

**Q&A Paper**

<p><b>Are model IUA clauses tested and adjusted?</b></p>	<p>IUA model clauses are published by the IUA Clauses Committee. The Committee is comprised of a range of wordings specialists from IUA member companies, several broking representatives, and a leading law firm. Prior to publication, model clauses are subject to a formal review process, which can involve the testing of clauses against hypothetical scenarios. Informal feedback is frequently sought from other market practitioners, such as underwriting and broking representatives. The IUA is open to receiving feedback on published clauses, which may result in updated versions being issued. Where necessary, formal legal advice is taken on draft clauses. IUA will also often draft and publish guidance alongside clauses to outline the core intent of the provision and the underlying rationale for the default positions taken and drafting used.</p>
<p><b>How does the IUA ensure clauses are written in plain English, so they are easy to understand by the non-specialist?</b></p>	<p>The IUA and individual insurers remain heavily focussed on contract clarity and ensuring that model clauses / insurance contracts are written in plain English. It is important to be mindful that clauses may be read by non-specialists and insurers are acutely aware of the obligation to treat customers fairly; it is imperative to ensure that clauses can be understood. Some existing policies may contain language now considered outdated, superfluous, or unhelpful jargon, but work is being undertaken to update clause language, included through the review process involved in the publication of model IUA clauses.</p>
<p><b>Are some of the more complicated insurance clauses written with a view to not pay out when a claim is made?</b></p>	<p>Insurers would not intentionally develop policy language with ambiguity. It is also not IUA’s intent when drafting model clauses for use in the market. It is in the best interest of all parties to ensure there is clarity and certainty in terms provided for several reasons, including that parties to the contract would not wish to be involved in disputes due to unclear terminology and that unclear terms will often be interpreted against the drafting party in court. It is important to note that insurance clauses often try to capture complicated ideas, but if an insured perceives that a clause is complicated, the insured is encouraged to ask its broker or the Insurer for clarification.</p>
<p><b>How effective are IUA (and LMA) competition disclaimers relating to the use of standard wordings? In practice what we see is a united front by insurers.</b></p>	<p>It is the policy of the IUA to comply fully with competition law. All IUA clauses and wordings are published in line with the IUA’s Clauses Wordings Protocol and strict competition law requirements. Furthermore, all IUA meetings are undertaken with a member of the IUA Secretariat who is competition law trained and the IUA holds regular competition law training sessions, which are freely available to all IUA members and other market representatives. Information regarding competition law training is circulated with the minutes and agendas of IUA committee meetings and is made widely available to IUA members, including in the form of a ‘Competition Law Do’s and Don’t’s Guide’.</p>

IUA Presentation - Policy Wordings and Contract Clarity: The key features of an efficient insurance process (Airmic Conference 2022)



	<p>The London insurance market is, by nature, a subscription market, meaning that multiple insurers are frequently party to the same insurance placements. This is done for several reasons, such as to diversify risk and increase capacity. Therefore, it is commonplace for different insurers to be subscribed to the same terms on a single insurance placement. Additionally, legal and regulatory requirements, for example those enforced by the PRA and Lloyd’s in respect of cyber risk, can result in a number of insurers undertaking similar actions on specific issues. It should be highlighted that our clauses often serve as a starting point for users who make amendments to them on a per risk basis and / or according to their corporate approach.</p>
<p><b>Are IUA clauses published with guidance?</b></p>	<p>IUA clauses are frequently published with guidance / commentary notes to provide insurers, brokers and clients with an understanding of the rationale behind model clauses.</p>
<p><b>Can insurers accept manuscript forms from clients?</b></p>	<p>Most insurers will negotiate manuscript / bespoke forms from clients, but it is dependent on their underwriting approach and in-house capabilities. Another consideration is that more in-depth negotiations for both parties to agree terms may be required, and as such, if the risk is time dependent the broker may choose to opt for standardised forms. There is also the option to utilise standard forms as a base and to amend and build upon those forms, this may assist with the negotiation process.</p>
<p><b>Governing law for policy interpretation. How important is it?</b></p>	<p>Governing law is vital as it ultimately dictates the way in which the policy is interpreted. Subject to underlying laws around choice of law and jurisdiction, it is generally appropriate to align the governing law and the jurisdiction in which a dispute will be heard, as the courts will then be applying law with which they are familiar. The governing law itself is particularly important as different legal systems can treat policy terms differently, both in the way terms are interpreted and physical characteristics of terms that are required to be effective in that law. For example, under French law exclusions must be in bold in order to be effective.</p>
<p><b>How effective are the brokers in avoiding overly insurer friendly exclusions, with preambles such as "in any way connected with"?</b></p>	<p>There are several determining factors to consider. A key factor is clearly the nature of the insurance market cycle. If alternative capacity is available, brokers can negotiate based on that alternative capacity or seek other capacity on preferred terms. A range of factors may impact upon the stance taken by insurers, be that significant industry losses from previous years, societal shifts, recent court judgments or regulatory interventions. These factors can result in similar actions being taken by multiple insurers. More generally, the IUA often has dialogue with brokers on policy terminology used, particularly on the scope of the underlying provision e.g. ‘directly / indirectly’, ‘in any way connected’. Such language is only used in circumstances according to the specific risk under review and this would normally be explained in guidance published with the clause. Nonetheless, IUA model clauses can be amended by agreement between the contractual parties.</p>

<p><b>If premium payment terms are not explicitly stated in the policy, can the insured pay the premium based on the insured's general payment terms (e.g. 30 days)?</b></p>	<p>Ordinarily this concept will be addressed by an insured’s broker, but, if there is no reference in the wording then the general payment terms will be invoked. Brokers will also have entered into Terms of Business Agreements with insurers that manage the status of premium made by the insured to the Insurer via the broker (i.e. when it is deemed to have been paid to the Insurer).</p>
<p><b>What is IUA’s relationship, if any, with LMA?</b></p>	<p>The IUA has a strong relationship with the Lloyd’s Market Association (LMA), as well as other industry bodies, including the Association of British Insurers (ABI), the London &amp; International Insurance Brokers Association (LIIBA), the British Insurance Brokers’ Association (BIBA) and Airmic. In a number of classes (principally marine and aviation) IUA publishes clauses jointly and there are several ad-hoc examples in the non-marine insurance sector where this has also been the case. Given that the IUA’s members have broadly the same starting position and often underwrite the same risks on a subscription basis, it is prudent to ensure unnecessary duplication of clause work is avoided.</p>
<p><b>In respect to the sub-contractors example, would the court look at the intention of the parties?</b></p>	<p>In the scenario considered, were the case to be heard in court, inevitably the intentions of the parties would have been taken into account.</p>

**Audience Poll:**

What should be done to improve the insurance policy wordings process?

- Wider consultation of changes in wording especially with clients will be great as although Brokers are made aware of wording changes they do not communicate these to clients very well on some occasions.
- IUA could publish layman’s guidance alongside its standard clauses explaining their intended effect, which might encourage insurers to do the same for their clauses, especially if they are based on IUA standard. It would help non-specialist decision makers to understand the effect and limitations of the policies they are signing up to and might encourage the purchase of extensions.
- Make sure the clauses are appropriate for your business.
- Review with insured and insurer with guidance note on agreed understanding.
- Have examples/ test scenarios of how clauses would apply to real life situations, before implementation.
- Take feedback from insureds.

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### **Additional Note:**

It is not compulsory for IUA clauses/wordings to be used as drafted, nor are they intended to replace the exercise of independent judgement. It is the responsibility of each individual company to judge their own circumstances when deciding whether or not to use a particular clause. Advice should be sought from legal advisors for clarification of the use and the intension of these wordings. The IUA does not accept any responsibility for the subsequent interpretation of the clauses/wordings. Comments and guidance notes are included purely for information purposes only.

**IUA Clauses Website:** [Link here](#)

**Additional Questions or Comments:** [Chris Jones](#) (Director of Legal and Market Services Executive) and [Tom Hughes](#) (Senior Market Services Executive)