

# MARKET BULLETIN

REF: Y4725

<b>Title</b>	Ireland: New complaints handling procedure
<b>Purpose</b>	To inform the market of a new Lloyd's complaints handling procedure for consumers in Ireland.
<b>Type</b>	Event
<b>From</b>	Jonathan May, Head Financial Control & Market Services +44 (0)20 7327 5314, <a href="mailto:Jonathan.May@lloyds.com">Jonathan.May@lloyds.com</a>
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<b>Deadline</b>	1 November 2013
<b>Related links</b>	<a href="#">Crystal report for Ireland</a>

## Summary

The Financial Services Ombudsman (FSO) in Ireland has recently changed its procedure regarding the circumstances in which it will accept a complaint from a consumer in Ireland. The change in the FSO's procedure is effective from 1 September 2013. It is aligned to the complaints handling procedures for insurers and insurance intermediaries that are set out in Chapter 10 of the Consumer Protection Code 2012, which has been in force since 1 January 2012.

The changes made by the FSO particularly concern the issue of FSO referrals following the provision of final response letters by insurers. Given the unique structure of the Lloyd's market, it has been necessary to introduce a new complaints handling procedure for complaints made by a consumer in Ireland, in order to ensure that final response letters are issued in a consistent manner and complainants are not disadvantaged.

## Background

With effect from 1 September 2013 the FSO will only accept a complaint from a consumer if the complainant can demonstrate that he has already communicated his complaint to the relevant financial service provider and that the financial service provider has been given a reasonable opportunity to deal with it. This requirement reflects Section 57BX(6) of the Central Bank and Financial Services Authority Act 2004. In addition, the financial service

provider must provide evidence to the complainant that it has dealt with his complaint in accordance with Chapter 10 of the Consumer Protection Code 2012. Please refer to Appendix 1 for details of Chapter 10.

The Consumer Protection Code 2012 has been in force since 1 January 2012 and applies to intermediaries in Ireland, intermediaries in an EEA member state outside Ireland and managing agents<sup>1</sup>. The complaint handling requirements in the Consumer Protection Code 2012 apply to complainants that are consumers in Ireland in respect of business written on an establishment or freedom of services basis. This means that they apply to open market business and to business written by a coverholder in Ireland or another EEA member state. Please refer to Appendix 2 for the definitions of “complaint” and “consumer” used in the Code.

The FSO has introduced new arrangements regarding the circumstances in which it will accept a complaint from a consumer due to the non-compliance by local insurers with Chapter 10 of the Consumer Protection Code. However, there is no suggestion that Lloyd’s market participants have not complied with it. The change is intended to make insurers handle complaints in accordance with the existing requirements, rather than assume that the FSO will handle complaints on their behalf.

### **New FSO procedure**

With effect from 1 September 2013, the FSO will only accept a complaint from a consumer in the following circumstances.

- i) Between 1-40 days; only if the financial service provider has received the complaint, has dealt with the complaint in accordance with the Consumer Protection Code 2012 and has given the complainant a final response letter.
- ii) More than 40 days; if the financial service provider has received the complaint, has not yet issued its final response and has written to the complainant informing him of the anticipated timeframe within which it hopes to resolve the complaint and of his right to refer the matter to the FSO. In this circumstance, if the complainant seeks FSO involvement, the FSO will write to the financial service provider confirming that it has registered the complaint and will advise that the anticipated timeframe is/is not a reasonable period for a response. The FSO will also request that the financial service provider issues their final response letter within the timescale indicated and it will chase this up if it is not.
- iii) When the financial service provider has not dealt with the complaint in accordance with the Consumer Protection Code 2012 and/or has not responded to the complaint at all and/or is unduly delaying the handling of the complaint. In this circumstance, the FSO will assist the complainant in obtaining the final response letter from the financial service provider.

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<sup>1</sup> For further details, please refer to the Insurance regulation section of the Crystal report for Ireland and the [Lloyd's Regulatory Communication article in January 2012](#).

### Limitation period for referring complaints to the FSO

A consumer is not entitled to refer his complaint to the FSO if the event that is the subject of the complaint happened more than six years ago. However, in order not to prejudice complainants under the new procedure, the FSO will accept complaints in writing before the complainant has contacted their financial service provider if they are nearing the end of the six year time limit. The complainant will then have to report the complaint to the financial service provider and allow them reasonable time to deal with it, before the FSO will deal with the complaint as described in i) and ii) above.

### New Lloyd's complaints handling procedure

Due to the unique structure of Lloyd's, it is been necessary to introduce a new procedure for handling complaints from consumers in Ireland which ensures that managing agents comply with both Section 10.9 of the Consumer Protection Code and the new FSO procedure outlined above. The new Lloyd's procedure is set out in Appendix 3 and must be followed for complaints received with effect from 1 November 2013. It contains a two stage process that is similar to the procedure for handing complaints for UK personal lines business (see [Market Bulletin Y4683](#) for details of this) in order to provide an approach for the market that is as consistent as possible.

### Qualifications for adjudicating on complaints under the Minimum Competency Code 2011

Under the Minimum Competency Code 2011<sup>2</sup>, certain activities, known as 'specified functions', may only be performed by an employee of an insurer or insurance intermediary if the employee has one of a number of particular professional qualifications. One of the specified functions listed in Appendix 2 of the Minimum Competency Code 2011 is:

*Adjudicating on any complaint communicated to a regulated firm by a consumer which relates to advice about a retail financial product provided to that consumer or the arranging or offering to arrange of a retail financial product for that consumer or [the activities of]*

- (1) Assisting consumers in the making of a claim under contracts of life assurance or determining the outcome of claims by consumers arising under contracts of life assurance, or,*
- (2) Assisting consumers in the making of a claim under contracts of general insurance or determining the outcome of claims by consumers arising under contracts of general insurance.*

Employees who perform this specified function must have one of the professional qualifications listed in Appendix 4 of the Minimum Competency Code 2011 in order to do so. These are listed in Appendix 4 of this bulletin. Managing agents are likely to receive

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<sup>2</sup> The Minimum Competency Code 2011 has been in force since 1 December 2011 and applies to insurance intermediaries in Ireland and managing agents. For further details about its application, please refer to the Insurance regulation section of the Crystal report for Ireland.

complaints that relate to “determining the outcome of claims by consumers”. Managing agents must put appropriate arrangements in place to ensure that complaints are adjudicated by a person with a required qualification.

### **Provision of pre-contractual complaints information to consumers**

Under Section 27 of the European Communities (Non-Life Insurance) Framework Regulations 1994, an insurer must, prior to inception, inform a proposer that is a natural person of the arrangements for handling the policyholder’s complaints. Lloyd’s has amended pre-contractual clause LSW1002IRL so that it reflects the new complaints handling procedure for consumers in Appendix 3. This clause must be given to all proposers that are natural persons located in Ireland, regardless of whether it is intended to write the risk on a freedom of services or establishment basis. The clause is available on the [Lloyd’s Wordings Repository](#) and should be used with effect from 1 November 2013.

### **Further information**

If you require information regarding the regulatory requirements for underwriting or placing Irish business, please contact:

Lloyd’s International Trading Advice  
Lloyd’s Desk, Ground Floor, Underwriting Room  
Telephone: + 44 (0)20 7327 6677  
Email: [LITA@Lloyds.com](mailto:LITA@Lloyds.com)  
[www.lloyds.com/crystal](http://www.lloyds.com/crystal)

If you require information regarding the new complaints handling procedure for Ireland, please contact:

Policy & Market Assistance department  
Complaints Helpline Telephone: + 44 (0)20 7327 5696  
E-mail: [complaints-enquiries@lloyds.com](mailto:complaints-enquiries@lloyds.com)  
[www.lloyds.com/complaintshandling](http://www.lloyds.com/complaintshandling)

## APPENDIX 1

## CHAPTER 10 OF THE CONSUMER PROTECTION CODE 2012

## ERRORS AND COMPLAINTS RESOLUTION

## ERRORS

10.1 A **regulated entity** must have written procedures in place for the effective handling of errors which affect **consumers**. At a minimum, these procedures must provide for the following:

- a) the identification of the cause of the error;
- b) the identification of all affected **consumers**;
- c) the appropriate analysis of the patterns of the errors, including investigation as to whether or not it was an isolated error;
- d) proper control of the correction process; and
- e) escalation of errors to compliance/risk functions and senior management.

10.2 A **regulated entity** must resolve all errors speedily and no later than six months after the date the error was first discovered, including:

- a) correcting any systems failures;
- b) ensuring effective controls are implemented to prevent any recurrence of the identified error;
- c) effecting a refund (with appropriate interest) to all **consumers** who have been affected by the error, where possible; and
- d) notifying all affected **consumers**, both current and former, in a timely manner, of any error that has impacted or may impact negatively on the cost of the service, or the value of the product, provided, where possible.

10.3 Where an error which affects **consumers** has not been fully resolved (as outlined in Provision 10.2) within 40 **business days** of the date the error was first discovered, a **regulated entity** must inform the **Central Bank**, on paper or on another **durable medium**, within five **business days** of that deadline.

10.4 A **regulated entity** must not benefit from any balance arising out of a refund, which cannot be repaid, in respect of an error.

10.5 A **regulated entity** must maintain a log of all errors which affect **consumers**. This log must contain:

- a) details of the error;
- b) the date the error was discovered;
- c) an explanation of how the error was discovered;
- d) the period over which the error occurred;
- e) the number of **consumers** affected;
- f) the monetary amounts involved;
- g) the status of the error;
- h) the date the error was resolved;
- i) the number of **consumers** refunded; and
- j) the total amount refunded.

10.6 A **regulated entity** must maintain a **record** of all steps taken to resolve an error which affects **consumers**, including details of the steps taken where:

- a) any affected **consumers** were dissatisfied with the outcome;
- b) there were difficulties contacting affected **consumers**; and
- c) a refund could not be repaid.

## COMPLAINTS RESOLUTION

10.7 A **regulated entity** must seek to resolve any **complaints** with **consumers**.

10.8 When a **regulated entity** receives an oral **complaint**, it must offer the **consumer** the opportunity to have this handled in accordance with the **regulated entity's complaints** process.

10.9 A **regulated entity** must have in place a written procedure for the proper handling of **complaints**. This procedure need not apply where the **complaint** has been resolved to the complainant's satisfaction within five **business days**, provided however that a **record** of this fact is maintained. At a minimum this procedure must provide that:

- a) the **regulated entity** must acknowledge each **complaint** on paper or on another **durable medium** within five **business days** of the **complaint** being received;
- b) the **regulated entity** must provide the complainant with the name of one or more individuals appointed by the **regulated entity** to be the complainant's point of contact in relation to the **complaint** until the **complaint** is resolved or cannot be progressed any further;
- c) the **regulated entity** must provide the complainant with a regular update, on paper or on another **durable medium**, on the progress of the investigation of the **complaint** at intervals of not greater than 20 **business days**, starting from the date on which the **complaint** was made;
- d) the **regulated entity** must attempt to investigate and resolve a **complaint** within 40 **business days** of having received the **complaint**, where the 40 **business days** have elapsed and the **complaint** is not resolved, the **regulated entity** must inform the complainant of the anticipated timeframe within which the **regulated entity** hopes to resolve the **complaint** and must inform the **consumer** that they can refer the matter to the relevant Ombudsman, and must provide the **consumer** with the contact details of such Ombudsman; and
- e) within five **business days** of the completion of the investigation, the **regulated entity** must advise the **consumer** on paper or on another **durable medium** of:
  - i) the outcome of the investigation;
  - ii) where applicable, the terms of any offer or settlement being made;
  - iii) that the **consumer** can refer the matter to the relevant Ombudsman, and
  - iv) the contact details of such Ombudsman.

10.10 A **regulated entity** must maintain an up-to-date log of all **complaints** from **consumers** subject to the **complaints** procedure. This log must contain:

- a) details of each **complaint**;
- b) the date the **complaint** was received;
- c) a summary of the **regulated entity's** response(s) including dates;
- d) details of any other relevant correspondence or **records**;

- e) the action taken to resolve each **complaint**;
- f) the date the **complaint** was resolved; and
- g) where relevant, the current status of the **complaint** which has been referred to the relevant Ombudsman.

10.11 A **regulated entity** must maintain up to date and comprehensive **records** for each **complaint** received from a **consumer**.

10.12 A **regulated entity** must undertake an appropriate analysis of the patterns of **complaints** from **consumers** on a regular basis including investigating whether **complaints** indicate an isolated issue or a more widespread issue for **consumers**. This analysis of **consumer complaints** must be escalated to the **regulated entity's** compliance/risk function and senior management.

## APPENDIX 2

### RELEVANT DEFINITIONS IN THE CONSUMER PROTECTION CODE 2012

“**business day**” means any day except Saturday, Sunday, bank holidays and public holidays.

“**complaint**” refers to an expression of grievance or dissatisfaction by a consumer, either orally or in writing, in connection with:

- a) the provision or the offer of the provision of a product or service to a consumer by a regulated entity; or,
- b) the failure or refusal of a regulated entity to provide a product or service to a consumer.

“**consumer**” means any of the following:

- a) a person or group of persons, but not an incorporated body with an annual turnover in excess of EUR 3 million in the previous financial year (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or,
- b) incorporated bodies having an annual turnover of EUR 3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a turnover greater than the said EUR 3 million);

and includes where appropriate, a potential ‘consumer’ (within the meaning above).

“**durable medium**” means any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

“**person**” means a natural person or a legal person.

“**record**” means any document, file or information (whether stored electronically or otherwise) and which is capable of being reproduced in a legible form.

“**regulated entity**” means a financial services provider authorised, registered or licensed by the Central Bank or other EU or EEA member state that is providing regulated activities in the State.

### APPENDIX 3

#### PROCEDURE FOR HANDLING COMPLAINTS FROM CONSUMERS IN IRELAND

##### Stage 1

1. The managing agent<sup>3</sup> receives a complaint from a consumer.
2. Within five business days the managing agent must acknowledge receipt of the complaint, in writing. The complainant must also be informed of the name of one or more individuals that will be their point of contact regarding the complaint until the complaint is resolved or cannot be progressed any further.
3. Within ten business days the managing agent must advise the complainant of its decision, in writing, based on the outcome of the investigation. The managing agent must clearly state that the letter is not a final response letter and should include the following statement.

*“The decision stated above does not constitute a final response from Lloyd’s to your complaint. Should you remain dissatisfied you may, if you wish, refer your complaint to the Lloyd’s Country Manager for Ireland who will investigate and assess this complaint and provide you with a final response.*

*The contact details are as follows:*

*Lloyd’s Country Manager  
Lloyd’s Representative Ireland Ltd  
7/8 Wilton Terrace  
Dublin 2  
Ireland  
Tel: + 353 1 644 1000  
E-mail: lloydsireland@lloyds.com*

*Should you remain dissatisfied with the final response from Lloyd’s Country Manager for Ireland, you may refer your complaint to the Financial Services Ombudsman (FSO). The contact details are as follows:*

*Financial Services Ombudsman  
3rd Floor, Lincoln House  
Lincoln Place  
Dublin 2  
Ireland  
Tel: +353 1 6 620 899  
Fax: +353 1 6 620 890  
E-mail: enquiries@financialombudsman.ie”*

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<sup>3</sup> Reference to a managing agent in Appendix 3 includes reference to a coverholder or third party administrator (TPA) or legal representative that is authorised by a managing agent to adjudicate on a complaint on its behalf.

A copy of this letter must be e-mailed to the Lloyd's Country Manager. The above statement must be included in all letters where the managing agent provides its decision on the complaint, regardless of when the letter is sent.

If the managing agent is not able to communicate its decision to the complainant within ten business days, it must provide the complainant with a written update on the progress of the investigation. A copy of this letter must be e-mailed to the Lloyd's Country Manager. Lloyd's expects that there will be very few occasions where a managing agent is not able to provide its decision to the complainant within ten business days.

4. Within twenty business days, if the managing agent is not able to provide the complainant with its decision it must notify the Lloyd's Country Manager that this is the case. The Lloyd's Country Manager will inform the complainant that he is now dealing with the complaint. The Lloyd's Country Manager will examine and assess the complaint and has the right to request any relevant information, documents or records from the managing agent as may be necessary in order to provide a final response to the complainant.

#### Stage 2

5. Within forty business days, the Lloyd's Country Manager will make a decision on the complaint and issue a final response letter to the complainant confirming that the investigation has been completed. If the Lloyd's Country Manager is unable to issue a final response letter within forty business days, e.g., due to a delay by the managing agent in providing relevant documents, he will inform the complainant in writing of the anticipated timeframe within which he hopes to resolve the complaint, the complainant's right to refer the matter to the FSO and the contact details of the FSO.

**APPENDIX 4**

**PROFESSIONAL QUALIFICATIONS FOR ADJUDICATING ON COMPLAINTS  
THAT RELATE TO THE OUTCOME OF A CLAIM UNDER APPENDIX 4 OF THE  
MINIMUM COMPETENCY CODE 2011**

Line of business	Professional qualification
Life assurance	<p>Qualified Financial Adviser (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).</p> <p>Member, Associate or Fellow of the Irish Institute of Pensions Management (post 2006 syllabus).</p> <p>Accredited Product Adviser (Life Assurance) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).</p> <p>Licentiate of the Association of Compliance Officers in Ireland.</p> <p>Solicitor Member of the Law Society of Ireland.</p> <p>Barrister-at-Law called to the Bar of Ireland.</p>
Personal general insurance	<p>Certified Insurance Practitioner (Insurance Institute of Ireland).</p> <p>Associate or Fellow of the Chartered Insurance Institute.</p> <p>Accredited Product Adviser (Personal General Insurance) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).</p> <p>Licentiate of the Association of Compliance Officers in Ireland.</p> <p>Solicitor Member of the Law Society of Ireland.</p> <p>Barrister-at-Law called to the Bar of Ireland.</p>
Commercial general insurance	<p>Certified Insurance Practitioner (Insurance Institute of Ireland).</p> <p>Associate or Fellow of the Chartered Insurance Institute.</p> <p>Accredited Product Adviser (Commercial General Insurance) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).</p> <p>Licentiate of the Association of Compliance Officers in Ireland.</p> <p>Solicitor Member of the Law Society of Ireland.</p> <p>Barrister-at-Law called to the Bar of Ireland.</p>

<p>Private medical insurance and associated insurances</p>	<p>Certified Insurance Practitioner (Insurance Institute of Ireland).          Associate or Fellow of the Chartered Insurance Institute.          Diploma in Private Medical Insurance (Insurance Institute of Ireland).          Accredited Product Adviser (Personal General Insurance) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).          Accredited Product Adviser (Private Medical Insurance) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).          Licentiate of the Association of Compliance Officers in Ireland.          Solicitor Member of the Law Society of Ireland.          Barrister-at-Law called to the Bar of Ireland.</p>
<p>Consumer credit and associated insurances</p>	<p>Qualified Financial Adviser (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).          Accredited Product Adviser (Loans) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).          Accredited Product Adviser (Consumer Credit) (Institute of Bankers School of Professional Finance, LIA and the Insurance Institute of Ireland).          Licentiate of the Association of Compliance Officers in Ireland.          Solicitor Member of the Law Society of Ireland.          Barrister-at-Law called to the Bar of Ireland.</p>