

## Appendix 7

---

### 1.1.1 Details of waivers to be requested

#### **1. Waiver of the requirement to notify non-transferring policyholders of Members of Lloyd's 1993 2020 (inclusive)**

Since 1993 it is estimated that a total of £35.9bn of Gross Premium (GP) relates to EEA risks or multi-jurisdictional policies with some EEA exposure. This £35.9 of GP constitutes approximately 8% of the total Lloyd's market GP since 1993.

The 92% balance of non-transferring business – c£400bn GP – represents millions of policyholders.

These non-transferring policies will remain with Members of syndicates which continue to be capitalised in line with PRA requirements to support those liabilities. Policyholders will continue to benefit from Lloyd's chain of security and central fund.

There will be no change to the terms and conditions of the non-transferring policyholders policies, which will continue to be administered in the same way as they currently are. Rights of redress for these policyholders in the UK or elsewhere globally are unaffected by the transfer.

Given that it is not an insurer, Lloyd's does not hold policyholder records, nor does it have access itself to such records. It would be impractical and probably impossible within the time available to notify all non-transferring policyholders directly. It would require a market-wide exercise to collate the policyholder data across all Lloyd's Market Participants and, even then, the data set would be incomplete because of run offs, liquidations, mergers and acquisitions, consolidation etc. Attempting such an exercise would require a disproportionate and material amount of resource (people and money) across the market. Lloyd's has estimated that, if it were to engage the whole market and attempt to identify all the transferring policies it could cost up to £50m and require almost 400 person-years effort. Therefore, to attempt such an exercise for the nontransferring policies would require multiples of these numbers and be an impossible task.

It should be noted that for the Equitas Part VII, the impossibility argument was successfully used to support the waiver for the exclusion of non-transferring policyholders from direct notification.

Such a communication would also serve little or no utility from the policyholder point of view. There is no benefit to those policyholders being told that Lloyd's has EEA policies which are being moved to Brussels because of regulatory requirements. Indeed, notifying these policyholders about the transfer could cause unnecessary confusion and uncertainty for them as their policies are unaffected and they will continue to interact with the market as they do currently.



Accountants &  
business advisers

# Appendix 7

---

## Appendix 7

---

### 2. Waiver of the requirement to notify existing policyholders of Lloyd's Brussels from 01 January 2019

All<sup>1</sup> new and renewing EEA business has been written by Lloyd's Brussels from 01 January 2019 onwards and, therefore, such business will not be transferring as part of the Scheme.

Most Lloyd's Brussels policyholders are existing Lloyd's policyholders whose business has renewed into Lloyd's Brussels from 01 January 2019. Accordingly, most of these policyholders will be in scope for direct notifications as they will be captured under the Look Back Period.

The security of the Lloyd's Brussels policyholders will not be impacted by the Scheme, as the Transferring Business will be 100% reinsured back to the Syndicates by Lloyd's Brussels pursuant to the Lloyd's Brussels Reinsurance Contract.

### 3. General notification waiver for the requirement to notify every transferring policyholder of members of Lloyd's 1993-2020 (inclusive)

Lloyd's proposes a waiver from the general notification requirement and to limit the direct notification to transferring policyholders to the following:

- a) holders of unexpired policies that are still within the period of cover at the Scheme Effective Date (SED);
- b) holders of policies with active claims at data extraction date (excluding third party claims); and
- c) holders of expired policies which inceptioned within the Look Back Period (see later).

The following sub-sections outline the constraints that apply to this proposed approach.

---

<sup>1</sup> Some EEA business has been written out of the UK post 01/01/19. There were c.300 binders with approved extensions, with all but 5 expiring by 28/03/19 (the final one of the 5 by 12/04/19). Policies could be bound up to the extension date, but no changes to the underlying contract or endorsements were permitted thereafter.

Xchanging were given authority to accept EEA business under a London stamp to 28/03/19.

Therefore, as all such policies will have expired and, those renewed, written into Lloyd's Brussels by 12/04/20, we will treat them the same as policyholders written into Lloyd's Brussels from 01/01/19.

## Appendix 7

---

### 4. Involvement of Market Participants

Lloyd's is not an insurance company and does not have policyholders. Therefore, Lloyd's only communicates directly with policyholders in exceptional circumstances (for example, through the Lloyd's complaints process). The relationship with policyholders and the holding of contact data is distributed throughout a wide range of Market Participants, in the UK, Europe and globally, most of whom over which Lloyd's has no direct control.

Business is written at Lloyd's in a number of ways. The principle routes for placing business are Open Market, which is Broker led and Delegated Authority business, which is underwritten by Coverholders and reported to Managing Agents (MA). These two placement methods and the volume of Market Participants involved create differing challenges in executing direct Policyholder notification.

Lloyd's has conceived the 'Match and Attach' process whereby a Notification Control List (NCL) of lead policies identified as transferring by MAs would be sent to Market Participants for them to Match the data to records on their policy administration systems and Attach the policyholder contact details. The completed NCLs would then be sent to a central mailing house, for deduplication of policyholders and dispatch of the direct notification, where the quality of contact details supports such notification.

At the meeting on 30 October, Lloyd's presented to me the results of the broker open market proof of concept, the broker questionnaire and the MA fact find. Lloyd's also showed the duration and cost profile if it attempted to undertake the Match and Attach process across the whole market. As a result of these initiatives, Lloyd's has concluded that a proportionality-based approach, based on tiering Market Participants, will be the most effective way to attempt to undertake a direct notification exercise.

All Market Participants will be issued with Notification Instructions, providing them with:

- a copy of the direct notification;
- the pipeline message for claims notified post data extraction date (see 3.2 below);

## Appendix 7

---

- concise Part VII message (drafted by Lloyd's) and a link to the Lloyd's Scheme Website, with a request to place them on their websites; and
- a set of rules for response management, should they receive queries from policyholders.

Using a proportionality approach, the market will be tiered as follows:

1. Open Market business (c.52% of overall business)
  - the top c.80% of policies, c.50 Lloyd's brokers – undertake Match and Attach process;
  - for remaining Lloyd's brokers and retail brokers – receive Notification Instructions.
2. Delegated Authority business (c.48% of overall business)
  - Managing Agents with bordereaux management systems containing extractable policyholder contact details – undertake Match and Attach process;
  - Service Company Coverholders – with systems containing extractable policyholder contact details – undertake Match and Attach process;
  - Coverholders / retail brokers / TPAs for binders where data not held on bordereaux management systems – receive Notification Instructions.

Regardless of the proposed approach, the proof of concept has shown that the Match and Attach process is unlikely to be 100 per cent effective, due to the issues in matching policies on broker policy administration systems and the quality of policyholder contact data held. Lloyd's is not requesting Market Participants undertake any specific data cleansing activity, tracing or manual effort as this would be a disproportionate requirement for an activity the market does not generally undertake as part of their business-as-usual servicing.

Therefore, this general waiver also covers the 'usual' waivers for:

- policyholders for whom no address, bad address data, or no current valid address is held ('gone-aways'), or where contact data is held in other forms that are not easily extractable in the timescales e.g. in paper form; and

## Appendix 7

---

- deceased policyholders (although it is unlikely that this status is recorded).

Because no commitment can be made as to which policyholders will be notified, Lloyd's will seek a dispensation from notifying all policyholders, based on its proposal to undertake the NCL and Notification Instructions approaches to direct notification.

In seeking a waiver from the requirement to notifying every transferring policyholder, Lloyd's has given due consideration to the FCA Guidance in FG 18/4 and the 'Aviva Factors', principally:

- Impossibility – the way that the market holds data (by retail broker, manually etc), the impact of systems changes, and overall GDPR concerns, means that although Lloyd's will attempt to obtain policyholder contact data, in many cases data it is simply unavailable;
- Practicality – as described above, Lloyd's does not hold policyholder data and is reliant upon Market Participants most of whom over which Lloyd's has no direct control. Lloyd's still intends to work with these Market Participants to source the data where possible and will procure and pay for a mailing house to assist them. All other Market Participants will be asked to notify relevant policyholders and Lloyd's will be undertaking targeted publication of the Legal Notice through trade press;
- Proportionality – the overall approach is based on what is proportionate given the Lloyd's market ecosystem: the time and cost involved to attempt to directly notify all policyholders, the issues with data capability across the market, versus the incremental numbers of policyholders for whom useable contact details might be found;
- Utility – this is a Brexit-driven Part VII and it is intended there will be no change in the customer experience following the transfer – the direct notification is of low utility to policyholders; and
- Availability of other information channels – the strategy is to use forms and methods of communication that are more suitable and effective for all policyholders and in a manner in which they are more used to: a wide web presence providing detailed online information; and UK and EEA advertising supported by industry-specific publications for major lines of business.

## Appendix 7

---

### 5. Claimants

Lloyd's proposes to directly notify all policyholders with active claims that will be transferring. The claims data will be extracted as at end-February 2020 for the purposes of compiling the mailing lists. For new claims that are notified post the data extraction date and before the SED (the Pipeline Period), Lloyd's will request Market Participants to issue a statement (the Pipeline message) that brings to the claimant's attention the proposed Scheme and refers them to the Scheme Website and the Scheme Helpline for further information.

Lloyd's has previously stated that the approach adopted will be the same with respect to first party claimants (claimants who are also policyholders or named as insured under a policy) and third party claimants (claimants who are not policyholders, such as, for example, people who are claiming against a Lloyd's policyholder). However, from investigations with the market, it is apparent that the data held electronically on claimants is limited and that where a name is captured, it is usually that of the policyholder rather than a third party.

In addition, Lloyd's does not intend to notify claimants on contested third party claims on the basis that the syndicate's position with respect to the claim could be materially prejudiced.

Lloyd's therefore proposes that open claims on policies within the Look Back Periods will be excluded, on the basis that where there are contact details, they will be of the policyholder, who would be de-duplicated at mailing stage by virtue of being on the Look Back Period policyholder list.

For open claims on policies beyond the Look Back Periods, Lloyd's will request Market Participants to attempt to identify the policyholder contact details.

### 6. Look Back Period

The applicable secondary legislation definition of policyholder is very broad and includes any potential claimant under a policy, regardless of whether the possibility of claiming is remote.

Lloyd's believe that it would be disproportionate to attempt to identify and notify every transferring policyholder and such notification would be of no utility for holders of expired policies on which they are unlikely to claim.

## Appendix 7

---

Instead, Lloyd's proposes to adopt the approach used in other General Insurance Part VIIs, in that where a policy has expired, direct notification will only be sent if the policy inception

is within a "Look Back Period". Based on its claims development profiles, Lloyd's has considered the number of claims first reported in each development period following the beginning of each underwriting year as a percentage of the number of policies written in that underwriting year. This gives a development profile of the proportion of claims from a given underwriting year cohort that is expected to have emerged by the end of each development period. Lloyd's proposes to send direct notification to policyholders in underwriting years where, looking back from the Scheme Effective Date, up to 90% of claims are forecast to have emerged.

Lloyd's believe that it is reasonable to set the Look Back Period for each class of business at this threshold and not to notify policyholders that are outside of the Look Back Period on the basis that:

- a) the proportion of policyholders of policies where the period of insurance has expired beyond the Look Back Period that may still make a future claim against a Member is very small, whereas the cost and effort of extending the mailing to the entire historical policyholder base beyond the Look Back Period would be disproportionately large and, in practice, impossible to undertake prior to the end of 2020 (for the reasons akin to those detailed in 1. above);
- b) for many of the classes of business there is a high retention rate, meaning that the majority of policyholders renew their policies back with the Lloyd's market every year and therefore, a high proportion of these policyholders, will renew into the Look Back Period and therefore receive the direct notification; and
- c) Lloyd's brokers may continue to have a relationship with a policyholder of an expired policy (e.g. placing the business outside of Lloyd's). To the extent that they believe any of these policyholders need to know about the Scheme, the provision of the Notification Instructions will enable them to issue the direct notification such policyholders.

### 7. Kidnap and Ransom

Kidnap and Ransom Insurance (K&R) is a product which helps corporate and private clients living and operating in complex environments around the world with heightened security risks, to protect their human and financial assets, and minimise



## Appendix 7

---

their reputational risk. Insurable events can include kidnap, extortion, hijack, detention and extraction.

Lloyd's will exclude from the NCLs, Transferring Policyholders of K&R insurance policies due to the high-risk nature of coverage provided and the security levels involved in protecting the identities of the holders of K&R policies.

### **8. Waiver in respect of the notification of the application for the Part VII Transfer to policyholders – Beneficiaries under Master/Group policies**

Under FG18/4, the FCA allows for applications for dispensation from the Transfer Regulations where policies have more than one beneficiary.

A Master Policy (also referred to as a Group Policy) is an insurance contract issued to a master (or group) policyholder who purchases the insurance to provide the benefit of insurance cover for others, usually individuals. The parties who have the benefit of the cover (customer or beneficiary), however, are not parties to the insurance contract.

Lloyd's will be seeking a waiver of the requirement to notify all underlying customers/beneficiaries under Master Policies and proposes instead to:

- notify all Master Policyholders of the proposed Scheme by sending the direct notification to them;
- request Master Policyholders to support the notification process by providing a concise Part VII message and link to the Lloyd's Scheme Website on their respective websites where policyholders can be directed to find more information; and
- offer support to the Master Policyholder should they wish to send a specific communication to their customers/beneficiaries (e.g. a short form notification which Lloyd's will draft).

Lloyd's considers this a reasonable approach on the following grounds:

- given the short-tail nature of the business, it is unlikely that these policies will fall into the scope of direct notification;

## Appendix 7

---

- it is the Master Policyholder who has entered into the contract of insurance on behalf of the customers/beneficiaries and will be best placed to assess the impact of the transfer on them;
- the Master Policyholder hold the records of the customers/beneficiaries and the level of data held will be extremely variable;
- to gather that data would be practically impossible to co-ordinate, given the likely number of Master policies and any dealings with Master Policyholders would have to be via the Managing Agent or Coverholder or, even, a local retail broker; and the underlying customer is unlikely to be familiar with the Lloyd's name / brand or even the broker, as the branding of the cover will be that of the Master Policyholder.

### **9. Waiver in respect of the notification of the application for the Part VII Transfer to policyholders – Employees of an employer**

Under the applicable secondary legislation the definition of policyholder is very broad and includes employees of an employer.

Lloyd's will be seeking a waiver of the requirement to directly notify all employees covered under such policies and proposes instead to:

- notify all Policyholders who are employers of the proposed Scheme by sending the direct notification to them;
- request that employers support the notification process by providing a concise Part VII message and link to the Lloyd's Scheme Website on their respective websites where employees can be directed to find more information; and
- offer support to the employer should they wish to send a specific communication to their employees (e.g. a short form notification which Lloyd's will draft).

Lloyd's considers this a reasonable approach on the following grounds:

- it is the employer who has entered into the contract of insurance on behalf of its employees and will be best placed to assess the impact of the transfer on them;
- employers hold the records of their employees; to gather that data would be practically impossible to co-ordinate, given the likely number of such policies

## Appendix 7

---

and any dealings with them would have to be via the Broker, Coverholder or, even, the local retail broker; and

- the employees are unlikely to be familiar with the Lloyd's name / brand regardless of any certificate that may be displayed in the workplace; and
- there will be no difference in the ability of the employee to make a claim or the process required to do so.

### **10. Waiver in respect of the notification of the application for the Part VII Transfer to policyholders – Co-insurers**

Under FG18/4, the FCA will carefully consider arguments from firms about not following the expectation to notify certain non-policyholders e.g. co-insurers.

Much of the Lloyd's market is conducted on a subscription basis where a risk is underwritten by multiple insurers (both Lloyd's syndicates and non-Lloyd's insurers) on the same risk. One insurer will take the lead and the others become co-insurers.

Lloyd's will be seeking a waiver to directly notify co-insurers on the basis that:

- All syndicates are aware of the Part VII and Open Year Members will receive direct notification;
- the data validation exercise has focused on lead positions. Lloyd's does not have details of the non-Lloyd's participants on a risk; and
- the non-Lloyd's (company) market, as experienced and sophisticated participants in the London market, many of whom will have conducted their own 'Brexit-related' Part VIIs, will already be aware of the Lloyd's Part VII.

### **11. Waiver in respect of the requirement to notify Reinsurers for whom no address, bad address or current details are held or are held in forms not easily extracted**

The proposal for how the Transfer will affect the existing structure for Syndicates' outwards reinsurance in respect of the Transferring Policies is explained in the Transferor witness statement. This structure ensures that economically both the Syndicates and reinsurers (and any counterparties to any associated collateral, Letter of Credit or security structures e.g. banks) are in the same position as they are currently.

## Appendix 7

---

Accordingly, Lloyd's do not anticipate reinsurers (nor any counterparties to any associated collateral, Letter of Credit or security structures e.g. banks) would have material grounds for objections on the basis that their exposure will not be altered as a result of the transfer and they will continue to deal with the same counterparty Managing Agents.

However, Lloyd's proposes that the providers of such outwards reinsurance will receive Direct Notifications advising them of the Scheme and the impact of it on the cover they have provided.

As there is no centralised database of outwards reinsurers with detailed policy-level information, Lloyd's will work with Managing Agents to produce a list of reinsurers to send to the mailing house in order for them to be sent the Direct Notification. However, this exercise is likely to identify reinsurers of only more recent years of account as records may not be available for the earlier years. It would require a disproportionate amount of effort by Managing Agents to attempt to identify all reinsurance covers and the providers, relating to all Transferring Policies. Lloyd's will therefore be seeking a waiver of the requirement in regulation 3(2)(c) of the Transfer Regulations to notify every reinsurer.

Most reinsurers are likely to have renewed the reinsurance cover they provide for more recent years where more accurate records are maintained and are also likely to be involved in providing reinsurance cover to more than one syndicate which will increase the chance of them being identified.

In addition, Managing Agents have indicated that they will be engaging with their reinsurers directly and to assist them with that and to ensure consistency in how the transfer is explained, Lloyd's has provided them with a document titled 'Summary of Part VII Transfer for Reinsurers' which they can use for that engagement. Reinsurers, as experienced and sophisticated stakeholders in the Lloyd's market and having been party to many Part VII transfers previously, will be aware of the progress of the Lloyd's transfer through their relationships with Lloyd's Market Participants such as Managing Agents and brokers.

### **12. Waiver in respect of the requirement to comply with regulation 3(2)(a)(iv) of the Transfer Regulations**

Lloyd's are publishing the Legal Notice in two national newspapers in all EEA countries. The requirement under regulation 3(2)(a)(iv) is to publish the Legal Notice in one business newspaper. Lloyd's will therefore seek a dispensation from this

## Appendix 7

---

requirement as they will instead be publishing the Legal Notice in two national newspapers in each EEA state.