www.fscs.org.uk) or you can write to them at PO Box 300, Mitcheldean, GL17 1DY.

LMA9125A  
28 June 2018

## Data Protection

### Regulatory Framework:

- Historically in the UK, the Data Protection Act 1998 controlled how personal information was used by organisations, businesses and the government. Under the Data Protection Act 1998, everyone responsible for using personal data had to follow strict rules called ‘data protection principles’ to make sure the data was:
  - used fairly and lawfully
  - used for limited, specifically stated purposes
  - used in a way that is adequate, relevant and not excessive
  - accurate
  - kept for no longer than is absolutely necessary
  - handled according to people’s data protection rights
  - kept safe and secure
  - not transferred outside the UK without adequate protection
- The 1998 Act has been replaced by the EU General Data Protection Regulation (GDPR) which was transposed into English law on 25 May 2018.
- The GDPR has wider applicability than the 1998 Act, imposes greater obligations on ‘data controllers’ and ‘data processors’, and increases the rights of individuals (“data subjects”).
- Under the GDPR, everyone responsible for “processing” personal data and special categories of personal data still has to follow strict rules called ‘data protection principles’. They must make sure the personal data is:
  - processed lawfully, fairly and in a transparent manner (‘lawfulness, fairness and transparency’)
  - collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (‘purpose limitation’)
  - adequate, relevant and limited to what is necessary (‘data minimisation’)
  - accurate and, where necessary, kept up to date (‘accuracy’)
  - kept in a form which permits identification of data subjects for no longer than is necessary (‘storage limitation’)
  - processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (‘integrity and confidentiality’)
- The GDPR is relevant to those dealing with policies relating to individuals, either singly or as part of a group scheme. The GDPR prohibits the processing of personal data and special categories of personal data unless there are legal grounds to do so.
- It is a requirement of the GDPR that ‘data controllers’ provide Information Notices to consumers to explain what personal data they collect, what the data is used for and the legal grounds for processing.
- The LMA has issued substantial guidance on the GDPR and has published model clauses under various LMA Bulletins, as listed in Appendix 15.
- Further information regarding the GDPR in general can be found on LMA’s website: <http://www.lmalloyds.com/LMA/Legal/GDPR/LMA/Legal/GDPR.aspx>

### Key Policy Features:

- Consumer policies should contain a suitable Data Protection ‘Notice’ (also known as a ‘Fair Processing Notice’). For further information in this regard, refer to LMA Bulletin LMA-013-18 (dated 25 April 2018)

which provides guidance as to the 'use and application' of the LMA 'model' Data Protection Short Form Notice (layer 1).

**Example Clause:**

**DATA PROTECTION SHORT FORM INFORMATION NOTICE (LAYER 1)**

Your personal information notice

*Who we are*

We are the Lloyd's underwriter(s) identified in the contract of insurance and/or in the certificate of insurance.

*The basics*

We collect and use relevant information about you to provide you with your insurance cover or the insurance cover that benefits you and to meet our legal obligations.

This information includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit. This information may include more sensitive details such as information about your health and any criminal convictions you may have.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose your personal information in connection with the insurance cover that we provide and to the extent required or permitted by law.

*Other people's details you provide to us*

Where you provide us or your agent or broker with details about other people, you must provide this notice to them.

*Want more details?*

For more information about how we use your personal information please see our full privacy notice(s), which is/are available online on our website(s) or in other formats on request.

*Contacting us and your rights*

You have rights in relation to the information we hold about you, including the right to access your information. If you wish to exercise your rights, discuss how we use your information or request a copy of our full privacy notice(s), please contact us, or the agent or broker that arranged your insurance who will provide you with our contact details at:

[Include agent/broker contact details]

{NOTE: where there is only one underwriter or this Notice is to be included in a proposal form or binding authority certificate, insert the details of the underwriter(s) as appropriate}

LMA9151  
25 April 2018

## Rights of Third Parties

### Regulatory Framework:

- Contracts (Rights of Third Parties) Act 1999 - “an Act to make provision for the enforcement of contractual terms by third parties”. Subject to the provisions of the Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if: (a) the contract expressly provides that he may, or (b) the term purports to confer a benefit on him. However (b) does not apply if, on proper construction of the contract, it appears that the parties did not intend the term to be enforceable by the third party.
- Third Parties (Rights Against Insurers) Act 2010 - (see Appendix 12) - the intention of this Act (which came into force on 01 August 2016) is to make it easier (and less costly) for a third party claimant, who has suffered a loss and is seeking damages from an Insured, to pursue directly (i.e. bring their claim directly against) the liability insurers of an insolvent Insured.

### Key Policy Features:

- For clarification of their position/intention in respect of third party rights under the policy/contract, managing agents may wish to consider including a ‘Contracts (Rights of Third Parties) Act 1999 Clarification Clause’ [*clarifying that in respect of the contract in question no benefits are conferred on the third party*]:
  - This may be contained in the “Introduction”/Preamble but may be best shown as a separate ‘Notice’.
  - Choose a simple title, e.g. “Rights of Third Parties”, which is easy for the consumer to understand.
- Where the policy/contract in question includes third party cover (i.e. liability insurances), managing agents may wish to further clarify the rights afforded to a third party, in the event that the Insured becomes insolvent. This is, however, an example of a “right or remedy of a third party which exists or is available outside of (“but for”) the Contracts (Rights of Third Parties) Act 1999”. We have included a suggested text below.

### Example Clauses:

#### Contracts (Rights of Third Parties) Act 1999 Clarification Clause

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

NMA2852  
30/03/2000

#### Third Parties Clause

**You** and **we** are the only parties to this policy. Nothing in this policy is intended to give any person any right to enforce any term of this policy which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

#### Third Parties (Rights Against Insurers) Act 2010 Clarification Clause

In the event of the policyholder’s insolvency, a claimant who is not a party to this policy may have the right to apply to the Court to enforce the provisions of this policy under the Third Parties (Rights Against Insurers) Act 2010.

## Law & Jurisdiction

### Regulatory Framework:

- When preparing the Product Documentation, a managing agent must take particular care to ensure that it is clear, fair and not misleading. Particular care should be taken with regard to which law the Product is subject to (MS9 - CS 5.2).
- It is a Lloyd's requirement (refer to the QA Tool) that law and jurisdiction are expressed in every contract of insurance.

### Key Policy Features:

- Consider a simple, easily understood title, e.g. "Law applicable to this policy".
- Both applicable law and jurisdiction should be mentioned in the policy.
- Whilst "Choice of Law" is a common choice of title, there is a limited choice of law in consumer contracts within the EU, it depends on the location of the insured property and / or residence of the Insured.
- Note: technically, the FOS 'remit' includes overseas policies written in the UK.

### Example Clauses:

#### Law and Jurisdiction

Unless specifically agreed to the contrary this policy will be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England.

#### Choice of Law

**You** and **we** are free to choose the law applicable to this contract of insurance. Unless specifically agreed to the contrary this contract of insurance will be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the courts of England.

#### Choice of Law

The law of England and Wales will apply to this contract unless:

- a. **you** and **we** agree otherwise; or
- b. at the date of the contract **you** are a resident of (or, in the case of a business, the registered office or principal place of business is situated in) Scotland, Northern Ireland, Channel Islands or the Isle of Man, in which case (in the absence of agreement to the contrary) the law of that country will apply.

## Sanctions

### Regulatory Framework:

- Lloyd's Requirements in respect of Sanctions are provided in Appendix 8.
- Managing agents should always check whether a country (or an individual) is subject to current sanctions.

### Key Policy Features:

- Lloyd's advocates the inclusion of a Sanctions Clause.

### Example Clause:

- The LMA has produced a 'model' clause for use on 'Consumer Insurance Contracts' - LMA5213 - which is available on the Lloyd's Wordings Repository [www.lloyds.com/wordings](http://www.lloyds.com/wordings)

#### **Sanctions Endorsement**

(For use on Consumer Insurance Contracts)

We shall not provide any benefit under this contract of insurance to the extent of providing cover, payment of any claim or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

LMA5213  
12 March 2014

# Definitions

## Regulatory Framework:

- The assessment of Product Complexity shall be made having careful regard to - ... the familiarity that the Lloyd's Customer might be expected to have with the **words and expressions used** in the Product Documentation ... (MS9 - CS 5.1/ CS 1.4).
- A managing agent must give careful consideration to preparing appropriate Product Documentation (MS9 - CS 5.2).
- A managing agent must communicate information to its clients in a way that is **clear, fair and not misleading** (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / FCA ICOBS 2.2.2 R).
- If a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer is to prevail (CRA 69(1) and UTCCR 7(2)).

## Key Policy Features:

- Where defined terms are used throughout the wording, grouping related definitions together in one "general definitions" section may be helpful. For those defined terms which are only used within a certain section of the wording, consideration should be given as to whether the associated definitions should be set out both at the start of the section in which the defined terms are used and also in a "general definitions" section. All definitions should be clearly signposted.
- Consider identifying the Definitions section(s) with a simple descriptive title such as "Words with special meanings".
- Definitions should be listed in alphabetical order.
- Words or terms should be defined if:
  - They are not commonly used, or easily understood, by consumers (e.g. "**subsidence**" to mean "downward movement of the ground beneath the buildings where the movement is unconnected with the weight of the building"); or
  - They have specific meanings for the purposes of the policy (e.g. a property being of "**standard construction**").
- If a word or term is not defined, then a court would normally consider that word, or term, to have the "generally understood" meaning, given the context of the relevant sentence. If a technical word is not defined clearly, there is a danger that its meaning would be construed against the managing agent. However, definitions should not be longer than necessary. A couple of examples can be beneficial.
- Use plain and intelligible language within the definitions; follow the general rule of thumb "Could my granny understand it?"
- Most consumer policies use **bold type** to indicate that the meaning of a word, or term, is explained in the Definitions section. This should include **We/our/us** and **You/your**, as appropriate.
- Defined terms should be used consistently throughout the policy document. If using bold type for defined words, managing agents should be careful to ensure that all instances of a defined word are shown in bold type - they are easy to miss, particularly when amending a policy wording.
- Care should also be taken to avoid using a defined word in a different context, e.g. if "**unoccupied**" has a specific meaning relating to the number of days a property is empty, care should be taken not to use the word "unoccupied" when referring to a vehicle, or hotel room, being left unattended.
- Interrelated definitions (i.e. definitions which themselves contain defined terms) should be avoided.

## Example Clauses:

*Example preamble to the Definitions section:*

Wherever the following words appear in **bold** in this insurance they will have the meanings shown below.

### **Words with special meanings**

Wherever words or phrases appear in **bold** in this policy, they will have the meanings described in the **DEFINITIONS** section, unless otherwise shown in any policy section.

### **Words with special meanings**

Some words have a special meaning in the policy and these are listed below. Wherever a word with a special meaning is used in the policy, it will be printed in **bold** type.

# Insuring Clause

## Regulatory Framework:

- CS 5.2 and CS 5.3 of Lloyd’s Minimum Standards (MS9 - Customer) concerning product design set out Lloyd’s expectation of managing agents regarding coverage.
- Specifically, a managing agent must take reasonable care to ensure that the Product will provide the Lloyd’s customer with insurance cover which meets their needs and reasonable expectations, and on which they can realistically claim (MS9 - CS 5.3).
- When preparing the Product Documentation, a managing agent must take particular care to ensure that it is clear, fair and not misleading (MS9 - CS 5.2).

## Key Policy Features:

- Recommended simple, descriptive title “What is covered”.
- There may be separate insuring clauses applicable to different sections of the policy.
- Where appropriate, insuring clauses should make reference to the period of insurance.
- Is the format clear and easy to follow? Many consumer policies adopt a tabular format with “What is covered...” and “What is not covered...” presented side-by-side, especially for sectionalised policies.
- Policyholders’ literacy will vary and, for some, English may not be their first language. Therefore, wherever possible, managing agents should use plain, non-legalistic language and avoid terms like “indemnify”, “peril”, “notwithstanding”, “hereafter”, etc. Some examples of plain English substitutions for “insurance speak” are included in Appendix 9.
- Managing agents should also review their insuring clause on a regular basis to ensure that it reflects advances in technology and remains ‘clear’ as to whether it includes, or excludes, related property items; for example, the term “computers” could now include far more than traditional desktops and laptops, encompassing iPads, tablets, gaming consoles and other internet enabled electronic devices.
- In drafting an insuring clause to ensure that it is clear as to what is included, bear in mind the FOS undertaking in respect of London General Insurance Company Limited (LGIC), July 2017: This concerned an LGIC extended warranty policy provided by Nationwide Building Society. The FCA was concerned by the use of the words “items such as” when describing certain goods whilst using a definitive list on its website; a situation which could lead to confusion. LGIC and Nationwide confirmed to the FCA that the items listed in term 3A had been treated as an exhaustive list when handling claims under the Policy.

## Example Clause:

What is covered	What is not covered
<p>We will provide cover for...</p>	<p>We will not cover ...</p> <p>Caused by....</p>

# Conditions

## General terms / conditions

### Regulatory Framework:

- Lloyd's Minimum Standards (MS9 - Customer), as outlined in Appendix 2, set out Lloyd's expectation of managing agents, starting with "The Board of a managing agent must lead a corporate culture which pays due regard to the best interests of Customers and treats them fairly at all times" (MS9-CS 1.1 / FCA TCF Consumer outcome 1).
- Lloyd's expectations surrounding coverage can also be applied to conditions, in so far as products should be such that consumers can realistically claim (MS9 - CS 5.3).
- A managing agent must prepare Product Documentation for, and communicate information to, its clients in a way that is **clear, fair and not misleading** (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R / TCF Consumer outcome 3).
- When considering how the Product will operate in practice, a managing agent must take particular care to ensure that there will be no unreasonable post-sales barriers for the Lloyd's Customer to making a claim (MS9 - CS 7.10/ CS 7.2 / TCF Consumer outcome 6).
- The FOS is unlikely to accept a managing agent's reliance on a breach of a condition (or any other term) if such a term is not sufficiently brought to a consumer's attention, so important conditions should be appropriately highlighted; merely emboldening the term to bring it to the Insured's attention may not carry weight with the FOS if it deems the term to be "unfair" (see FCA Guidance on unfair terms under UTCCR, in Appendix 5, and CRA 62(4)). However, conditions which might be considered overly onerous or burdensome should therefore be avoided.
- Unfair terms in consumer contracts are not binding on consumers (UTCCR reg 8.1 and CRA 62(1)) (see Appendices 4 and 10).
- Terms will generally be considered "fair" if they are 'transparent'. It should be noted that CRA 64 provides that contractual terms in consumer contracts are excluded from an assessment of fairness under section 62 if they are transparent (i.e. expressed in plain and intelligible language and (in the case of written terms) are legible and prominent (i.e. if they are brought to the consumer's attention in such a way that an average consumer would be aware of the terms) (CRA 64(2)-(4)).
- A firm must ensure that any written term of a contract is transparent ('expressed in plain, intelligible language' (CRA 68(1)-(2))).
- If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail (UTCCR reg 7.2 and CRA 69(1)).
- Products must always be adapted to meet the requirements of the consumer group that they are targeted at, for example the elderly / visually impaired (MS9 - CS 5.3 / Equality Act 2010), to ensure that the Product meets their needs and reasonable expectations and are Products upon which they can realistically claim (MS9 - CS 5.3). e.g. a condition to garage a vehicle overnight on a policy underwritten for mobility scooters. There should be no terms that could be deemed 'unfair' (UTCCR 5.1 / CRA 62) to that specific consumer group and no post sales barriers to them making a claim (MS9 - CS 5.2/ CS 12.1). e.g. window lock conditions imposed on policies for "holiday lets" / onerous "unoccupancy" definitions on policies aimed at property developers.
- Some terms may now be deemed 'unacceptable' for use in consumer policies due to their obscure or ambiguous nature, e.g. "consequential loss" and "such as ...". These have been identified within FOS Reports / FCA Undertakings (refer Appendix 5). If managing agents wish to use such words, they must ensure the meanings are explained clearly to consumers. Another option would be for managing agents to consider using alternative words in their documentation (see Appendix 9).

### Key Policy Features:

- All terms should be explained in plain English (refer Appendix 9). Archaic terms and technical jargon should be avoided.
- Managing agents should ensure that all terms are defined and no abbreviations are used - consistent terms should be used throughout.
- General conditions / terms are those applicable to all sections of the policy / the whole policy. This should be made 'clear', and they should be well signposted.
- Managing agents should consider whether any terms could be considered 'unfair' and detrimental to the consumer - a term is unfair if it creates an imbalance between the rights and obligations of the firm and the consumer, to the detriment of the consumer. As a general rule, if a term appears unfair on first reading it will likely be deemed unfair to the consumer (see Appendices 4 and 10).
- Managing agents should consider whether there are any provisions which vary the cover without the consumer's consent, e.g. terms that allow managing agents to determine the characteristics of the subject matter of the contract after it has been concluded, or to determine the price after the consumer is bound by the contract. Such provisions would be deemed 'unfair', and therefore unenforceable, in consumer contracts as they are included on the "Grey List" under the Consumer Rights Act 2015 (refer CRA Schedule 2, Part 1, items 12 and 14) (see Appendix 10).
- Managing agents should ensure that any important conditions are clearly identified and explained. Conditions which might be considered overly onerous or burdensome should be avoided - for example, to report a claim within 24 hours of loss (or discovery) in a UK household policy may be achievable but on an international travel policy, it may not; cancellation clauses should contain examples of reasons for cancellation.
- Managing agents should consider whether any 'unacceptable terms' are used - as identified within FOS Reports / FCA Undertakings, e.g. "consequential loss" - refer Appendix 5.

### Example Clause:

#### Policy conditions

These are the conditions of the insurance that **you** need to meet as **your** part of this contract. If **you** do not meet these conditions, **we** may need to reject a claim payment or a claim payment could be reduced. In some circumstances **your** policy may not be valid.....

.....

## Conditions precedent and warranties

### Regulatory Framework:

- The Insurance Act 2015 (refer Appendix 7) came into force on 12 August 2016 and contains provisions relating to fraudulent claims and remedies:
  - Different considerations apply to conditions precedent and warranties compared with general terms/conditions.
  - Most policies contain terms which, if complied with, would tend to reduce the risk of loss of a particular kind, or loss at a particular location or time. This is not limited to warranties and may include conditions precedent and exclusions. Section 11 of the Insurance Act 2015 provides that, if the Insured breaches such a term, the insurer cannot rely on the breach to reduce or extinguish its liability if the Insured proves that the breach could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred (see Appendix 7).
  - This will prevent an insurer from relying on breach of any term by the Insured if that breach is entirely unconnected with the actual loss which the Insured has suffered.
  - It should be noted that Section 11 of the Insurance Act 2015 will not apply to terms which define the risk as a whole (e.g. a requirement that a property will not be used commercially).
  - Where a term is breached, the intention is that a managing agent would be liable only if the consumer could show that the breach was totally irrelevant and could not have affected the actual loss suffered. Neither the Insured nor the managing agent would have to prove what actually caused the loss, or what would have happened if the term had been complied with, so evidential matters are far less important than they would be under a causal test. Even if an Insured can show that compliance with the condition would not have actually made a difference to the loss (thus satisfying a causal test), the fact that it **could** have made a difference means that a managing agent does not have to pay.
  - Accordingly, in order to limit the scope for dispute, managing agents should specify in their policies what requirements they wish to impose, what risk of loss that requirement is intended to address and what consequence non-compliance will have.
  - It is not possible to contract-out of the provisions of the Insurance Act 2015 in relation to consumer contracts - the Insurance Act 2015 provides that a term has no effect if it puts a consumer in a worse position than provided for under the Act (this does not apply to settlement agreements for claims). A more detailed commentary relating to warranties and other terms is contained in the LMA/IUA guide to the Insurance Act 2015 (see Appendix 7).
- ICOBS 8.1.2 R (which states that rejection of a **consumer's** claim is unfair following a breach of condition, unless such a breach was directly related to the loss) renders conditions precedent to liability difficult to implement in consumer policies.

### Key Features:

- Within LMA model consumer wordings, we have tried to ensure that all terms/conditions (including those related to claims) are reasonable, necessary, and not overly burdensome. Wherever possible, time restrictions (for notification, etc.) have been removed. There are no terms/conditions which require “immediate” action. Consumers are required to comply with such terms/conditions “as soon as practicable”.
- Whilst “Condition Precedent” language may still be used in a consumer policy, managing agents should consider the limitation of its effect and also the fact that many consumers would likely not understand the term.

- There are no “warranties” or “conditions precedent” in LMA model consumer wordings. Where conditions precedent did exist in old forms of wording, they have been renamed “Important conditions” and been given prominence by moving them to the front of the model policy.
- There are no basis of contract clauses in LMA model consumer proposal forms as these are outlawed under the Consumer Insurance Disclosure and Representations Act 2012 (see Appendix 6).

# Exclusions

## Regulatory Framework:

- Lloyd's Minimum Standards (MS9 - Customer), as outlined in Appendix 2, set out Lloyd's expectation of managing agents, starting with "The Board of a managing agent must lead a corporate culture which pays due regard to the best interests of Customers and treats them fairly at all times". (MS9 - C1.1 / FCA TCF Consumer outcome 1)
- Lloyd's expectations around coverage can also be applied to exclusions. Specifically, a managing agent must take reasonable care to ensure that the Product will provide the Lloyd's customer with insurance cover which meets their needs and reasonable expectations on which they can realistically claim. 'In particular, consideration may need to be given as to the impact of any exclusions of cover included in the product...' (MS9 - CS 5.3).
- A managing agent must prepare Product Documentation for, and communicate information to, its clients in a way that is **clear, fair and not misleading** (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R / TCF Consumer outcome 3). Particular care should be taken with regard to "**explaining what is not covered or is excluded**" (MS9 - CS 5.2).
- Where necessary, products should be adapted to meet the requirements of the consumer group that they are targeted at, for example the elderly / visually impaired (MS9 - CS 5.3 / Equality Act 2010), to ensure that the product meets their needs and reasonable expectations and upon which they can realistically claim (MS9 - CS 5.3).
- There should be **no terms that could be deemed 'unfair'** to the intended consumer group, which would include 'unfair' exclusions (CRA 62(4)).
- When considering how the Product will operate in practice, a managing agent must take particular care to ensure that there will be no unreasonable post-sales barriers for the Lloyd's Customer to- ... making a claim... (MS9 - CS 5.2 / CS 7.2 / FCA TCF Consumer outcome 6).
- The FOS is unlikely to accept a managing agent's reliance on a breach of a policy term (exclusion) if such a term is not sufficiently brought to a consumer's attention, so important exclusions should be appropriately highlighted; merely highlighting the term to bring it the Insured's attention may not carry weight with the FOS if it deems the term to be "unfair" (see FCA Guidance on "unfair terms" under UTCCR/CRA in Appendix 5). However, exclusions which might be considered overly onerous should therefore be avoided.
- Unfair terms in consumer contracts are not binding on consumers (UTCCR reg 8.1 / CRA 62(1)) (see Appendices 4 and 10).
- Terms will generally be considered "fair" if they are 'transparent'. It should be noted that CRA 64 provides that contractual terms in consumer contracts are excluded from an assessment of fairness under section 62 if they are transparent, i.e. expressed in plain and intelligible language and (in the case of written terms) are legible and prominent, (i.e. if they are brought to the consumer's attention in such a way that an average consumer would be aware of the terms) (CRA 64(2)-(4)).
- A firm must ensure that any written term of a contract is transparent ('expressed in plain, intelligible language' (UTCCR reg 7.1 / CRA 68(1)-(2))).
- If there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail' (UTCCR reg 7.2 / CRA 69(1)).

**Key Policy Features:**

- Recommended simple, descriptive title “What is not covered”.
- Is the format clear and easy to follow? Many consumer policies adopt a tabular format with “What is covered...” and “What is not covered...” (i.e. the policy “Exclusions”) presented side-by-side, especially for sectionalised policies.
- Managing agents should seek to achieve a balance between policy document length and clear explanation of what is not covered.
- It is recommended that, when set out in the policy document, exclusions be divided into two categories: excluded perils, and exclusion clauses applying to the cover; and these should be clearly identified / ‘signposted’. Similarly, a distinction should be made between exclusions applicable to a section or applicable to the whole policy and they should be clearly identified / ‘signposted’ accordingly.
- None of the exclusions should be such as to seriously degrade the level of cover or leave cover being unlikely to meet the needs of consumers, although some exclusions are paramount (e.g. War on Land, Nuclear, Chemical/Bio) - following Lloyd’s Underwriting Guidelines.
- Collectively, the exclusions should not significantly erode the overall cover provided.
- Consider the ‘onus of proof’ - the onus rests with the managing agent if they are seeking to argue that an exclusion applies and therefore to decline a claim.
- Policyholders’ literacy will vary and, for some, English may not be their first language. Therefore, wherever possible, managing agents should use plain, non-legalistic language. Some examples of plain English substitutions for “insurance speak” are included in Appendix 9.
- Managing agents should remember that in the event of misunderstanding, any lack of clarity will favour the consumer (UTCCR reg 7.2 / CRA 69(1)). Similarly, where there is any ambiguity, the words would almost certainly be construed against the managing agent and in favour of the consumer (Contra Proferentum).

**Example Clauses:**

*Example preamble to the Exclusions/What is not covered section:*

**What is not covered [under this section]**

**We will not pay for.....**

What is covered	What is not covered
We will provide cover for...	<b>We will not cover ...</b>  Caused by...

# Endorsements

## Regulatory Framework:

- Product Documentation means, in respect of a Product, the policy (including the relevant terms and conditions (wordings) and any supporting contractual documents, and sales and promotional documents (MS9 - Definitions).
- When preparing the Product Documentation, a managing agent must take particular care to ensure that it is clear, fair and not misleading (MS9 - CS 5.2 / FCA TCF Consumer outcome 3).

## Key Policy Features:

- Somewhere in the policy (e.g. under “Introduction”) it should clearly stipulate that “this document, the schedule and any endorsement(s) attached form the policy”.

## Example Clauses:

### The Contract of Insurance

This policy is a contract of insurance between **you** and **us**.

The following elements for the contract of insurance between **you** and **us**, please read them and keep them safe:

- **Your** policy booklet; **your** schedule
- Any clauses endorsed on **your** policy, as set out in **your** schedule;
- Any changes to **your** insurance policy contained in notices issued by **us** at renewal;.....

### Example Preamble for Endorsements:

The following clauses apply only if they are stated in the Schedule:

{response}

{response}

{response}

# Schedule

## Regulatory Framework:

- A managing agent must give careful consideration to preparing appropriate Product Documentation (MS9 - CS 5.2).
- A managing agent must communicate information to its clients in a way that is clear, fair and not misleading (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R).
- Particular attention should be given to setting out which syndicate or syndicates have underwritten the Product (MS9 - CS 5.2).
- “Basis of Contract” Clauses are not permitted (CIDRA 2012).
- It is a Lloyd’s requirement that the policy should contain a Several Liability Notice.

## Key Policy Features:

- Somewhere in the policy (e.g. under “Introduction”) it should clearly stipulate that “this document, the schedule and any endorsement(s) attached form the policy.”
- The policy schedule describes the insured risk, and also states the name (and address) of the policyholder.
- The description of the risk should reflect the questions asked on the proposal form and the answers provided by the consumer (see section titled “Proposal Forms” below). If the importance of checking the schedule and notifying any inaccuracies/changes is sufficiently highlighted to consumers (see section titled “Important Information - Information You have Given Us” above), this can provide a useful means of ensuring that “material” changes are brought to the insurer’s attention.
- Historically, Lloyd’s policies have used a Lloyd’s “jacket” (and this might still be the case for “Certificates” / Insurance Contract Documentation issued under Binding Authorities), which in the past may have incorporated the Several Liability Notice. If a Several Liability Notice is not included elsewhere, (i.e. reference to it on the Schedule), then it may be included in the “jacket”.

## Example Clauses:

### The Contract of Insurance

This policy is a contract of insurance between **you** and **us**.

The following elements for the contract of insurance between **you** and **us**, please read them and keep them safe:

- **Your** policy booklet;
- **Your** schedule;
- ...

In this contract of insurance, **our** syndicate numbers and proportions are shown in the attached table. **We** bind ourselves severally and not jointly, that is, in the event of a loss, each of **us** (and **our** Executors and Administrators) is liable only for **our** own share of **our** syndicate’s proportion of the risk.

**You** or **your** representative can obtain the name of each of **us** and **our** respective shares by applying to Market Services, Lloyd’s, One Lime Street, London EC3M 7HA.

# Policy Cover / “Jacket”

## Regulatory Framework:

- Entities authorised by the PRA or FCA must disclose that regulatory status in any letter (or electronic equivalent) to a consumer (FCA GEN 4.3.1 R & FCA GEN 4.3.2 B R).

## Key Policy Features:

- Although these are regulatory requirements, they are not likely to be of particular relevance to consumers under normal circumstances. The policy “jacket” (or back page) is a useful place to show this information.
- The policy should indicate that managing agents insuring the risk are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and Prudential Regulation Authority. This is what is known as the UK statutory status disclosure statement. Note that the names of the regulators must be written in full and not abbreviated to PRA/FCA.
- We are aware that some overseas regulators find the UK statutory status disclosure confusing. As such, it may be prudent for managing agents to use an amended disclosure, or not include such a statement at all, for certain overseas business. For UK business, however, the disclosure statement should not be amended.
- It should also be noted that, depending on their regulatory status, coverholders may also need to make a statutory status disclosure. Any coverholder disclosure would be in addition to the disclosure by managing agents.

## Example Clause:

**[INSERT FULL LEGAL NAME OF MANAGING AGENT]** is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Our Firm Reference Number and other details can be found on the Financial Services Register at [www.fca.org.uk](http://www.fca.org.uk).

## Amended Clause (if risk is insured by *more than one* managing agent):

In this contract of insurance, **our** syndicate numbers and proportions are shown in the attached table. **We** bind ourselves severally and not jointly, that is, in the event of a loss, each of **us** (and **our** Executors and Administrators) is liable only for **our** own share of **our** syndicate's proportion of the risk.

**You** or **your** representative can obtain the name of each of **us** and **our** respective shares by applying to Market Services, Lloyd's, One Lime Street, London EC3M 7HA.

Lloyd's Managing Agents are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

**Our** Firm Reference Numbers and other details can be found on the Financial Services Register at [www.fca.org.uk](http://www.fca.org.uk).

# OTHER DOCUMENTATION

## Insurance Product Information Documents (IPIDs) and Policy Summaries

### Regulatory Framework:

- When preparing the Product Documentation, (the policy plus any supporting contractual documents and sales and promotional documents), a managing agent must take particular care to ensure that it is clear, fair and not misleading (MS9 - CS 5.2 / FCA ICOBS 2.2.2 R/ FCA TCF Consumer outcome 3). The documentation should also be provided in good time so that the customer can use it for comparison purposes and to make an informed decision about the arrangements proposed.
- The Insurance Distribution Directive (IDD), which replaced the Insurance Mediation Directive (IMD), became effective on 01 October 2018.
- The requirements under the IDD concerning the disclosure of information build upon, and are therefore lengthier than, those under the IMD.
- Implementation of IDD has varied across EEA member states. Summaries of IDD requirements per member state may be found on Crystal in due course.
- All consumers of general insurance products (i.e. not including pure protection contracts) must be provided with an Insurance Product Information Document (IPID). IPIDs can also be provided to commercial customers, however, firms should be mindful of whether an IPID is suitable given product complexity.
- The IDD introduces the customer's best interest rule and, as such, it is important to consider how information is made meaningful to customers. Information must be provided at an appropriate time and through the right channels.
- The information must be provided:
  - On paper, or using an alternative durable medium, where the following conditions are met:
    - the use of the durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer;
    - the customer has been given the choice between information on paper and on a durable medium, and has chosen the durable medium; and
    - a paper copy of the information is provided to the customer on request and free of charge.
  - By means of a website, if it is addressed personally to the customer, or where the following conditions are met:
    - the provision of the information by means of a website is appropriate in the context of the business conducted;
    - the customer has consented to the information being provided by means of a website;
    - the customer has been notified electronically of the website's address, and the place on the website where the information can be accessed;
    - the information remains accessible on the website for such a period of time as the customer may reasonably need to consult it; and
    - a paper copy of the information is provided to the customer on request and free of charge.
- The requirements regarding the format and content of IPIDs can be found at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.209.01.0019.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.209.01.0019.01.ENG). For further information on IDD, please refer to Appendix 14.

- The LMA has drafted model IPIDs for those consumer products for which there are LMA model wordings, and these were published under LMA Bulletin reference [LMA18-037-AC](#) on 26 July 2018. The model IPIDs for the model LMA consumer products are available on Lloyd's Wordings Repository.
- Please refer to Appendix 14 for further information concerning the requirements set out by the IDD in relation to IPIDs.

### Policy Summaries, Key Facts:

Policy Summaries / Key Facts documents and the Key Facts logo should not be used for consumer business, however, they may be used for commercial customers which fall outside of the IPID requirements in the UK. It is still a requirement for pure protection contracts.

- Policy summaries (or Key Facts documents) should provide customers with a summary of the main benefits and limitations of the policy. For example:
  1. Significant, or unusual, terms/conditions or exclusions should be highlighted. These include terms/conditions or exclusions that are most commonly used (not what is common in the wording but what is the most common 'declinature' reason). Questions that may need to be asked and answered to ascertain if a term is "significant" include:
    - Is the exclusion likely to influence someone's decision to buy the product?
    - Is it unusual? Are there any exclusions in the cover that are unusual for this type of policy?
  2. Policy summaries should feature prominently details of how to make a claim.
- The full list of items required to be included are set out in the FCA Handbook (see Appendix 3 for link to ICOBS). Managing agents should note that **only** those things listed by the FCA should be included, and managing agents should strive to find a balance between providing adequate and useful information, and keeping the document quick and easy to read.
- Policy summaries should use the same style of language (including defined terms) as the main policy wording. Managing agents should remember to review an associated Policy Summary when any amendment is made to a main policy document.
- Key Facts documents will be class-specific and may vary significantly from class to class.

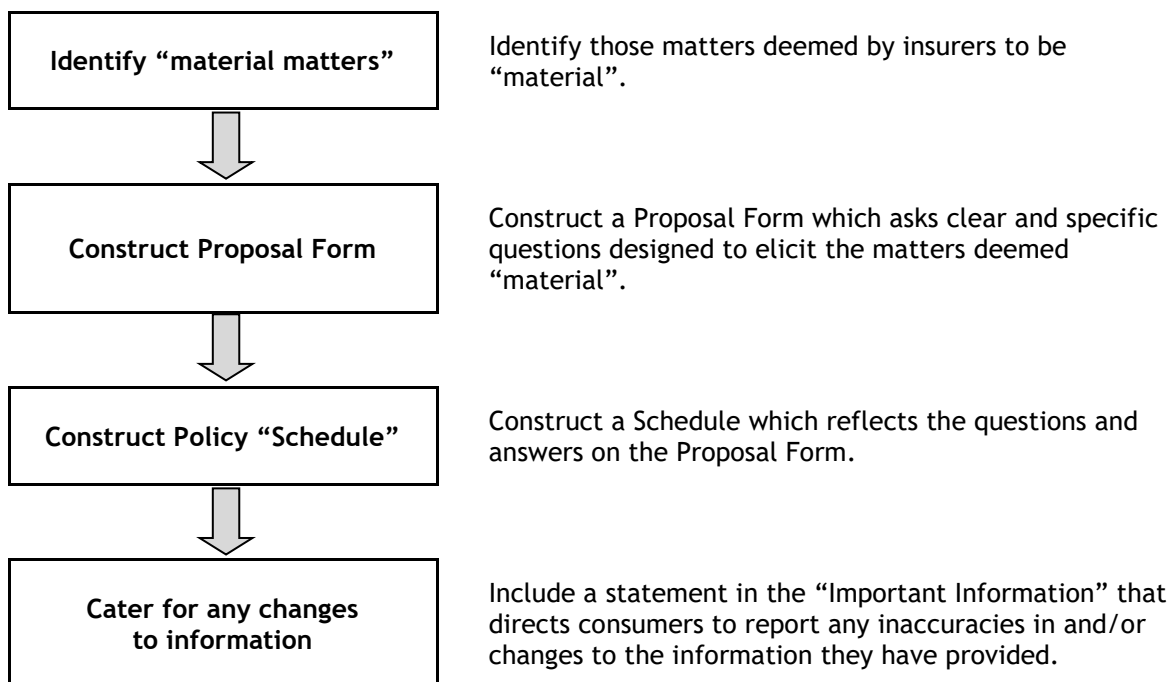
# Proposal Forms

## Regulatory Framework:

- Pre-contractual disclosure requirements under CIDRA (see Appendix 6).
- CIDRA removes any duty on consumers to disclose material circumstances. The onus is now on the insurer to ask clear, relevant and specific questions (see section titled “Important Information - Information You have Given Us” above). Therefore, questions asked of consumers at policy inception, amendment and renewal must be “*clear and specific*” in terms of what managing agents need consumers to tell them, and should address all aspects of the risk that the insurer deems material.

## Key Features, Proposal Forms:

- Under CIDRA, managing agents cannot rely on “basis of contract” clauses (which seek to convert representations into a policy warranty allowing managing agents to discharge the policy without return of premium if the warranty is breached). Managing agents should amend Proposal Forms and other pre-contractual documents to ensure that all relevant questions are asked in an appropriate way to elicit the desired information.
- Managing agents should avoid assuming a high level of consumer understanding. It is also noteworthy that the ABI has recommended that all default (i.e. pre-ticked, or pre-chosen) answers be removed so that the consumer has to make an active choice as to which answer is correct for them. We endorse that recommendation.
- Managing agents should remember to review an associated Proposal Form when any amendment is made to a main policy document.
- Suggested methodology to ensure that the pre-contractual disclosure requirements under CIDRA are adhered to:



# Renewal Documentation

## Regulatory Framework:

- A firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed. (ICOBS 6.1.5(R))
- The FCA's Policy Statement PS16/21 (see Appendix 13) put in place new rules across all personal lines general insurance markets, affecting all insurers and intermediaries (brokers) selling retail general insurance products requiring firms to:
  - disclose last year's premium at each renewal;
  - include text to encourage consumers to check their cover and shop around for the best deal at each renewal; and
  - identify consumers who have renewed with them four consecutive times, and give these consumers an additional prescribed message encouraging them to shop around.

## Key Features:

- Include appropriate language which meets with FCA requirements within renewal letters/ documentation for documentation issued on or after 01 April 2017.
- For further details, refer to Appendix 13.

# OTHER THINGS TO CONSIDER...

## The Importance of a feedback loop

### Regulatory Framework:

- A managing agent must conduct regular Product Reviews of all its Products as may be appropriate having regard to their Product Risk (MS9 - CS 5.8).
- A managing agent must promptly conduct a Product Review where a material issue or problem has been identified relating to a product (MS9 - CS 5.8).
- The output of Product Reviews must be used as an input into the managing agent's Product Design process so as to be part of an effective feedback cycle (MS9 - CS 5.8).
- A managing agent's Conduct Management Information must enable it to assess the effectiveness of "its Product Controls, Product Design" and "its approach to Product Service including claims and complaints" (MS9 - Appendix 1 - Conduct Management Information).
- In respect of complaints, a respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any recurring or systemic problems (FCA DISP 1.3.3).

### Key Features:

- Managing agents should use both qualitative and quantitative data to understand the reasons for cancellations, rejected claims and complaints. Indeed, for High Risk Products, Lloyd's sets out a minimum Management Information (MI) data set which managing agents must collect (see Lloyd's Market Bulletin [Y4847](#)).
- Where such data points to a potential deficiency in a policy wording (e.g. an ambiguous coverage term or overly burdensome condition), managing agents should ensure that they have a mechanism by which policy terms can be reviewed and amended.
- Where data points to a potential deficiency in an LMA model consumer wording, endorsement, proposal or summary, we would ask managing agents to advise the LMA directly or via the relevant LMA business panel, so that the LMA can ensure that any deficiency is rectified.

# Other practical considerations....

## Equal Opportunities

### Regulatory Framework:

- Products must always be adapted to meet the requirements of the consumer group that they are targeted at, for example the elderly / visually impaired, to ensure that the product meets their 'needs and reasonable expectations and upon which they can realistically claim'. (MS9 - CS 5.3 / Equality Act 2010).
- This may include consideration of - ... whether the Product disadvantages any particularly vulnerable group and whether it meets all applicable obligations under the Equality Act 2010 (cross refer MS9 - CS 5.3).
- Managing agents should not include terms which could be deemed 'unfair' to a specific consumer group, e.g. a condition to garage a vehicle overnight on a policy underwritten for mobility scooters. (UTCCR 5.1 / CRA 62 / MS9 - CS 5.2) (see Appendices 4 and 10).

### Key Policy Features:

- Products should be adapted where necessary to meet the requirements of the consumer group at which they are targeted.
- Managing agents should consider whether wordings should be made available in braille and/or large print and/or in Audio format for visually impaired consumers and include an appropriate 'Notice' to that effect in the policy wording.
- Use of colour - managing agents should also consider the combinations of colours used in product literature. Certain combinations can be difficult to read, particularly for people with impaired colour vision.

### Example Clause:

#### Customers with Disabilities

This policy and other associated documentation are also available in large print, audio and Braille. If **you** require any of these formats please contact **us** on .....

## Other ‘Incidental’ Legislation

### Regulatory Framework:

- This Guidance focusses on consumer insurance regulations outlined in Lloyd’s Conduct Risk Guidance / FCA Principles, but there may be a myriad of other Legislation pertinent to specific classes of insurance that may need to be explained to the consumer, which we are unable to include in the Guidance, e.g.
  - Dangerous Dogs Act 1991 - in respect of Homeowners Insurance
  - Defective Premises Act 1972 - in respect of Homeowners Insurance

### Key Policy Features:

- Where incidental legislation is pertinent to a specific class of business and requires further explanation, consider including an ‘Important Note’ (e.g. in a highlighted box to draw it to the attention of the consumer), explaining the significance of the legislation in plain English.

### Example Clauses:

#### **Dangerous Dogs Act 1991**

The Dangerous Dogs Act 1991 imposes certain requirements on specific types of dog. It also places requirements in relation to dogs which are, as described by the Act, dangerously out of control. For further guidance please see the Office of Public Sector Information website ([www.opsi.gov.uk](http://www.opsi.gov.uk)) or contact the Citizens Advice Bureau.

#### **Defective Premises Act 1972**

The Defective Premises Act 1972 imposes duties in connection with the provision of dwellings and imposes liability for injury or damage caused to persons through defects in the state of the premises. Section 3 of the Defective Premises Act 1972 (or in Northern Ireland Section 5 Defective Premises Northern Ireland Order 1975) extends the duty of care in certain circumstances after the dwellings have been disposed of. For further guidance please see the Office of Public Sector Information website ([www.opsi.gov.uk](http://www.opsi.gov.uk)) or contact the Citizens Advice Bureau.

## Internal Review

### Regulatory Framework:

- When assessing the needs and reasonable expectations of Lloyd’s Customers, a managing agent must give careful consideration, where proportionate and appropriate, to using a ‘focus group’ to assess the suitability of the Product and the Product Documentation (MS9 - CS 5.8).
- In providing Customer Challenge (MS9 - CS 1.4), consideration might be given to the following questions
  - With regard to Product Design..... “Imagine that the Product was designed to be sold to a loved member of your family. Would you personally recommend that he or she buys it?”
  - With regard to Product Documentation..... “Having read the Product Documentation, would you personally be able to explain the key aspect of the Product to the proposed Lloyd’s Customer?”

### Key Policy Features:

- As an effective internal review, managing agents should consider asking people within the organisation who are not insurance specialists to review consumer wordings. They can highlight any part of the wording which is difficult to understand or required repeated reading.
- As a useful rule of thumb, managing agents might ask themselves “could my granny understand it?”

## Plain English

### Regulatory Framework:

- A managing agent must communicate information to its clients in a way that is clear, fair and not misleading (MS9 - CS 5.2 / FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R).
- The assessment of Product Complexity shall be made having careful regard to “the familiarity that the Lloyd’s Customer might be expected to have with the words and expressions used in the Product Documentation” (MS9 - CS 5.1).
- A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is **transparent** (CRA 68(1) / UTCCR 7(1)). Such a term / consumer notice is transparent if it is expressed in **plain and intelligible language** and (in the case of a written term) it is **legible** (CRA 64 (2)-(4) and 68/ UTCCR 7(1)).

### Key Policy Features:

- It is recommended that managing agents stick to “plain English” throughout the Policy document.
- Further guidance to the use of “Plain English” is contained in Appendix 9.

# CONTACTS

For more information / further assistance:

## Lloyd's Market Association (LMA)

**Alison Colver**  
Head of Contract Wordings  
Email: [Alison.Colver@lmalloyds.com](mailto:Alison.Colver@lmalloyds.com)

**Steve Morrell**  
Head of Regulatory Affairs  
Email: [Steve.Morrell@lmalloyds.com](mailto:Steve.Morrell@lmalloyds.com)

**Linda Cook**  
Technical Executive, Wordings  
Email: [Linda.Cook@lmalloyds.com](mailto:Linda.Cook@lmalloyds.com)

## Clyde & Co LLP

**Ian Plumley**  
Partner  
Email: [ian.plumley@clydeco.com](mailto:ian.plumley@clydeco.com)

# APPENDIX 1

## Table of Statutes / Regulations

Statute / Regulation	Look up
Consumer Insurance (Disclosure and Representations) Act 2012 - CIDRA	<a href="http://www.legislation.gov.uk/ukpga/2012/6/crossheading/qualifying-misrepresentations/enacted">http://www.legislation.gov.uk/ukpga/2012/6/crossheading/qualifying-misrepresentations/enacted</a>
LMA / Clyde & Co Joint Guidance on CIDRA	<a href="http://www.lmalloyds.com/CMDownload.aspx?ContentKey=dd2b0e1e-92b8-4ae5-9bc9-d9cf827c4469&amp;ContentItemKey=0c5d8626-31c4-48b7-8b60-0b17da2555dc">http://www.lmalloyds.com/CMDownload.aspx?ContentKey=dd2b0e1e-92b8-4ae5-9bc9-d9cf827c4469&amp;ContentItemKey=0c5d8626-31c4-48b7-8b60-0b17da2555dc</a>
Consumer Rights Act 2015	<a href="http://www.legislation.gov.uk/ukpga/2015/15/pdfs/ukpga_20150015_en.pdf">http://www.legislation.gov.uk/ukpga/2015/15/pdfs/ukpga_20150015_en.pdf</a>
Consumer Rights Act 2015 Explanatory Notes	<a href="http://www.legislation.gov.uk/ukpga/2015/15/notes/data.pdf">http://www.legislation.gov.uk/ukpga/2015/15/notes/data.pdf</a>
Contracts (Rights of Third Parties) Act 1999	<a href="http://www.legislation.gov.uk/ukpga/1999/31/pdfs/ukpga_19990031_en.pdf">http://www.legislation.gov.uk/ukpga/1999/31/pdfs/ukpga_19990031_en.pdf</a>
Third Parties (Rights Against Insurers) Act 2010	<a href="http://www.legislation.gov.uk/ukpga/2010/10/pdfs/ukpga_20100010_en.pdf">http://www.legislation.gov.uk/ukpga/2010/10/pdfs/ukpga_20100010_en.pdf</a>
Data Protection Act 1998	<a href="https://www.gov.uk/data-protection/the-data-protection-act">https://www.gov.uk/data-protection/the-data-protection-act</a>
Data Protection Act 2018	<a href="http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted">http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted</a>
Equality Act 2010	<a href="http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf">http://www.legislation.gov.uk/ukpga/2010/15/pdfs/ukpga_20100015_en.pdf</a>
Insurance Act 2015	<a href="http://www.legislation.gov.uk/ukpga/2015/4/contents/enacted">http://www.legislation.gov.uk/ukpga/2015/4/contents/enacted</a>
LMA / IUA Joint Guidance on The Insurance Act 2015	<a href="http://www.lmalloyds.com/act">http://www.lmalloyds.com/act</a>
Insurance Act 2015 - Quick reference guide to key provisions and their practical effects for Underwriters	<a href="http://www.lmalloyds.com/act">http://www.lmalloyds.com/act</a>
General Data Protection Regulation (GDPR)	<a href="http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:119:FULL&amp;from=EN">http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2016:119:FULL&amp;from=EN</a>
Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 (IDD)	<a href="http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016L0097">http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016L0097</a>
Unfair Terms in Consumer Contract Regulations 1999	<a href="http://www.legislation.gov.uk/uksi/1999/2083/regulation/5/made">http://www.legislation.gov.uk/uksi/1999/2083/regulation/5/made</a>

Alternative Dispute Resolution Regulations 2015	<a href="https://www.businesscompanion.info/sites/default/files/ADR%20business%20guidance%20inc%20DR%20Dec%202015.pdf">https://www.businesscompanion.info/sites/default/files/ADR%20business%20guidance%20inc%20DR%20Dec%202015.pdf</a>
---	---

FCA Handbook	<a href="http://fshandbook.info/FS/html/FCA/">http://fshandbook.info/FS/html/FCA/</a>
FCA ICOBS	<a href="https://www.handbook.fca.org.uk/handbook/ICOBS">https://www.handbook.fca.org.uk/handbook/ICOBS</a>
FCA TCF Consumer Outcomes	<a href="http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers">http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers</a>
FCA Undertakings	<a href="https://www.the-fca.org.uk/unfair-contract-terms/unfair-contract-terms-library?RRU0116&amp;section=news#undertakings">https://www.the-fca.org.uk/unfair-contract-terms/unfair-contract-terms-library?RRU0116&amp;section=news#undertakings</a>
FCA Policy Statement PS16/21	<a href="https://www.fca.org.uk/publication/policy/ps16-21.pdf">https://www.fca.org.uk/publication/policy/ps16-21.pdf</a>
FCA Policy Statements in respect of the Insurance Distribution Directive (IDD) [including customer's best interest rule and method of distribution]	<a href="https://www.fca.org.uk/publications/policy-statements/ps17-21-insurance-distribution-directive-implementation">https://www.fca.org.uk/publications/policy-statements/ps17-21-insurance-distribution-directive-implementation</a> <a href="https://www.fca.org.uk/publication/policy/ps17-27.pdf">https://www.fca.org.uk/publication/policy/ps17-27.pdf</a> <a href="https://www.fca.org.uk/publication/policy/ps18-1.pdf">https://www.fca.org.uk/publication/policy/ps18-1.pdf</a>
FG18 / 7: Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015	<a href="https://www.fca.org.uk/publication/finalised-guidance/fg18-07.pdf">https://www.fca.org.uk/publication/finalised-guidance/fg18-07.pdf</a>
FCA Policy Statement PS18/21: SME access to Financial Ombudsman Service [Eligible complainant definition extended to include small businesses]	<a href="https://www.fca.org.uk/publication/policy/ps18-21.pdf">https://www.fca.org.uk/publication/policy/ps18-21.pdf</a>
FOS Newsletters	<a href="http://www.financial-ombudsman.org.uk/publications/ombudsman.htm">http://www.financial-ombudsman.org.uk/publications/ombudsman.htm</a>
FOS Ombudsman Decisions	<a href="http://www.ombudsman-decisions.org.uk/">http://www.ombudsman-decisions.org.uk/</a>
Lloyd's Minimum Standards (MS9 - Customer)	<a href="https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards">https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards</a>
Lloyd's Code for Underwriting Agents: UK Personal Lines Claims and Complaints Handling - Update (Market Bulletin Y4905)	<a href="http://www.lloyds.com/~media/files/the%20market/communications/market%20bulletins/2015/06/y4905.pdf">http://www.lloyds.com/~media/files/the%20market/communications/market%20bulletins/2015/06/y4905.pdf</a>

Lloyd's Code for Underwriting Agents: UK Personal Lines Claims and Complaints Handling - Charges for Telephone Calls - Update (Market Bulletin Y4924)	<a href="http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2015/09/y4924.pdf">http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2015/09/y4924.pdf</a>
Lloyd's Code for Underwriting Agents: UK Personal Lines Claims and Complaints Handling - Update (June 2016) (Market Bulletin Y5000)	<a href="http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2016/05/y5000.pdf">http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2016/05/y5000.pdf</a>
Lloyd's Code for Underwriting Agents: UK Personal Lines Claims & Complaints Handling - Update (July 2018) (Market Bulletin Y5200)	<a href="https://www.lloyds.com/-/media/files/the-market/communications/market-bulletins/2018/07/y5200.pdf">https://www.lloyds.com/-/media/files/the-market/communications/market-bulletins/2018/07/y5200.pdf</a>
LMA Bulletin LMA14-007-SM (Cancellation)	<a href="http://www.lmalloyds.com/CMDownload.aspx?ContentKey=14d1ab14-51de-4861-b619-f262017b7130&amp;ContentItemKey=f5a6e908-5fec-4367-a9a8-7627c0acd9f4">http://www.lmalloyds.com/CMDownload.aspx?ContentKey=14d1ab14-51de-4861-b619-f262017b7130&amp;ContentItemKey=f5a6e908-5fec-4367-a9a8-7627c0acd9f4</a>
Lloyd's Sanctions Guidance - Sanctions Clauses (Market Bulletin Y4832)	<a href="http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2014/10/y4832.pdf">http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2014/10/y4832.pdf</a>
Lloyd's Sanctions Guidance - Sanctions Clauses (Market Bulletin Y4916)	<a href="https://www.lloyds.com/market-resources/market-communications/-/media/files/the-market/communications/market-bulletins/2015/07/y4916.pdf">https://www.lloyds.com/market-resources/market-communications/-/media/files/the-market/communications/market-bulletins/2015/07/y4916.pdf</a>
Lloyd's Management Information requirements (Market Bulletin Y4847)	<a href="http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2014/12/y4847_.pdf">http://www.lloyds.com/-/media/files/the%20market/communications/market%20bulletins/2014/12/y4847_.pdf</a>

# APPENDIX 2

## Lloyd's Minimum Standards (MS9 - Customer)

### Regulatory Background

The Lloyd's Franchise Board, concerned to protect the interests of Lloyd's Customers, originally published Minimum Standards (MS11 - Conduct Risk) in July 2014. MS11 has now been replaced by the new MS9 Standard with effect 01 January 2019 - please see <https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards>.

MS11 was originally designed to meet the requirements of the Financial Conduct Authority (FCA) and to provide practical guidance for their implementation having particular regard to the operation of the Lloyd's market, the roles of brokers and intermediaries, the roles of leaders and followers in the Lloyd's market and the roles of coverholders and service companies in the distribution of products.

It is important to note that FCA requirements continue to apply and, if the Standards are effective in promoting conduct and enhancing consumer protection within the market, the FCA will take them into account when considering its supervisory approach. In addition to responding to the increased regulatory oversight of conduct issues, Lloyd's believes that the proper and proportionate management of conduct will result in a greater understanding of customers' expectations, in turn leading to better products being developed and sold.

There are now 9 Minimum Standards, which follow as culture and strategy, performance management and monitoring, operational management, case reserving, product assessment and review, customer experience - sales/post sales, third parties and outsourcing and conduct management information.

MS9 consolidates the previous Minimum Standards for Claims, Conduct and Delegated Authority and Lloyd's has created a spreadsheet document which provides a mapping between the current MS9 and the previous Minimum Standards. This mapping document can be opened by selecting the MS9: Customer heading located at <https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards> and then selecting the link entitled "Download Mapping MS9 Customer Standards Final" under the MS9: Customer heading.

Product documentation (policy wordings) is just one element of Conduct Risk covered by the Minimum Standards (MS9) and their focus is on the Lloyd's 'Customer'. The terminology throughout the Minimum Standards refers to "Product Risk" rather than differentiating between 'consumer' and 'commercial customers. Where the Lloyd's Customer is considered to be a 'consumer', having regard to the regulatory definition of consumer (or the equivalent term) in the territory in which the Product will be sold, a consumer will generally have a high Customer Risk and therefore be considered a high Product Risk (refer MS9 - CS 5.1 below) . The Minimum Standards (under MS9 - CS 5.1) provide a non exhaustive list of examples of Products that they deem to have a high Product Risk:

- Motor
- Household
- Accident and health
- Legal expenses
- Payment protection insurance
- Extended warranty Products
- Mobile phone or gadget insurance
- Travel insurance
- Pet insurance
- Life insurance
- Add-on Products
- Home emergency cover
- Guaranteed asset protection

## Lloyd's Minimum Standards - MS9 - Customer - cited

MS9 Standard	MS9 Citation	Previous MS11 Standard "equivalent"
Lloyd's MS9 - CS 5.1 - Product Risk Assessment Page 23	The assessment of the <b>Product Risk</b> of a Product shall be made having careful regard to - <ul style="list-style-type: none"> <li>• Customer Risk;</li> <li>• Product Complexity; .....</li> </ul>	MS11 - CR5.1
Lloyd's MS9 - CS 5.1 - Assessment of Customer Risk Page 24	The assessment of the <b>Customer Risk</b> of a Product shall be made having careful regard to the <b>financial sophistication and expertise</b> of the Lloyd's Customer to whom it is intended the Product will be sold.	MS11 - CR5.2
Lloyd's MS9 - CS 5.1 - Assessment of Product Complexity Page 24	The assessment of the <b>Product Complexity</b> shall be made having careful regard to - <ul style="list-style-type: none"> <li>• The <b>complexity of the Product Documentation</b> (including when compared with the documentation for products of a similar type from competitors where this is available).....</li> <li>• The familiarity that the Lloyd's Customer might be expected to have with the <b>words and expressions used in the Product Documentation</b>.....</li> </ul>	MS11 - CR5.3
Lloyd's MS9 - CS 5.2 - Product Design Page 21	Managing agents must have a customer focused Product Design process which identifies the target market and assesses their needs and reasonable expectations	MS11 - CR6.1
Lloyd's MS9 - CS 5.2 - Product Design Page 21	A managing agent must give careful consideration to - <ul style="list-style-type: none"> <li>• Preparing <b>appropriate Product Documentation</b>...</li> </ul>	MS11 - CR6.2
Lloyd's MS9 - CS 5.3 - High Product Risk Page 21	A managing agent must take reasonable care to ensure that the Product will provide the Lloyd's customer with insurance cover which meets their <b>needs and reasonable expectations on which they can realistically claim</b> .	MS11 - CR7.3
Lloyd's MS9 - CS 5.3 - High Product Risk Page 21	When preparing the Product Documentation, a managing agent must take particular care to ensure that it is <b>clear, fair and not misleading</b>	MS11 - CR7.5
Lloyd's MS9 - CS 5.2 - Product Design Page 21	...a managing agent must take particular care to ensure that there will be <b>no unreasonable post-sales barriers for the Lloyd's Customer</b> ...	MS11 - CR7.10
Lloyd's MS9 - CS 1.4 - Customer Challenge	... With regard to <b>Product Design</b> <ul style="list-style-type: none"> <li>• "Imagine that the Product was designed to be sold to a loved member of your family. Would</li> </ul>	MS11 - CR7.13

<p>Page 11</p>	<p>you personally recommend that he or she buys it?";</p> <p>With regard to <b>Product Documentation</b></p> <ul style="list-style-type: none"> <li>• “Having read the Product Documentation, would you personally be able to explain the key aspect of the Product to the proposed Lloyd’s Customer”; ...</li> </ul>	
<p>Lloyd’s M9 - CS 5.3 - Product Design - High Product Risk</p> <p>Page 21</p>	<p>In undertaking product design, a managing agent may place reasonable reliance on -</p> <ul style="list-style-type: none"> <li>• Wordings which have been specifically formulated by the Lloyd’s Market Association for use in Products with a high Product Risk...</li> </ul>	<p>MS11 - CR8.5</p>
<p>Lloyd’s MS9 - CS 7.1 - Unreasonable Barriers, CS 7.2 - Claims Handling</p> <p>Page 31</p>	<p>A managing agent must have effective Product Controls which ensure that it handles claims from Lloyd’s Customers fairly. This must include -</p> <p>Managing agents must ensure that they <b>handle claims from Customers fairly</b>, in the way that the managing agent has lead them to expect and in line with the Standard of Service. Managing Agents must:</p> <p>Assess what actions can be taken to resolve claims <b>properly</b></p> <p>Not unreasonably reject a claim or unreasonably terminate or avoid a contract of insurance</p> <p>Provide appropriate information to a Customer (or its agent) on the progress of a claim</p>	<p>MS11 - CR11.1</p>
<p>Lloyd’s MS9 - CS 7.3 - Complaints</p> <p>Page 31</p>	<p>A managing agent must comply with the Lloyd’s Code for Underwriting Agents: UK Personal Lines <b>Claims and Complaints Handling</b>.....</p>	<p>MS11 - CR12.4</p>
<p>Lloyd’s MS9 - Conduct Management Information</p> <p>Page 12</p>	<p>Meaningful Objectives and Key Performance Indicators, supported by robust reporting, support managing agents in monitoring and managing their ability to service Customers and deliver the overall business strategy.</p>	<p>MS11 - CR13</p> <p>A managing agent must be able to compile adequate Conduct Management Information for it to determine whether it is <b>treating Lloyd’s Customers fairly</b> at all times.....</p>
<p>Lloyd’s MS9 - Conduct Management Information (page 14 and Appendix 1)</p> <p>Page 41</p>	<p>The content of managing agents conduct Management Information and Operational Reports will vary depending on their business strategy, governance structure, product range and appetite and exposure to Conduct Risk generally. An illustration of model metrics and indicators that Lloyd’s would typically expect to see in a robust conduct Management Information pack for agents transacting high Product Risk business can be found in Appendix 1.</p>	<p>MS11 - CR13</p> <p>A managing agent’s Conduct Management Information must enable it to assess the effectiveness of- <b>its Product Design</b></p>

Lloyd's MS9 - CS 5.8 - Product Review Page 23	A managing agent must conduct <b>regular Product Reviews</b> of all its Products as may be appropriate having regard to their Product Risk.	MS11 - CR14.1
Lloyd's MS9 - CS 5.8 Product Review Page 23	A managing agent must promptly conduct a <b>Product Review</b> where a material issue or problem has been identified relating to a product	MS11 - CR14.2
Lloyd's MS9 - CS 5.8 - Product Review Page 23	The output of the Product Reviews must be used as an input into the managing agent's Product Design process so as to be part of an effective <b>feedback cycle</b>	MS11 - CR14.7

## Look Up

Where to find:

- Lloyd's Minimum Standards (MS9 - Customer) can be located on the Lloyds.com website:  
<https://www.lloyds.com/market-resources/requirements-and-standards/minimum-standards>

# APPENDIX 3

## FCA Rules / High Level Principles

### Regulatory Background

The FCA (and PRA) maintain Handbooks which set out rules and guidance for authorised financial services firms. Many sections of the FCA Handbook apply to managing agents. However, for the purposes of policy wordings, the most relevant sections are the “Principles for Business” (PRIN), “Insurance Conduct of Business rules” (ICOBS), and “Dispute Resolution” (DISP). FCA rules must be followed by all firms to whom they apply. Firms should also act in accordance with all guidance on a “comply or explain” basis.

The FCA also sets out six TCF Consumer Outcomes, which can be found below. It should be noted that whereas the specific outcomes relate only to consumers, the FCA’s TCF framework applies to all customers and the FCA expects those customers to be at the heart of a firm’s business.

### Relevant FCA Handbook provisions

FCA PRIN 2.1.1 R 6 - customers’ interests	A firm must pay due regard to the interests of its customers and <b>treat them fairly</b>
FCA PRIN 2.1.1 R 7 - communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is <b>clear, fair and not misleading</b>
FCA ICOBS 2.2.2 R	When a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is <b>clear, fair and not misleading</b>
FCA ICOBS 6.1.5 R	A firm must take reasonable steps to ensure a customer is given <b>appropriate information</b> about a policy in <b>good time</b> and in a <b>comprehensible form</b> so that the customer can make an <b>informed decision</b> about the arrangements proposed
FCA ICOBS 6.1.10 G	A firm dealing with a consumer may wish to provide information in a <b>policy summary</b> or as a <b>key features document</b>
FCA ICOBS 6 (Annex 2)	Provides the information items to be included in a Policy Summary <a href="https://www.handbook.fca.org.uk/handbook/ICOBS/6/Annex2.pdf">https://www.handbook.fca.org.uk/handbook/ICOBS/6/Annex2.pdf</a>

FCA ICOBS 7.1.1 R	A consumer has a <b>right to cancel</b> , without penalty and without giving any reason, within:  (1) 30 days for a contract of insurance which is, or has elements of, a pure protection contract or payment protection contract; or (2) 14 days for any other contract of insurance or distance contract.
FCA ICOBS 7.2.4 G	In most cases, the FCA would expect the proportion of a policy's exposure that relates to the <b>time on risk to be a pro rata apportionment</b> . However, where there is material unevenness in the incidence of risk, an insurer could use a more accurate method. The sum should be reasonable and should not exceed an amount commensurate to the risk incurred.
FCA ICOBS 8.1.1 R	An insurer must:  (2) provide <b>reasonable guidance to help a policyholder make a claim...</b>
FCA ICOBS 8.1.2 R	<b>Rejection of a consumer policyholder's claim is unreasonable</b> , except where there is evidence of fraud, if it is  (3) for breach of warranty or condition unless the circumstances of the claim are connected to the breach...
FCA DISP 1.3.3 R	...a respondent must put in place <b>appropriate management controls</b> and take reasonable steps to ensure that in <b>handling complaints</b> it identifies and remedies any recurring or systematic problems
FCA DISP 1.11.1 R	The Society must establish and maintain appropriate and effective <b>procedures for handling complaints</b> by policyholders against members of the Society which comply with this chapter.
FCA GEN 4.3.1 R	A firm must take reasonable care to ensure that every letter (or electronic equivalent) which it or its employees send to a retail client, with a view to or in connection with the firm carrying on a regulated activity, includes the disclosure in ...GEN 4 Annex 1AR (PRA-authorized persons)
FCA GEN 4 Annex 1.A	Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority

## FCA TCF Consumer Outcomes

Outcome 1	Consumers can be confident that they are dealing with firms where the <b>fair treatment of customers</b> is central to the corporate culture.
Outcome 2	Products and services marketed and sold in the retail market are designed to <b>meet the needs of identified consumer groups</b> and are targeted accordingly.
Outcome 3	Consumers are <b>provided with clear information</b> and are <b>kept appropriately informed</b> before, during and after the point of sale.

Outcome 4	Where consumers receive advice, the <b>advice is suitable and takes account of their circumstances.</b>
Outcome 5	Consumers are provided with <b>products that perform as firms have led them to expect</b> , and the associated service is of an acceptable standard and as they have been led to expect.
Outcome 6	Consumers <b>do not face unreasonable post-sale barriers</b> imposed by firms to change product, switch provider, submit a claim or make a complaint.

## Look Up

Where to find:

- FCA Handbook: <http://fshandbook.info/FS/html/FCA/>
- FCA TCF Consumer Outcomes: <http://www.fca.org.uk/firms/being-regulated/meeting-your-obligations/fair-treatment-of-customers>
- FCA ICOBS: <https://www.handbook.fca.org.uk/handbook/ICOBS>

# APPENDIX 4

## Unfair Terms in Consumer Contract Regulations 1999 (UTCCR)

### Historic Application

Legislation regarding unfair contract terms was historically contained in the Unfair Contract Terms Act 1977 (UCTA), which applied to contracts between businesses and between consumers, but contained some particular rules about business to consumer contracts. It made some terms in contracts automatically non-binding and subjected others to a test of 'reasonableness'. The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR), which came into force on 1 October 1999, enabled consumers to challenge most non-negotiated terms of a contract on the grounds that they are 'unfair'.

The UTCCR are replaced by the Consumer Rights Act 2015. The main provisions of the Consumer Rights Act came into force on 1 October 2015, with later provisions commencing on 1 April 2016 (in relation to transport services contracts). Please refer to Appendix 10 for further details.

The Consumer Rights Act 'clarifies' (retains and modifies) the existing law relating to 'unfair' contract terms, merging consumer protection rules under the UCTA with the UTCCR and also the Unfair Terms in Consumer Contracts (Amendment) Regulations 2001.

### Regulatory Background

Under UTCCR, consumer contracts should be written in "plain, intelligible language" (regulation 7) and should be "fair" (regulations 4 and 8).

The "plain, intelligible language" concept applies in three ways:

1. If the meaning of a term is in doubt a court will follow the interpretation most favourable to the consumer (regulation 7(2)).
2. Enforcement bodies may exercise powers to remove terms which are not in plain, intelligible language.
3. Even if a term is concerned with the "adequacy of the price" or "main subject matter" it will be reviewable for fairness if it is not drafted in "plain, intelligible language".

A court may assess any term in a consumer contract for fairness, unless the term falls within one or more of three exemptions. The exemptions cover:

1. negotiated terms;
2. terms that reflect the existing law; and
3. the main subject matter of the contract or the adequacy of the price or remuneration, as against the goods or services supplied in exchange.

Regulation 5(1) of the UTCCR sets out the basic test of unfairness:

*"A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer."*

This must be judged at the time the contract was concluded, looking at "*all the circumstances attending the conclusion of the contract*" (regulation 6(1)).

## UTCCR Basic Provisions cited

		Corresponding CRA 2015 provision:
Unfair Terms in Consumer Contracts Regulations 1999 - regulation 5(1)	A contractual term that has not been <u>individually negotiated</u> (i.e. a standard term) shall be regarded as <b>unfair if</b> , contrary to the requirements of good faith, <b>it causes a significant imbalance in the parties' rights and obligations, to the detriment of the consumer</b>	62(4) - applies to <u>all</u> terms and is not restricted to individually negotiated terms.
Unfair Terms in Consumer Contracts Regulations 1999 - regulation 7	Regulation 7 states that a firm 'shall ensure that any written term of a contract is expressed in <b>plain, intelligible language</b> ' and 'if there is doubt about the meaning of a written term, the interpretation which is most favourable to the consumer shall prevail'	64(3) and 69(1)
Unfair Terms in Consumer Contracts Regulations 1999 - regulation 8 (1)	An <b>unfair term</b> in a contract concluded with a consumer by a seller or supplier <b>shall not be binding on the consumer</b> .	62(1)
Unfair Terms in Consumer Contracts Regulations 1999 - regulation 4	Sets out the application of the regulations.	61

## Look Up

Where to find:

- <http://www.legislation.gov.uk/uksi/1999/2083/regulation/5/made>

# APPENDIX 5

## FCA Guidance and Insurer Undertakings / FOS Reports

### Regulatory Background

- The FOS publishes quarterly newsletters which provide information on hot topics and case studies. All Ombudsman decisions (which can be filtered in various ways) are published on the FOS website. Both these information sources can provide valuable insight into the FOS' current thinking and best practice. Managing agents are encouraged to monitor the FOS website for updates.
- The FCA also publishes 'notices of undertakings' by insurers and other financial service firms. These are where firms undertake to amend contract terms which the FCA has considered likely to be 'unfair'. Managing agents should consider if, and how, these undertakings could apply to their policy wordings and amend them as necessary.

### FCA Guidance

- For example, during 2012, the FSA (now the FCA) published guidance for insurers on the types of contract term it commonly finds to be 'unfair' under the UTCCR 1999 (see Appendix 4). These are:
  1. The right to unilaterally vary the contract: This is the most common type of unfair term as it has the potential to change the bargain the consumer entered into, without their explicit consent.
  2. The right to terminate the contract: Cancellation terms have the potential to be unfair if they create substantial inconvenience or cost to the consumer (e.g. they may have to declare they have previously had insurance cancelled when seeking new insurance, even when the cancellation was through no fault of their own). Insurers should clarify the grounds on which they may cancel the policy and allow the consumer the opportunity to redress the matter.
  3. Discretion to exercise contractual powers: Terms that are drafted in a vague way are more likely to be unfair as they give an insurer scope to interpret the term in the way that is most favourable to it (e.g. terms that are vague about the circumstances in which an insurer may levy charges upon cancellation of the contract by the consumer).
  4. The right to transfer its obligations under the contract: Terms which reserve the right for the insurer to transfer its obligations to a third party caused concern where the transfer may serve to reduce the guarantees for the consumer, without their agreement.
  5. Using terms that are not in plain and intelligible language: Insurers often use technical or legal language in their contracts which consumers may not be able to understand (e.g. 'indemnify', 'consequential loss' and 'force majeure'). Contract terms should fully reflect how an insurer intends to operate the product or service in practice, as consumers rely on the terms of the contract to understand their rights and obligations and those of the insurer.
- The FCA expects insurers to continue to consider their guidance and ensure that terms in their consumer contracts are clear and not unfair.
- In the future the FCA will no doubt reference the superseding legislation, CRA 2015 (see Appendix 10), in place of UTCCR 1999.
- The FCA published Finalised Guidance FG18/7 on 19 December 2018 entitled "Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015". This Guidance outlines a number of non-exhaustive areas that the FCA believes firms should have regard to when drafting and reviewing variation terms in financial services consumer contracts. These include and are not limited to the following:

- the validity of the reason(s) for using the variation term;
- the transparency of the variation term;
- provision for notice in the variation term; and
- provision for the freedom to exit the contract should a consumer not wish to accept the variation.

The FCA expects firms to consider FG18/7 when they review their existing contracts and when they draft new ones. Firms should ensure that variation terms in their contracts are transparent and not unfair.

## Example FCA Undertakings

In addition, managing agents need to consider the impact of the FCA (formerly FSA) published Notices of Undertaking, for example, under UTCCR 1999 (see also Appendix 4):

- RBSI, November 2011: FSA found that wordings were potentially unfair to consumers because they were unclear and gave insurers the power to decide what was “**reasonable and necessary**”. Insurers should review all references to ‘Reasonable’ and ‘Necessary’ in policy wordings.
- L&G, December 2011: FSA found that **undefined wording** could lead insurers to interpret wordings to their advantage, create an imbalance and afford scope to refute a claim. Insurers should ensure that exclusions from cover are clearly defined.
- AXA, February 2012: FSA found that terms requiring the customer to provide at their ‘**reasonable expense**’ all information and reports that would be needed to progress the claim had the potential to cause an imbalance by being an unreasonable and excessive requirement for consumers to comply with. Insurers should amend all claims settlement, claims notification and claims condition wordings to match the AXA wording sanctioned by the FSA.
- AXA, February 2012: FSA found that, in cases where insurers were unable to replace items and consumers received a discounted cash settlement (i.e. not where the consumer opted for a cash settlement), the discounts could be detrimental to consumers as they would not be fully reimbursed for their insured losses. Insurers should **not discount a cash settlement** where they cannot provide an alternative replacement item and should clearly set out the claims process and should update their policy wordings.
- Esure, September 2013: the newly formed FCA published a Notice of Undertaking regarding some “unfair” contractual terms in use by esure in their UK home and motor policies. Specifically the FCA was concerned that the terms allowed esure to **cancel a policy** without having to provide a valid reason.

The FCA published its first “undertaking” under CRA 2015 (see also Appendix 10) in July 2017. This was the first undertaking to be published by the FCA since January 2014 and was also the first publication by the FCA on “unfair terms” in consumer contracts since March 2015:

- London General Insurance Company Limited (LGIC), July 2017: This concerned an LGIC extended warranty policy provided by Nationwide Building Society. The FCA was concerned by the use of the words “items such as” when describing certain goods whilst using a definitive list on its website; a situation which could lead to confusion. LGIC and Nationwide confirmed to the FCA that the items listed in term 3A had been treated as an exhaustive list when handling claims under the Policy.

## Look Up

Where to find:

- FOS Newsletters: <http://www.financial-ombudsman.org.uk/publications/ombudsman.htm>
- FOS Ombudsman Decisions: <http://www.ombudsman-decisions.org.uk/>
- FCA undertakings: <https://www.the-fca.org.uk/unfair-contract-terms/unfair-contract-terms-library?RRU0116&section=news#undertakings>

# APPENDIX 6

## Consumer Insurance (Disclosure And Representations) Act 2012 - CIDRA

### Regulatory Background

The Insurance Act 2015 (the key provisions of which came into force in August 2016) and the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA) represent the most significant changes to insurance contract law in this country in over 100 years. The legislation brings English consumer law into line with other European jurisdictions by shifting the balance of the law in favour of consumers, and in particular removing the duty of disclosure on consumers.

The Consumer Insurance (Disclosure and Representations) Act 2012 - CIDRA - applies to all Consumer Insurance Contracts (“a contract of insurance entered into by an individual wholly or mainly for purposes unrelated to the individual’s trade, business or profession”) entered into or varied after 6 April 2013.

CIDRA defines a “consumer” and contains specific provision for “Group” policies. (The addition of the words “or mainly” in the definition of consumer insurance contract widens the scope of application beyond the old FCA definition of a “retail customer”.)

The key reforms under CIDRA relate to non-disclosure, misrepresentation and basis of the contract clauses (reforms which largely follow the existing FOS approach).

- CIDRA replaces a duty to disclose material circumstances relating to the proposed cover with a duty to take “*reasonable care*” not to make a misrepresentation during pre-contract negotiations (and any subsequent variations or endorsements). i.e. The onus therefore switches to insurers (managing agents) to ask relevant questions.
- Consumers must answer the insurers’ (managing agents’) questions honestly and reasonably.
- As the consumer’s duty is limited to ensuring that questions asked by managing agents are answered honestly and reasonably, the burden is placed on managing agents to ask for any information that they need in order to assess the risk and to clarify any unclear or incomplete information provided.
- Under CIDRA, insurers (managing agents) are no longer able to rely on “*basis of contract*” clauses, which seek to convert representations into a policy warranty allowing insurers (managing agents) to discharge the policy without return of premium if the warranty is breached.
- Whether the consumer has taken reasonable care will depend on the relevant circumstances including:
  - The type of insurance in question - e.g. product complexity;
  - The explanatory material and publicity produced by insurers;
  - How clear and specific insurers’ (managing agents) questions were; and
  - Whether the consumer used a broker.
- If the consumer acts with reasonable care, then insurers (managing agents) must pay claims if otherwise covered.
- CIDRA provides remedies for breach of the duty to take reasonable care, which are markedly different from the avoidance remedy previously available and will depend on the nature of the misrepresentation i.e. whether innocent, deliberate/reckless or careless:
- Insurers (managing agents) are not permitted to contract out of CIDRA if to do so would put the consumer in a worse position than under CIDRA.

The FCA has incorporated CIDRA into its Rulebook in ICOBS 8.1.

The LMA, jointly with Clyde & Co, have previously published guidance on CIDRA, which is summarized below, and is also available on the LMA website [www.lmalloyds.com](http://www.lmalloyds.com)

## Joint LMA/Clyde & Co Guidance on CIDRA

Insurers should consider how the changes brought about by CIDRA affect their business, amend their policy/certificate wordings and other documentation and claims processes in order to comply with CIDRA, adopt best practice and mitigate against increased exposure.

### *Wordings/Documentation*

- Insurers should amend proposal forms and other pre-contractual documents to ensure all relevant questions are asked in an appropriate way to elicit the desired information.
- As the consumer's duty is limited to ensuring that questions asked by insurers are answered "honestly and reasonably", the burden is placed on insurers to ask for any information that they need in order to assess the risk and to clarify any unclear or incomplete information provided.
- The questions asked of consumers at policy inception, amendment and renewal must be "clear and specific" in terms of what insurers need consumers to tell them. Insurers should avoid assuming a high level of consumer understanding. It is also noteworthy that the Association of British Insurers (ABI) has recommended that all default (i.e. pre-ticked, or pre-chosen) answers be removed so that the consumer has to make an active choice as to which answer is correct for them. We endorse that recommendation.
- In the documentation, the insurer also needs to advise consumers of the remedies which are available to the insurer if the consumer makes a misrepresentation.
- Insurers should focus more closely on specific conditions in place of "basis of contract clauses".

### *Claims Processes*

Insurers need to comply with the rules and guidance of the FCA.

Under CIDRA, in the event of a claim, where there is a suspected misrepresentation, an investigation needs to determine the nature of the misrepresentation. The category into which this falls will in turn determine the remedy available to insurers, and CIDRA gives legislative effect to the three part FCA classification:

1. Honest and Reasonable: The insurer has no remedy and must pay the claim.
2. Careless: The insurer has a compensatory remedy, which is based on what the insurer would have done had the question been answered accurately/completely.
3. Deliberate or Reckless: The insurer may treat the policy as if it had never existed and decline claims.

It is for the insurer to show that a misrepresentation is deliberate or reckless, failing which the misrepresentation is regarded as a careless misrepresentation. Showing a misrepresentation as deliberate or reckless is likely to prove challenging in all but the clear cut cases and insurers need to adopt a flexible and proportionate approach.

### **Look Up**

Where to find:

- CIDRA: <http://www.legislation.gov.uk/ukpga/2012/6/crossheading/qualifying-misrepresentations/enacted>
- LMA/Clyde & Co Joint Guidance on CIDRA: <http://www.lmalloyds.com/CMDownload.aspx?ContentKey=dd2b0e1e-92b8-4ae5-9bc9-d9cf827c4469&ContentItemKey=0c5d8626-31c4-48b7-8b60-0b17da2555dc>

# APPENDIX 7

## Insurance Act 2015 (as amended by the Enterprise Act 2016)

### Regulatory Background

The Insurance Act 2015 and the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA - see Appendix 6) represent the most significant changes to insurance contract law in this country in over 100 years. The legislation brings English consumer law into line with other European jurisdictions by shifting the balance of the law in favour of consumers, and in particular removing the duty of disclosure on consumers.

The Insurance Act 2015 gained Royal Assent on 12 February 2015 and the key provisions came into force on 12 August 2016. All new contracts and variations to existing contracts concluded on or after 12 August 2016 are governed by the Act if they are expressly or impliedly subject to the law of England and Wales, Scotland or Northern Ireland.

A binding authority is a contract for insurance and not of insurance - the Act applies to English law certificates issued under the binder. The applicable date would be the conclusion of each contract with each customer - i.e. offer/acceptance etc. in respect of each certificate issued. Therefore, it will be necessary to look at forms of certificates which are issued on or after 12 August 2016 to ensure these are appropriate. The position may not be so straightforward for some types of facility and treaty - declarations may be considered to be new contracts in respect of some types of facility. There is some guidance on this at the end of the joint LMA/IUA Guidance on the Act (see below for the link to the Guidance).

The Insurance Act 2015 applies to both consumer and non-consumer (i.e. commercial) insurance contracts but this Guidance discusses only those aspects of the Act which touch on consumer insurance contracts.

### Insurance Act 2015 - relevance to consumer policies

The key provisions relating to consumer insurance contracts are:

#### *Warranties*

All warranties become "*suspensive conditions*" (Section 10 of the Act) and insurers will be liable only for losses that take place after a breach has been remedied (assuming that it is possible to remedy the breach).

For example, if a consumer breaches a warranty that an alarm system will be inspected every six months, that breach will be "remedied" if the system is inspected after seven months, and so coverage will be suspended for only one month in such circumstances.

#### *Other Contractual Provisions*

A new provision has been introduced for any term (not just a warranty) designed to reduce the risk of a particular type of loss, or of loss at a particular time or in a particular place (Section 11 of the Act). It does not apply to terms which define the risk as a whole (e.g. a requirement that a property will not be used commercially).

Where there is non-compliance, insurers are not able to rely on that non-compliance as a defence if the consumer can demonstrate that such non-compliance could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred. So, for example, where there is a requirement to install a burglar alarm, and that is not done, insurers will not be able to refuse an indemnity on that ground for flood loss.

The intention is that insurers should pay only if the Insured can show that the breach was totally irrelevant and could not have affected the actual loss suffered. Neither the Insured nor the insurer would have to prove what actually caused the loss, or what would have happened if the term had been complied with, so evidential matters are far less important than they would be under a causal test. Even if an Insured can show that compliance with the condition would not have actually made a difference to the loss (thus satisfying a causal test), the fact that it could have made a difference means that an insurer does not have to pay.

Accordingly, in order to limit the scope for dispute, insurers should specify in their policies what requirements they wish to impose, what risk of loss that requirement is intended to address and what consequence non-compliance will have.

### *Contracting out*

Section 15 of the Act operates to prohibit contracting out, such that any term which would put a consumer in a worse position than would have been the case under the Act is to that extent of no effect. The contracting-out provisions will not apply to settlement agreements (and hence an Insured will still be able to enter into a settlement on less favourable terms than the default rules).

### *Fraudulent claims*

Previously, an insurer was not liable to pay a fraudulent claim and could recover any sums already paid in respect of it. It was not clear whether an insurer can refuse to pay genuine claims for losses suffered after the fraudulent act but before discovery/termination of the policy.

Under Section 12 of the Act, an insurer also has the option of terminating the contract from the date of the fraudulent act (not the discovery of it), without any return of premium. The Law Commissions believed that insurers would want this option, rather than an automatic remedy, because it allows them more commercial flexibility. The insurer can then refuse to pay any claims from that point onwards (but will remain liable for legitimate losses before the fraud).

The Act does not seek to define what a fraudulent claim is, so there is no distinction between an Insured who presents a completely fraudulent claim (i.e. claims for something that never happened) and an Insured who has genuinely suffered a loss but has used a lie or deception either to improve its chances of a faster payout or because it mistakenly believes that the truth would entitle insurers to decline cover (known as a fraudulent device). However, the position on fraudulent devices has been clarified by the decision of the Supreme Court in *Versloot Dredging BV & Anor v. HDI Gerling Industrie Versicherung AG & Ors* [2016] UKSC 45, where it was held that a lie calculated to improve the Insured's position will no longer be enough in and of itself to repudiate the claim if it has no actual impact on the validity of the claim. It will not trigger the remedies currently available for fraudulent claims under the common law and the Insurance Act 2015.

However, the law still does not allow Insureds to benefit from fraud.

An Insured who deliberately burns down premises may tell a material lie by relying on a false alibi. Similarly, the submission of false or forged documents which inflate an otherwise genuine loss is material and entitles insurers to decline the entire claim.

It is only where the fraud has no impact on the Insured's entitlement that insurers will be unable to reject the claim. For example, if the Insured provides a false alibi but is ultimately found to be innocent of the fire, the policy will respond. Similarly, where the Insured provides a forged invoice which evidences an otherwise genuine payment, managing agents will be obliged to indemnify.

## Late Payment Damages

The Enterprise Act 2016 received Royal Assent on 04 May 2016 and came into force on 04 May 2017.

The effect of s.5 of the Enterprise Act is that it introduces into the Insurance Act 2015 new provisions (as clause 13A) relating to damages for late payment of an insurance claim.

Under the new provisions, every insurance contract concluded on or after 04 May 2017 is subject to an implied term that, if an Insured makes a claim, the insurer must pay any sums due within a reasonable time. If the insurer breaches this implied term, it may be liable to the Insured in damages (“Late Payment Damages”).

The LMA has updated both the Joint Guidance on the Insurance Act 2015 and the “Quick reference guide” to include reference to Late Payment Damages.

## Look Up

Where to find:

- The Insurance Act 2015: <http://www.legislation.gov.uk/ukpga/2015/4/contents/enacted>
- The Enterprise Act 2016: [http://www.legislation.gov.uk/ukpga/2016/12/pdfs/ukpga\\_20160012\\_en.pdf](http://www.legislation.gov.uk/ukpga/2016/12/pdfs/ukpga_20160012_en.pdf)
- LMA/ IUA Joint Guidance on the Insurance Act 2015: <http://www.lmalloyds.com/act>
- Insurance Act 2015 - Quick reference guide to key provisions and their practical effects for Underwriters: <http://www.lmalloyds.com/act>

# APPENDIX 8

## Sanctions

### Regulatory Background

Lloyd's general position regarding the use and function of sanctions clauses on insurance and reinsurance contracts is set out in Lloyd's Sanctions Guidance.

### Lloyd's Sanctions Guidance

Lloyd's General Guidance on Sanctions Clauses has been provided in Market Bulletin Y4916 dated 27 July 2015, which replaces guidance provided in Market Bulletin Y4832 dated 17 October 2014.

It is always advisable to check whether a country (or an individual) is subject to current sanctions.

Lloyd's advocates the inclusion of an appropriate Sanctions Clause on policies.

LMA3100 is the 'model' clause developed by the LMA for use in commercial contracts. The LMA has also adapted and produced a specific 'model' for use in Consumer Insurance Contracts.

### Example Clause:

#### Sanctions Endorsement

(For use on Consumer Insurance Contracts)

We shall not provide any benefit under this contract of insurance to the extent of providing cover, payment of any claim or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

LMA5213  
12 March 2014

### Look Up

Where to find:

- Market Bulletin Y4916: <https://www.lloyds.com/market-resources/market-communications/-/media/files/the-market/communications/market-bulletins/2015/07/y4916.pdf>

# APPENDIX 9

## Use of Plain English

### Regulatory Background

- A managing agent must communicate information to its clients in a way that is clear, fair and not misleading (MS9 - CS 5.2/ FCA PRIN 2.1.1 R 7 / ICOBS 2.2.2 R / CRA 64(3) and 68(2)).
- The assessment of Product Complexity shall be made having careful regard to- .... the familiarity that the Lloyd’s Customer might be expected to have with the words and expressions used in the Product Documentation (MS9 - CS 5.1).
- Some terms are now deemed ‘unacceptable’ for use in consumer policies - as identified within FOS Reports / FCA Undertakings, e.g. “consequential loss” - refer Appendix 5.

### Key Policy Features

- It is recommended that managing agents stick to “plain English” throughout the Policy document.
- Avoid legal terms / “legalistic” language.
- Remove and replace Latin terms/phrases.
- Remove or replace “jargon” and do not use abbreviations.
- Remove archaic language and replace with something simpler to understand, unless the “old” word is unavoidable or at least makes perfectly good sense.
- Useful rule of thumb; ask yourself “Could my granny understand it?”
- The usual “policy drafting rules” apply, e.g.:
  - Beware “cut and paste” - and the introduction of contextual ambiguity.
  - Contra Proferentum - any ambiguity will be construed against the drafter (i.e. in favour of the consumer).
  - Consistency of definitions throughout the policy.
  - If a word or term is not defined, then a court would normally consider that word, or term, to have the “generally understood” meaning, given the context of the relevant sentence. If a technical word is not defined clearly, there is a danger that its meaning would be construed against the managing agent.

### Examples

Unacceptable terms: Every managing agent’s experience will be different, but there are some terms that the FCA has deemed “inappropriate” (e.g. through FCA Insurer Undertakings/ FOS Decisions) due to their obscure or ambiguous nature. If such words are used, their meaning may need further explanation for consumers within the policy documentation. Examples include the following:

<i>Consequential Loss</i>	<i>Curtail / Curtailment</i>	<i>De facto</i>
<i>Force majeure</i>	<i>Notwithstanding</i>	<i>Indemnify / Indemnity</i>
<i>Lien</i>	<i>Tacit renewal</i>	<i>Tort</i>
<i>Whosoever</i>	<i>Wheresoever</i>	

Additionally, examples of the type of language that might be difficult for a consumer to understand are shown below and managing agents may wish to consider using alternative language:

<i>Instead of</i>	<i>Consider using</i>
<i>Notwithstanding</i>	<i>Even if, despite,</i>
<i>Ab initio</i>	<i>From the beginning</i>
<i>Each and every</i>	<i>Each</i>
<i>In the event that</i>	<i>if</i>
<i>Such</i>	<i>the</i>
<i>Hereunder, aforesaid, aforementioned, Herein, hereto, hereof, whereof, thereto, aforegoing, hereinafter, therefore, wheresover, whomsoever</i>	<i>Delete / omit where possible.....</i>
<i>It is understood and agreed</i>	<i>Delete / why else would it be in an agreement?</i>

## Look Up

Where to find further useful information:

- A good source of information is “The Oxford Guide to Plain English” by Martin Cutts (ISBN 978-0-19-966917-2).
- This website <http://www.plainenglish.co.uk/free-guides.html> contains an “A-Z of alternative words” download which may be useful. If you don’t want to download/print the full guide, click on “services” at the top, and the next page to appear has a drop down menu which can be used to search by word.
- This website <http://www.clearest.co.uk/pages/publications/plainenglishlexicon> contains a “Plain English Lexicon” download which, according to the website, “enables you to make informed choices about the familiarity and frequency of 2,700 words that sometimes occur in public-information documents”. The download is 98 pages in total and uses two research foundations, the ‘Living Word Vocabulary’ (LWV) and the British National Corpus (BNC) which, according to the guide, “empowers plain-language writers to expand the vocabulary they use”. The words in the lexicon vary not only in length, but in complexity, in the fields from which they are drawn (legal, medical and financial, for example), and in grammatical functions.

# APPENDIX 10

## Consumer Rights Act 2015 (CRA 2015) / FCA Finalised Guidance FG18/7

### Regulatory Background:

- The Consumer Rights Act 2015 (“the Act”), received Royal Assent on 26 March 2015 and the main provisions came into force on 01 October 2015 (provisions relating to consumer transport services contracts including rail, air, sea and inland waterway came into force on 01 April 2016).
- The Act sets out a framework that consolidates in one place key consumer rights covering contracts for goods, services, digital content and the law relating to unfair terms in consumer contracts. The Act complements but is distinct to the measures introduced by the European Consumer Rights Directive (“CRD”).
- Despite the main focus applying to retailers, the Act also applies to consumer insurance contracts, and the insurance market should be aware of its impact, particularly in respect of:
  1. Digital content (as the Act applies to both digital content for which a consumer pays a price and digital content supplied free with goods/services)
  2. Supply of services
  3. Unfair contract terms, including ancillary contracts
  4. Enhanced enforcement powers
- For insurers offering consumer products, the main impact of the Act is likely to be seen in the new laws for digital content and ancillary contracts, unfair contract terms and the changes to the mechanisms for consumer redress.
- For most insurers, the new Act will not have a significant impact on their business. Many of the measures reflect much of the FCA best-practice in terms of policy wordings and Treating Customers Fairly (TCF), but this is a major piece of legislative reform that does introduce some changes of which insurers should be aware.
- In particular, insurers should be aware of:
  - the introduction of rules to ensure that digital content is of satisfactory quality and fit for purpose (CRA 34-35);
  - changes to consumer cancellation rights; and
  - the requirement to make all terms of consumer contracts ‘transparent’ and ‘prominent’. Under the CRA, a term will only be excluded from an assessment for fairness where it is both transparent and prominent (CRA 64(2) / UTCCR 7 (see Appendices 4 and 10)).
- The Act, together with the Consumer Insurance (Disclosure and Representations) Act 2012 (refer Appendix 6) fundamentally changes the legal landscape for insurers offering consumer insurance policies bringing the law and regulation closer into alignment. Insurers need to be certain that their policy/contract terms and conditions comply with the Act and are regularly reviewed to ensure that they are fair and compliant, and that all services are carried out within a reasonable time.
- The FCA published Finalised Guidance FG18/7 on 19 December 2018 entitled “Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015”. This Guidance outlines a number of non-exhaustive areas that the FCA believes firms should have regard to when drafting and reviewing variation terms in financial services consumer contracts. These include and are not limited to the following:

- the validity of the reason(s) for using the variation term;
- the transparency of the variation term;
- provision for notice in the variation term; and
- provision for the freedom to exit the contract should a consumer not wish to accept the variation.

The FCA expects firms to consider FG18/7 when they review their existing contracts and when they draft new ones. Firms should ensure that variation terms in their contracts are transparent and not unfair.

## Key Policy Features:

- Terms of consumer contracts (including, in particular, exclusions) should be:
  - transparent (i.e. expressed in plain and intelligible language and, when written, legible); and
  - prominent (i.e. brought to the consumer’s attention in a way that an average consumer would be aware of the term - an average consumer is one who is ‘reasonably well-informed, observant and circumspect’).
- Managing agents should also beware that the new additions to the ‘grey list’ of terms presumed to be unfair include:
  - disproportionately high charges where the consumer decides to cancel the contract;
  - terms enabling the insurer (managing agent) to determine the characteristics of the subject matter of the contract after the conclusion of the contract; and
  - terms allowing the insurer (managing agent) to determine the price after the consumer is bound by the agreement.
- Similarly, insurers should ensure that renewals or product literature is transparent (i.e. written in plain and intelligible language).

## Look Up

Where to find:

- Further useful information: <http://www.legislation.gov.uk/ukpga/2015/15/contents/enacted>
- The Government’s Competition & Markets Authority (CMA) website (<https://www.gov.uk/government/organisations/competition-and-markets-authority>) contains a link to a flowchart which “*aims to provide an ‘at a glance’ simplified overview of the unfair terms provisions in Part 2 of the Act. It should not be used, in isolation, to determine the fairness or otherwise of a particular term, and should be read in light of the guidance documents as a whole. It is not a substitute for legal advice.*” The CMA’s flowchart can be found via this link: <https://www.gov.uk/government/publications/unfair-contract-terms-cma37>
- <https://www.fca.org.uk/publication/finalised-guidance/fg18-07.pdf>

## Consumer Rights Act 2015 - Summary of Provisions

The CRA is in three Parts:

Part 1 - Consumer contracts for goods, digital content and services;

Part 2 - Unfair terms; and

Part 3 - Miscellaneous and general, including investigatory powers.

### Digital content

CRA Part 1 Chapter 3 imposes an entirely new regime of consumer rights in respect of digital content. The CRA applies both to digital content for which a consumer pays a price and digital content supplied free with goods/services.

Under the CRA, digital content forming part of the insurance package (including apps and whether the service is paid for or free to policyholders):

- **must be of satisfactory quality**, according to the expectations of a reasonable person (this will depend on the nature and use of the digital content and will be different for different digital products).
- **must be “fit for purpose”** - the insurer (or broker) must ensure that any digital content is fit for purpose and maintained (e.g. if the digital content is not available for a significant period of time, the policyholder may have a right to repair and/or to a price reduction, even if the digital content itself is free of charge).
- **must be “as described”** - every contract to supply digital content is to be treated as including a term that the digital content will match any description of it given by the trader (insurer) to the consumer.

Remedies also exist where digital content causes damage to consumer devices, for example where a virus affects the app. A number of insurers now offer digital content as part of their insurance offering to consumers and, as technology plays a greater role in the insurance industry, firms need to ensure that, before they offer apps to consumers, they are safe, secure and reliable to avoid any potential penalties.

### Supply of services

CRA Part 1 Chapter 4 clarifies the law as it relates to the provision of services. Insurance is not expressly excluded under the CRA, but the Act applies only to the extent that the service provided is not subject to separate existing legislation that provides for more extensive consumer rights than under the CRA. As a result, the impact of the CRA on the supply of insurance services is likely to be limited given the extensive rights already set out in financial services legislation and the Financial Conduct Authority Rules.

It is also unclear how the Courts might interpret how the various pieces of legislation, and rules interplay with each other. A good example is that of the Insurance Conduct of Business (ICOBS) Rules which require claims to be paid “promptly”, whereas the CRA requires the performance of services (e.g. claims payments) within a “reasonable time”. It may be that “promptly” is considered to be a higher standard than “within a reasonable time”, but the remedy under the CRA is greater than that under ICOBS so it is unclear which provides the greater consumer rights. What might constitute a reasonable time will be a question of fact, but managing agents need to be aware that any unnecessary delays in providing services could result in a breach under the CRA.

## Unfair contract terms

CRA Part 2 clarifies the existing law relating to ‘unfair’ contract terms, merging consumer protection rules under the Unfair Contract Terms Act 1977 (UCTA) with the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCR) and also the Unfair Terms in Consumer Contracts (Amendment) Regulations 2001.

Legislation regarding unfair contract terms was contained in the UCTA, which applied to contracts between businesses and between consumers, and contained some particular rules about business to consumer contracts. It made some terms in contracts automatically non-binding and subjected others to a test of ‘reasonableness’. The UTCCR enabled consumers to challenge most non-negotiated terms of a contract on the grounds that they were ‘unfair’. There are certain terms that cannot be assessed for fairness: terms that relate to the definition of the main subject matter of the contract and those that relate to the adequacy of the price or remuneration as against the goods or services supplied in exchange. These are maintained in the CRA (CRA 64(1)).

Both consumer ‘contracts’ and consumer ‘notices’ are covered by the CRA (CRA 61(1) and 61(4)). Consumer notices may be written or oral and include announcements and other communications that are intended to be read by the consumer. Renewal notices, for example, would amount to a consumer ‘notice’.

The CRA maintains the position that an unfair term of a consumer contract is not binding on the consumer (CRA 62(1)) and a term is deemed to be unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties rights and obligations under the contract to the detriment of the consumer (CRA 62 (4)).

Ultimately, whether a term is fair is to be determined by taking into account the nature of the subject matter of the contract and by reference to all of the circumstances existing when the term was agreed, and to all of the other terms of the contract or of any other contract on which it depends (CRA 62(5)).

The CRA does add to the so-called “grey list” of terms (Part 1 of Schedule 2) that are presumed to be unfair, so that the list now also includes:

1. Disproportionate cancellation charges imposed on the consumer;
2. Terms enabling the insurer to determine characteristics of the subject matter of the contract after it has been concluded; and
3. Terms allowing the insurer to determine the price after the consumer has been bound.

The CRA also maintains the position that any unfair terms in consumer contracts or notices must be made prominent to the ‘average’ customer (one who is reasonably well informed, observant and circumspect) and transparent in order to avoid an assessment for fairness (CRA 64(2)). If such a term is not transparent and prominent, (e.g. if it is in the ‘small print’), it is assessable for fairness. Therefore, terms must be expressed in plain and intelligible language (CRA 64(3)) and, when in writing, must be legible and must also be brought to the customer’s attention in such a way that the ‘average’ customer would be aware of them.

The CRA also maintains the position that, if a term in a consumer contract, or a consumer notice, could have different meanings, the meaning that is most favourable to the consumer will prevail (CRA 69(1)).

The key provisions of the CRA relating to unfair contract terms are set out below, along with the “grey list” in full.

## Enhanced enforcement powers

CRA Part 3 deals with various miscellaneous provisions including, under Chapter 1 and Schedule 3, 'Enforcement'.

Under the previous legislation, if a managing agent was found to be using policies containing unfair terms, the Competition and Markets Authority (CMA) or the Financial Conduct Authority (FCA) could require an 'undertaking' from the managing agent that they will amend the term, and/or bring injunction action to force the managing agent to stop using the term. These provisions remain in the CRA (Schedule 3(3) and 3(6)).

However, the CRA (under Schedule 7) also amends Part 8 of the Enterprise Act 2002 to provide for new consumer redress measures including:

1. Compensation to consumers who suffer as a result of the unfair terms (which have given rise to the enforcement order or 'undertaking');
2. Termination (i.e. offers the consumer the option to terminate but not vary that contract);
3. Collective interest measures of consumers where they cannot be identified (i.e. where the consumers cannot be identified, or cannot be identified without disproportionate cost to the subject of the enforcement order or undertaking, measures intended to be in the collective interests of consumers).

The CRA defines 'regulators' (Schedule 3, s.8(1)) and also extends to bodies who may act as private enforcers (as specified by the Secretary of State), which can include consumer bodies ('Consumer Associations').

The CRA also introduces significant changes to the regime for collective actions on behalf of consumers for breaches of competition law (Schedule 8, Part 1). It enables consumers to bring collective actions before the Competition Appeals Tribunal where the claims relate to the same, similar or related issues of fact and law.

## Consumer Rights Act 2015 - Unfair Contract Terms - Provisions cited

Consumer Rights Act 2015 - PART 2 "UNFAIR TERMS"	Provision	Corresponding UTCCR Provision
61	<b>Contracts and notices covered by this Part</b>	
61 (1)  61 (7)	<p>This part applies to <b>a contract between a trader and a consumer</b>.</p> <p>A notice to which this Part applies is referred to in this Part as a "consumer notice".</p> <p><i>[Sets out the application of the Act.</i></p> <p><i>NB Insurance Contracts are not expressly excluded]</i></p>	4 (1)
62	<b>Requirement for contract terms and notices to be fair</b>	
62 (1)	An <b>unfair term</b> of a consumer contract <b>is not binding on the consumer</b> .	8 (1)
62 (2)	An unfair consumer notice is not binding on the consumer.	
62 (3)	This does not prevent the consumer from relying on the term or notice if the consumer chooses to do so.	
62 (4)	A term is unfair if, contrary to the requirement of good faith, it <b>causes a significant imbalance in the parties' rights and obligations</b> under the contract <b>to the detriment of the consumer</b> .	5 (1)
62 (5)	<p>Whether a term is <b>fair is to be determined</b> –</p> <p>(a) taking into account the nature of the subject matter of the contract, and</p> <p>(b) by reference to all the circumstances existing when the term was agreed and to all of the other terms of the contract or of any other contract on which it depends.</p>	6 (1)
63	<b>Contract terms which may or must be regarded as unfair</b>	
63 (1)	<p><b>Part 1 of Schedule 2</b> contains an <b>indicative and non-exhaustive list of terms of consumer contracts that may be regarded as unfair</b> for the purposes of this Part.</p> <p><i>[The "Grey List"]</i></p>	5 (5)
64	<b>Exclusion from assessment of fairness</b>	
64 (1)	<p>A term of a consumer contract may not be assessed for fairness under section 62 to the extent that–</p> <p>(a) it specifies the main subject matter of the contract, or</p>	6 (2)

	(b) the assessment is of the appropriateness of the price payable under the contract by comparison with the goods, digital content or services supplied under it.	
64 (2)	Subsection (1) excludes a term from an assessment under section 62 only if it is <b>transparent and prominent</b> .	
64 (3)	A term is <b>transparent</b> for the purposes of this Part if it is expressed in <b>plain and intelligible language</b> and (in the case of a written term) is <b>legible</b> .	7 (1)
64 (4)	A term is <b>prominent</b> for the purposes of this section if it is <b>brought to the consumer's attention</b> in such a way that an average consumer would be aware of the term.	
64 (5)	In subsection (4) "average consumer" means a consumer who is reasonably well-informed, observant and circumspect.	
64 (6)	This section does not apply to a term of a contract listed in Part 1 of Schedule 2. <i>[Refer also CRA 63 (1) above].</i>	
<b>67</b>	<b>Effect of an unfair term on the rest of the contract</b>	
67	Where a term of a consumer contract is not binding on the consumer as a result of this Part, the <b>contract continues, so far as practicable, to have effect</b> in every other respect.	8 (2)
<b>68</b>	<b>Requirement for transparency</b>	
68 (1)	A trader must ensure that a written term of a consumer contract, or a consumer notice in writing, is <b>transparent</b> . <i>[Refer also CRA 64 (3) above].</i>	
68 (2)	A consumer notice is transparent for the purposes of subsection (1) if it is expressed in <b>plain and intelligible language</b> and it is <b>legible</b> .	
<b>69</b>	<b>Contract terms that may have different meanings</b>	
69 (1)	If a term in a consumer contract, or a consumer notice, could have <b>different meanings</b> , the meaning that is <b>most favourable to the consumer is to prevail</b> .	7 (2)

## Consumer Rights Act 2015 - The “Grey List”

Consumer Rights Act 2015 -	Provision	Corresponding UTCCR Provision
SCHEDULE 2 PART 1	CONSUMER CONTRACT TERMS WHICH MAY BE REGARDED AS UNFAIR  LIST OF TERMS <i>[The “Grey List”]</i>	Schedule 2
1	A term which has the object or effect of excluding or limiting the trader’s liability in the event of the death of or personal injury to the consumer resulting from an act or omission of the trader.	1a
2	A term which has the object or effect of inappropriately excluding or limiting the legal rights of the consumer in relation to the trader or another party in the event of total or partial non-performance or inadequate performance by the trader of any of the contractual obligations, including the option of offsetting a debt owed to the trader against any claim which the consumer may have against the trader.	1b
3	A term which has the object or effect of making an agreement binding on the consumer in a case where the provision of services by the trader is subject to a condition whose realisation depends on the trader’s will alone.	1c
4	A term which has the object or effect of permitting the trader to retain sums paid by the consumer where the consumer decides not to conclude or perform the contract, without providing for the consumer to receive compensation of an equivalent amount from the trader where the trader is the party cancelling the contract. <i>[i.e. Cancellation provisions / “Cooling Off” Periods]</i>	1d
5	A term which has the object or <b>effect of requiring that, where the consumer decides not to conclude or perform the contract, the consumer must pay the trader a disproportionately high sum in compensation</b> or for services which have not been supplied. <i>[i.e. Short term cancellation rights are generally not appropriate]</i>	<b>NEW</b>
6	A term which has the object or effect of requiring a consumer who fails to fulfil his obligations under the contract to pay a disproportionately high sum in compensation.	1e
7	A term which has the object or effect of authorising the trader to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer, or permitting the trader to retain the sums paid for services not yet supplied by the trader where it is the trader who dissolves the contract. <i>[i.e. Cancellation provisions]</i>	1f

8	A term which has the object or effect of <b>enabling the trader to terminate a contract of indeterminate duration without reasonable notice</b> except where there are serious grounds for doing so. <i>[i.e. Cancellation without reasonable notice]</i>	1g
9	A term which has the object or effect of automatically extending a contract of fixed duration where the consumer does not indicate otherwise, when the deadline fixed for the consumer to express a desire not to extend the contract is unreasonably early. <i>[i.e. "Tacit" Renewals]</i>	1h
10	A term which has the object or effect of irrevocably binding the consumer to terms with which the consumer has had no real opportunity of becoming acquainted before the conclusion of the contract.	1i
11	A term which has the object or effect of enabling the trader to alter the terms of the contract unilaterally without a valid reason which is specified in the contract. <i>[i.e. variation of contract without valid reason]</i>	1j
12	A term which has the object or effect of <b>permitting the trader to determine the characteristics of the subject matter of the contract after the consumer has become bound by it.</b>	<b>NEW</b>
13	A term which has the object or effect of enabling the trader to alter unilaterally without a valid reason any characteristics of the goods, digital content or services to be provided.	1k
14	A term which has the object or effect of <b>giving the trader the discretion to decide the price payable under the contract after the consumer has become bound by it</b> , where no price or method of determining the price is agreed when the consumer becomes bound. <i>[i.e. determination of price after consumer bound.]</i> <small><b>Note:</b> In accordance with CRA Schedule 2, Part 2 "Scope of Part 1" - Item 25, this does not include a term which is a <b>price-indexation clause</b> (where otherwise lawful), if the method by which prices vary is explicitly described.</small>	<b>NEW</b>
15	A term which has the object or effect of permitting a trader to increase the price of goods, digital content or services without giving the consumer the right to cancel the contract if the final price is too high in relation to the price agreed when the contract was concluded. <i>[i.e. a price increase after consumer bound.]</i> <small><b>Note:</b> In accordance with CRA Schedule 2, Part 2 "Scope of Part 1" - Item 25, this does not include a term which is a <b>price-indexation clause</b> (where otherwise lawful), if the method by which prices vary is explicitly described.</small>	1l
16	A term which has the object or effect of giving the trader the right to determine whether the goods, digital content or services supplied are in conformity with the contract, or giving	1m

	the trader the exclusive right to interpret any term of the contract.	
17	A term which has the object or effect of limiting the trader's obligation to respect commitments undertaken by the trader's agents or making the trader's commitments subject to compliance with a particular formality.	1n
18	A term which has the object or effect of obliging the consumer to fulfil all of the consumer's obligations where the trader does not perform the trader's obligations.	1o
19	A term which has the object or effect of allowing the trader to transfer the trader's rights and obligations under the contract, where this may reduce the guarantees for the consumer, without the consumer's agreement. <i>[i.e. no assignment]</i>	1p
20	A term which has the object or effect of excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, in particular by— <ul style="list-style-type: none"> <li>(a) requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions,</li> <li>(b) unduly restricting the evidence available to the consumer, or</li> <li>(c) imposing on the consumer a burden of proof which, according to the applicable law, should lie with another party to the contract.</li> </ul> <i>[i.e. cannot enforce Arbitration and/or onus of proof]</i>	1q

# APPENDIX 11

## EU Online Dispute Resolution

The European Commission has set up an online dispute resolution (ODR) platform to allow consumers who have a complaint about a product or service bought online to submit the complaint via the online platform. The platform, called the 'ODR platform', allows consumers to submit complaints to a trader based in that or another EU member state. The ODR platform is intended to be additional to existing Alternative Dispute Resolution (ADR) arrangements provided by traders in the EU.

Lloyd's already has in place detailed arrangements for complaints handling and, where complainants remain dissatisfied, they are able to refer their complaint to the appropriate complaints ombudsman in the relevant EU territory. In the UK that is the Financial Ombudsman Service.

In addition to Lloyd's complaints handling rules and FOS details, to ensure compliance with the ODR regulations, managing agents now must also provide consumers with the following ODR information for all policies sold online in the EU (including the UK):

- a link on their website to the ODR platform, irrespective of whether they currently market their products or services to consumers in other member states.
- an email address on their website so that consumers have a first contact point. This could be the email address of an individual or a shared mailbox that has been set up to deal with complaints.
- a link to the ODR platform in any emails sent to consumers offering insurance products as well as making consumers aware of the possibility of using the ODR platform for resolving their disputes. It is recommended that this information should follow contact information for making complaints to Lloyd's and any local complaints ombudsman/regulator.

This information must also be provided in the general terms and conditions applicable to online sales and service contracts - again this is in addition to direct contact information for the making of complaints to Lloyd's and any local complaints ombudsman.

The website address for the ODR platform is: <http://ec.europa.eu/odr>.

The requirements to provide the information will apply to all managing agents and coverholders where insurance policies are sold online. The definition of online selling is a wide one.

Please note that, as a result of the UK's departure from the EU, UK businesses and consumers will no longer be able to use the ODR platform from 01 January 2021. Further information can be found here: <https://www.gov.uk/guidance/consumer-rights-and-business-changes-from-1-january-2021>

# APPENDIX 12

## Third Parties (Rights Against Insurers) Act 2010

### Implementation

Six years after receiving Royal Assent on 25 March 2010, the Third Parties (Rights Against Insurers) Act 2010 came into force on **01 August 2016**, following approval by Parliament of the Third Parties (Rights against Insurers) Regulations 2016 on 04 May 2016

The commencement of the 2010 Act was delayed because it did not fully address a number of insolvency situations, but the necessary amendments to the Act were made by the Insurance Act 2015 to extend the definition of “relevant person” (i.e. the insolvency processes caught).

### Overview

The intention of the 2010 Act is to make it easier (and less costly) for a third party claimant, who has suffered a loss and is seeking damages, to pursue directly (i.e. bring claims directly against) the liability insurers of an insolvent Insured.

The 2010 Act repeals the Third Parties (Rights against Insurers) Act 1930, save in certain circumstances outlined below, and represents a long-awaited overhaul of the existing regime under the 1930 Act.

Significantly, it is now possible for a third party to bring a single set of proceedings to establish both the liability of the Insured to the third party and the liability of the insurer under the policy.

### 1930 Act

The 1930 Act required a claimant first to establish a claim against the insolvent entity (the wrongdoer) before bringing a claim against the insolvent entity’s insurer. The existence of a claim and the amount of the liability first had to be established by court judgment, arbitration award or agreement, which meant claimants had to bring two actions, thus increasing costs.

In spite of its repeal, the 1930 Act will still apply in circumstances where the Insured:

1. became a “relevant person” (i.e. subject to a formal insolvency procedure); and
2. liability to a third party was incurred,

before 01 August 2016.

Accordingly, the 2010 Act will not apply to current/ongoing claims and will impact only claims where (1) and (2) take place after 01 August 2016.

### 2010 Act: key points

The new Act will make it easier and less costly for a third party claimant (who has suffered a loss and is seeking damages) to pursue the insurers of an insolvent Insured (wrongdoer) directly.

### Liability

The 2010 Act removes the need for a third party to first obtain judgment against an insolvent Insured before issuing a claim against insurers, albeit the liability of the Insured to the third party will have to be established before any rights against insurers can be enforced.

This can be achieved by way of a declaration of the Court, within the same proceedings.

Accordingly, only one set of proceedings will be required.

## **Insurer Defences**

Under the 2010 Act, insurers will retain and rely on the defences to a claim by a third party which would have been available to the Insured (including, for example, limitation or contributory negligence).

Insurers are also entitled to rely upon the same policy defences that would apply if the claim was brought by their Insured. However, the Act restricts reliance on policy conditions that an Insured is required to fulfil such as notification and claims co-operation provisions and clauses that would require an insolvent Insured to provide insurers with information or assistance. These cannot be relied on against third parties. The intention is that third parties are not penalised for any detrimental conduct of the Insured.

The so-called “pay to be paid” defence mechanism (“pay first” clauses), whereby the Insured is required to pay sums due to the third party before seeking an indemnity from insurers/claiming under the policy, cannot be relied upon under the 2010 Act - except for marine insurance (as defined in the Marine Insurance Act 1906) for claims other than death or personal injury.

The 2010 Act will also prevent the use of limitation defences where proceedings are commenced against the Insured during the limitation period but proceedings for a declaration against insurers fall outside the limitation period.

## **Document Requests**

The 2010 Act will provide third party claimants with an enhanced right to request insurance information from insurers, provided the third party can show a reasonable belief that liability is owed by an Insured.

Under the Act, a third party who believes he has a right of action under the 2010 Act can obtain information about the rights transferred both before and after the issue of proceedings. If it can be established that there is a contract of insurance that covers, or might reasonably be expected to cover, the supposed liability, information can then be obtained on:

- the identity of the insurer;
- the terms of the insurance;
- whether there are (or have been) proceedings issued; and
- whether there is an aggregate limit of indemnity (if so, how much) and whether there are any fixed charges which would apply to any sums paid out.

Requests for information have to be answered within 28 days. Failure to comply with a notice requesting information permits the third party to apply to the court for an order compelling compliance.

In addition, the third party may request information from any person that he or she reasonably believes could provide the information. This might include brokers, former employees and anyone else authorised to hold policy information.

## **Dissolved / Struck-off Company**

The 2010 Act eliminates the requirement to restore a dissolved insured company to the ‘register of companies’ in order to pursue its insurers.

The 2010 Act reflects changes in insolvency law by widening the definition of insolvent company (i.e. the insolvency processes caught) from that under the 1930 Act, to include companies subject to company voluntary arrangements and schemes of arrangement with creditors.

## Impact of 2010 Act

### Third Party Claimants

The advantages provided by the 2010 Act for third parties seeking to claim for loss against an insolvent company are considerable:

- A greater degree of certainty as regards prospective claims against an insolvent Insured.
- A considerable cost benefit for claimants, who can now avoid two layers of litigation as well as avoiding the cost of potentially having to restore a company to the register of companies before pursuing its insurers.
- It further allows the chances of recovery against insurers to be established early, and prior to proceedings being issued.

### Insurers

For insurers, who have been anticipating the implications of the 2010 Act, there will be some anxiety that the 2010 Act will bring:

- a rise in the number of claims; and
- increased quantum of such claims (given the defences available to insurers from a coverage perspective will be more limited in third party claims); and
- a hike in the number of information requests made, which may put a strain on insurers' claims handling teams.

Insurers may also find themselves in a position whereby previously communicated declinatures, for example, may come under scrutiny. However, the third party may only cure breaches of conditions requiring the Insured to do something and, in practice, this is likely to be limited to fulfilling cooperation and notification provisions in the policy. Any declinature or remedy applied in reliance on non-administrative policy requirements, for example, misrepresentation, non-disclosure or breach of warranty, will prevail.

### Links

The Third Parties (Rights Against Insurers) Act 2010 can be accessed via the following link:

<http://www.legislation.gov.uk/ukpga/2010/10/contents>

# APPENDIX 13

## Renewals Transparency - FCA Policy Statement PS16/21

### Regulatory Background:

- A firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed. (ICOBS 6.1.5(R))

### New Regulatory Framework:

- The FCA's Policy Statement PS16/21 (increasing transparency and engagement at renewal in the general insurance markets - feedback on CP15/41 and final rules and guidance) affects firms and consumers in retail general insurance markets.
- Insurers and intermediaries selling retail general insurance products are required to implement new requirements as set out by the FCA.
- The FCA's objective is to "remove barriers to consumers shopping around and switching" and to "ensure consumers are treated fairly and that communications are clear, fair and not misleading".

### Implementation:

- Effective Date: firms were required to make the necessary changes to their renewal communications (letters, notices, documentation) by 01 April 2017. The changes applied to renewal notices sent on or after 01 April 2017 (not notices sent before that date for policies renewing on or after 01 April).
- The changes applied to all renewing policies sold to consumers with a duration of 10 months or more.
- Within the FCA's guidance, the FCA states "Although commercial customers are not within scope, we would encourage firms to consider whether any of the issues raised by us about retail consumers would also apply to commercial customers...".
- The new rules do not apply to group policies.

### Overview:

- The FCA has put in place new rules across all personal lines general insurance markets requiring firms to:
  - disclose last year's premium at each renewal;
  - include text to encourage consumers to check their cover and shop around for the best deal at each renewal; and
  - identify consumers who have renewed with them four consecutive times, and give these consumers an additional prescribed message encouraging them to shop around.

### Rules Summary:

- The new rules can be summarised as follows:
  - Firms must provide the consumer with last year's premium as well as the renewal premium in such a way as they can be easily compared.
  - Together with the information detailed in the bullet immediately above, firms must provide a statement that the consumer:

- (a) should check that the level of cover offered by the renewal is appropriate for their needs; and
  - (b) is able, if they so wish, to compare the prices and levels of cover offered by alternative providers.
- The statement required under bullet (b) above, could be in the form of a question and the example provided by the FCA is:
 

*“Have you checked that your insurance cover still meets your needs? Have you considered shopping round to find the best deal for the cover you want?”*
  - For policies renewing for the fourth time (i.e. renewing into the fifth year), and for subsequent renewals, the statement shown under bullet (b) shown above must be replaced with the following:
 

*“You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”*
- The requirements apply to both new and existing business. So, if an existing policyholder has renewed three times or more already, they will need to be provided with the statement *“You have been with us a number of years. You may be able to get the insurance cover you want at a better price if you shop around.”* at the next renewal.
  - The requirements apply to both carriers (insurers) and brokers, which means a broker may be required to provide one of the “shopping around” messages even where the product renews with a different carrier (insurer).
  - The FCA requires that the disclosure is provided “in writing or another durable medium” (except where the exceptions for telephone communications are used - ICOBS 6.1.14), and must be accessible and presented as key information.
  - The following factors should be considered, and addressed where necessary, in respect of mid-term adjustments:
    - The premium disclosure must provide an annualised figure which takes account of any adjustments.
    - The method for annualising is not stipulated by the FCA; however, the following is an example of how it might be calculated:
 

*Home insurance policyholder has an initial policy premium of £300 for a 12 month policy. The policyholder moves to a larger house 6 months into the policy period and is charged an additional £100 premium. The annualised figure would be £500 (the original premium plus £200 annualised increase).*
    - The premium disclosure must not include any fees or charges so that consumers receive simple, understandable and comparable information. The FCA’s guidance refers to the FCA’s existing disclosure requirements requiring firms to provide information separately about fees before they are incurred.
  - Any additional information, reasons for increase and/or an explanation of the annualised figure can be included with the disclosure; however, such information must be in addition to the new requirements and must not obscure the required information.
  - If monthly premium figures are used, they must be used for the renewal premium and last year’s premium; however, the annual premiums must still be provided.

## Links

FCA Policy Statement PS16/21 (Increasing transparency and engagement at renewal in general insurance markets - feedback on CP15/41 and final rules and guidance) can be accessed via the following links:

<https://www.fca.org.uk/publications/increasing-transparency-and-engagement-renewal-general-insurance-markets-ps16-21>

<https://www.fca.org.uk/publication/policy/ps16-21.pdf>

For the LMA response to FCA Consultation Paper CP15/41 and FCA feedback, please see:

<http://www.lmalloyds.com/AsiCommon/Controls/BSA/Downloader.aspx?iDocumentStorageKey=da9a485c-072a-4624-936a-de1c08f85ed5&iFileTypeCode=PDF&iFileName=Renewals%20Transparency%20Guidance>

# APPENDIX 14

## Insurance Distribution Directive (IDD)

### Regulatory Background:

- The original application date of the Insurance Distribution Directive (IDD) was 23 February 2018, by which date EU Member States were meant to have transposed the new rules into national law and firms were expected to have been compliant with the requirements of IDD. However, following calls for a delay in implementation of the IDD from market associations across the EU, including the LMA, to give the insurance industry more time to prepare for the changes required under the IDD, in December 2017, the European Commission proposed a draft Directive to postpone the implementation of the IDD until 01 October 2018. The draft Directive was approved by the European Parliament on 01 March 2018 and was adopted by the European Council on 09 March 2018. This confirmed the new application date for compliance with the IDD to be **01 October 2018** and extended until **01 July 2018** the deadline for Member States to transpose the IDD into national laws.
- Implementation of IDD has varied across EEA member states. Summaries of IDD requirements per member state may be found on Crystal in due course.

### New Regulatory Framework:

- IDD replaced the Insurance Mediation Directive (IMD) and brought with it new requirements for intermediaries and insurers, as well as introducing new terminology and definitions, including the terms “manufacture” and “manufacturer”.

The FCA definitions of ‘manufacture’ and ‘manufacturer’ are as follows:

***manufacture***     **Creating, developing, designing and/or underwriting a contract of insurance**

***manufacturer***     **A firm which manufactures contracts of insurance for sale to customers**

Therefore, the manufacturer of an Insurance Product can be the underwriter(s), coverholder, broker, or any combination of them. Under normal circumstances, we would expect the lead underwriter to be the manufacturer in subscription business (however, especially when considering business written under a Binding Authority Agreement, it may well be the case that the manufacturer’s responsibilities are split between the underwriter and the intermediary, but a written agreement will need to be in place detailing who is responsible for what).

There are several aspects of the IDD which are the responsibility of the manufacturer, including the creation of the Insurance Product Information Document (IPID).

- The IDD introduced the customer’s best interest rule and method of distribution (PS17/21 - pages 13, 19, 20, 50, 55 and 56). As such, it is important to consider how information is made meaningful to customers. Information must be provided at an appropriate time and through the right channels. The FCA Policy Statement PS17/21 introduced new ICOBS rules 2.5 and 1.4.1A.
- Information must be clear and accurate, on paper and provided free of charge. Instead of providing this information to the customer on paper, it may be provided either:
  - Using a durable medium other than paper, where the following conditions are met:
    - the use of the durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer;
    - the customer has been given the choice between information on paper and on a durable medium, and has chosen the durable medium; and
    - a paper copy of the information is provided to the customer on request and free of charge.

- By means of a website, if it is addressed personally to the customer, or where the following conditions are met:
  - the provision of the information by means of a website is appropriate in the context of the business conducted;
  - the customer has consented to the information being provided by means of a website;
  - the customer has been notified electronically of the website's address, and the place on the website where the information can be accessed;
  - the information remains accessible on the website for such a period of time as the customer may reasonably need to consult it; and
  - a paper copy of the information is provided to the customer on request and free of charge.

### Implementation:

- IDD introduced the requirement for a new pre-contractual document in the form of an IPID to be provided to consumers; the purpose of which is to provide consumers with product information which is easy to read, understand and compare in order to allow them to make an informed decision. An IPID should detail objective and relevant information about an insurance product in a standardised format as part of the requirement to provide appropriate product information.

Implementation of the IDD was pushed back until 01 October 2018 and IPIDs should be provided with quotations for policies incepting from that date onwards.

- In the UK, the FCA has deemed that only consumers need be provided with an IPID, however, it is the LMA's understanding that regulators in other territories within the EU have interpreted the IDD differently and, therefore, IPIDs may be required for consumers as well as commercial entities in other EU territories.
- The format (and instructions regarding content) of an IPID is set out in Article 20 of the IDD (see extract below), and there is little scope for variation. The Commission Implementing Regulation lays down a standardised presentation format for the IPID and provides further instruction as to the information an IPID must contain, and this was adopted by the EC on 11 August 2017: [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2017.209.01.0019.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.209.01.0019.01.ENG).

*Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016*

*Extract from Article 20 (Advice, and standards for sales where no advice is given):*

7. *The insurance product information document shall:*
  - (a) *be a short and stand-alone document;*
  - (b) *be presented and laid out in a way that is clear and easy to read, using characters of a readable size;*
  - (c) *be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;*
  - (d) *be written in the official languages, or in one of the official languages, used in the part of the Member State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;*
  - (e) *be accurate and not misleading;*
  - (f) *contain the title 'insurance product information document' at the top of the first page;*
  - (g) *include a statement that complete pre-contractual and contractual information on the product is provided in other documents.*
8. *The insurance product information document shall contain the following information:*

- (a) information about the type of insurance;
- (b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- (c) the means of payment of premiums and the duration of payments;
- (d) main exclusions where claims cannot be made;
- (e) obligations at the start of the contract;
- (f) obligations during the term of the contract;
- (g) obligations in the event that a claim is made;
- (h) the term of the contract including the start and end dates of the contract;
- (i) the means of terminating the contract.

- EIOPA has published editable IPID templates files in Adobe InDesign format ([https://eiopa.europa.eu/Pages/Supervision/Insurance/Editable-Template-for-the-Insurance-Product-Information-Document-\(IPID\).aspx](https://eiopa.europa.eu/Pages/Supervision/Insurance/Editable-Template-for-the-Insurance-Product-Information-Document-(IPID).aspx)) (Format: © European Union, 2017). Please note that firms are not required to use these specific files to produce their IPIDs, but they may be a useful technical aid in meeting the requirements of the IDD in relation to IPIDs. An example of how an IPID might look is provided at the end of this Appendix.
- Our understanding is that the FCA expects a proportionate approach to the tailoring of IPIDs and does not expect widespread ‘bespoking’.

Regarding endorsements, the LMA understands that:

- (a) endorsements which are used frequently and have a major impact should be reflected in the IPID;
- (b) endorsement which are used infrequently could be highlighted by an appropriate reference in the: “Are there any restrictions on cover?” section.

It would be beneficial to consumers if the reference mentioned in (b) above were to indicate where (page and/or section) in the schedule the endorsement(s) can be found; for example, “*Endorsements may apply to your insurance. These will be shown on page 2 of your schedule.*”

It is crucial to ensure that the IPIDs being used for policyholders reflect the terms of the policies used. It is important to note that should insurers amend LMA model consumer wordings in any way, insurers should ensure that the corresponding model IPID is also reviewed accordingly.

- The LMA has drafted model IPIDs for those consumer products for which there are LMA model wordings. The original model IPIDs were published under LMA Bulletin reference [LMA18-037-AC](#) on 26 July 2018. The model IPIDs for the model LMA consumer products are available on Lloyd’s Wordings Repository.

LMA3127A(IPID)	Home Insurance Policy (HIP2015) (For use on Consumer Insurance Contracts) - IPID
LMA3130D(IPID1)	Lloyd's Equine Insurance (UK) (For use on Consumer Insurance Contracts) -
LMA3130D(IPID2)	IPID
LMA3130D(IPID3)	
LMA3130D(IPID4)	
LMA3132B(IPID)	Lloyd's Accident and Illness Insurance [K (UK)] (For use on Consumer Insurance Contracts) - IPID
LMA3133A(IPID)	Lloyd's Accident and Illness Insurance [KA (UK)] (For use on Consumer Insurance Contracts) - IPID

LMA3139D(IPID)	Lloyd's Livestock Insurance (UK) (For use on Consumer Insurance Contracts) - IPID
LMA3140A(IPID)	Home Insurance Overseas Policy (HIP2016) (For use on Consumer Insurance Contracts) - IPID

## Look Up

Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016:  
<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016L0097>

European Insurance and Occupational Pensions Authority (EIOPA) - technical advice on possible delegated acts concerning the Insurance Distribution Directive (IDD):  
<https://eiopa.europa.eu/Publications/Consultations/EIOPA%20Technical%20Advice%20on%20the%20IDD.pdf>

European Insurance and Occupational Pensions Authority (EIOPA) - link to editable IPID template files:  
[https://eiopa.europa.eu/Pages/Supervision/Insurance/Editable-Template-for-the-Insurance-Product-Information-Documents-\(IPID\).aspx](https://eiopa.europa.eu/Pages/Supervision/Insurance/Editable-Template-for-the-Insurance-Product-Information-Documents-(IPID).aspx)

FCA Policy Statements:

- (i) <https://www.fca.org.uk/publication/policy/ps17-21.pdf>
- (ii) <https://www.fca.org.uk/publication/policy/ps17-27.pdf>
- (iii) <https://www.fca.org.uk/publication/policy/ps18-1.pdf>

# Xxxxx Insurance

## Insurance Product Information Document

Company: <Name> Insurance Company

Product: <Name> Policy

[Statement that complete pre-contractual and contractual information on the product is provided in other documents]

### What is this type of insurance?

[Description of Insurance]



#### What is insured?

- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx
- ✓ Xxxxxx



#### What is not insured?

- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx
- ✗ Xxxxxx



#### Are there any restrictions on cover?

- ! Xxxxxx
- ! Xxxxxx
- ! Xxxxxx
- ! Xxxxxx
- ! Xxxxxx



#### Where am I covered?

- ✓ Xxxxxx



#### What are my obligations?

- Xxxxxx
- Xxxxxx
- Xxxxxx
- Xxxxxx



#### When and how do I pay?

Xxxxxx



#### When does the cover start and end?

Xxxxxx



#### How do I cancel the contract?

Xxxxxx

# APPENDIX 15

## General Data Protection Regulation (GDPR)

### Regulatory Background:

The Data Protection Act 1998 came into force in the UK on 16 July 1998. It applied to ‘data controllers’ “established” in the UK and to data controllers processing personal data in the UK. The Data Protection Act 1998 contained eight principles which had to be adhered to when processing personal data.

### New Regulatory Framework:

In January 2012, the European Commission proposed a comprehensive reform of data protection rules within the EU, including a new draft data protection regulation. This new data protection regulation became the EU General Data Protection Regulation (GDPR). The GDPR is an evolution of the data protection principles set out in the Data Protection Act 1998, although the territorial application of GDPR is greater than just the UK - it applies to all organisations processing the personal data of data subjects residing in the European Union, regardless of the organisation’s location (see further below). Whilst the GDPR came into effect in May 2016, it was transposed into English law on **25 May 2018** under the Data Protection Act 2018, on which date organisations had to be fully compliant with the new regulation.

### The GDPR:

- has a wider applicability than the UK Data Protection Act 1998,
- imposes enhanced obligations on ‘data controllers’ and ‘data processors’
- increases the rights of individuals (“data subjects”), and
- has a 4% global turnover or €20 Million (whichever is greater) maximum penalty for organisations that fail to comply with the rules, and for those that suffer data breaches.

### Implementation:

- The GDPR contains a number of key definitions, including those of ‘Data Controller’ and ‘Data Processor’:
  - Data Controller - A firm which decides which data to collect and how it is processed (e.g. a broker, coverholder, insurer or reinsurer).
  - Data Processor - A firm which processes data on the instruction of a Data Controller (e.g. a Third Party Administrator).
- The Information Commissioner’s Office (“ICO”) current guidance on whether an organization is acting as a Data Controller or Data Processor in a particular context can be found at: <https://ico.org.uk/media/for-organisations/documents/1546/data-controllers-and-data-processors-dp-guidance.pdf>.
- Article 3 of the GDPR states that its application is not only to organizations who are Data Controllers and/or Data Processors established in the EU, but also to those which:
  - ◇ Offer goods or services to EU residents (irrespective of whether a fee is charged); or
  - ◇ Monitor the performance of EU residents as far as that behaviour occurs in the EU.
- From 25 May 2018, all such organisations need to be able to demonstrate that they have analysed the GDPR’s requirements in relation to their processing of personal data and that they have implemented a system or programme that allows them to achieve compliance with the GDPR rules on:
  - › the legal basis for processing and consent;
  - › the provision of and access to privacy notices;
  - › control of personal data;

- › mandatory breach reporting;
- › complaints;
- › penalties.

### Overview:

- The GDPR is the culmination of many years of efforts to update data protection to reflect modern day practices, in which people regularly grant permissions for others to use their personal information for a variety of reasons, usually in exchange for some form of services. The GDPR seeks to give people more control over how organisations use their personal data.
- Considering the application of the GDPR specifically to insurance, the GDPR:
  - is relevant for those dealing with policies relating to individuals, either singly or as part of a group scheme.
  - deals with the transfer and use of personal data ‘within’ the EU.
  - prohibits the processing of personal data and special categories of personal data unless there are legal grounds to do so.
- There are two key categories of data under GDPR:
  - i) Personal data, being any information relating to a living person by which they (the ‘data subject’) can be identified.
  - ii) Special Categories of Personal Data, being any data relating to racial or ethnic origin, political opinions, religious beliefs, membership of a trade union, physical or mental health or condition, sexual life and (subject to UK government decision) commission, or alleged commission, of any offence.
- Essentially, the GDPR has clarified that personal data covers circumstances where it may not be too obvious to whom the data relates, such as location data or IP addresses, but it is still possible to identify an individual from that data.

### Data Protection Principles:

- Under the GDPR, everyone responsible for processing Personal Data and Special Categories of Personal Data still has to follow strict rules called ‘data protection principles’, which (with the exception of the addition of a new principle of **accountability**) are largely unchanged from those contained in the Data Protection Act 1998. They must make sure that the Personal Data is:
  - ◇ Processed lawfully, fairly and in a transparent manner (**lawfulness, fairness and transparency**).
  - ◇ Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (**purpose limitation**).
  - ◇ Adequate, relevant and limited to what is necessary (**data minimisation**).
  - ◇ Accurate and, where necessary, kept up-to-date (**accuracy**).
  - ◇ Kept in a form which permits identification of data subjects for no longer than is necessary (**storage limitation**).
  - ◇ Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (**integrity and confidentiality**).

The new **accountability** principle specifically requires data controllers to take responsibility for complying with the principles and to have appropriate processes and records in place to demonstrate that they comply.

However, the GDPR prohibits the processing of personal data, and special categories of personal data, unless there are **legal grounds** to do so.

## Legal Grounds for Processing:

- There are a number of lawful bases (six separate bases) to process Personal Data and Special Categories of Personal Data, including:

### *For Personal Data:*

- › Consent (i.e. processing of the data is permitted if the data subject has consented to the processing).
- › Performance of a contract with the data subject (i.e. processing of the data is necessary for the performance of a contract to which the data subject is a party; or for the taking of steps at the request of the data subject with a view to entering into a contract).
- › Vital interests (i.e. processing of the data is necessary to protect the vital interests of the data subject or other individual).
- › Legitimate interests (i.e. processing of the data is necessary for the purposes of legitimate interests pursued by the Data Controller (or by a third party), except where the Data Controller's interests are overridden by the interests, fundamental rights or freedoms of the affected data subjects which require protection, particularly where the data subject is a child).
- › In substantial public interest and set out in law.

### *For Special Categories of Personal Data:*

- › Explicit consent of the data subject.
- › Legal claims (i.e. processing of the data is necessary for the establishment, exercise or defence of legal claims).
- › Vital interests (i.e. processing of the data is necessary to protect the vital interests of the data subject or other individual).
- › In substantial public interest and set out in law (i.e. processing of the data is necessary for reasons of substantial public interest, on the basis of Union or Member State law, which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject).

No one of these individual bases is 'better' or more important than the others (and the most appropriate basis will depend on the purpose and relationship with the individual).

Where any organisation is processing special category data, it will need to identify both a lawful basis for general processing and an additional condition for processing such special category data.

## Data Protection Act 2018

- Despite much lobbying by the insurance industry during the formation of the GDPR, the processing conditions which permit the processing of Special Categories of Personal Data were not expanded to include the processing of sensitive personal data when necessary for the purpose of a contract. For example, the GDPR itself does not provide a satisfactory basis for processing health and criminal conviction data for the insurance industry.
- EU Member States have the ability, however, to make further provisions in national law in certain areas. Therefore, at the Third Reading on 17 January 2018, the House of Lords passed a Government-tabled amendment to Schedule 1 of the then Data Protection Bill (the "derogation") which provides insurers with a new ground to process selected types of Special Categories of Personal Data, including health and criminal data. The UK Data Protection Bill received Royal Assent on 23 May 2018 and was embedded into the Data Protection Act 2018 with effect from 25 May 2018.
- The essence of the new processing ground is that the processing is necessary for an insurance purpose and is in the public interest. An insurance purpose includes advising, arranging, underwriting and administering an insurance contract; administering a claim; and exercising other rights (e.g. subrogation). The "public interest test" is overall and is not policy-specific and includes making

available insurance products through risk-based pricing (i.e. where that data is necessary), administration and payment of claims, and detection of fraud.

- The effect of the Data Protection Act 2018 is that, in relation to UK data subjects, when processing personal data relating to health, racial or ethnic origin, religious or philosophical beliefs, trade union membership, genetic data, or processing criminal conviction, where this is necessary and within the public interest, it is not necessary for brokers, coverholders or carriers to obtain consent at the 'arranging' stage or claims stage. Consent does still need to be obtained to process Special Categories of Personal Data relating to data subjects who are located outside of the UK but within the EU.

#### Information Notices:

- Irrespective of the Data Protection Act 2018, it is important to note that, in order to comply with the GDPR, all Data Controllers will still be required to explain to consumers in an 'Information Notice' (also known as a "Fair Processing Notice") what Personal Data they collect, what it is used for, and the legal grounds for processing such data.
- The requirement to provide an information notice applies irrespective of whether the processing is of "ordinary" Personal Data or of Special Categories of Personal Data.
- The information notices provided to consumers or data subjects must:
  - ❖ Contain details on purposes and legal grounds for processing;
  - ❖ Set out 'legitimate interest' (where relied upon as a ground for processing);
  - ❖ Set out rights to withdraw consent (where relied upon as a ground for processing).
  - ❖ Identify recipients / categories of recipients of personal data;
  - ❖ Provide details of international transfers;
  - ❖ Contain data retention periods or the criteria used to determine what data is to be retained;
  - ❖ Confirm the existence of data subject rights to access data; have data rectified, erased or restricted; and/or object to the processing of the data.
  - ❖ Confirm existence of automated decision making/profiling and the right to complain to the Information Commissioner.
- The full list of requirements for an information notice can be found at: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>
- A cross-market GDPR Focus Group led by the LMA published the London Market Core Uses Information Notice, which is designed to explain to consumers the complexities of London Market and how Personal Data may be processed by the various Data Controllers (recognising that, due to the complexities of Lloyd's and the London Market, there can often be multiple Data Controllers who pass data between each other). The Notice, and accompanying guidance, can be found at: <http://www.lmalloyds.com/LMA/Legal/GDPR/LMA/Legal/GDPR.aspx>
- This Core Uses Notice covers the core uses of personal data required to allow the insurance market to operate efficiently. These core uses are uses and disclosures that, without which, the insurance industry would not be able to operate. However, as the core uses do not include less fundamental uses (e.g. marketing) and the Notice itself does not contain details of the individual insurance market participant's data protection contact, the Notice does not fully meet the requirements under the GDPR. The Notice can therefore be thought of as the third layer in a three layer approach to information notices, as explained in the LMA Guidance (see LMA18-012-SM).

## Layered approach:

Layer	Notice Type	Links
Layer 1	Short Form Notice	Links to Layer 2 and potentially Layer 3
Layer 2	Insurance Market Participant's own Long Form Information Notice Privacy Policy (which would normally reside on their website)	Links to Layer 3
Layer 3	Core Uses Information Notice	

In conjunction with Clyde & Co, the LMA has produced 'model' (Layer 1) Short Form Notice and ancillary consent language / policy clauses (for use in the UK/EU/EEA), which are available on the Lloyd's Wordings Repository

LMA9151	Data Protection Short Form Notice (Layer 1)
LMA9152	Data Protection Consent Form Wordings (Proposal stage)
LMA9153	Data Protection Consent Form Wordings (Claims stage)
LMA9154	Data Protection Clause for commercial lines policies (no consent)
LMA9155	Data Protection Clause for commercial lines policies (with consent)

## Links:

Guidance on the GDPR in general: <http://www.lmalloyds.com/LMA/Legal/GDPR/LMA/Legal/GDPR.aspx>

LMA General Data Protection Regulation (GDPR) Guide - prepared by the LMA with DAC Beachcroft: [http://lma.informz.ca/LMA/data/images/Bulletin%20att/LMA%20GDPR%20guide%20-%20May%202018%20\(FINAL\).pdf](http://lma.informz.ca/LMA/data/images/Bulletin%20att/LMA%20GDPR%20guide%20-%20May%202018%20(FINAL).pdf)

## Recent LMA Guidance Bulletins:

**LMA17-038-MS London Market Core Uses Information Notice** - 28 November 2017 - Core Uses Information Notice is designed to help data subjects understand how various insurance market participants process their personal data in respect of core activities through the insurance lifecycle

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/xLMA\\_bulletins/LMA17\\_038\\_MS.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/xLMA_bulletins/LMA17_038_MS.aspx)

The London Market Core Uses Information Notice is now an interactive document and can be accessed directly via <https://admin.londonmarketgroup.co.uk/wp-content/uploads/2018/06/LMA-Insurance-Market-Information-Uses-Notice-post-enactment-31-05-2018.pdf>

**LMA18-003-KK Data Protection Bill** - 22 January 2018 - at the Third Reading on 17 January 2018, the House of Lords passed a Government-tabled amendment to Schedule 1 of the Data Protection Bill, which provides insurers with a new (legal) ground to process selected types of Special Category Personal Data, including health and criminal conviction data - so called "carve out" (derogation) for insurance.

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/xLMA\\_bulletins/LMA18\\_003\\_KK.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/xLMA_bulletins/LMA18_003_KK.aspx)

**LMA18-009-TH Coverholder and TPA Model GDPR Readiness Questionnaire** - 14 February 2018 - LMA drafted a model GDPR Readiness Questionnaire (LMA9143), in conjunction with the market and Lloyd's, to support managing agents in confirming that coverholders and TPAs will be compliant with GDPR.

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/xLMA\\_bulletins/LMA18\\_009\\_TH.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/xLMA_bulletins/LMA18_009_TH.aspx)

**LMA18-012-SM LMA Guidance - GDPR Core Uses Information Notice** - 16 February 2018 - the LMA, jointly with Norton Rose Fulbright, published guidance to assist insurance market participants with their use of the London Market Core Uses Information Notice.

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/LMA\\_Bulletin\\_2013/LMA18\\_012\\_SM.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/LMA_Bulletin_2013/LMA18_012_SM.aspx)

**LMA18-017-KK GDPR and Criminal Finances Act 2017 - Model Agreements** - 05 March 2018 - publishing new BAA (LMA3113A), new Consortium Agreement (LMA3145A) and TPA Agreement (LMA9008B)

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/LMA\\_Bulletin\\_2013/LMA18\\_017\\_KK.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/LMA_Bulletin_2013/LMA18_017_KK.aspx)

**LMA18-019-KK Risk Transfer and Non Risk Transfer Terms of Business Agreements** - 22 March 2018 - publishing the amended model Non Risk Transfer Terms of Business Agreement (NRT TOBA) and Risk Transfer Terms of Business Agreement (RT TOBA) to reflect the General Data Protection Regulation.

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/LMA\\_Bulletin\\_2013/LMA18\\_019\\_KK.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/LMA_Bulletin_2013/LMA18_019_KK.aspx)

**LMA18-023-AC GDPR - Information Notices and model wordings**- 25 April 2018 - publishing model (Layer 1) Short Form Notice and ancillary consent language / policy clause and providing general guidance as to their application and use, i.e. what each wording is for and how it can be used in combination with the other wordings.

[http://www.lmalloyds.com/LMA/News/LMA\\_bulletins/xLMA\\_bulletins/LMA18\\_023\\_AC.aspx](http://www.lmalloyds.com/LMA/News/LMA_bulletins/xLMA_bulletins/LMA18_023_AC.aspx)

**LMA18-027-KK LMA General Data Protection Regulation Guide** - 17 May 2018 - publishing the market guidance produced jointly by the LMA and DAC Beachcroft.

[http://lma.informz.ca/LMA/data/images/Bulletin%20att/LMA%20GDPR%20guide%20-%20May%202018%20\(FINAL\).pdf](http://lma.informz.ca/LMA/data/images/Bulletin%20att/LMA%20GDPR%20guide%20-%20May%202018%20(FINAL).pdf)

## DOCUMENT REVISION / CHANGE HISTORY

Version	Date	Description of Change
V1.0	27 April 2015	Original publication - see LMA Bulletin LMA15-016-AC. Document was drafted to provide general guidance and was intended to assist managing agents with the practicalities of drafting new 'consumer' products and/or adaptation of existing 'commercial' wordings to produce 'consumer' versions.
V1.1	27 July 2015	See LMA Bulletin LMA15-032-AC. Guidance updated to reflect inter alia: <ul style="list-style-type: none"> <li>• Complaints Clause amended in line with Market Bulletin Y4905;</li> <li>• revisions to the Schedule and Policy Cover / "Jacket" sections;</li> <li>• addition of section entitled Proposal Forms;</li> <li>• link to LMA/IUA Joint Guidance on Insurance Act 2015 added.</li> </ul>
V2.0	13 January 2016	See LMA Bulletin LMA16-006-AC. Guidance updated to reflect inter alia: <ul style="list-style-type: none"> <li>• guidance on the effects of the Consumer Rights Act 2015 (which came into effect on 01 October 2015);</li> <li>• an update to the Statutory Status Disclosure;</li> <li>• an update on the jurisdictional reach of the FCA;</li> <li>• clarification regarding cooling off periods;</li> <li>• the Lloyd's updated Consumer Complaints Procedures.</li> </ul>
V2.1	30 November 2016	See LMA Bulletin LMA16-046-AC. Guidance updated to reflect inter alia: <ul style="list-style-type: none"> <li>• guidance on the effects of the Enterprise Act 2016 (which will come into effect on 04 May 2017);</li> <li>• guidance on the effects of the Third Party (Rights Against Insurers) Act 2010 (which came into effect on 01 August 2016);</li> <li>• revisions to the Claims Handling section relating to the Insurance Act 2015, including new example clauses;</li> <li>• revisions to the Complaints section, incorporating reference to the EU Online Dispute Resolution Regulation;</li> <li>• example Financial Services Compensation Scheme (FSCS) clause added (LMA9125);</li> <li>• examples of Rights of Third Parties clauses added;</li> <li>• revisions to the Conditions section relating to the Insurance Act 2015;</li> <li>• revisions to the Summaries section relating to Key Facts documents;</li> </ul>

		<ul style="list-style-type: none"> <li>• revisions to Appendix 7 relating to the Insurance Act 2015, including reference to the “Versloot Dredging” (fraudulent devices) judgement;</li> <li>• revisions to Appendix 9 including an update to the examples of unacceptable terms;</li> <li>• addition of Appendix 11 entitled “EU Online Dispute Resolution”;</li> <li>• addition of Appendix 12 entitled “Third Party (Rights Against Insurers) Act 2010”.</li> </ul>
V3.0	19 April 2017	<p>See LMA Bulletin LMA17-016-AC.</p> <p>Guidance updated to reflect inter alia:</p> <ul style="list-style-type: none"> <li>• Claims handling - clarification added regarding Insured’s duty to mitigate the loss;</li> <li>• Data Protection (GDPR) - placeholder added;</li> <li>• Rights of Third Parties - further clarified Third Parties (Rights Against Insurers) Act 2010;</li> <li>• Law and Jurisdiction - added Lloyd’s requirement;</li> <li>• Definitions - expanded guidance;</li> <li>• Exclusions - expanded guidance;</li> <li>• Other Documentation - added new Renewal Documentation section to incorporate new FCA rules on “renewals transparency” which took effect on 01 April 2017 (FCA Policy Statement PS 16/21);</li> <li>• Addition of Appendix 13 entitled Renewals Transparency - FCA Policy Statement PS16/21.</li> </ul>
V4.0	14 February 2018	<p>See LMA Bulletin LMA18-010-AC.</p> <p>Guidance updated to reflect inter alia:</p> <ul style="list-style-type: none"> <li>• Introduction - includes reference to the FCA’s Smarter Consumer Communications Initiative.</li> <li>• Data Protection / General Data Protection Regulation (GDPR).</li> <li>• Other Documentation / Insurance Product Information Documents (IPIDs) replacing Key Facts for consumers.</li> <li>• Update to Appendix 5 in respect of July 2017 FCA Undertaking.</li> <li>• Addition of Appendix 14 entitled “Insurance Distribution Directive (IDD)”.</li> </ul>
V4.1	18 June 2018	<p>See LMA Bulletin LMA18-030-AC.</p> <p>Guidance updated to reflect:</p> <ul style="list-style-type: none"> <li>• Postponement of the application date of the Insurance Distribution Direction until 01 October 2018.</li> <li>• Addition of Appendix 15 entitled “General Data Protection Regulation (GDPR)”.</li> </ul>

V4.2	28 November 2018	<p>See LMA Bulletin LMA18-050-AC.</p> <p>Guidance updated to reflect inter alia:</p> <ul style="list-style-type: none"> <li>• Introduction - placeholders added to (i) note that Lloyd’s Minimum Standards are changing from 01 January 2019 - MS11 will be replaced by the new MS9 Standard and (ii) the range of customers which will be able to refer complaints to the FOS is changing with effect from 01 April 2019.</li> <li>• Complaints - updated to include FCA Handbook definition of a “complaint” and reference to Market Bulletin Y5200.</li> <li>• Updated example Financial Services Compensation Scheme (FSCS) clause added (LMA9125A) to reflect current FSCS address.</li> <li>• Other Documentation - Insurance Product Information Documents (IPIDs) and Policy Summaries updated.</li> <li>• Appendix 1 - updated.</li> <li>• Appendix 2 - placeholder added to note that Lloyd’s Minimum Standards are changing from 01 January 2019 - MS11 will be replaced by the new MS9 Standard.</li> <li>• Appendix 8 - updated.</li> <li>• Appendix 11 - updated.</li> <li>• Appendix 14 - updated.</li> <li>• Appendix 15 - updated.</li> </ul>
V5.0	29 March 2019	<p>See LMA Bulletin LMA19-013-AC.</p> <p>Guidance updated to reflect inter alia:</p> <ul style="list-style-type: none"> <li>• Lloyd’s Minimum Standards - changes made to reflect that MS11 has been replaced by MS9 Customer Standard with effect from 01 January 2019.</li> <li>• Appendix 1 - updated.</li> <li>• Appendix 2 - updated.</li> <li>• Appendix 5 - updated.</li> <li>• Appendix 9 - updated.</li> <li>• Appendix 10 - updated (in light of the FCA’s Finalised Guidance (FG18/7) entitled “Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015”).</li> </ul>
V6.0	29 April 2020	<p>See LMA Bulletin LMA20-018-AC/LC.</p> <p>Guidance updated to reflect inter alia:</p> <ul style="list-style-type: none"> <li>• Introduction - updated to reflect the expansion of the FOS remit with effect from 01 April 2019.</li> <li>• Readability - the guidance has been updated throughout to include various suggestions and recommendations for how to improve the readability of a policy wording.</li> </ul>

- |  |  |  |
|--|--|--|
|  |  | <ul style="list-style-type: none"><li>• Appendix 11 - updated to note that from 01 January 2021 UK businesses and consumers will no longer be able to use the EU ODR platform.</li></ul> |
|--|--|--|