



SPECIMEN PAPER

991 – London market insurance specialisation

This Specimen Paper is intended as a guide to candidates preparing for the L7 Certificate in London Market Insurance Specialisation.

It provides candidates with an insight into the requirements for the proposal and the dissertation and indicates the depth and breadth of the research required. It also indicates the structure of both documents. This exemplar is the authentic work of a candidate.

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CII Level 7 RESEARCH PROPOSAL

**Fit for Purpose at Lloyd's: Enhancing Reputation through the Design and
Delivery of an Educational Programme for Wordings**

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March 2013

Background

The Lloyd's Market Association's (LMA) Professional Standards Committee (PSC) launched a two year pilot, early in 2010, with the aim of creating a community of learning and education that will underpin the future commercial success of the Lloyd's Market.

The LMA Lloyd's Market Academy (LMALMA) is being positioned at the centre of this community; driving, developing and delivering a range of educational activities that will address the collective needs of the Lloyd's Market, in order to sustain its vitality and help to secure a profitable future.

At present there is no educational programme for the core subject of wordings for the Lloyd's Market. An insurance contract wording is the basis of all insurance transactions. The failure to produce a well drafted wording can lead, particularly in the event of a claim, to expensive litigation and damage to the commercial reputation of underwriter and broker alike.

I am Manager, Professional Standards, reporting directly to the Head of Professional Standards and I am a member of the PSC and associated panels. My role is to provide advice, information and support to the PSC which represents LMA Members' interests through liaison with the Corporation of Lloyd's and other organisations, including the Chartered Insurance Institute (CII) and the Insurance Institute of London (IIL).

I have been asked by the LMA to undertake a research project that will enable it to establish an appropriate educational programme for wordings for the Lloyd's market.

I believe that this research project is well suited for a dissertation for the L7 CII Certificate in London Insurance Market Insurance Specialisation.

Research Objective

To enhance reputation through the design and delivery of an educational programme for wordings in the Lloyd's market. This will involve:

1. A brief overview of current wordings practice:
 - (a) by Lloyd's Underwriters;
 - (b) by Lloyd's Brokers; and
 - (c) their procedures and workflows.
2. The educational support and professional qualifications available in respect of wordings with specific reference to CII qualifications.
3. Establishing good drafting practice by exploring the principle of contract certainty and its application in the production of fit for purpose insurance wordings.
4. Conducting a gap analysis to answer the question 'what does good look like?'
5. Designing and delivering a programme for wordings which will ensure improvements and enhance reputation.

The Benefits of Researching this Topic

A. To my Personal Development

1. To gain a deeper understanding of how the Lloyd's market operates.
2. To enhance my analytical and research skills.
3. To broaden my understanding of the Lloyd's market.
4. To engage with key market practitioners.
5. To enhance my management role within the LMA Lloyd's Market Academy.
6. To progress my CII professional qualifications.

B. To my Employer

1. To design a framework for an educational programme to be delivered by the LMA Lloyd's Market Academy.
2. To provide an analysis of the effectiveness of the market's ability to respond to a changing and innovative environment in relation to insurance wordings by:
 - (a) Defining foundation wordings.
 - (b) Identifying how bespoke wordings can be best developed.
3. To provide information that can be disseminated to the LMA Membership through the LMA Wordings Forum, LMA Websites and specific market briefings.

Research Methods

The research will use a range of methods:

1. Background reading, which will include Lloyd's and London Market internet sites, Lloyd's Wordings Repository (model wordings), LMA documentation, insurance publications, journals and market bulletins.
2. When background research is complete, semi-structured interviews with senior underwriters, senior brokers, claims managers, and executives in the London Market to gain a greater depth of understanding of how the market manage insurance wordings.

Possible Challenges

Challenges in conducting this research are primarily around access to the senior personnel and their willingness to share meaningful, possibly sensitive, information. If it appears, after the first few interviews, that gaining sufficient or adequate information is unrealistic, the breadth of the research aims (above) will be adjusted.

Possible Chapter Headings

A summary of the research aims, methods employed and the results of the study which form the basis of the new educational programme for wordings.

1. Introduction

- Definition of an insurance wording and its basic structure.
- How a wording is constructed and by whom.
- Mapping the business process – from quotation to inception of a Lloyd's policy.
- Clarification of the author's position and perspective on the issue.
- Focus, parameters and limitations of the research.
- Explanation of the dissertation question.
- Methods appropriate to delivering an educational programme.

2. Method

The research will concentrate on the following areas:

1. Procedures: Regulation, compliance, governance.
2. Process: IT systems, policy development, wordings repository, model wordings, policy checking, issuance.
3. People: Resources, skills, monitoring competence.
4. Professional qualifications: CII – P21 Commercial Insurance Contract Wording, including the compulsory papers – P05 Insurance Law and P92 Insurance business and finance.
5. Course construction and delivery mechanism.

3. Data Collection

Data collection will involve:

1. Interrogation of insurance publications and websites.
2. Structured interviews with accompanying notes.
3. Viewing of the Lloyd's Wordings Repository and the library of model wordings.
4. Conducting interviews with the respective chairmen and secretaries of the LMA Wordings Forum, Joint Committees for Marine, Aviation and the LMA Non Marine Committee and acknowledged wordings experts in the Lloyd's market, including brokers.

4. Analysis

The details obtained in the research will be analysed, including transcription of the interviews, using the four method areas:

- Procedures
- Process
- People
- Professional Qualifications

Proposals will be suggested as to how the current management of wordings in the Lloyd's market can be improved through the introduction of a structured educational programme.

5. Results

The detailed results from the research will be used to identify:

- How the Lloyd's market currently manages wordings and the potential risks it runs if key areas are not robust from a contract certainty point of view.
- How improvements can be introduced through a structured educational programme.

6. Discussion

- What has been discovered as a result of the research in relation to:
 - current wordings practice;
 - educational support and professional qualifications;
 - contract certainty and its application in the production of wordings.
- Set out the lessons learned from the research.
- What is understood as 'fit for purpose' for wordings at Lloyd's.
- Establish, 'what does good look like?' having completed a gap analysis.
- Design and delivery – how an appropriate programme could be developed for Lloyd's.
- The potential pitfalls of leaving the process as it is.
- How an educational programme will enhance reputation.

7. Future Research

- Identify and analyse the risks the market runs if wordings are not compliant in relation to claims and the cost of litigation.
- Explore the characteristics of 'line specific' wordings and how good drafting practice can be applied to bespoke insurance contracts.

8. Conclusions and Proposals

- Identify the key facts that have arisen from the research.
- Set out concrete proposals to develop a structured educational programme.

9. References

Provisional Timetable

| Week | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
|--|---|---|---|---|---|---|---|---|---|----|----|----|
| Background reading, literature search | ■ | ■ | ■ | | | | | | | | | |
| Identify interviewees | | ■ | ■ | | | | | | | | | |
| Refine research parameters | | | ■ | | | | | | | | | |
| Prepare interview schedules | | | ■ | | | | | | | | | |
| Draft the Dissertation Introduction, Method and Design | | | | ■ | | | | | | | | |
| Conduct interviews | | | | ■ | | | | | | | | |
| Analyse the data | | | | ■ | | | ■ | ■ | ■ | | | |
| Draft analysis and results sections | | | | ■ | | | | | ■ | ■ | | |
| Draft Discussion, Future Research and Limitations sections | | | | ■ | | | | | | ■ | ■ | |
| Refine Dissertation and write Abstract and Conclusion | | | | ■ | | | | | | | ■ | ■ |
| Submit Dissertation | | | | ■ | | | | | | | | ■ |

CII Level 7 Exemplar Dissertation

Fit for Purpose at Lloyd's: Enhancing Reputation through the Design and Delivery of an Educational Programme for Wordings

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March 2013

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CHAPTER 1: CONTEXT

Summary of Research Aims

The objective of this dissertation is to examine how Lloyd's can improve its reputation through the design and delivery of an educational programme for policy wordings. Poorly designed policy wordings can easily damage reputation in insurance.

Background: Reputation at Lloyd's

The Lloyd's insurance market is recognised as a world leading institution and was established over 320 years ago. It has built its reputation upon its motto 'Fides'; a direct reference to the key insurance principle, *Uberrima fides* (utmost good faith) as Lloyd's underwriters seek to pay all valid claims in full and on time.

A Lloyd's policy is based upon this clear intention, which sits at the heart of buying a Lloyd's policy: a promise to pay all valid claims. Clients (policyholders) are willing to pay the underwriters' price for this promise; explicitly recognising that Lloyd's has built its reputation, throughout its history, on this premise alongside its reputation for creativity and innovation allied to strong security.

It is, therefore, important that Lloyd's maintains this reputation in an increasingly litigious environment. If this reputation is lost, tarnished or damaged then the Lloyd's brand will suffer and clients may take their business elsewhere.

This reputation underpins the Lloyd's A+ credit status accorded by Standard & Poor's and Fitch and the A rating (Excellent) by A.M. Best.

The Lloyd's brand was ranked number 33 in the UK Superbrands Rankings for 2012, the highest ranking of any brand in the World Insurance Sector. It was ranked 37 in 2010 and 40 in 2011 (Syncforce: 2012).

The principle of paying all valid claims was clearly demonstrated at the time of the San Francisco Earthquake in 1906. In oft-quoted references to the modern history of Lloyd's, Cuthbert Heath, a leading Lloyd's Underwriter, cabled his agents in California, instructing that all losses covered under a Lloyd's property policy should be paid in full, regardless of cause. This established the reputation of Lloyd's in the United States, a market that now generates about 40% of Lloyd's written premium.

Lloyd's Vision 2025

In June 2012, the Chairman of Lloyd's was joined by David Cameron, UK Prime Minister, to launch *Lloyd's Vision 2025* which will seek to enhance the Lloyd's market as the Global Centre for Specialist Insurance and Reinsurance (Corporation of Lloyd's: 2012). The Vision encompasses many aspects of Lloyd's but the following four areas have a particular bearing upon the subject of this paper and they are as follows:

1. Lloyd's will be an international, London-based market, **built on trusted relationships** and focused on property and casualty business requiring **bespoke underwriting** and broking.
2. Lloyd's will be a market where entrepreneurialism and innovation will thrive, underpinned by robust risk and performance management.
3. Lloyd's distribution chain will be optimised through the efficient use of technology.

4. Lloyd's will attract the best talent and provide an accelerated career path for the progression of high achievers.

Recent trading results

In 2011, Lloyd's made a loss before tax of £516.00m (2010: £2.195m profit) with a combined ratio of 106.8% (2010: 93.3%). This result reflected the frequency and severity of natural catastrophes throughout the year and the continuing low interest rate environment. However, despite a difficult trading year, gross premium income grew to £23.477bn (2010: £22.592bn) and Lloyd's central assets were maintained at record levels of £2.388bn (2010: £2.377bn).

At Q2 2012, Lloyd's announced an interim profit of £1.53bn. The result marks a return to profit after the second most expensive year on record for the insurance industry in 2011 (Corporation of Lloyd's: 2013).

Background: Enhanced Wordings and Education

This paper centres upon insurance wordings in the context of an educational programme. An insurance policy is a legally binding contract and its wording is the basis of all insurance transactions. The failure to produce a well drafted wording can lead, particularly in the event of a claim, to expensive litigation and damage to the commercial reputation of the underwriter and broker alike.

At present, there is no specific, structured educational programme for wordings and their use in the Lloyd's market. The main professional educational course is Course P21 *Commercial Insurance Contract Wording*, delivered by the CII. This is a non-compulsory exam paper which forms part of the CII's professional qualification framework. It is true to say that other insurance courses within the CII examination framework have specific sections dedicated to wordings, but these relate directly to the context of the insurance subject under discussion and only partly cover the overall subject (Chartered Insurance Institute: 2011).

The CII is, however, cognisant of these issues, for in its Aldermanbury Declaration it establishes a framework for embedding professionalism in the insurance industry. Fundamentally, the declaration sets out practical measures covering qualifications, development of staff and ethical conduct that will promote a more confident and trusted profession. It has been recognised that the historic failure to value high standards of insurance, business education and technical competence, coupled with ethical behaviour, are major barriers to success in the future (Chartered Insurance Institute, 2010).

This dissertation explores what could be done to design and deliver an educational programme for those in the Lloyd's market that will significantly contribute to their expertise and, in turn, will help to ensure that the reputation of Lloyd's is protected and enhanced. It concentrates upon one aspect: policy wordings, which are the foundation of ALL business that is conducted at Lloyd's. If the basic policy wording is incorrect or ambiguous then the premise of a valid claim comes into question and costly disputes may arise, closely followed by potential loss of reputation.

CHAPTER 2: GENESIS

The subject of insurance wordings has been widely discussed over the years within the Lloyd's market. Several reference works have been written on the subject, the most recent book relating to the London Insurance market being, *Drafting Insurance Contracts*, by Christopher Henley (2010).

There is, however, no evidence that specific research has been conducted in relation to wordings education in the London insurance market and whether a co-ordinated approach for Lloyd's would be of practical and positive benefit to that market. Apart from the CII paper for the wider Insurance industry, P21, there is no specific educational programme dedicated to the subject of wordings in the Lloyd's market.

The researcher's position and the origins of this research

The researcher is currently the Head of Professional Standards at the Lloyd's Market Association (LMA) and Secretary to the LMA Professional Standards Committee (PSC). The PSC seeks to drive and develop a range of educational activities that address the collective training needs of the Lloyd's market, aimed at sustaining its vitality and helping to secure a profitable future.

A series of three presentations were conducted in March 2012 at Lloyd's, in conjunction with the LMA, entitled *If only I'd known: wordings pitfalls* (Bolt and Banks: 2012).

These events were attended by over 300 market practitioners across all levels of management. This level of interest was unexpected and raised the questions of:

- What educational support existed within the market for the subject of wordings?
- What could be done to improve competency among those involved with wordings in the widest context?

The researcher was asked, in his role as the then Manager of Professional Standards, to conduct an exercise into this subject to find out why there was this demand. The researcher was also asked to see if more could be done in wordings education in the Lloyd's market and to establish what benefits might accrue.

Historically, it was generally acknowledged in Lloyd's that a properly drafted insurance contract wording was absolutely fundamental to all insurance transactions. However, the demand from the market to listen to a presentation about wordings and the pitfalls to be avoided, questioned the assumption that there was adequate educational support in this area.

The researcher wanted to establish if it really was the case that there was a lack of fundamental knowledge and proper expertise in relation to how contract wordings were developed and crafted, and if so, what educational programmes could be developed to address this need.

In summary, concern had been clearly expressed and backed-up with substantiated evidence that wordings had been inadequately drafted and had resulted in unnecessary litigation and dissatisfied policyholders with a subsequent potential damage to reputation. Examples are cited in Chapter 3.

Research purpose

In response to this stimulus, the purpose of the research was to establish:

- If it was the view of the Lloyd's market that more educational support was required.
- What those in the market felt should be done.
- Whether a lack of wordings expertise, and the risk of wording disputes regarding interpretation of insurance contracts, was a genuine threat to Lloyd's reputation and its brand.

Before describing, in detail, the research methodology and the recommendations arising from it, it is worth looking at some recent history in the financial sector, at the drivers for change and the regulatory landscape in which London market insurers operate.

CHAPTER 3: EVIDENCE

The current drivers of change in the Lloyd's Insurance Market

In the last decade, there has been a significant increase in regulation in the financial sector around the world. The business environment is one of increasingly complex regulation. The financial services landscape is littered with recent scandals.

This dissertation cannot identify all the scandals, but by way of example it is worth citing the following: the 'Sub-Prime' crisis, the Madoff and Stanford 'Ponzi' schemes and the ENRON scandals. They all showed what could happen in the absence of suitable internal company controls and a lack of robust industry regulation.

These specific incidents were not isolated events and demonstrated the extent of fraud and misfeasance in both the global economy and the financial sector. They adequately identify the significant levels of financial damage that can be inflicted at a personal and corporate level by such inappropriate corporate behaviour.

Not only were individual reputations ruined, but the related industries, institutions and regulators suffered significant reputational damage. In the words of Warren Buffet: "It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently" (cited at Quotations Book: last accessed May 2013).

Examples of what can go wrong

During the interview process reference was repeatedly made to two insurance industry incidents of what can go wrong if an insurance wording is not 'fit for purpose' and one banking/insurance related example.

Insurance examples:

The World Trade Centre: 11 September 2001 / the Silverstein Case

The destruction of the World Trade Centre (WTC) by terrorist attack raised the question under law as to whether these attacks were two separate events which would allow two separate recoveries under the insurance policies held by the leaseholder, Larry Silverstein, owner of Silverstein Properties, New York, USA.

Complex and costly legal discussions took place seeking to address the question as to which of the two insurance policies the interested parties intended to use when the WTC risk was 'agreed' or underwritten.

- One party of subscribing insurers stated that all parties intended to adopt a market standard form which specifically referred to 'an occurrence or series of occurrences'. This implied that underwriters would only pay for one loss within the policy limit.
- The leaseholder held that the actual form used was prepared by another insurer which did not contain such specific language, which inferred that two losses were covered in excess of the policy limit.

A series of well publicised trials ensued and the case developed as follows:

- April 2004: Trial concluded that a group of insurers had bound their \$1.8bn commitment using a form that recognised this as a single event.
- December 2004: A jury found that nine insurers had bound their \$1.7bn cover using unclear language allowing the leaseholder to claim for two events which equated to \$1.1bn above the policy limit.
- October 2006: The 2nd US Circuit Court of Appeal upheld the verdict that there were two events.

For a résumé and more comprehensive comment on the Silverstein case, see Swierkiewicz: [2011].

Charter Reinsurance V Fagan June 1995

This appeal case concerned the effect of three excess loss reinsurances incorporating ultimate net loss (UNL) clauses in a standard form where the reinsured was insolvent. The case report defines “net loss” as “the sum actually paid by the reinsured in the settlement of losses after making deductions for all recoveries.”

The issue was whether Charter Re, an insolvent entity, was entitled to recover under the reinsurances in respect of claims received from its original insured's, to the extent that Charter Re had either agreed or been held liable to meet the same. The Lloyd's syndicates in question submitted that their liability to indemnify Charter Re was conditional upon disbursement of such claims by Charter Re.

The appeal focused upon the construction of the standard clause known as 'ultimate net loss' (UNL), a common clause in general use in the London excess and reinsurance market. In fact, the actual case centred upon the use of the word 'paid' versus the phrase 'actually paid'.

To quote Lord Hoffmann:

I think that in some cases the notion of words having a natural meaning is not a very helpful one. Because the meaning of a word is so sensitive to syntax and context, the natural meaning of words in one sentence may be quite unnatural in another.

In conclusion, the judge finally decided that the use of the word 'actually' in the UNL clause was used to emphasise the fact that the loss for which the reinsurer was liable, was to be net of any reinsurance recoveries and that the clause did not restrict liability to the amount by which the liability of the reinsured for the loss had been discharged. Lord Mustill is quoted in the report as saying “I think that this is the natural meaning of the clause.....I would dismiss the appeal” (Charter v Fagan [1997]).

Underwriters at Lloyd's London v Yale

This example comes from the United States and relates to an athletic and sports participant's exclusion.

A commercial lines policy was bought by a games promoter who produced and promoted 'exhibition' sports events. The policy specifically excluded bodily injury while participating in 'any sports or athletic contest or exhibition'.

A wrestler suffered an injury at a sponsored event and because of the exclusion a claim was initially declined.

A US court found that the exclusion was ambiguous because it did not adequately define the terms 'athletics' and 'sports' (Underwriters at Lloyd's London v Yale [2007]).

Lloyd's: Olin Corp. V Certain Underwriters at Lloyd's London.

This case centred around the number of underlying limits in a multi-year insurance contract.

A multi-year excess policy covering environmental pollution was issued. There was a question about how many deductibles or underlying limits applied to the multi-year policy with a single limit.

The policy provided that underwriters were liable for the ultimate net loss of any amounts recoverable under the underlying insurances.

A District Court and Appellate Court in the United States found that this policy language was ambiguous and resolved the ambiguity in favour of the insured. It was held that there was only one underlying limit where there was only one policy limit (Olin Corp v Certain Underwriters [2006]).

Banking example:

PPI / Miss-selling

In the UK Banking sector, systemic operational risk was evidenced by the UK payment protection insurance (PPI) scandal.

To quote from the Financial Services Authority's report, *The Financial Conduct Authority: approach to regulation*:

Confidence in the financial services sector as a whole is at a low level. Conduct issues since 1990 have been a major factor, particularly the significant instances of widespread miss-selling of financial products [including PPI] to retail consumers (Financial Services Authority: 2011, p 5).

Again, the facts of this scandal are too complex to describe in detail in this dissertation. Wikipedia provides an overview ("Payment protection insurance": as of Feb 28, 2013, 20:25 GMT).

CHAPTER 4: REGULATION AND CONTRACT WORDINGS

The formation of the **Financial Services Authority (FSA)** on 1 December 2001 introduced the beginning of consolidated regulation for authorised entities (including all brokers and insurers in the London Market) and began a series of initiatives that have gone some way to improving the way that business is conducted in the Lloyd's market.

Over the next six years a number of key developments were introduced that set the foundations for better standards in the Lloyd's market in particular.

- Contract Certainty Implementation Steering Group established.
- A new version of the LMP slip is introduced.
- The London Market Reform Group publishes the 'London Market Plan', which defines contract certainty and publishes an LMP slip check list (see below).
- Contract Certainty Code of Practice introduced (see below).

For further details of these regulatory changes see the additional sources at the end of this document.

These stages highlight principles and guidelines that need to be clearly understood by all those involved in contract wordings. **These should form the basis of any educational programme.**

The establishment of such standards means that increased emphasis is slowly being focused on wordings experts. In turn, this has led to recognition that they need to be properly trained in the skills required of them. It also suggests that, in complex cases of risk, they may need to be brought closer to the negotiation process between the placing broker and the underwriter.

Specific effects of the regulatory development of wordings:

Contract Certainty Code of Practice

The Contract Certainty Code of Practice clearly states that contract certainty 'is the complete and full agreement of all terms (including signed down lines) between insured and insurers before inception'. It goes on to state that the FULL WORDING must be agreed before any insurer formally commits to the contract with an appropriate evidence of cover issued within 30 days of inception.

Contract Certainty, in order to be achieved, specifically states the following in relation to contract wordings: that the full wording must be agreed before any insurer fully commits to the contract. It is up to the broker to decide which combination of contract wording is submitted and the underwriter is at liberty to stipulate what he requires.

For the sake of clarity, the full **Contract Certainty Principles** for the London Market are as follows (Lloyd's: 2005) and are **highlighted in grey in relation to contract wordings:**

- Brokers will provide submissions that satisfy the contract certainty definition and checklist to obtain firm quotes and place firm orders.
- The wordings-related component of the submission to insurers must be complete and will be a combination of wordings and/or clauses, referenced of full text, bespoke or model material.
- If reference is made to an 'original wording' the market may follow the policy form of another insurer. The wording has to be attached or clearly identified.
- Each insurer will be satisfied that the submission meets the contract certainty definition and checklist before formally committing to the contract, ensuring that any conditions or subjectivities are clearly expressed.

- The full wording must be agreed before any insurer formally commits to the contract.
- Brokers will notify all terms to their client and obtain the client's agreement before inception.
- Brokers will calculate signed lines by inception and notify them to each insurer no later than 30 days after inception date, or by inception date on request.
- Brokers and insurers will not take part in post-inception over-placing.
- Brokers and insurers will ensure that post inception amendments are documented and agreed as endorsements.
- Brokers and insurers will each collect and maintain data on their contract certainty performance at individual contract level.
- Brokers will ensure that appropriate evidence of cover, including security, is issued within 30 days of inception.

An appropriate evidence of cover may be any of the following:

- The insurance policy (wording).
- Certificate of insurance.

Brokers have to ensure that the submission makes clear where the responsibility for drafting, checking and issuing evidence of cover within 30 days of inception sits.

For a more detailed description of contract certainty see the additional sources at the end of this document (London Market Group: 2005, 2007a, 2012).

CHAPTER 5: THE CURRENT EDUCATIONAL FRAMEWORK

Historically, individuals entered the world of insurance without formal qualifications and were educated in their trade by learning on the job. Over the years they have been encouraged to take a formal qualification. Now, it is unlikely that Lloyd's managing agents will not insist on a relevant insurance qualification as a condition of employment for a senior post. Most graduate intakes, for instance, are expected to achieve ACII status within three years of joining a graduate scheme.

Educational support and professional qualifications currently available in the Lloyd's / London market in respect of wordings.

The Chartered Insurance Institute (CII)*

The CII is the Chartered body of the UK Insurance industry. It promotes itself as "the premier professional organisation in the insurance and financial services industry" (Chartered Insurance Institute: 2013). Chartered status enables "individuals and firms to demonstrate their professional commitment to raising standards of knowledge, capability and ethical practice" (Chartered Insurance Institute: 2013a).

As already indicated, the ACII is a required standard for aspiring underwriters in Lloyd's. All graduates who enter the market are generally expected to become ACII qualified.

It became clear during the research phase of this dissertation that the CII will need to be involved in the delivery of an educational programme for wordings in some way and at some stage. See Chapter 8.

London Introductory Test (LIT)

This test was designed for brokers and underwriters. Originally, it had to be passed in order to work in the Underwriting Room at Lloyd's. This requirement was subsequently dropped during the 1990s because it was interpreted by the European Commission as a restriction on an individual's ability to enjoy freedom to work wherever they chose.

The Lloyd's and London Introductory Test (LLMIT)

This test was introduced to 'provide knowledge and understanding of basic insurance principles and practice, including how the profession conducts business within the London Market and the various organisations that make up the market'.

It was originally run jointly by the Chartered Insurance Institute and the Corporation of Lloyd's and was studied by new entrants to the market who were encouraged to take the course as part of their induction to the market.

In 2010, Lloyd's appointed PearsonVue to take over the running of the programme from the CII with the result that although the aim of the course and the programme remain the same, the development strategy has changed.

LLMIT is now focusing upon those who have an existing non-insurance qualification who need to know about how the London market functions and individuals who are located around the globe who may conduct Lloyd's-related business. These are typically Lloyd's cover-holders and brokers based overseas.

Passing this exam accounts for 15 points towards the CII's qualifications (Certificate, Diploma and Advanced Diploma: ACII). There is, however, no specific section on contract wordings. For more details of LLMIT see the additional sources at the end of this document (Chartered Insurance Institute: 2010, 2010a, 2012a). To gain these credits application for recognition of prior learning is required.

* Associate of the Chartered Insurance Institute (ACII) / Fellow of the Chartered Insurance Institute (FCII): These designations are the recognised industry professional qualifications. There are currently 106,000 practising CII members in the industry represented through 60 local Institutes. Significantly, the Insurance Institute of London alone has over 18,000 active members,

many of whom could participate in the educational programme proposed in this dissertation.

The key CII areas of research for wordings:

CII Award in London Market Insurance: ALMI

The Chartered Insurance Institute developed this two-part introductory insurance programme following the changes to the LLMIT programme noted above. The aim of the programme is to provide 'an essential grounding in the operation of the London Insurance market' (Chartered Insurance Institute: 2012). The syllabus concentrates on technical subjects such as reinsurance, the role of brokers and intermediaries, claims and underwriting and is focussed upon those in a broking, underwriting or claims role. Although those specialising in insurance wordings would benefit from a foundation in this programme there is no section devoted to the construction of an insurance policy wording. Passing this exam accounts for 25 points towards the CII's qualifications framework.

For more details of ALMI see the additional sources at the end of this document (Chartered Insurance Institute: 2012a).

P21 Commercial Insurance Contract Wording.*

This is a specific course and examination, at diploma level. However, unlike Insurance Contract Law, another course at the same level, it is not compulsory.

Many interviewees suggested that the CII should make this a compulsory examination bearing in mind the wording in any insurance contract is fundamental and a full understanding of the subject is crucial.

The purpose of the unit is clear: candidates, having taken the course, should be able to demonstrate:

- the purpose, scope and use of commercial contract wording in the London market;
- the issues to consider when drafting or agreeing a contract wording;
- the importance of greater contract certainty to the London market.

The learning outcomes for P21 (Chartered Insurance Institute: 2013b, 2013c) are understanding:

- the regulatory regime
- legal issues affecting insurance and reinsurance contracts;
- scope, coverage and limits of insurance contract wording;
- the main conditions applied to commercial contract wording;
- the implications of contract wording as applied to different types of reinsurance.

*Candidate numbers for this paper in 2011 were as follows:

- 90 candidates for April of which 33 were international
- 109 candidates for October of which 38 were international

CHAPTER 6: THE RESEARCH PROJECT – PRACTISE AND PROCESS

An explanation of the research question:

Fit for purpose at Lloyd's: Enhancing reputation through the design and delivery of an educational programme for wordings sought to address three distinct, but connected concerns:

- **Fit for purpose at Lloyd's:** do market practitioners in the Lloyd's market know what an effective insurance wordings looks like?
- What are the **key features** that **MUST** be present in every insurance contract?
- **Can reputation be enhanced through a structured educational programme** that ensures that all practitioners have a working understanding of wordings and are given sufficient support to manage the process to high standards?

Methodology

The research for this dissertation was primarily conducted through an interview process, which sought to:

1. Establish if there really was a need to develop a clear and co-ordinated approach to understanding wordings for the Lloyd's market.
2. See if it was possible to embed the significance of 'getting wordings right' in the minds of market practitioners.
3. Establish where the gaps in understanding were and explore ways in which expertise could be improved.
4. Explore the value of addressing the level of competence of practitioners in relation to contract wordings.

Focus and parameters of the research

Focus: The Lloyd's and London Insurance market within the City of London represented the geographical focus of the research.

Parameters: The research covered:

- An overview of the Lloyd's Insurance Market, which set out, in detail, the business and regulatory environment, with special emphasis on insurance contract wordings.
- Structured interviews and discussion with key Lloyd's market practitioners involved closely with contract wordings. This population included Lloyd's underwriters, Lloyd's brokers, wordings specialists, insurance consultants, lawyers and senior Corporation of Lloyd's management – this population is described more fully in the next section.
- The views of individuals about insurance wordings, their importance and if the reputation of the Lloyd's Market suffered if wordings were not 'fit for purpose'.
- The educational and professional support currently available for those responsible for drafting contract wordings.
- Whether a structured educational programme was required for those who conducted insurance business in the Lloyd's market.

- The need to establish what 'good looks like' for such an educational programme.
- Identification of what was missing and the component parts required.
- An exploration of what could be done to ensure that any shortfalls in education were addressed.

Research population parameters - Lloyd's underwriters and Lloyd's brokers:

The Lloyd's market is a broker-driven market and largely operates on the basis that all insurance transactions are initiated by recognised Lloyd's brokers or their agents.

The broker, acting as an agent of his client, is charged with finding the most appropriate insurance cover for the risk in question at the most advantageous price. Price, in this context does not necessarily mean the cheapest premium.

Lloyd's is a subscription market, which means that underwriters will often each subscribe to a portion of the risk. The broker will identify and approach the most suitable specialist underwriter to lead the risk. When this has been achieved he will then seek others to subscribe until 100% of the risk has been covered.

The lead underwriter (L/U) will be shown a 'slip'*, which identifies the material details of the risk in question, and an appropriate contract wording will be identified.

In practice, the L/U and broker negotiate the insurance 'deal' and indicate which wording is to be used. The contract is then passed by the broker to his supporting team / back-office for processing.

This means that the drafter of the policy is not always directly a party to the original negotiation and cannot necessarily understand all the intentions or nuances behind the contract. In addition, the drafter may not be suitably trained in producing contract wordings, legal opinion may not be requested and due to time pressures the contract may only be prepared with the minimum of checking.

The role of the placing broker has also changed significantly over the last few years. This is partly as a result of the tightening in regulations (see Chapter 4) but also due to cost-cutting within the brokers' operations themselves and a change in their structures.

In relation to structure, the following trend has taken place. The major broking companies have introduced the 'account executive'; a role which means that an individual is responsible for the entire relationship with the insured customer. He will be responsible for preparing the market risk presentation when approached by his client. He will analyse the risks to be covered, select the wording, outline the necessary conditions and present the best case for the underwriter to consider.

The risk presentation will, in most cases, be given to the 'placing broker' to go into the Lloyd's and London insurance market to achieve the best cover for his client. Occasionally, if the risk is large or complicated enough, the account executive will negotiate with the lead underwriter.

However, whatever approach is used, there are several individuals and separate steps involved that will affect how the policy wording is handled.

* A slip is now technically known as the MRC: the Market Reform Contract.
For a working definition see: www.marketreform.co.uk/MRC

In researching this topic, the author sought to speak to several market operators involved in this matrix of relationships and processes.

The actual development of the wordings process itself is also of interest in understanding the subject matter of this dissertation:

The placing / wordings process: How a wording is constructed and by whom - the business process; from quotation to inception of a Lloyd's policy.

- Completed proposal form received from insured or all material data supplied.
- Broker prepares presentation and the slip for the Lloyd's market. This will contain the proposed wording together with details of the risk with accompanying data.
- Broker identifies lead underwriter to establish the basis of cover and the premium.
- Broker then approaches the following market to obtain cover for 100% of the risk.
- Broker then obtains lead underwriter sign-off of policy wording and agreed terms and conditions.
- Broker transfers file to 'back office' for processing the documentation prior to passing to Xchanging for policy issuance to broker and insured.

Wordings databases:

The market operates a series of wordings databases which are the key resource for contractual terms for insurance and reinsurance. The organisations involved are as follows:

- **The Market Wordings database (MWD)**

This is run by Xchanging Plc and has over 12,000 wordings on its database. The database also includes the wordings held by the US International Services Office (ISO) together with the Brokers and Reinsurance Markets Association (BRMA) wordings.

- **The Lloyd's Market Association (LMA) Wordings Database / Repository**

The LMA represents all managing agents and underwriters in the Lloyd's market and is separate from the Corporation of Lloyd's. Its database contains over 2,000 approved wordings and has been available to the whole London insurance market since 2007.

The LMA has the responsibility of managing and maintaining the Lloyd's Wordings Repository in partnership with the Corporation. In addition, it runs the LMA Wordings Forum, a group of Lloyd's wordings specialists who are constantly commenting upon and approving wordings for use in the market.

- **Insurance Lawyers**

There are also a number of wordings databases operated by lawyers that concentrate on specialist wordings coupled with comparative analysis which they offer as part of their service to fee paying customers.

The 'appropriate' wording may come from a variety of sources:

- *Model Wordings: The Lloyd's Wordings Repository:* This enables underwriters and brokers to access insurance clauses that are regularly used within the London Market. This system provides a search facility for wordings and clauses by markets, business classes, jurisdictions and language.

- *Marine insurance*: for example, is governed by Standard Marine Institute Clauses underpinned by the Marine Insurance Act 1906. The publishers, Witherby, have incorporated a whole series of marine clauses in their publications. Such forms are the established basis for all marine contracts and are the result of years of refinement. For example, the Joint Marine Committee completed a two year full review of all the marine wordings in 2009.
- *Manuscript wordings*: As the term implies, this relates to a bespoke wording that is specific to an insurance risk. Most of the larger catastrophe risks covered in the Lloyd's market are based on wordings of this nature.

There is a danger that such wordings can become an amalgamation of several clauses and conditions that are 'cut and pasted' from existing contracts without sufficient time being spent on analysing how clauses and terms interact with each other.

During the research process many interviewees saw this as the biggest threat to producing a wording fit for purpose. It was felt this process was being carried out by those who lacked a basic understanding of the fundamentals of the construction of an insurance wording.

- *Company Own Forms*: These are established wordings devised by an insurance company or underwriters themselves and are recognised as such. These policies are usually specifically designed for a particularly specialised class of insurance business, for example Directors' and Officers' liability.

For further details see **Appendices 15 & 16**.

Design of the research / Course construction / Delivery mechanism

The research for the dissertation was designed in several parts:

A) Background research:

Reading and interrogating several of the following sources:

- Lloyd's and London Market Internet sites.
- Lloyd's Wordings Repository (model wordings).
- LMA documentation.
- Insurance publications.
- Journals and market bulletins.
- Analysis of procedures: Regulation, compliance, governance.
- Analysis of process: IT systems, policy development, wordings repository, model wordings, policy checking, issuance.
- Identification of people within the wordings process: Resources, skills, monitoring competence.
- Analysis of professional qualifications: CII P21 *Commercial Insurance Contract Wording*, including the compulsory papers, CII P05 *Insurance Law* and CII P92 *Insurance business and finance*.

Data collection involved seeking appropriate information from the following sources:

Organisation websites:

- Lloyd's.
- Lloyd's Wordings.com.
- Lloyd's Market Association.
- Financial Services Authority.
- Xchanging.
- Market Reform Group.
- Chartered Insurance Institute.
- LinkedIn Forum discussion site.

Publications

- ABI/BIBA/IIB/IUA/Lloyd's/LMA/LMBC Contract Certainty Code of Practice.
- ACII Course and Examination publications / P21 and Examination Overview.
- Centre for Brand Analysis.
- CII – Award in London Market Insurance / ALMI Syllabus.
- CII – The Aldermanbury Declaration.
- *Drafting Insurance Contracts*. Christopher Henley. Leadenhall Press.
- IUA/Lloyd's/LMA/LMBC Market Reform Group – Contract Certainty Code of Practice.
- IUA/Lloyd's/LMA/LMBC Market Reform Group – Implementation Guide / Open Market.
- LinkedIn Forum: London Market Wordings Group.
- Lloyd's and London Market Introductory Test: LLMIT Syllabus.
- Lloyd's/ISO Wordings Repository - User Guide.
- QBD Court of Appeal & House of Lords Authoritative Report AC 313.
- World Trade Center Property Insurance Trial (Silverstein): Akos Swierkiewicz: Expert Article Library.

B) *Actual results of the research:*

- Analysing the semi-structured interviews with underwriters, brokers, claims managers, actuaries, accountants, lawyers and senior executives.
- Reflecting on the LinkedIn web forum: London Market Wordings Group (see below).

C) *Research deliverables and specific recommendations:*

Specific recommendations are covered in *Chapter 8*.

Limitations of the research

In view of time constraints imposed for the composition of this paper as a CII 'exemplar', the interviews and research were restricted to those who operated within the London Insurance Market over a three-month time-frame.

The exemplar dissertation was specifically requested by the CII of the LMA, in order to assist the CII in developing its instruction materials for its new Level 7 offering within the 2012 CII qualification framework.

Accordingly, this dissertation made no comment on the technical aspect of individual wordings or specific processes and how they could be improved, as this was deemed to be outside the remit of the dissertation.

Despite excellent support from those who were interviewed, there was a marked reluctance from some practitioners and market groups to become fully engaged in the research. Whether this was due to lack of interest or from the belief that this was too large a subject to research was unclear. In itself, this reluctance may benefit from further research.

Research anomaly

One somewhat anomalous feature stood out during the research process: there appears to be a lack of specific articles about insurance wordings in the press. Most comments were anecdotal or related to the facts of a specific case in law.

During the research, an **on-line insurance forum** was discovered. Several London market practitioners are using the social medium **LinkedIn** to debate the subject of wordings. In view of the variety of the

comments made and the format of the debate from this source it was not possible to collate all the comments and views into a coherent message or to establish a solution to their suggestions. This forum could possibly be the subject of further research on this matter. An edited version of the on-line insurance forum LinkedIn dialogue is contained within **Appendix 17**.

CHAPTER 7: THE RESEARCH PROJECT – INTERVIEWS AND ANALYSIS

Research through structured interviews

A series of 19 interviews were conducted with a wide range of London market professionals and senior Lloyd's practitioners identified in the previous chapter.

The *interview transcripts* are contained in **Appendix 18** and were used as the basis of the GAP analysis contained in this dissertation.

Results of the structured interviews

The details obtained in the research were obtained through a series of structured interviews where five key questions were asked, as follows:

1. What are the key elements of an insurance wording?
2. Which processes are required to ensure that a wording is fit for purpose in the Lloyd's market?
3. Who should be involved in the process and what should be their responsibilities?
4. What is required to embed a thorough understanding and practical working knowledge of wordings in the Lloyd's market?
5. What could an educational programme look like and how could it be delivered effectively?

Each interview took 45 minutes and all five questions were asked. These questions, as it turned out, merely set the scene as each interviewee had very clear, well held views on the subject. The researcher decided not to be completely bound by the set questions as these sessions actually provided a deeper insight into the subject and widened the scope of the research. However, the basic questions were addressed and answered and the result was a much fuller picture than was originally anticipated.

In addition to the arranged structured interviews, the researcher joined the LinkedIn wordings forum discussion site upon which specific comment has already been made. The feedback from this forum has not been included for the reasons already stated, although a sample of the dialogue is included in **Appendix 17** for reference purposes.

Analysis of the research and the structured interview questions

The analysis of the data focussed upon the design and delivery of a possible educational programme. The transcriptions were analysed of each interview using a **GAP Analysis** which is available in **Appendix 19**.

The results were analysed with the following additional considerations in mind:

- Procedures.
- Process.
- People.
- Professional Qualifications.

Question 1

What are the key elements of an insurance contract?

| Question | What are the key elements of an insurance contract? | | | | | | | | | | | | | | | | | | | | |
|---------------------------------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|---|----|
| Elements | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | | |
| Legal Framework | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | 19 |
| No ambiguity | X | | X | X | | | X | X | | | | | | | X | X | X | X | | | 9 |
| Plain English | X | | X | X | | | | | X | | | | | X | | | X | X | | | 7 |
| Clear about what is covered | X | X | | | | | | X | X | | | | | X | | | | | X | X | 7 |
| Under structure | X | | X | | | | X | | | | | X | X | | | | | | | | 5 |
| Intention/ It makes clear sense | | | | X | | | | | X | X | | | X | | | | | X | X | | 6 |
| Clear interpretation | | | | | | | | | | | | X | | | | | | | X | X | 3 |
| Reflects the cover needed | | | | X | | X | | | | | | | | | | | | | | | 2 |
| Legal context fully understood | | | | | | | | | X | X | | | | | | | | | | | 2 |
| Understand how all pieces fit | X | | | | | | | | | | X | X | | | | | | | | | 3 |
| Fit for purpose | | | | | | | | | | | | | | | | | | | X | X | 2 |

Analysis:

The need for a legal framework was agreed by all interviewees, and their responses encompassed the following areas:

- Wording education should be encompassed by an understanding of a legal framework.
- Clear in intent and use of clear English.
- Contract law applies irrespective of terminology.
- Agreement between two parties which is recognised by law.
- Requires: Intention, offer and acceptance, consideration.
- Basic structure:
 - Schedule.
 - Definitions.
 - Insuring agreement.
 - General Clauses.
 - Exceptions.
 - Preamble.
 - Signature.

Question 2

Which processes are required to ensure that a wording is fit for purpose in the Lloyd's Marketplace?
The context was: Regulatory: Market Reform Contract.

| Question | What Processes are required? | | | | | | | | | | | | | | | | | | | |
|---|------------------------------|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | |
| MRC | x | | | | x | | | | x | | x | x | x | x | x | x | x | x | x | 12 |
| Contract Certainty | x | | x | x | x | x | x | x | | x | x | x | x | x | x | x | x | x | x | 17 |
| Use of wordings software | | x | | | | | x | x | | | | x | | x | x | | x | | | 7 |
| New Lloyd's check list | x | | | | x | x | x | x | | | | | | | | x | | | x | 7 |
| Wordings databases | | x | | | | | | | | x | | x | x | | | | | | | 4 |
| Lloyd's Binding | x | x | | | | | | | | | | | | | | | | | | 2 |
| LPSO | x | x | | | | | | | | | | | | | | | | | | 2 |
| Drafting process | | | x | | | | | | | | | | x | | | | | | | 2 |
| Review by Syndicate | | x | | | | | | | | | | x | | | | | | | | 2 |
| Internal Checking: Broker and Underwriter | x | x | | | | | | | x | | | | | x | | | | | | 4 |
| Iterative Process | | | x | | | | | | x | | | | | x | | | | | | 3 |
| Third Party review | | | | | | | | | | | | | | | | | x | x | | 2 |
| Compliance principles | | | x | | | | | | | | | | | | x | | | | | 2 |
| Quality control system | | | x | | | | | | | | | x | | | | | | | | 2 |
| Be close to regulation | | | | | | | | | x | | | | | | | | | | | 1 |
| Use LMA Wordings Forum | | | | | | | | | | | | x | | | | | | | | 1 |

Analysis:

The importance of Contract Certainty encompassed within the code of practice and the Market Reform Contract (MRC) of June 2007 (London Market Group: 2007) was regarded as the fundamental foundation for processing management.

It was very clear from those interviewed that the process had become well established in market procedures and would be required as part of an educational programme.

It is interesting to note that in practice, managing agents have adopted these codes within their own procedures, but, apart from market wide briefings, they tend to manage and develop this process internally. It should be noted that it would be expected that those interviewed would be aware of Contract Certainty. However, additional research with students commencing their ACII studies and those attending the LMA Academy Apprenticeship Programme suggested that these students were not clear about the full implications of the MRC and how it fitted into the governance of the market place.

Additional issues raised were:

- Quality control through the use of checking with all parties to the contract – syndicate peer reviews.
- Use of consistent checklists, wordings databases and software programmes.
- Reference to formal groups important: LPSO, LMA Wordings Forum, Xchanging, Lloyd's Wordings Repository. See also responses to Question 3.

Question 3

Who should be involved in the process and what should be their responsibilities?

| Question | Who should be involved and what should be their responsibilities? | | | | | | | | | | | | | | | | | | | |
|-----------------------------|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|
| Elements | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | |
| Underwriters | x | X | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | 19 |
| Brokers | x | X | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | x | 19 |
| Specialist Wordings experts | x | | | | | | x | | | x | x | x | x | x | x | x | | | x | 10 |
| Lawyers | x | | | | | | x | | | x | x | | x | x | | | x | | x | 8 |
| LMA Wordings Forum | x | | | | | | | x | | | x | x | x | | | | x | | | 6 |
| Trade Associations | x | | | | | | | | | | x | x | x | | | | x | | | 5 |
| Claims | | X | | | x | | | | x | | x | | x | | | | | | | 5 |
| Lloyd's Wordings Repository | | | | | | x | | | | x | x | x | | | | | | | 4 | |
| Insured/Risk Manager | | X | | | | | | | x | | x | | x | | | | | | | 4 |
| Qualified ACILs | | | | x | | | | | | | x | | x | | | | | | | 3 |
| LPSO Chatham | | | | | | | | x | | | x | | | | | | | | | 2 |
| Xchanging | | | | | | | | x | | | x | | | | | | | | | 2 |
| FSA | | | | | | | | | | | | x | | | | | | | | 1 |
| Compliance | | | | | | | | | | | | | | | x | | | | | 1 |

Analysis:

All related specialists, as would be expected, were identified. Additional comments were made as follows:

- The underwriter: In law, the underwriter is accountable for the efficacy of the wording and therefore must ensure that the wording is 'fit for purpose'. The underwriter has a responsibility to the broker and therefore to the policyholder.
- '*Verba chartarum fortius accipiuntur contra proferentem*': It is a maxim of the law that every man's grant shall be taken by construction of law most forcibly against himself.
- '*Contra Proferentum*': Any ambiguities are construed against the drafter (i.e. the underwriter).
- The broker: The broker is an agent of the policyholder and that is where his responsibility lies.
- Legal Counsel: Can be used by either party in the capacity of drafter or commentator on the contract wording.
- Reference to formal groups important: LPSO, LMA Wordings Forum, Xchanging, Lloyd's Wordings Repository. See also Question 2.

Question 4

What is required to embed a thorough understanding and practical working knowledge of wordings in the Lloyd's marketplace?

| Question | What is needed to embed a thorough understanding of wordings? | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|-----------|
| Elements | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | |
| Understanding the processes | x | x | | x | | x | | x | x | x | x | | x | | x | x | | x | | 12 |
| How insurance is conducted | x | x | x | | x | | x | x | x | x | x | | | | | | | x | x | 11 |
| Central high quality programme | x | | | x | | x | x | x | x | | x | | x | | x | x | | | | 10 |
| Understanding regulation | | x | | | | | x | | | | | | | | | x | x | | | 4 |
| Better standard of education | x | | | x | | | | x | | | | | | x | | | | x | | 5 |
| Awareness of issues | x | | | | x | | | | | | x | | | | | | | | | 3 |
| Key fundamentals of contracts | x | x | | x | | | | | | | | | | | | | | | | 3 |
| Senior management buy in | | | x | | x | | | | | | | | | | | | x | | | 3 |
| Embed in wordings teams | | | | | x | | | | | x | | | | | | | | | x | 3 |
| Impact on business | | | | | | | | x | | | | | | x | | | | x | | 3 |
| Understand technology | | | | | x | | | | | | | | | x | | | | | | 2 |
| How do others do it? | | | | | x | | | | | | | | | | | | | | x | 2 |
| Understand what can go wrong | | | | | x | x | | | | | | | | | | | | | | 2 |
| Read the financial press | | | | | x | | | | | | | | | | | | | x | | 2 |
| Make it more interesting | | | | | | x | | | | | | | | | | | | | x | 2 |
| Lloyd's guide to wordings | | x | | | | | | | | | x | | | | | | | | | 2 |
| Duty roster of Legal experts | | | | | | | | | | | | | x | | | | | | x | 2 |
| Raise the status of the wordings expert | | | | | | | | | | | | | | x | | | | | x | 2 |
| Understand Lloyd's/wordings | | | | | | | x | | | | | | | x | | | | | | 2 |
| Understand specific case law | | | | | | | | | | | | | | | | | | | x | 1 |
| More ACIIs | | | | | | | | | | | | | | | | | | | x | 1 |
| Brokers/U/Wrs learn together | | x | | | | | | | | | | | | | | | | | | 1 |
| Learn how to craft a wording | | x | | | | | | | | | | | | | | | | | | 1 |
| Good negotiation skills | | | | | | x | | | | | | | | | | | | | | 1 |

Analysis

- The key response from the research was the need for all those involved with insurance contract wordings to understand how insurance is conducted and the processes involved. It was recognised that this knowledge could be obtained by 'doing the job'.

However, over 50% of those interviewed said that there should be a high quality central education programme available to the market. Such a programme would also encompass the skills referred to in the analysis above.

- It was made clear that such a programme should be complementary to the existing professional qualifications provided by the CII through the ACII qualification and particularly through P21 *Commercial Insurance Contract Wording*.
- **A series of foundation courses could be delivered by the CII, the LMA or Lloyd's to address these requirements.**
- It was recognised that there were many organisations in the London Market that could provide valuable input to such programmes. It was recognised that some of this work was being conducted currently. However, this was being done on an ad hoc basis and **required focussed co-ordination**.

| |
|---|
| NB: The responses and the analysis contained in this question are absolutely key to the results of the findings of the research. |
|---|

Question 5

What could an educational programme look like and how could it be delivered effectively?

| Question | What could an Education Programme look like? | | | | | | | | | | | | | | | | | | | | |
|--|--|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|---|
| Elements | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | | |
| Intermediate, basics, pre CII P21 | x | | x | | x | x | | | x | x | x | x | x | x | x | x | x | x | x | 15 | |
| Multi layered, structured and integrated | | x | | | x | x | x | x | x | | | x | x | x | x | x | x | x | x | 14 | |
| Workshops / master classes on wordings | | x | | x | | | x | x | x | | x | x | | x | x | x | x | x | x | 13 | |
| Input on claims experience | | | | | x | | | x | | x | x | x | x | x | x | x | x | x | x | 12 | |
| State of the art E-learning for intermediate | x | | | x | | | | | | x | x | x | x | x | x | x | x | x | x | 12 | |
| Intermediate accredited by CII | x | | | x | | | | | | x | x | x | x | x | x | x | x | x | x | 12 | |
| Roster of Lawyers that can be consulted | x | | | | x | x | | | | | | | | x | | x | x | x | x | 8 | |
| LMA / PSC led | x | | | x | x | x | | | | | | | | | | | | | | 4 | |
| CII Involvement | x | | | x | x | x | | | | | | | | | | | | | | 4 | |
| Engage outside organisations e.g. Universities | | | | | | | | | | | | x | | x | | x | x | | | 4 | |
| Only engage the best | | | | | | | | | | | | x | | x | | x | x | | | 4 | |
| Text book on How to do it | | x | | | | | | | | | | | | | | | | | x | x | 3 |
| Interactive and interesting | | | | | x | x | | | | | | | x | | | x | | | | | 4 |
| Read wordings and discuss (like a book club) | | | | x | | | | | | | | | | | x | | | | | | 2 |
| Put in context of career | | | | | | x | | | | | | | | | | | | | | | 1 |
| How do others do it? | x | | | | | | | | | | | | | | | | | | | | 1 |
| Communicate at all levels | | | | | | x | | | | | | | | | | | | | | | 1 |
| Learning by practical experience | | | x | | | | | | | | | | | | | | | | | | 1 |
| More LMA Wordings Repository days | | | | | | | | | | | x | | | | | | | | | | 1 |

Analysis:

Key elements were clearly identified with the following structure in mind:

- A programme should be fully integrated with the existing professional qualifications.
- In order to embed professionalism and emphasise the importance of the need to understand insurance contract wordings, any foundation course should be accredited by the CII through the use of CPD points or CII examination credits.

- Tuition, outside the formal foundation programme should be given through the use of workshops, seminars, master classes with speakers invited from the Lloyd's and London market, the legal profession and the Lloyd's Market Association.
- In order to address the demand from the market for this level of understanding, state-of-the-art **e-learning** coupled with additional input from chosen market experts should be considered.

CHAPTER 8: PROPOSAL – AN INTEGRATED EDUCATION PROGRAMME

What would an integrated education programme look like?

One of the key questions raised at the beginning of the research was, '*what would good look like?*'

It was apparent from the work carried out that there was an overwhelming requirement for an integrated educational programme for insurance contract wordings. The research confirmed that all the component parts for a programme were already available. Also, there was recognition in the market that something was required to improve the knowledge and competence in this area.

The results of the research were collated and are presented in the following outline proposal.

Review of the Background

As indicated above, the overwhelming demand from the market following the presentation *If only I'd known - wordings pitfalls*' (Bolt & Banks: 2012) resulted in a request from Lloyd's that the LMA should carry out market research and present some proposals for the development of an educational programme for wordings for the Lloyd's market.

The proposal

This proposal is based upon the results of the interviews conducted during the research for this dissertation.

Requirement:

- A training programme that delivers competence in reviewing contract wordings and based upon the following structure:
 - **SCHEDULE** MRC Risk Details
 - **DEFINITIONS**
 - **INSURING AGREEMENT** Basis of Cover
 - **GENERAL CLAUSES** Conditions
 - **EXCEPTIONS** Exclusions
 - **PREAMBLE** Lloyd's Jacket text
 - **SIGNATURE**
- A programme that delivers evidence of learning that will **complement the CII Certificate in Contract Wording** (CII P05 *Insurance Law* and P21 *Commercial insurance contract wording*).
- A programme capable of meeting a short term demand of approximately 300 delegates as at Q4 2012.
- The content should be practical, focus on the specific challenges that Lloyd's faces and be of the highest quality.

Target Audience:

- All currently employed in the Lloyd's market dealing with wordings.
- Unlikely to have formal insurance qualifications in this topic.
- Number in the region of 300 people as at Q4 2012.
- Assumed that not all will want to proceed beyond core competence level (Certificate Level in CII terms).

Format / Levels

- Structured learning modules at **3 levels** directly linked to the CII competency framework and qualifications levels.
- Created and approved by an LMA Working Group comprising of experts from Lloyd's, the CII and the market.
- Due to the breadth of this subject, it is proposed that two levels of structured learning should be considered: **Foundation** and **Core Competencies**.
- A third level, referred to as **Key Competencies**, was proposed by a number of interviewees and is included in this paper for discussion only. It is recognised that this could be viewed as an advanced level and outside the scope of a foundation programme.

Foundation Level:

The learning / teaching programme would encompass the following:

- Demonstrate an understanding of what is meant by the law of tort and how legal liabilities arise in the context of insurance.
- Know the meaning of common contract terms.
- Identify the requirements for a valid contract.
- Know the terms of the Market Reform Contract.
- Understand the structure of a contract in the Subscription Market.
- List the key elements of a contract.
- Understand what contract certainty really means.
- Know the relationship between the application of UK law and that of principal international locations of Lloyd's.

Core Competencies:

The learning / teaching programme would encompass the following:

- Know the responsibilities of participants in the contract drafting and agreement process.
- Know and identify the sources of information available for drafting a wording.
- Identify the common omissions and lack of clarity in definitions and terms.
- Outline the key clauses that must be in place for a common risk.
- Understand the principal causes for disputes when claims are made.
- Identify which types of wordings are appropriate in a range of insurance and reinsurance contexts.
- Know the reasons for applying specific terms, exclusions, conditions and warranties to a policy.

Key Competencies:

The learning / teaching programme would encompass the following:

- Ability to demonstrate an understanding of standard and non-standard policy wordings.
- Identify and assess potential legal liability for a situation due to faulty wordings.
- Identify when to alter policy terms and the impact of doing so.

Proposed Delivery:**Foundation:**

- Assuming all 300 people would wish to take this module, an E-learning programme with a test at the end would be the most efficient way to deliver this knowledge. E-learning platforms are readily available.
- During the research process the LMA / PSC was offered the use of an existing E-learning delivery platform that could be badged by the LMA or the LMA Academy. This facility could be provided by the Corporation of Lloyd's, by the CII, and the National Skills Academy or direct from Unicorn Plc (used by Hiscox and other managing agents).

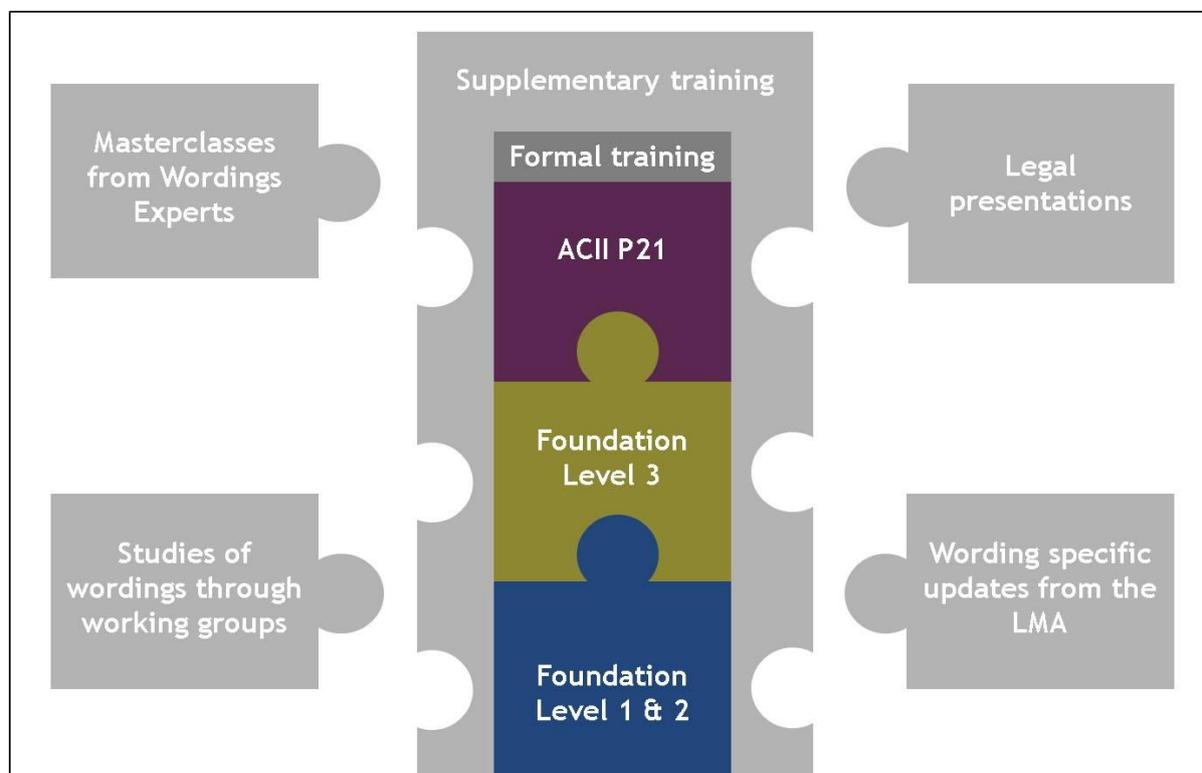
Core Competence in Wordings:

- A combination of study text available online via the LMA or the LMA Academy supported by an element of face-to-face training with a final on-line examination.
- Key Competence in Wordings: It is recognised that at this advanced level it is probably better to consider this element in conjunction with CII exams P05 and P21.

Overall framework for an educational programme for wordings:

The diagram below provides a view of what an integrated programme would look like. The intention would be to provide a mix of formal and supplementary training available for practitioners at all levels.

Each piece of the jigsaw would fit together to form a fully integrated educational programme.



In addition to the formal training (Foundation 1+2+3 and the CII P21 course) a continuous programme of education, at all levels, would ensure that those who need to know are kept informed of all aspects of wordings.

This programme could be delivered by the LMA and the LMA Academy in the following ways:

- Master classes from wordings experts and lawyers.
- Legal presentations on case law.
- Studies of specific wordings through working groups.
- Wording specific updates from the LMA.

The CII, Lloyd's, the LMA, through the LMA Wordings Forum and the LMA Academy, are well placed to provide a fully integrated educational programme.

CHAPTER 9: FUTURE RESEARCH

Topics, areas and issues

Suggested areas, topics and issues that might benefit from further research, would include:

- Engagement with the London Market LinkedIn forum and analysis of their discussions on insurance contract wordings*.
- Analysis of how insurance companies outside the Lloyd's market, usually referred to as the "Company Market", educate their employees in the drafting and management of insurance contract wordings.
- Research into how to ensure that regulatory matters and legal changes relating to insurance contracts wordings are identified and communicated better to those who need to know.
- Engagement with the purchasers of Lloyd's policies would broaden the scope of the research and identify other areas regarded as important that might be overlooked by practitioners, for example, the Association of Insurance Risk Managers in Commerce (AIRMIC), and the Institute of Risk Management (IRM).
- Analysis of a wider range of legal cases where insurance contract wordings have been disputed in claims settlements and how they might impact on reputation.
- The characteristics of "line specific" wordings and how good drafting practice could be applied to bespoke insurance contracts.
- Conduct further research into the effectiveness of the Market Reform Contract in relation to the quality of insurance wordings and determine if they present a true representation of the risk that is underwritten.

Factors that limited the research and how it could be improved if repeated

- The sample size of interviews restricted the scope of the research. A wider audience may have brought out more issues for consideration.
- The views of the interviewees were biased towards their respective areas of expertise. Those closely involved with insurance contract wordings had strong feelings towards the issues compared with those who regarded the subject as part of the overall insurance transaction.
- A large part of the discussions centred upon regulation and how to be compliant. This restricted the debate about how policy wordings should be crafted and what could be done to attract more people to specialise in a career as wordings experts.

*This engagement has already commenced, post the research for this paper.

CHAPTER 10: CONCLUSIONS

Fit for purpose at Lloyd's: Enhancing reputation through the design and delivery of an educational programme for wordings

What has been discovered as a result of research into this subject?

Current wordings practice

- Although underwriters endeavour to ensure that their wordings meet the intention of the cover provided, many felt that this was an area that required greater market-wide expertise. This view applied to underwriters and brokers alike. It was recognised that the recent cutbacks in staffing levels meant that there was a scarcity of wordings experts. It was pointed out that when cutbacks took place that the 'back office functions' were the first to go. Many consulted felt that the expertise and importance of those involved with drafting wordings were not recognised and that the whole subject did not attract the importance it deserved.

Educational support and professional qualifications

- It was recognised that the London market had an abundance of knowledge and experience in this sector. However, it was suggested that it was not sufficiently co-ordinated to take advantage of this resource and, as already discussed, was not recognised as being of sufficient importance.
- The introduction of an **integrated educational programme** would focus the market generally in this area and raise the level of debate in this matter.

Contract certainty and its application in the production of wordings

- The discussion around wordings centred upon regulation and compliance. This clearly demonstrated that the procedures for Contract Certainty have been effectively embedded in the process. However, many fear that this process has become a 'tick box' exercise and that not enough is sufficiently understood why this is required and the consequences of getting it wrong.

What is understood as 'fit for purpose' for wordings at Lloyd's?

- Establishing good drafting practice is what most market practitioners actually wanted and 'fitness for purpose' could be identified and established as a market standard practice.

Some felt that the subject was simply too large and complicated to manage effectively and in any case it would take too long to resolve the current issues.

Many believed that a focused educational programme would speed up the process for enhancements and that designing and delivering a programme for wordings would ensure improvements in reputation.

Conducting a gap analysis to answer the question: 'what does good look like?'

- The process of the analysis by applying it to the interview transcripts enabled the overall views of the sample to be clearly analysed. It served to confirm many of the generally held views in the market about the need to embed knowledge about wordings and enabled key areas to be addressed when considering an educational programme.

This analysis resulted in the formulation of the proposed design and delivery of an integrated programme. It also identified the optimal manner in which an appropriate programme could be delivered to the Lloyd's market.

How improvements can be introduced through a structured educational programme

- The introduction of phased, foundation programmes would ensure a gradual improvement of wordings skills and would begin the process of embedding this skill within market practice. As individuals developed their careers, the integrated programme would be present to teach additional skills when required and keep them informed of wordings-related developments through market briefings, seminars and similar educational events.

The potential pitfalls of leaving the process unchanged

- The risks the market runs if wordings are not compliant in relation to claims are well understood. Litigation costs will remain; practitioners will continue to spend time on fixing mistakes rather than spending time on increasing business and growing their businesses. It was generally agreed that the combination of the current 'soft insurance market', where it is difficult to increase market share, coupled with rising litigation costs was unsustainable in a global market.

The Lloyd's 2025 Vision stated that "Lloyd's will be a market where entrepreneurialism and innovation will thrive" and will be "underpinned by robust risk and performance management" (Corporation of Lloyd's: 2012).

If insurance contract wordings, the basis of every insurance transaction, are not fit for purpose, then Lloyd's will not achieve this part of its vision.

How an educational programme will enhance reputation

- Lloyd's has built its reputation over 320 years by settling all valid claims. However, the Lloyd's market continually needs to remind its existing, and potential customers, together with those in the new and expanding BRIC markets (Brazil, Russia, India and China) that it will continue to honour the promise inherent in a Lloyd's policy.

The introduction of a high-quality, integrated educational programme, underpinned by the commitment to that promise, will be a step towards building upon the existing reputation of Lloyd's. It will help to achieve its goal of becoming 'the Global Centre for Specialist Insurance and Reinsurance', which represents the heart of the current strategy for the Lloyd's market (Ibid).

APPENDICES (Appendices not included in this document due to size)

| Subject | Number |
|---|---------------|
| Centre for Brand Analysis | 1 |
| Chartered Insurance Institute: The Aldermanbury Declaration 1 | 2 |
| Chartered Insurance Institute: The Aldermanbury Declaration 2 | 3 |
| World Trade Center Property Insurance Trial: Akos Swierkiewicz : Expert Article Library | 4 |
| Queen's Bench, Court of Appeal & House of Lords Authoritative Report AC 313 | 5 |
| IUA / Lloyd's / LMA / LMBC Market Reform Group: Implementation Guide/ Open Market | 6 |
| IUA / Lloyd's / LMA / LMBC Market Reform Group: Contract Certainty Code of Practice 1 | 7 |
| IUA / Lloyd's / LMA / LMBC Market Reform Group: Contract Certainty Code of Practice 2 | 8 |
| ABI / BIBA / IIB / IUA / Lloyd's / LMA / LMBC Contract Certainty Code of Practice | 9 |
| Lloyd's and London Market Introductory Test: LLMIT Syllabus | 10 |
| Lloyd's LLMIT Overview | 11 |
| Chartered Insurance Institute: Award in London Market Insurance / ALMI Syllabus | 12 |
| ACII Course and Examination publications: P21 and Examination Overview | 13 |
| Chartered Insurance Institute: P21 Paper - Contract Wordings | 14 |
| Lloyd's / ISO Wordings Repository: Submitter Functions / Common Functions User Guide | 15 |
| Wordings Repository Guidelines: Lloyd's Market Association | 16 |
| LinkedIn: Edited dialogue of informal London Market Wordings Group | 17 |
| Structured Interviews Transcripts | 18 |
| GAP Analysis | 19 |

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