

Lloyd's Claims Scheme: Right Expertise at the Right Time

Consultation Document
January 2023

Consultation

The Lloyd's Claims Scheme (the 'Claims Scheme')¹, which is mandated for all syndicates, has been prescribed by the Council of Lloyd's under paragraph 12 of the Underwriting Byelaw.

The Claims Scheme is designed to streamline the claims agreement process for claims with multiple Lloyd's syndicates on risk, where they are managed by different managing agents, by ensuring that each claim is determined on behalf of all the participating syndicates on the (re)insurance by either a single Lloyd's lead managing agent or, for more complex claims, jointly by a Lloyd's lead and second Lloyd's lead.

Following engagement with the market, we are proposing to make a number of changes to the existing Claims Scheme, which we are also intending to rename as the 'Lloyd's Claims Lead Arrangements'. The Claims Scheme changes are designed to:

- enhance policyholder and broker experience by having a single Lloyd's claims agreement party more often
- increase market efficiency and scalability
- further focus expert resources on the right claims situations
- improve the information flow and transparency for Lloyd's followers

At the same time, we are taking the opportunity to update a number of provisions and remove redundancy where appropriate. We are also replacing the existing 'CTP: 2010 Claims Scheme Process Guidelines' with a new 'Guidance on the Lloyd's Claim Scheme – Guidance and additional requirements for managing agents' (the 'Scheme Guidance'). This explains and provides additional guidance on how the amended Claims Scheme applies and, as provided for in the Claims Scheme, prescribes some of the more detailed requirements (such as setting out the non-financial criteria).

To support the implementation of these changes, we will be providing suitable training resources alongside the Scheme Guidance in advance of the changes coming into effect, to help market participants get ready for going live. The Scheme Guidance and training will be periodically updated to support consistent good practice.

Although these proposals have been developed in conjunction with relevant market groups, we want to ensure all market participants have an opportunity to comment before the proposals go live.²

If you wish to comment on the proposals or any aspect of the changes we are making, you are invited to send your response to claimsschemeconsultationfeedback2023@lloyds.com. A template for providing responses can be downloaded from the consultation webpage: www.lloyds.com/lloyds-claims-scheme-consultation-2023. All consultation responses must be received by 27 February 2023.

This Consultation Document is being sent to all managing agents and members' agents, the LMA, the London and International Insurance Brokers Association (LIIBA) and the British Insurance Brokers Association (BIBA), as well as being published on lloyds.com.

Implementation

If adopted, (with the exception of co-lead binding authority arrangements) we are proposing that these changes will be effective from 1 June 2023 and will apply to all current, open claims and new claims from that date. For open claims managing agents will be required to adopt the revised scheme requirements from the next claim transaction.

For claims on policies issued under co-lead binding authority arrangements we believe the market will require a longer period to transition to the new protocols we are putting in place. In these cases, the new rules will initially only apply to claims on policies issued by a coverholder under two or more binding authorities where all the binding authorities have inception after 1 June 2023 or, earlier, if there is a Claims Scheme compatible co-lead claims agreement (CLCA) arrangement in place covering all the binding authorities under which the policy is issued. All claims made on policies

¹ The Claims Scheme is currently set out in the Lloyd's Claims Scheme (Combined), which includes the now redundant 2006 Claims Scheme and the 2010 Claims Scheme, which currently governs all claims in the Lloyd's market that are in scope for the Claims Scheme. The Lloyd's Claims Scheme (Combined) can be found at www.lloyds.com/claimsscheme.

² In developing the proposals set out here, we have engaged extensively with market participants. This included setting up a number of working groups to provide feedback on our initial proposals. We are grateful to the LMA, including the LMACC, for their engagement on this and in assisting to facilitate those workings groups. We are particularly grateful to the individuals who gave up their time to participate on the various working group meetings.

issued under co-lead binding authorities are in scope from 1 January 2024. Managing agents will need to ensure that once claims are in scope any CLCA agreed is compatible with the Claims Scheme.

Background – How does the Claims Scheme work?

The Lloyd's Claims Scheme has been in place with slight variations since 1998 and provides the backbone of an efficient and stable claims service supporting a diverse subscription market.

The Claims Scheme's objective is that policyholders should be able to benefit from the diversity and breadth of underwriting expertise that a subscription market provides at placement but that when a claim is made policyholders should have a single decision maker to determine their claim (and for more complex claims, there should be no more than two managing agents involved).

The Claims Scheme therefore gives authority to the managing agent of the leading Lloyd's syndicate to determine all claims. This is supplemented for more complex claims, where the managing agent of the second Lloyd's syndicate is jointly responsible with the managing agent of the leading Lloyd's syndicate to determine the claim.

Subject to giving the lead and, on complex claims, the second lead managing agents broad discretion as to how to assign claims, the Claims Scheme provides financial criteria to determine whether a claim qualifies as complex. At present, a claim should be assigned as complex if Lloyd's syndicates' share of the claim made to the policy (or assessed as potentially being made) is at or above £500,000, other than for Property Treaty Reinsurance and Energy claims, where the threshold is £1,000,000.

In addition, so-called non-financial criteria have been developed which indicate the claim should be assigned as complex (irrespective of the claim's financial value).

The Claims Scheme additionally sets out requirements for the lead managing agent(s) to determine the claim, gives authority to appoint professional advisors and provides for the sharing of information by the lead managing agent(s) with the following market. Where disagreements arise, the Claims Scheme sets out how they should be resolved (and sets out limits on the liability of the managing agents with claims determination authority).

The Claims Scheme is therefore intended to provide a framework by which Lloyd's subscription claims can be determined to ensure:

- a consistent approach that delivers the best service to the policyholder and broker in terms of fairness and speed
- efficient use of managing agent resources
- adequate protection is afforded to all Lloyd's syndicates on the risk in the way that claims are determined

Right expertise at the right time

During 2022, we engaged extensively with the market, the LMA Claims Committee (LMACC) and LMA Board on the operation of the Claims Scheme and whether any changes were required.

This engagement also included a managing agent survey on the operation of the current Claims Scheme to solicit initial feedback and the establishment of a Claims Scheme Advisory Group, comprising senior managing agent claims professionals, to work directly with Lloyd's and the LMA to develop, debate and help refine the proposed changes.

This activity has been supplemented with a number of individual sessions with managing agents arranged via either Lloyd's, the LMA or the LMACC. Through these sessions around 30 managing agents have provided their views on the Claims Scheme and feedback on early iterations of our current proposals.

In addition, we have hosted a detailed managing agent briefing event and have met with LIIBA, on behalf of the London broker community.

The feedback we received through this extensive engagement emphasised the value of the Claims Scheme to brokers in reducing the number of claims agreement parties they had to deal with. It became particularly clear that, wherever possible, brokers wanted a consistent approach and to have a single claims agreement party to determine their claim.

On the managing agent side, from our analysis of the data and hearing from the claims professionals, it was apparent the current criteria for complex claims were resulting in too many claims being assigned as complex when they could

readily be managed by a single managing agent, tying up valuable managing agent claims resource. In addition, following managing agents were seeking enhanced transparency and information flows from leaders.

There was ultimately broad consensus that not all claims that have a higher claim amount are necessarily more complex and require two managing agents to be involved. Similarly, the 15 non-financial complex claims criteria that have built up over time were leading to claims (often quite low value claims) being assigned as complex, that could readily be determined by a single managing agent.

Skilled claims resource needs to be allocated efficiently. However, it is evident that due to the current Claims Scheme provisions too much of that resource is currently being allocated to acting as a second pair of eyes on claims where that additional expertise is not necessary either because, in truth, the claim is not that complex and the managing agent of the lead syndicate is more than capable of managing any complexity or the value of the claim does not merit the involvement of another managing agent.

At the same time, where claims are genuinely more complex, following managing agents have said they do consider there is a benefit from having two sets of eyes looking at the claim. Managing agents recognised, however, that the balance at present between complex and standard is not where it should be but that if any change was to be made it should be matched by enhanced transparency of the lead managing agent's decisions.

Our proposal, therefore, is to amend the Claims Scheme so there is now a default expectation that claims will be dealt with by a single Lloyd's lead. Only when the complexity of the claim merits it will two managing agents be involved in determining the claim. Even where a claim may have complex aspects, that should not always mean having two managing agents involved or they may not both need to be involved throughout the full lifecycle of the claim. Claims need to be reassessed continuously to ensure the right level of expert resource is being allocated at each stage.

Improvements are to be implemented to the sharing of information by claims agreement parties (both what they share and how they do it) to ensure that at the same time following managing agents are better able to monitor the claims being handled on their behalf.

The core elements of the changes we are proposing are:

Complex claim financial thresholds

We are proposing to increase the financial thresholds that apply before the claim needs to be assigned as complex. Instead of having financial thresholds of £1,000,000 for Property Treaty reinsurance and Energy classes and £500,000 for everything else, we are proposing the following financial thresholds:

Class	Complex Claim Financial Threshold ³
Non-Proportional Treaty Reinsurance ⁴	£ 5,000,000
First Party (including Facultative Reinsurance and Binding Authorities)	£ 2,000,000
Third Party (including Facultative Reinsurance and Binding Authorities)	£ 1,000,000

We will replace the current Schedule 5 of the Claims Scheme with a list of the Lloyd's 60 (Class of Business) risk codes and their allocation to one of the three categories listed above.

When assessing whether the claim meets the relevant financial threshold we also intend to amend the Claims Scheme so that the relevant consideration is the lead managing agent's assessment of the amount 'likely to be claimed' by the policyholder. At present, the lead managing agent is required to assign a claim as complex when the amount claimed may 'potentially' exceed the threshold. With the change we are making, the financial threshold will only be triggered

³ The thresholds apply to Lloyd's syndicates' share of any amount claimed under the policy.

⁴ As currently, all proportional treaty reinsurance claims, which are typically dealt with via bordereaux submissions will be assigned as standard. This will be made clear in the Scheme Guidance.

if the claim amount actually meets the financial threshold or the lead managing agent believes there is more than a 50% chance of the policyholder making a claim that is equal to or exceeds the threshold amount. The lead managing agent, as at present, is not required to consider how much insurers may actually pay to settle the claim; the lead managing agent is only required to consider the amount the policyholder is likely to claim, whatever the merits of that claim and solely for the purposes of assigning the claim under the Claims Scheme.

In setting the financial thresholds we have drawn on statistical reference sources and external feedback. As a result, we are confident that the volume of additional claims that will be assigned as standard through the impact of the proposed changes will be meaningful.

Complex claim non-financial criteria

In addition to increasing the financial thresholds, we are proposing changes to the non-financial criteria that require the assignment of a claim as complex (and the term 'non-financial criteria' will also now be used in the Claims Scheme itself).

Currently, claims will be assigned as complex if any one of 15 non-financial criteria are met. These non-financial criteria are set out in the 'CTP: 2010 Claims Scheme Process Guidelines' (which we are replacing with the Scheme Guidance).

Having engaged with a market working group set up to advise on the non-financial criteria, we are proposing to reduce the number of non-financial criteria to three:

- If there are actual or pending (or likely to be) dispute resolution proceedings between the (re)insured and the (re)insurers in relation to the claim – including, but not limited to, contested denials, meaningful quantum disputes, policy avoidance matters and any referral to relevant Ombudsman or local equivalent
- Claims against (re)insurers seeking extra contractual damages (including punitive damages), or claims seeking damages in excess of policy limits (including allegations of bad faith)
- Allegations of potential breach(s) of regulation against (re)insurers, including any regulatory investigation(s)

Dynamic triage

The present Claims Scheme gives the lead managing agent broad discretion to reassign a standard claim as complex and gives the lead and second managing agent similar broad discretion to reassign a complex claim as a standard claim. This is even if the claim no longer meets the criteria for a standard or complex claim (as the case may be). Our market engagement has confirmed to us that this is an area where change is required.

We are therefore introducing the concept of dynamic triage to the Claims Scheme. Accordingly, claims leads will be required to consider throughout the lifecycle of a claim whether it properly continues to meet the criteria to assign it as either a standard claim or complex claim and, if not, the claim must be reassigned.

In addition, however, on complex claims we are proposing to require the lead and second lead managing agent to consider jointly⁵ at each stage in a claim's lifecycle whether they reasonably consider that it is appropriate to reassign the claim as a standard claim (notwithstanding that it continues to meet the requirements for a complex claim). While the managing agents should consider all relevant circumstances, our proposal, as set out in the draft Scheme Guidance is that the most significant factor that managing agents should consider is whether the second lead will add value to the determination of the claim at the present stage of the claim's lifecycle, for example where there is a lack of complexity to the issues that need to be resolved at that stage.

A complex claim that is reassigned to standard, following agreement by the lead and second managing agents that a second agreement party is not required, will only be reassigned back to complex if it (1) continues to meet the minimum requirements for a complex claim (that is it meets one of the financial or non-financial criteria) and (2) the reason for

⁵ In April 2020, we issued [Market Bulletin Y5290](#), which amended the Claims Scheme to allow the managing agent of the leading Lloyd's syndicate to unilaterally make the decision to reassign a complex claim as standard. The version of the Claims Scheme currently published on Lloyds.com, however, was not been amended to reflect this change. As the changes we are making will have the effect of reversing the changes made in 2020 by requiring the lead managing agent and the second managing agent to jointly reassign the claim as standard, for ease of review we have shown the changes we are proposing against the version of the Scheme currently on lloyds.com.

assigning it as a standard claim no longer applies or new issues arise that merit the involvement of a second claims agreement party.

Improved information for follow managing agents

We expect the effect of the changes we are making will be to significantly increase the number of claims that will be determined by a single lead managing agent. As a corollary, managing agents have told us in our discussions with them, that following managing agents should have improved and more timely information flows to allow them to better track, and if needed respond to, developments on the claims where they follow. This is an area that we will keep under review in the course of our ongoing oversight of the market. At this initial stage, the changes we are implementing to respond to this feedback divides into two parts.

- Enhanced identification of claims with complex non-financial characteristics

The managing agents we have engaged with have said they want to be able to more easily identify the claims with more complex non-financial characteristics (even if they are not required under the Claims Scheme to be determined as a complex claim, requiring two claims agreement parties).

The changes we are proposing to address this will involve promoting the introduction of a set of unique identification codes, to be known as Watchlist codes. These will be respectively applied to a claim if the claim meets one or more relevant non-financial criteria. In the first instance the Watchlist codes that have been developed have been drawn from the list of 15 non-financial criteria for triaging a claim as complex under the current published Claims Scheme. Therefore, while under the proposals we are putting forward, claims may no longer be assigned as complex in all cases if they have a relevant complex non-financial characteristic, the claim will require the allocation of a Watchlist code for reporting to following underwriters.

These codes will be allocated by the lead managing agent and will be reported to following managing agents via existing market systems and claims process data feeds.

Lloyd's will consult separately with managing agents on specialist guidance specifying the Watchlist code definitions and setting out how the codes should be used.

- Lead communication to following managing agents

For the majority of developments on a claims situation the following managing agents are able to identify and stay aware of the developments, typically through ECF or equivalent claims management systems using lead comments combined with relevant syndicate claims messages.

There can, though, be material developments that are significant enough that a more overt and timely communication method is warranted by the Lloyd's claims agreement party(ies) so as to ensure that followers are notified of the material development with sufficient speed and with sufficient detail being provided, particularly should any action be required by the followers.

In order to provide for a more consistent approach to communication by the Lloyd's claims agreement party(ies) as part of our consultation we will consult with managing agents on specialist guidance providing for enhanced detail clarifying when additional communication to the followers is expected.

Co-Lead binding authorities

We are now making it clear that all claims that are in-scope for the Claims Scheme must comply with the requirements of the Claims Scheme. This includes all claims notified to risks written under delegated authorities, including under binding authorities, consortium agreements and line slips.

Co-lead binding authorities have provided a particular challenge for the market in complying with the Claims Scheme. These are arrangements where a coverholder binds a risk using authority given to it under two or more binding authorities. Generally the policy document will not specify which syndicates are to be the leading Lloyd's syndicate or the second Lloyd's syndicate.

Historically, co-lead binding authorities have not complied with the Claims Scheme and the managing agents of the leading Lloyd's syndicate on each binding authority participating on the risk will act as the claims agreement party for the following syndicates on its binding authority (but not for the other syndicates on the risk). This can result in the

broker having to deal with multiple Lloyd's claims agreements parties, including on relatively low-value, non-complex claims.

In April 2020 in [Market Bulletin Y5290](#), we announced improved arrangements for dealing with claims on policies written under co-lead binding authorities. This included requiring that managing agents take reasonable steps to agree to the adoption of LMA9186 on binding authority arrangements that may involve co-lead risks being written.

The Claims Scheme going forward will be expected to apply to all co-lead binding authority arrangements and therefore managing agents should agree the leading and second Lloyd's syndicates for the purposes of the Claims Scheme and document this agreement in a co-lead claims agreement (CLCA). Unless or until agreement can be reached then default provisions will apply to determine the leads, as prescribed in the Scheme Guidance.

We will be consulting separately with managing agents on specialist guidance we will be publishing for claims involving co-lead arrangements.

Limits of liability of the lead and second lead managing agents

The Claim Scheme sets out how disagreements between managing agents, including between the managing agents appointed to determine claims and following managing agents, should be resolved. The Scheme also prescribes limits on the liability to the following syndicates of the managing agents determining the claims.

At present, the amounts prescribed in paragraph 28 of the Scheme are £2,000,000 in respect of any one claim and £10,000,000 in the aggregate in any one calendar year.

The figures have not been adjusted for a considerable period. There is no single right figure to use. The managing agents determining claims do so on behalf of the following market without expecting to be paid for these services. Accordingly, it would be unrealistic to expect them to take on substantial financial risk in the event they make an error in the way they determine a claim. At the same time, in taking on the claims agreement role, they do owe a responsibility to the following syndicates and must be ready to be held accountable for that, including financially.

Following discussion with the Claims Scheme Advisory Group, LMACC and a number of managing agents we are proposing to increase the per scheme claim limit to £5,000,000, while leaving the aggregate limit unchanged at £10,000,000.

Other changes to the Lloyd's Claims Scheme

We are taking the opportunity to make a number of other amendments to the Claims Scheme to update it.

- 1 Removal of 2006 Claims Scheme** - The current version of the Claims Scheme is the Lloyd's Claims Scheme (Combined). This consists of two versions of the Claims Scheme: the 2006 Claims Scheme and the 2010 Claims Scheme. The 2006 Claims Scheme ceased to apply in 2011 and all in-scope claims are subject to the 2010 Claims Scheme. As the 2006 Claims Scheme is now not operative, we are removing it, including the defined terms in Schedule 1 to the Claims Scheme that are only applicable to the 2006 Claims Scheme and all of Schedules 2 & 4. Note, the version of the Claims Scheme being consulted on, shows the 2010 Claims Scheme and the changes we intend to make to that. For ease of review we have not included the deleted 2006 Claims Scheme provisions in the consultation document. The deletion of Schedules 2 & 4 is shown.
- 2 Removal of redundant provisions** - We have removed various redundant provisions currently in the 2010 Claims Scheme, including references to the Claims Payable Abroad Scheme (including Schedule 3), which is no longer in operation.
- 3 Categories of claim not subject to the Claims Scheme (paragraph 1)** - Categories of claims that are presently listed in paragraph 1 of the 2010 Claims Scheme as not subject to the Claims Scheme (including term life claims and exempt satellite risk claims) have been removed from the Claims Scheme document. Instead these classes are listed in the new Scheme Guidance with other categories of claim that are dispensed from having to apply the Claims Scheme.

- 4 Definitions of complex and standard claims (paragraph 2(d))** – The references to dispute resolution proceedings in this paragraph have been removed as dispute resolution proceedings are now one of the non-financial criteria relevant to assigning a claim as complex. All non-financial criteria are now prescribed in the Scheme Guidance. Paragraph 2(d) now also includes an express reference to non-financial criteria in addition to the financial thresholds.
- 5 Authority of the managing agent of the leading Lloyd’s syndicate to agree professional advisor fees (paragraph 14)** – in line with the changes outlined above, to enhance the efficiency of the process and ensure the appropriate level of resource is allocated at each point in the claim lifecycle, we are proposing that the managing agent of the lead syndicate should have sole authority to agree the fees of professional advisors in complex claims, as they already do in standard claims. (This only applies to insurers’ own fees and does not include where the payment of fees is for the insured, made as part of the indemnity under the cover provided.) We do not believe that requiring two managing agents to agree the fees in each case adds value or achieves savings for the market on claims.
- 6 Provisions allowing for Lloyd’s to prescribe guidance** – In a number of paragraphs (for example, see paragraphs 18 and 19) we have added provisions giving Lloyd’s additional flexibility to prescribe requirements and guidance that will supplement the requirements specified in the Claims Scheme and can be more readily updated, without requiring changes to the Claims Scheme itself. These requirements and guidance can be included or referenced in the Scheme Guidance (and we would expect to consult on any changes before implementing them).
- 7 Mechanism for resolving disagreements relating to conflict of interest (paragraph 9)** – Managing agents can sometimes face difficult decisions as to whether they can properly act for the following market or whether they should step aside by reason of a conflict of interest. Generally, any disagreements between managing agents can be resolved quickly but we consider that it would be helpful to have a process to address those instances where that is not possible. We are therefore adding a sentence to paragraph 9 of the Claims Scheme to give us specific power to prescribe requirements for resolving any disagreements. In the Scheme Guidance, we have set out a proposed mechanism for the appointment, at Lloyd’s discretion, of King’s Counsel to provide an opinion.
- 8 Definitions** – Schedule 1 sets out various defined terms. We have made changes to the definition of leading Lloyd’s syndicate and second Lloyd’s syndicate which provide more specificity on how these syndicates should be identified. In addition, redundant definitions have been removed from the Schedule and a small number of new defined terms have been included.

Changing the name of the Lloyd’s Claims Scheme

Finally, we are proposing to change the name of the Claims Scheme to the ‘Lloyd’s Claims Lead Arrangements’ (CLA).

In the United Kingdom, the word ‘scheme’ can mean a “a systemic plan or arrangement for attaining some particular object or putting a particular idea into effect” or it can mean a “secret or underhand plan; a plot” (Oxford English Dictionary). Which meaning is given to the term will depend on the context and in the case of the Lloyd’s Claims Scheme, it is clear that the first of the two meanings is the appropriate one.

We know, however, that in the USA, the term ‘scheme’ only has the second meaning and we have had consistent feedback over the years that the use of the term is having a negative impact on how the Claims Scheme is perceived.

We do not want the title given to our requirements to act as a barrier to doing business locally. We therefore propose to change the name of the Claims Scheme to remove the term.

In so doing, we also propose adding the word ‘Lead’ into the title to emphasise that the Claims Scheme is concerned with the arrangement for delegating claims determination authority to a single lead managing agent (or, for complex claims, two lead managing agents).

While we recognise this will have implications for updating model wordings and other documents that refer to the current name of the Claims Scheme (the ‘Lloyd’s Claim Scheme (Combined)’) the change should not require endorsements to existing policies (although the decision whether to endorse the policy in each case will be a matter for the parties). The changes we are making are an amendment to the existing set of requirements and most current claims agreement wordings reference the Lloyd’s Claim Scheme (Combined) as may be amended from time to time (or similar). References in those clauses to the the Lloyd’s Claim Scheme (Combined) will therefore continue to be references to the updated version of the Scheme as renamed.

We welcome any comments on the change of name (including alternative suggestions). For the purposes of the consultation, as there will be greater familiarity with the existing name and until a new name is confirmed, we have retained references to the Lloyd's Claims Scheme or the 'Claims Scheme'.

Responses to the consultation and further information

A copy of this consultation document, the Lloyd's Claim Scheme, showing the proposed changes against the 2010 Claims Scheme and the new 'Guidance on the Lloyd's Claim Scheme – Guidance and additional requirements for managing agents' (the 'Scheme Guidance') can be found on Lloyd's website at: www.lloyds.com/lloyds-claims-scheme-consultation-2023. In addition to any feedback on the proposals outlined in this document, we also welcome any comments on the draft amendments to the Claims Scheme and the Scheme Guidance. The Scheme Guidance additionally refers to more specialist guidance notes which will be consulted on separately, before being published.

If you wish to comment on the proposals or any aspect of the changes we are making, you are invited to send your response using the response template, which can be downloaded from the consultation webpage at www.lloyds.com/lloyds-claims-scheme-consultation-2023. All responses must be received by 27 February 2023.

Responses to the consultation and any questions about the changes we are making can be sent to claimsschemeconsultationfeedback2023@lloyds.com.