



Dated

29 February 2016

Flood Re Limited

Payments Dispute Process

Version 1.0

1. General

1.1 The following provisions will apply to all disputes referred to and conducted under this Payments Dispute Resolution Procedure (the “**Procedure**”¹) between Flood Re Limited (“**Flood Re**”²), and Relevant Insurers.

1.2 This Procedure applies to:

1.2.1 disputes as to liability for and/or the quantum of a Type A payment or Type B payment, or otherwise connected with such a Type A payment or Type B payment, under the Act, the Regulations and the Scheme Document (“**Legislative Documents**”), including but not limited to disputes about the amount of levies requested by Flood Re and the calculation of a Relevant Insurer’s GWP.

1.2.2 any Payment Dispute under the Flood Re Membership Agreement (as a Payment Dispute is defined in the Membership Agreement); and

1.2.3 other such disputes as may be expressly notified by Flood Re to Relevant Insurers from time to time;

(each a “**Qualifying Dispute**”, and each of the Legislative Documents and the Membership Agreement a “**Qualifying Document**”).

1.3 For the avoidance of doubt, except as expressly provided, this Procedure does not apply to any other disputes including disputes regarding claims made under a Flood Risk Excess of Loss Reinsurance Treaty.

1.4 References to a ‘party’ or ‘parties’ in this Procedure apply to both Flood Re and to any Relevant Insurer as parties to a Qualifying Dispute or Qualifying Disputes.

1.5 For the avoidance of doubt, except as expressly agreed between Flood Re and Relevant Insurers, the existence of and matters arising under any Qualifying Dispute are strictly confidential as between the parties.

2. Exhaustion of the Internal Review Process

2.1 The Qualifying Documents contain provisions relating to circumstances where initial disagreements or differences between the parties regarding Payments, do not necessarily crystallise into a dispute.

2.2 Where a reconsideration, appeal or review process by Flood Re is provided for under a Qualifying Document or is subsequently notified by Flood Re to Relevant Insurers pursuant to any Qualifying Document (the “**Internal Review Process**”), all parties will exhaust such Internal Review Process before issuing a Dispute Notice (as defined in clause 3 below) under this Procedure.

¹ For a list of definitions for terms used in this Procedure but not defined in the body of the Procedure, see Annex I.

² the body designated by the Flood Reinsurance Scheme and Scheme Administrator Designation Regulations 2015 as the FR Scheme administrator.

2.3 The current Internal Review Process in relation to Payment Disputes is:

- Where an issue or a complaint by a Relevant Insurer arises, this will be notified in writing by that Relevant Insurer to the Flood Re Service Desk or directly to a contact within Flood Re. Once a complaint or an issue is received, an acknowledgment of receipt will be sent to the Relevant Insurer. Where an issue or a complaint by Flood Re arises, this will be notified either to the business address specified by that Relevant Insurer or to Flood Re's usual contact for that Relevant Insurer.
- The Finance team at Flood Re will endeavour to resolve the issue within 5 working days of acknowledging receipt (or, in Flood Re's case, the notification of the issue to the Relevant Insurer) through discussions with the Relevant Insurer.
- If the issue is not resolved as per point 1 above, it will be referred to the Flood Re director responsible for Finance, currently Adam Golding.
- That director will be informed of the circumstances surrounding the issue and will make direct contact with the Relevant Insurer to attempt to find a resolution. As part of this contact, the Relevant Insurer will be invited to participate in a teleconference or a face to face meeting to help resolve the issue. If the issue is not resolved within 5 working days of any teleconference or meeting, and in any case within 15 working days of acknowledging receipt (or, in Flood Re's case, the notification of the issue to the Relevant Insurer), the director will refer it to the Executive Committee.
- If a resolution is agreed between Flood Re and the Relevant Insurer prior to a reference being made to the Executive Committee, this resolution will be documented and acknowledged by both parties in writing (including over email). Evidence of this agreement will be noted and filed by the Executive Committee at its next meeting.
- At the time of referral, the Relevant Insurer will be invited by Flood Re to make a written representation regarding the issue to be presented by the director to the Executive Committee.
- The Executive Committee must meet to discuss the issue within 5 working days of an issue being referred to it.
- The Executive Committee will make a determination on the issue. The decision will be communicated to the Relevant Insurer within 3 working days of the Executive Committee meeting.
- If any sanctions are to be implemented as a result of the Executive Committee decision, this will be considered separately by the Executive Committee under the related Sanctions Procedure (see separate Sanctions Procedure document). A sanctions determination can be made during the same issue meeting or a separate meeting to be held no later than 5 working days following the original issue meeting. Any sanction decisions are to be communicated to the Relevant Insurer no later than 3 working days after the decision is taken by the Executive Committee.

Following a decision by the Executive Committee, unless a Dispute Notice is issued in line with the provisions below within 5 working days of the decision being informed to the Relevant Insurer (including any sanction decisions), that decision will be considered a final resolution of the issue at hand.

3. Invocation of Dispute Procedure

3.1 Any party may refer a Qualifying Dispute to this Procedure by issuing a notice in writing to the other party or parties to the Qualifying Dispute (“**Dispute Notice**”). To engage this Procedure, a Dispute Notice must specify expressly that it invokes this Procedure, contain a brief statement of the nature of the Qualifying Dispute (or where applicable Qualifying Disputes) and the relief requested, and request negotiations between the parties.

4. Procedure Stage 1 - Negotiation

- Following the receipt of a Dispute Notice, the parties to the Qualifying Dispute shall engage in good faith negotiations to attempt to resolve the parties’ dispute (the “**Negotiation Period**”).
- A Negotiation Period pursuant to Clause 4.1 shall expire upon the written agreement of all parties and in any case within 15 working days following the receipt of a Dispute Notice.

The current negotiation process is:

- The Negotiation Period will commence on the day of receipt of a Dispute Notice.
- Negotiations will be led by the Chairman at Flood Re, currently Mark Hoban.
- Negotiations between Flood Re and the Relevant Insurer will be conducted strictly in good faith and with a view of resolving the Dispute before any further legal action is taken by either side.
- During the Negotiation Period, at least one face to face or teleconference meeting has to take place between Flood Re and the Relevant Insurer.
- The Flood Re Board of Directors may get involved in negotiations. Flood Re and the Relevant Insurer may elect to have their internal and/or external legal advisers participating in the negotiation process, however, their presence is not required.
- If an agreement is reached at the end of a Negotiation Period. This will be documented in a mutually agreed protocol (signed by both parties) which will be noted and filed by the Executive Committee no later than 10 working days after such agreement is signed.
- The times and deadlines provided in this Procedure can be altered by the mutual agreement of Flood Re and the relevant Relevant Insurer.
- If any sanctions are to be implemented as a result of an agreement reached through negotiation, this will be considered separately by the Executive Committee, with regard to the particulars of the agreement, under the related Sanctions Procedure (see separate Sanctions Procedure document). A sanctions determination can be made during the meeting where an agreement is noted and filed or a separate meeting to be held no later than 5 working days following the filing of an agreement. Any sanction decisions are to be communicated to the Relevant Insurer no later than 3 working days after the decision is made by the Executive Committee.

5. Procedure Stage 2 – Expert Determination

- 5.1 Following the expiry of the Negotiation Period (pursuant to Clause 4.1), providing no agreement is reached between the parties, the Qualifying Dispute will be referred to and determined by an Independent Expert, who will be selected and appointed according to this Procedure, including the criteria set out in Clause 6 of this Procedure and in accordance with Clause 7 of this Procedure.
- 5.2 The Independent Expert shall determine the Qualifying Dispute, which may include any issue involving the interpretation of any provision of a Qualifying Document, his jurisdiction to determine the matters and issues referred to him, or his terms of reference.
- 5.3 Where different Qualifying Disputes raise similar issues, the parties may (subject to agreement by the other party) refer those Disputes to the same Independent Expert within a single expert determination.
- 5.4 The determination of the Independent Expert will be binding upon the parties to a Qualifying Dispute.
- 5.5 The parties will work together in good faith to ensure that the expert determination process is conducted and concluded as quickly as possible and in accordance with the timescales set out in Clause 9 of this Procedure, following which the parties will implement the outcome of the expert determination process.

6. Criteria for Independent Expert

6.1 The Independent Expert:

6.1.1 will be a person who:

6.1.1.1 is a qualified accountant under a professional accountancy body (for example, a chartered accountant);

6.1.1.2 has 10 years of experience in the general insurance industry, including as an insurance industry professional, through performing accountancy services in connection with the insurance industry, or through previously performing the role of expert or arbitrator in connection with disputes in or relating to the insurance industry;

6.1.2 will preferably (but not essentially)

have acted as an expert on at least one previous expert determination;

6.1.3 for the avoidance of doubt does not cease to be independent or impartial solely because he or she:

6.1.3.1 has acted as an expert in relation to a previous Qualifying Dispute under this Procedure, or is concurrently considering another Qualifying Dispute under this Procedure; or

6.1.3.2 has previously been employed by any of the parties to a Qualifying Dispute.

7. Nomination and Appointment of Independent Expert

7.1 The parties to the Qualifying Dispute will attempt to agree upon the identity and appointment of an Independent Expert.

7.2 If within **14** days of service of the Dispute Notice or the end of the Negotiation Period, as appropriate, the parties have not agreed in writing and appointed the Independent Expert:

7.2.1 either party may apply in writing to the LCIA (the “**Independent Nominator**”) to appoint the Independent Expert, enclosing a copy of the relevant Qualifying Document(s), this Procedure, the Dispute Notice and a brief statement setting out any additional matters (if any) that the party wishes to bring to the attention of the Independent Nominator for the purposes only of selecting the Independent Expert (the “**Nomination Notice**”), with simultaneous copy to the other parties;

7.2.2 within **7** days of service of the Nomination Notice, the other party or parties to the Qualifying Dispute shall send to the Independent Nominator, with simultaneous copy to the nominating party, a reply to any matters raised in the Nomination Notice. The Independent Nominator will be entitled to disregard and not take into account any comments or reply provided after this date;

7.2.3 the Independent Nominator shall endeavour to appoint the Independent Expert within **7** days of service of the Nomination Notice, or as soon as reasonably practicable thereafter.

7.2.4 the Independent Nominator’s charges for acting as appointing authority shall be in accordance with its schedule of arbitration fees and costs, as in force at the time of the Nomination Notice (the “**Schedule of Costs**”).

7.2.5 prior to appointment, the Independent Expert shall provide the Independent Nominator with a written résumé of his past and present professional positions, shall agree in writing a fee rate conforming to the Schedule of Costs, and shall sign a declaration to the effect that there are no circumstances known to him and likely to give rise to justifiable doubts as to his independence and impartiality.

7.2.6 the Independent Expert shall assume a continuing duty to disclose any such circumstances to the Independent Nominator (if applicable) and the parties to the dispute, if such circumstances should arise after the date of such declaration and before the expert determination is concluded.

7.3 Each party:

7.3.1 will co-operate in doing everything that is reasonably necessary to procure the appointment of any Independent Expert selected either by the written agreement of all parties or by the Independent Nominator;

7.3.2 will not unreasonably refuse to agree the terms of engagement of any Independent Expert selected either by the written agreement of all parties or by the Independent Nominator, provided such terms are reasonable;

7.3.3 may require that those terms include a confidentiality undertaking in a form acceptable to that party (acting reasonably). No confidentiality undertaking will restrict the Independent Expert from disclosing his or her determination,

reasoning or any underlying information or documentation to the other parties to the Qualifying Dispute.

7.4 If, following his or her appointment, the Independent Expert dies or becomes unwilling or incapable of acting, then any party may by written notice request the other(s) to agree to the selection and appointment of a replacement Independent Expert. If the parties have not selected an alternative Independent Expert (by written agreement) and appointed that Independent Expert within **14** days of such notice then the provisions of Clause 7.2 shall apply.

7.5 When used in this Procedure, “appointed” means that all parties have agreed the terms of appointment of the Independent Expert and entered into a written agreement with him in relation to that appointment.

8. Role of an Independent Expert

8.1 The Independent Expert will make his or her determination in writing and will give brief reasons for that decision.

8.2 The Independent Expert will act as expert and not as arbitrator.

8.3 The Independent Expert will not have the power to make any order which would compel any party to a Qualifying Dispute to act in breach of any relevant legislative or regulatory provision or to make any decision which would or might prejudice the solvency of Flood Re on either a balance sheet or a going concern basis.

8.4 The Independent Expert’s determination will, save in the event of fraud or manifest error, be final and binding.

9. Independent Expert Determination Process

9.1 Once an Independent Expert has been appointed, he or she will endeavour to make his or her determination within **28** days of his or her appointment (or such other period as the parties may agree) and in any event as soon as reasonably practical.

9.2 Any party to a Qualifying Dispute will have the right to make written submissions and provide supporting documentation to the Independent Expert, with copies of the same being provided to all other parties, in accordance with the provisions set out in this Clause 9.

9.3 The Independent Expert will direct whether he or she requires an oral hearing. Where the Independent Expert requires an oral hearing and unless otherwise agreed by the parties:

9.3.1 A hearing shall be arranged to take place within **two weeks** of the Independent Expert’s appointment (or, if not possible, as soon as possible thereafter) in order that the Independent Expert may hear the parties’ representations in relation to the Qualifying Dispute.

9.3.2 The disputing parties will submit to the Independent Expert, and exchange with each other, any written submissions and supporting documentation they intend to use or refer to during the hearing, including but not limited to precedents and authorities and any statements, no later than five days prior to the date of the hearing, unless it is jointly agreed that this should take place at an alternative time.

- 9.3.3 Each party shall submit to the Independent Expert, and exchange with each other, any written comments on the written submissions of any other parties and supporting documentation supplied in accordance with Clause 9.3.2 above, no later than three days prior to the date of the hearing, unless it is jointly agreed that this should take place at an alternative time.
- 9.3.4 The disputing parties shall work together in good faith to establish and attempt to agree the relevant facts for each Qualifying Dispute and the issues to be addressed by the Independent Expert, for submission to the Independent Expert by no later than two days prior to the date of the hearing, unless it is jointly agreed that this should take place at an alternative time. Failure to agree the relevant facts or issues to be addressed will not affect the Independent Expert's ability to make his or her determination on the Qualifying Dispute.
- 9.3.5 Save with the agreement of the parties, or in exceptional circumstances as directed by the Independent Expert, oral witness evidence will not be used in the expert determination procedure.
- 9.4 Where the Independent Expert does not require an oral hearing he or she will set down a timetable for the provision of written submissions and supporting documentation such that all submissions and supporting documents (including lists of agreed issues) are received by the Independent Expert within two weeks of the Independent Expert's appointment (or, if not possible, as soon as possible thereafter).
- 9.5 The Independent Expert will be free to make his or her determination whether or not a party or parties comply with the timetable set by him or her, and will be entitled to disregard and not take into account any submissions or documentation provided after the dates specified within such timetable.
- 9.6 Each party will provide the Independent Expert with such information, co-operation and assistance as the Independent Expert may reasonably require.
- 9.7 In the case of dispute between the parties on procedural matters including the timetable, the provision of evidence and the definition of the issues in dispute, the Independent Expert shall decide such matters.
- 9.8 In reaching his or her determination, the Independent Expert is required to take into account the provisions and principles contained in the Qualifying Documents.
- 9.9 In reaching his or her determination, the Independent Expert may also take account of any document, agreement, processes or policies relevant to the subject matter of the Qualifying Dispute, and in reaching a decision will interpret those documents, agreements, process or policies in a manner consistent with the operation and policy of the Scheme in accordance with the Qualifying Documents.
- 9.10 The Independent Expert may on his or her own initiative or at the written request of a party, correct any clerical mistake, error or ambiguity within the determination provided that the initiative is taken or the request is made within 3 days of the notification of his or her determination to the parties. The Independent Expert will make such corrections within 3 days of any such request.
- 9.11 In relation to the parties' costs and expenses:

- 9.11.1 in general, each party will bear its own costs and expenses in relation to the Independent Expert's determination, save that the fees and costs of the Independent Expert and any costs and expenses incurred in relation to his or her appointment (including any fees charged by the Independent Nominator) shall be borne equally by the parties to the Qualifying Dispute;
- 9.11.2 in exceptional circumstances (including where a party had no reasonable basis to argue its position in a Qualifying Dispute) the Independent Expert may direct a party to pay sums due in respect of the parties' costs and expenses incurred in relation to the Independent Expert's determination, including any fees and costs of the Independent Expert or relating to his or her appointed.

10. Miscellaneous

- 10.1 This Procedure, and any final and binding determination of an Independent Expert pursuant to this Procedure, are subject to the jurisdiction of the courts of England and Wales.
- 10.2 Each party will continue to perform its obligations under the Qualifying Document(s) notwithstanding the existence of any Qualifying Dispute, unless and until the parties reach a final and binding negotiated agreement in relation to the Qualifying Dispute (including without limitation its obligation to make any payment, notwithstanding the possibility that following this Procedure the amount of that payment may be adjusted by reimbursement of any overpayment).
- 10.3 Nothing in this Procedure will prevent or delay either party from seeking orders for specific performance of any payment obligation, or of any interim or conservatory relief from the English courts.

ANNEX I

Definitions

In addition to those definitions contained in the body of this Payments Dispute Resolution Procedure, the following definitions will apply:

Act	Water Act 2014
Flood Re Membership Agreement	agreement between Flood Re and Relevant Insurers who are corporate members of Flood Re.
Flood Risk Excess of Loss Reinsurance Treaty	a treaty of reinsurance between Flood Re and a Relevant Insurer.
GWP	<p>amount used to calculate a Relevant Insurer's market share and defined in the Regulations as:</p> <p>means the aggregate sterling amount paid or payable by, or on behalf of, policyholders for the relevant risk element of home insurance, before the deduction of any amount (including commission), but after the deduction of insurance premium tax;</p> <p>a Relevant Insurer's gross written premium must be increased by the amount of any gross written premium paid or payable for the relevant preceding calendar year for "transferred home insurance";</p> <p>"transferred home insurance" means the rights and liabilities arising out of, or in connection with, home insurance, where the home insurance –</p> <ul style="list-style-type: none">(a) formed the whole, or part, of an insurance business carried on by a person ("A"),(b) the insurance business, or that part, has been transferred to, or has otherwise vested in, the Relevant Insurer in the preceding calendar year, and(c) A is not a Relevant Insurer on the date on which the levy is due under regulation 9(1) or (2) of the Regulations. <p>when calculating a Relevant Insurer's gross written premium, home insurance shall be taken to cover only the relevant risk element unless the contrary is shown by the Relevant Insurer to the reasonable satisfaction of FR Scheme Administrator</p>

Independent Expert	an independent expert fulfilling the criteria in Clause 6 of this Procedure
Payments	Type A and Type B payments
the Regulations	the Flood Reinsurance Scheme Funding and Administration Regulations 2015
Relevant Insurer	<p>an insurer who is liable to pay Type A and Type B payments and is defined the Regulations as:</p> <p>means an insurer who, as at any date during the initial period or during any subsequent financial year -</p> <p>(a)(i) effected any home insurance at any time in the period of 12 months immediately preceding the first day of the initial period or financial year; and</p> <p>(ii) is authorised for the purposes of the Financial Services and Markets Act 2000 to effect and carry out home insurance on the first day of the initial period or financial year; or</p> <p>(b) is a member of the Society (within the meaning of the Lloyd's Act 1982) and, as such a member –</p> <p>(i) effected any home insurance at any time during the period of 12 months immediately preceding the first day of the initial period or financial year; and</p> <p>(ii) on the first day of the initial period or financial year, intends to effect further home insurance in the initial period or financial year.</p> <p>For the purposes of paragraph (b), an insurer who falls within paragraph (b)(i) shall be taken to fall within paragraph (b)(ii) unless the contrary is shown by the insurer to the reasonable satisfaction of the FR Scheme administrator</p>
Scheme Document	scheme document dated 16 March 2015, being the scheme referred to in section 64(1) of the Water Act 2014 and the Flood Reinsurance Scheme and Scheme Administrator Designation Regulations 2015
Type A payment	(also known as Levy 1) a payment made or due to be made by a Relevant Insurer in accordance with section 66(1)(a) of the Water Act and regulations 8 and 9 of the Regulations which shall be a levy
Type B payment	(also known as Levy 2) a payment made or due to be made by a Relevant Insurer in accordance with section 66(1)(b) of the Water Act and regulations 10 and 11 of the Regulations which shall be a levy or a contribution