

FROM: Managing Director, Members' Services Unit
LOCATION: 86/774
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DATE: 1 November 2002
REFERENCE: MFD/KAH/1sb/Mbullcashcalls/Y2906
SUBJECT: SETTLEMENT OF SYNDICATE LOSSES AND CASH CALLS
SUBJECT AREA(S):
ATTACHMENTS: Revised guide to Agents on the procedures for settlement of syndicate losses and cash calls
ACTION POINTS: **All Agents to note revised best practice procedures**
DEADLINE: **Immediate**

The attached revised document "Guide to agents on the procedures for settlement of syndicate losses and cash calls" is intended to provide agents with best practice guidelines in relation to the procedures for the funding of syndicate losses and cash calls.

The guide, which has been prepared with the help of agents' representatives and the LMA, sets out agents' responsibilities with regard to all aspects of settlement of syndicate losses and cash calls.

A timetable, detailing the approved dates for action covering all aspects of the process forms part of the guide.

Members' Agents are requested to take note of the amendments to Central Fund procedures in Section 6 of the Guide – "Members with insufficient funds at Lloyd's".

This revised guide replaces that issued under Market Bulletin dated 11 January 2002 (Ref. Y2694).

If you have any questions regarding the guide please contact Kim Harris, Members' Funds department on Lloyd's extension 2910.

This bulletin is being circulated to all underwriting agents, direct capital participants and licensed advisers.

S M Quiddington
Managing Director
Members' Services Unit

**Guide to Agents on the Procedures
for Settlement of
Syndicate Losses and Cash Calls**

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1. Introduction

This document is intended to give guidance to agents as to best practice in relation to the procedures for the funding of syndicate losses and cash calls. The guidelines are not intended to detract from the general law as it applies to agents or the requirements of the Agency Agreements Byelaw (No.8 of 1988), the relevant Lloyd's trust deeds or applicable conditions and requirements made under the Lloyd's byelaws.

2. Underwriting agents' responsibilities

2.1 General responsibilities of agents

Underwriting agents have a responsibility to pursue the effective collection of funds from the members for whom they act to meet their syndicate losses and cash calls so as to enable the members' underwriting liabilities to be discharged. They must therefore take all reasonable steps to effect recovery of outstanding cash calls from members, including where necessary, the commencement of litigation against members who are in default.

A failure to take reasonable steps to effect recovery of members' outstanding cash calls is a matter which the Council of Lloyd's may take into account in exercising its powers under the Underwriting Agents Byelaw (No. 4 of 1984), in particular its powers to review any permission granted to any body to act as a managing agent or as a member's agent or both, and to withdraw permission to act as a managing agent or a members' agent.

2.2 Managing agents

Managing agents should give members as much notice as possible of the likelihood of a cash call being made.

Where the managing agent makes a cash call, the member is not obliged to pay it unless he has first been provided with, in the case of a closed year loss, a copy of the audited annual report and accounts, and in any other case, a cash call statement signed by the agent and accompanied by a report signed by the syndicate auditor. The cash call statement and report must be in the form required by Council. The latest requirements for this purpose are the Cash Call Statements (Contents and Form) Requirements (1999) (for a copy of these requirements, see Regulatory Bulletin (ref. 068/2000) dated 12 September 2000 entitled *Cash Call Requirements*).

The date specified in the cash call statement for payment must be not less than 35 days from the date of service of the cash call statement.

Where the cash call is served by post by sending it to the member's members' agent it will be deemed to have been received 48 hours from the date of posting. In any other case it will be deemed to have been received 72 hours from the date of posting. A managing agent proposing to serve a cash call by post should take into account these deemed times for service in determining the due date for payment to be specified in the cash call statement.

Managing agents must ensure the regular reconciliation of their records of outstanding cash call balances with the Outstanding Balance (OB) files provided by the Members' Services Unit (MSU).

Where a member has insufficient FAL to meet a cash call and fails to make additional funds available to do so, the managing agent should liaise with the members' agent in order, where appropriate, to take proceedings to recover sums payable in respect of that member's outstanding cash call. Regular updates in respect of the progress of any such proceedings should be given to MSU.

Under the terms of the Agents' Agreement, a managing agent is entitled to be reimbursed by the relevant members' agent in respect of all reasonable legal and other costs incurred by the managing agent in taking action to enforce payment by a member of his underwriting liabilities provided the members' agent has been given an adequate opportunity to ask the member to comply with the request for funds.

2.3 Members' agents

Generally, a managing agent's cash call will be served on the member via his members' agent. Under the members' agent's agreement, the members' agent has an obligation promptly to inform the member of the cash call and, except in relation to a MAPA member, forward a copy of the cash call statement/audited accounts to him. Such documents must however be made available to a MAPA member if he requests them.

A member must be given not less than 21 days notice from the date of service of the cash call for payment of that call.

Where the cash call is sent by the members' agent to the member by post, it will be deemed to have been received 72 hours from the date of posting. Members' agents should take this into account when serving a cash call on the member by post.

The members' agent has an obligation under the Agents' Agreement to use its best endeavours to ensure that the member complies with his obligation to pay the cash call. It also has a duty to reimburse the managing agent all reasonable legal and other costs incurred by the managing agent in taking action to recover from the member any sums payable by him in respect of the cash call provided the members' agent has been given an adequate opportunity to ask the member to comply with the request for funds.

Members' agents should therefore liaise with the member to determine how the cash call is to be met and make recommendations as to the method of funding.

From a practical viewpoint, members' agents should, where requested by a managing agent, co-ordinate any legal action to be taken by that managing agent to enforce members' cash call obligations (see Section 6 for further information). Regular updates in respect of the progress of any such proceedings should be given to MSU.

Evidence of efforts made to obtain payment of outstanding cash calls will generally be required if a withdrawal from the New Central Fund is requested.

3. Lloyd's responsibilities

Lloyd's is responsible for operating the central cash management system known as the Debt Allocation Matrix (DAM) in which all members' assets and liabilities are recorded.

In its capacity as trustee of each member's funds at Lloyd's, Lloyd's will determine how a member's funds are to be apportioned to meet particular cash calls. Lloyd's will provide information to agents regularly on the net funding position of their members.

At regular intervals following the due date for payment of cash calls, Lloyd's will arrange for audit reports relating to members' outstanding liabilities to be produced based on the information in the DAM to facilitate the submission of compulsory deposit drawdown requests.

4. Timetable - funding of losses process

An indicative timetable of the settlement process is attached as Appendix 1.

5. Members with available funds at Lloyd's

Where a member has available funds at Lloyd's, the usual sequence of funding syndicate losses and cash calls is as follows.

5.1 Special Reserve Fund – mandatory use

Where a member has a Special Reserve Fund (SRF), it is mandatory under the tax legislation governing the SRF that any cash call or loss be met (to the extent that there are sufficient assets in the member's SRF) first from that fund.

Members will be given the opportunity to liquidate any non-cash holdings in their SRF prior to the due date for the payment of the losses or cash calls. If no such request has been received at least ten working days before the due date for payment, Lloyd's will realise assets so as to provide sufficient cash to meet the required amount of the withdrawal from the fund.

5.2 Use of other funds at Lloyd's or assets outside Lloyd's

Where a member's SRF has been exhausted or he has no SRF, the member may settle his losses or cash calls by way of a payment or transfer of funds held outside Lloyd's into the personal reserve sub-fund (PRF) of his premiums trust fund (PTF). The member may also utilise assets already held in the PRF and, to the extent that these are insufficient, the deposit.

5.3 Use of the Personal Reserve Sub-Fund

Subject to mandatory use of the SRF as described in paragraph 5.1, a member may instruct his members' agent to utilise assets held in his PRF to settle his losses and cash calls. Where MSU receives a request from a members' agent to apply PRF assets in discharging such liabilities, it will generally act in accordance with that request. Where this involves the sale of securities, the member must arrange this via his own broker.

In any event, Lloyd's as Regulating Trustee of the PTF may apply a member's PRF in or towards payment of the member's outstanding liabilities. In practice, it will not usually do this until at least 21 days after the due date for payment of the loss or cash call.

5.4 Use of the Lloyd's Deposit

5.4.1 Voluntary drawdown

Where a member's SRF (if any) and PRF are insufficient or have been exhausted, the member may request that his Lloyd's deposit be used to pay his losses or cash calls. For this purpose, a member must complete and sign a voluntary drawdown form requesting that his underwriting liabilities be funded out of assets held at Lloyd's. Where this involves the sale of securities the member must arrange this via his own broker. The members' agent must also complete and sign a form of declaration in support of the request. The members' agent should then submit the forms to MSU.

Copies of the relevant forms are attached to the Market Bulletin (ref. Y2080) dated 24 June 1999 entitled *Deposit Drawdowns – Voluntary Requests* which outlines the voluntary deposit drawdown process.

To reduce the amount of time and costs associated with deposit drawdowns, members may elect in advance of anticipated cash calls to transfer cash and securities from their deposit to their PRF. Such a transfer may generally be made as a one-off annual transaction. Full details of this process are set out in the Market Bulletin (ref. Y2463) dated 10 January 2001 entitled *Transfer of cash and securities from Lloyd's deposit to the personal reserve sub-fund of the premiums trust fund to pay cash calls*.

5.4.2 Compulsory drawdown

Where a member has funds available in his deposit but is unwilling to request a voluntary deposit drawdown, the members' agent (or in the case of a direct corporate member, the managing agent of the syndicate concerned) should submit a request for a compulsory deposit drawdown on behalf of the member. A copy of the relevant form for this purpose, FOL1, is attached to the Market Bulletin (ref. Y2093) dated 14 July 1999 entitled *Compulsory Deposit Drawdowns*.

To assist agents in this process, MSU will provide them with drawdown schedules identifying each of those members for whom a deposit drawdown is considered appropriate, the amount of their outstanding liabilities and the value of their deposit available to meet those liabilities. Agents should check the schedules and submit a FOL1 to MSU duly signed and dated as soon as possible and in any event, within 28 days.

It should be noted that, in relation to deposits held under *old style* deposit trust deeds and security and trust deeds (i.e. deeds executed prior to September 1989), before a compulsory deposit drawdown can be actioned by MSU, a Managing Agent's Declaration of Underwriting Liabilities/Syndicate Auditor's Report (DUL) relating to the member concerned must be submitted to MSU by the relevant managing agent. MSU will request DULs from managing agents on an 'as required' basis.

In other cases, Lloyd's will obtain an audit report in relation to the member's underwriting liabilities from the Corporation's auditors based on information held centrally in the DAM. This will normally be obtained and provided to members' agents 7 to 10 weeks after the due date for payment of the cash call.

MSU will action a compulsory deposit drawdown once it is in receipt of a request from the members' agent (or in the case of a direct corporate, the managing agent of the syndicate concerned) in the requisite form and an appropriate audit report.

6. Members with insufficient funds at Lloyd's

Where a member has insufficient funds at Lloyd's to meet his underwriting liabilities, he has an obligation to make additional funds available to do so.

MSU will provide members' agents, and in the case of direct corporate members, managing agents, with details of those members that have outstanding cash calls and insufficient funds at Lloyd's to meet those calls.

Where an individual member advises his members' agent that he has insufficient assets outside Lloyd's to meet his underwriting liabilities, the members' agent should ask the member to provide a Financial Declaration (FD) giving details of his financial circumstances. The member should also be asked to provide all relevant documentation in support of the FD. The FD should be verified by the member's accountant. In the absence of such verification, provided that the members' agent is satisfied that the information contained in the FD is accurate, it may verify the FD in place of the member's accountant. A member should provide a completed FD together with all supporting documentation within 28 days.

Where the member provides a FD with supporting documentation and his members' agent is satisfied that the member has made full and frank disclosure and that he has insufficient assets outside Lloyd's to meet his underwriting liabilities, the member's agent should make a request for a payment out of the New Central Fund to meet the member's outstanding liabilities. The members' agent should also provide MSU with a copy of the member's FD and supporting documentation.

Where the member fails to provide a FD with supporting documentation, MSU will check and request a payment from the New Central Fund (NCF) to meet the members' outstanding liabilities where:

- 1a) All underwriting accounts are closed or
- 1b) The last year of underwriting was 1998 or prior and
- 2) The member's total indebtedness calculated by aggregating current outstanding debts, previous withdrawals from the NCF and an allowance to cover future cash calls for any syndicates in run-off on which the member participates, satisfies the following limits:
 - In the case of a UK member is not greater than £5,000
 - In the case of an overseas member (excluding US) is not greater than £10,000
 - In the case of a US member is not greater than £15,000

Where the debt recovery process has been pursued up to (but not including) the point of going to court MSU will consider and where appropriate request a payment from the New Central Fund to meet the members' outstanding liabilities where:

- 1a) All underwriting accounts are closed or
- 1b) The last year of underwriting was 1998 or prior and
- 2) The member's total indebtedness calculated by aggregating current outstanding debts, previous withdrawals from the NCF and an allowance to cover future cash calls for any syndicates in run-off on which the member participates, satisfies the following limits:
 - In the case of a UK member is not greater than £10,000
 - In the case of an overseas member (excluding US) is not greater than £20,000
 - In the case of a US member is not greater than £30,000

Evidence of the debt recovery process, including a copy of the solicitor's letter, should be submitted with the application for the New Central Fund withdrawal

MSU will additionally consider and where appropriate request a payment from the New Central Fund to meet a members' outstanding liabilities where previous evidence of hardship or lack of assets has been accepted and there has been no change in the financial circumstances of the member.

If the member fails to discharge his underwriting obligations and fails to provide evidence of his inability to pay, the members' agent and managing agent should liaise concerning the steps to be taken to obtain payment, including, where appropriate, legal action to enforce the member's Lloyd's obligations. If such action ultimately yields no assets then a request for payment out of the New Central Fund to meet the member's outstanding liabilities should be made by the relevant member's agent (or in the case of a direct corporate member, the relevant managing agent).

Evidence that the agent has taken all reasonable steps to pursue the debt will be required before such a withdrawal may be made.

A copy of the form on which a request for a withdrawal from the New Central Fund should be made (FOL5) together with the form of FD is attached to the Market Bulletin (ref. MFS/CT/ARM/Y2150) dated 20 October 1999 entitled *Application for withdrawals from the New Central Fund*.

In relation to direct corporate members the appropriate form of request for a New Central Fund withdrawal may be obtained by the relevant managing agent(s) from MSU. Any such application will be considered on receipt of the completed form from the relevant agent.

7. Market/Regulatory Bulletins

For ease of reference, Market and Regulatory Bulletins containing information relevant to the current funding of losses process (including those already referred to above) are listed below.

Y2080	Deposit Drawdowns – Voluntary Requests	24 June 1999
Y2093	Compulsory Deposit Drawdowns	14 July 1999
Y2120	Cash Calls	26 August 1999
Y2150	Application for Withdrawals from the New Central Fund	20 October 1999
068/2000	Cash Call Requirements	12 September 2000
Y2463	Transfer of Cash and Securities from Lloyd's Deposit to PRF to pay Cash Calls	10 January 2001
Y2598	Payment of losses – cash calls	10 August 2001

Settlement Process Indicative Timetable

Appendix 1

Process	Timescale	Procedure	Comments
Service of cash call statement	T - 35	Managing agent must give not less than 35 days' notice from date of service cash call for payment to member	Members' obligations in respect of cash calls are set out in clause 7 of the standard managing agent's agreement and clause 9 of the standard members' agent's agreement.
VOLUNTARY FUNDING			
Agents will be notified of the date by which FAL holdings should be liquidated and instructions given to MSU to realise the same	T - 35		
Voluntary drawdown form submitted by members' agent	Between T - 21 and T - 4		Voluntary drawdown requests should be submitted promptly by the members' agent.
SRF non-cash assets	T - 10	If insufficient cash is held in SRF then investments will be liquidated approximately 10 working days prior to the due date of the cash call	SRF must be used to settle any cash calls to extent assets in that fund available before any other FAL or assets outside Lloyd's may be used. Three clear days notice of MSU's intention to sell assets will be given.
SRF cash	Between T - 10 and T - 4	SRF cash transferred to the member's PRF	
Syndicate credited	T + 0	Transfer from PRFs to syndicate PTFs via BACS by due date for payment of cash call	
NON VOLUNTARY FUNDING			
PRF non-cash assets (no instruction received from members' agent)	T + 21	Sell orders placed to liquidate sufficient cash to pay calls normally 21 days from due date for payment of cash call	Lloyd's as Regulating Trustee has power to liquidate PRF assets. Agents will be advised of members in relation to whom PRF assets sold. Three clear days notice of MSU's intention to sell assets will be given
PRF cash (no instruction from members' agent)	T + 21	PRF cash transferred to syndicate PTF after 21 days of due date for payment of cash call	
Drawdown schedule sent to members' agents in respect of members with deposit	T + 42	Identification of members for whom a compulsory deposit drawdown is necessary (member has no other FAL available except deposit)	The audit report details the member's outstanding liabilities and will be accompanied by a letter indicating that

Settlement Process Indicative Timetable

Appendix 1

Process	Timescale	Procedure	Comments
Details of members with outstanding cash calls and insufficient FAL issued to agents in form of a drawdown schedule	T + 42	Identification of members in respect of whom recovery proceedings may be required or a request for a Central Fund withdrawal made	members' agent should make a request for a compulsory deposit drawdown (see Bulletin Y2093, dated 14 July 1999) Where syndicate debts remain unpaid, MSU will issue details of those members with insufficient FAL to meet the call
Members' agents submit FOL 5 for a withdrawal from NCF	T + 43 to T + 56	<p>Where :</p> <p>1) All underwriting accounts are closed or the member's last year of underwriting was 1998 or prior and the member's total indebtedness (including any allowance for run off syndicates) does not exceed the following limits</p> <p style="padding-left: 40px;">UK - £5,000 Other Overseas - £10,000 US - £15,000</p> <p>MSU will check and request a NCF withdrawal.</p> <p>If the debt recovery process has been pursued up to the point of going to court the following higher limits will be applied:</p> <p style="padding-left: 40px;">UK - £10,000 Other Overseas - £20,000 US - £30,000</p> <p>MSU will consider and where appropriate request a NCF withdrawal.</p> <p>2) In the case of a member where previous evidence of hardship or lack of assets have been accepted and there has been no change in the financial circumstances of the member</p>	FOL 5 request should be submitted without delay for consideration by MSU.

Settlement Process Indicative Timetable

Appendix 1

Process	Timescale	Procedure	Comments
Members' agents submit FOL 5 to 'fast-track' NCF withdrawals	T + 43 to T + 56	Identification of those members with no FAL and insufficient assets outside Lloyd's to meet the cash call	For members who are unable to pay MSU will consider a 'fast-track' NCF withdrawal upon receipt of a FOL 5 without the need for a Financial Declaration
Members' agents follow up non 'fast-track' members for payment	T + 43	Members' agents should write to members requesting immediate settlement of outstanding amounts or if member in financial difficulties, provision of Financial Declaration	Members should be requested to complete and return a Financial Declaration within 28 days of receipt of the request from their agent
Members' agents return FOL Forms to initiate compulsory deposit drawdown	T + 70	Agents should complete and return FOL 1(D) within 28 days	See Bulletin Y2093, dated 14 July 1999
Members' agents should write to members failing to provide Financial Declaration	T + 72	Where members fail to provide a Financial Declaration it must be assumed that assets are available to meet outstanding cash call	
Members' agent submit Financial Declaration and request for NCF withdrawal in form FOL 5 to MSU	T + 43 to T + 102	Agents should submit the forms to MSU without delay following receipt from member of satisfactory Financial Declaration	See Bulletin Y2150, dated 20 October 1999
Managing agents should commence recovery proceedings against defaulting member. Members' agents should, where requested, co-ordinate recovery proceedings against defaulting members on behalf of managing agents.	T + 102		Agents should advise MSU of the progress of any recovery proceedings