

In the Royal Court of Jersey

Samedi Division

2020/037

In the year two thousand and twenty, the twenty-second day of June.

Before Robert James MacRae, Esquire, Deputy Bailiff of Jersey, assisted by Jurats Anthony John Olsen and Robert Anthony Christensen M.B.E.

IN THE MATTER OF THE REPRESENTATION OF SUNDERLAND MARINE INSURANCE COMPANY LIMITED AND THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED
AND IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 27 OF AND SCHEDULE 2 TO THE INSURANCE BUSINESS (JERSEY) LAW 1996

Sunderland Marine Insurance Company Limited and The North of England Protecting and Indemnity Association Limited (hereinafter “the Representors”) presented to the Court a Representation in the following terms:

Purpose of the Representation

1. The purpose of this Representation is to seek directions from and the sanction of the Royal Court in relation to a proposed scheme (Jersey Scheme) for the transfer to The North of England Protecting and Indemnity Association Limited (Transferee) of the whole of the general insurance business (as described in Part 2 of Schedule 1 to the Insurance Business (Jersey) Law 1996 (Insurance Law)) carried on in or from within Jersey (Jersey Business) by Sunderland Marine Insurance Company Limited (Transferor).
2. A copy of the Jersey Scheme is attached to this Representation. The Jersey Scheme is supplemental to an insurance business transfer scheme under Part VII of the Financial Services and Markets Act 2000 (UK Scheme) pursuant to which it is intended to transfer the whole of the general insurance business of the Transferor to the Transferee subject to the approval of the High Court of Justice of England and Wales (High Court). On 18th February, 2020, the Transferee filed an application with the High Court for sanction of the UK Scheme. The terms of the Jersey Scheme are

substantially the same as the terms of the UK Scheme, save that the Jersey Scheme is conditional on the sanction of the UK Scheme by the High Court.

Interpretation

3. Words and expressions used in this Representation which are defined in the Jersey Scheme shall bear the same meanings herein, save where they are expressly defined herein or unless the context otherwise requires.

Introduction

4. The Transferor was incorporated under the Companies Act 1862 in England and Wales on 17th February, 1882, with registered number 00016432 and having its registered office at The Quayside, Newcastle upon Tyne, NE1 3DU. The Transferor is a wholly owned subsidiary of the Transferee.
5. The Transferee was incorporated under the Companies Act 1948 in England and Wales on 13th March, 1952, as a company limited by guarantee having previously been registered pursuant to the Companies Acts 1862 to 1883 as an unlimited company on 17th February, 1886, with registered number 00505456 and having its registered office at The Quayside, Newcastle upon Tyne, NE1 3DU. The Transferee is the ultimate parent company of the North group.
6. The Transferor holds a Category A permit as defined in Article 5(2) of the Insurance Law. It has permission, *inter alia*, to effect and carry out contracts of general insurance under classes of general business 01, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17, as set out in Part 2 of Schedule 1 to the Insurance Law.
7. The Transferee holds a Category A permit as defined in Article 5(2) of the Insurance Law. It has permission, *inter alia*, to effect and carry out contracts of general insurance under classes of general business 01, 04, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17, as set out in Part 2 of Schedule 1 to the Insurance Law.

The purpose of the Jersey Scheme

8. The purpose of the Jersey Scheme is to complete the legal transfer which is envisaged by the UK Scheme of the whole of the general insurance business of the Transferor to the Transferee by the transfer of the Jersey Business.

Independent Actuary's Report

9. Pursuant to paragraph 3 of Schedule 2 to the Insurance Law, an independent actuary (Independent Actuary), Mr Derek Newton of Milliman LLP, has been appointed to prepare a report in relation to the UK Scheme and the Jersey Scheme (Independent Actuary's Report). The Independent Actuary's Report specifically addresses the Jersey Scheme and the interests of Jersey policyholders.
10. The Independent Actuary concludes, in summary, that:

- 10.1 the security of benefits to policyholders of the Transferor and the Transferee will not be materially adversely affected by the implementation of the Jersey Scheme; and
- 10.2 the Jersey Scheme will not have an impact on service standards experienced by policyholders of the Transferor or the existing policyholders of the Transferee.

Circular to Policyholders and Notices

11. A notice of the presentation of this Representation complying with the provisions of paragraph 4(a) of Schedule 2 to the Insurance Law will be published in the Jersey Gazette.
12. Subject to the directions of the Court, it is intended that a notification (Jersey Notification) will be sent to each of the holders of policies in relation to the Jersey Business (Jersey Policyholders) in accordance with the proposed approach to notification as set out at paragraphs 29 to 31 of the Affidavit of Mr Edward John Davies sworn on 26th February, 2020, (Davies Affidavit).
13. In accordance with the provisions of paragraph 4(c) of Schedule 2 to the Insurance Law, a copy of the Representation, the Independent Actuary's Report and a copy of the Jersey Notification (itself enclosing a summary of the Independent Actuary's Report) will be served on the Jersey Financial Services Commission (JFSC) at least 21 days before the hearing seeking sanction of the Jersey Scheme.
14. In accordance with the provisions of paragraphs 4(d) and 5 of Schedule 2 to the Insurance Law, copies of the Representation and the Independent Actuary's Report will be open to inspection at the offices of Appleby (Jersey) LLP, 13-14 Esplanade, St Helier, Jersey for a period of 21 days after publication of the notice referred to in paragraph 11 above.
15. It is not proposed that a Jersey Notification will be sent to all policyholders of the Transferor or the Transferee, as referred to in paragraph 30 of the Davies Affidavit. The Representor therefore seeks a dispensation from the requirements of paragraph 4(b) of Schedule 2 to the Insurance Law.
16. Furthermore, it is not proposed that a Jersey Notification will be sent by post to each of the members of the Transferor and of the Transferee for the reasons set out at paragraph 31 of the Davies Affidavit. The Representor therefore seeks a dispensation from the requirements of paragraph 4(b) of Schedule 2 to the Insurance Law.

Dispensation

17. The provisions of paragraph 4(b) of Schedule 2 to the Insurance Law require that, except where the Court has otherwise directed, a statement (Paragraph 4(b) Statement) setting out the terms of the Jersey Scheme and containing a summary of

the Independent Actuary's Report be sent to every policyholder and every member of each of the Transferor and the Transferee.

18. The Representor seeks directions from the Court dispensing with certain of the requirements of the Paragraph 4(b) Statement and in particular the requirement for the Paragraph 4(b) Statement to:

18.1 set out the terms of the Jersey Scheme;

18.2 be sent to every policyholder of the Transferor and the Transferee; and

18.3 be sent to every member of the Transferor and the Transferee.

19. The grounds upon which the Representor seeks dispensation are set out at paragraphs 29 to 31 of the Davies Affidavit.

WHEREFORE THE REPRESENTORS PRAY THAT THIS HONOURABLE COURT DO MAKE THE FOLLOWING ORDERS:

- (a) THAT pursuant to paragraph 4(a) of the Second Schedule to the Insurance Law, the Representors shall cause to be published in the Jersey Gazette a notice in substantially the form annexed to the draft Order;
- (b) THAT the Representors shall cause to be sent, in accordance with the Representors' proposed approach to circularisation as set out in the Davies Affidavit sworn in support of this application, to Jersey Policyholders of the Transferor, a letter summarising the terms of the Jersey Scheme and enclosing a summary of the Independent Actuary's Report (such documents to be in substantially the same terms as the drafts annexed to the draft Order);
- (c) THAT pursuant to paragraph 4(c) of the Second Schedule to the Insurance Law, the Representors shall serve a copy of this Representation, a copy of the Independent Actuary's Report and a copy of the documents referred to in paragraph (b) above on the JFSC;
- (d) THAT service of a statement as required by paragraph 4(b) of Schedule 2 to the Insurance Law upon each of the policyholders of the Transferor and the Transferee and to every member of each of the Transferor and the Transferee be dispensed with;
- (e) THAT pursuant to paragraph 4(d) of the Second Schedule to the Insurance Law, the Representors shall make available for inspection at the offices of Appleby (Jersey) LLP at 13-14 Esplanade, St Helier, Jersey JE1 1BD copies of this Representation and the Independent Actuary's Report;
- (f) THAT further consideration of the Representation be adjourned to a hearing at 09:00am on 22nd June, 2020;

- (g) THAT at the substantive hearing of the Representation at 09:00am on 22nd June, 2020, an Order be made pursuant to Schedule 2 of the Insurance Law sanctioning the Jersey Scheme;
- (h) THAT the Representors shall within ten days from the date of such Order referred to in paragraph (d) above, or such longer period of time as the JFSC may allow, deposit two office copies of such Order with the JFSC; and
- (i) THAT such other Orders be made as this Honourable Court shall deem appropriate.

And whereas on the 3rd March, 2020, as appears by Act of Court that day, upon reading the said Representation and hearing the Advocate on behalf of the Representors, and upon the Advocate for the Representors undertaking to confirm to the Court that the Summary of the Scheme and the Independent Actuary's Report to be sent to policyholders has been approved by the Independent Actuary, the Court ordered that:-

1. pursuant to paragraph 4(a) of the Second Schedule to the Insurance Business (Jersey) Law 1996 (Insurance Law), the Representors shall cause to be published in the Jersey Gazette a notice in substantially the same form annexed to this Order and approved by the Court;
2. the Representors shall cause to be sent to the Jersey Policyholders of the Transferor (as defined in the Representation), a letter summarising the terms of the Jersey Scheme enclosing a summary of the Independent Actuary's Report (as defined in the Representation), such documents to be substantially in the form as amended and approved by the Court and annexed to this Order;
3. save as provided in paragraph 2 above, the requirements of paragraph 4(b) of the Second Schedule to the Insurance Law are dispensed with;
4. pursuant to paragraph 4(c) of the Second Schedule to the Insurance Law, the Representors shall serve a copy of the Representation, a copy of the Independent Actuary's Report and a copy of the documents referred to in paragraph 2 above on the Jersey Financial Services Commission;
5. pursuant to paragraph 4(d) of the Second Schedule to the Insurance Law, the Representors shall make available for inspection at the offices of Appleby (Jersey) LLP at 13-14 Esplanade, St Helier, Jersey JE1 1BD copies of the Representation and the Independent Actuary's Report;
6. further consideration of the Representation shall be adjourned to a hearing at 9:00a.m. on the 22nd June, 2020; and
7. there shall be liberty to apply.

Now this day, upon hearing the advocate on behalf of the Representors and upon reading an email from the Jersey Financial Services Commission dated the 19th June, 2020,

the Court ordered that:-

1. pursuant to Article 27 of and Schedule 2 to the Insurance Business (Jersey) Law 1996, the scheme (in the form annexed hereto) (Scheme) to transfer the Jersey general insurance business of Sunderland Marine Insurance Company Limited to The North of England Protecting and Indemnity Association Limited be and is hereby sanctioned;
2. the transfer of business as set out in the Scheme shall, without further Order, have effect from the Jersey Effective Date as defined in the Scheme;
3. the Representors shall within seven days of the date hereof, or such longer period of time as JFSC may allow, deposit two office copies of this Order with the JFSC; and
4. there be liberty to apply.



Greffier Substitute

Appleby (MC) x 3

**IN THE ROYAL COURT OF JERSEY
(Samedi Division)**

**IN THE MATTER OF THE TRANSFER OF INSURANCE BUSINESS BY
SUNDERLAND MARINE INSURANCE COMPANY LIMITED**

to

**THE NORTH OF ENGLAND PROTECTING AND INDEMNITY ASSOCIATION LIMITED
(Pursuant to ARTICLE 27 of, and SCHEDULE 2 to, THE INSURANCE BUSINESS (JERSEY)
LAW 1996)**

SCHEME OF TRANSFER

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1. INTRODUCTION

1.1 Interpretation

The definitions and other provisions relating to interpretation set out in Schedule 1 apply throughout this Jersey Scheme, including the schedule.

1.2 Parties to the Scheme

- (a) Sunderland Marine Insurance Company Limited (**Transferor**) is a company incorporated in England and Wales with registered number 00016432 and having its registered office at The Quayside, Newcastle-upon-Tyne, NE1 3DU. The Transferor has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part 1 of Schedule 1 to the RAO.
- (b) The Transferor holds a Category A permit as defined under Article 5(2) of the Law with permissions, *inter alia*, to carry out contracts of general insurance in Jersey under classes of general business 01, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17 as defined in Part 2 of Schedule 1 to the Law.
- (c) The Transferor carries on general insurance business in the United Kingdom and in or from within Jersey (amongst other places).
- (d) The North of England Protecting and Indemnity Association Limited (**Transferee** and together with the Transferor, the **Applicants**) is a company incorporated in England and Wales with registered number 00505456 and having its registered office at The Quayside, Newcastle-upon-Tyne, NE1 3DU. The Transferee has a Part 4A permission under FSMA to carry on General Business in the United Kingdom in classes 1, 4, 5, 6, 7, 8, 9, 11, 12, 13, 15, 16 and 17 as set out in Part 1 of Schedule 1 to the RAO.
- (e) The Transferee holds a Category A permit as defined under Article 5(2) of the Law with permissions, *inter alia*, to carry out contracts of general insurance in Jersey under classes of general business 01, 04, 05, 06, 07, 08, 09, 11, 12, 13, 15, 16 and 17 as defined in Part 2 of Schedule 1 to the Law.
- (f) The Transferor is a wholly-owned subsidiary of the Transferee.

1.3 Jersey Transferring Business

- (a) The Transferor carries out general insurance business in Jersey, amongst other places.
- (b) The Transferring Jersey Business comprises the whole of the insurance business effected and/or carried out by the Transferor in or from within Jersey.
- (c) It is proposed that the Transferring Jersey Business be transferred to the Transferee in accordance with this Jersey Scheme and that an order be sought for the sanction of this Jersey Scheme.

1.4 **Court Sanction**

Each of the Transferor and the Transferee have agreed to be represented by Counsel on the hearing of the application to sanction this Jersey Scheme and have undertaken to be bound by this Jersey Scheme and to do all such acts and things as may be necessary or expedient to be executed or done by them for the purposes of giving effect to this Jersey Scheme.

2. **TRANSFER OF BUSINESS BY INCORPORATION OF THE UK SCHEME**

2.1 The terms of the UK Scheme shall apply to the Transferring Jersey Assets, Transferring Jersey Business, Transferring Jersey Liabilities and Transferring Jersey Policies in the same manner as they apply to the Transferred Assets, Transferred Business, Transferred Liabilities and Transferred Policies and (save to the extent inconsistent with any of the provisions of this Jersey Scheme) the terms of the UK Scheme (subject to the excluded paragraphs of the UK Scheme set out at paragraph 2.2 of this Jersey Scheme) shall be incorporated in and to and shall form part of this Jersey Scheme as if reproduced herein, *mutatis mutandis*. For this purpose, the following definitions of the UK Scheme shall be read and construed as follows:

- (a) Business shall be read as Transferring Jersey Business;
- (b) Court shall be read as Royal Court;
- (c) Effective Date shall be read as the Jersey Effective Date;
- (d) Order shall be read as the Jersey Order;
- (e) Scheme shall be read as the Jersey Scheme;
- (f) Transferred Assets shall be read as Transferring Jersey Assets;
- (g) Transferred Liabilities shall be read as Transferring Jersey Liabilities; and
- (h) Transferred Policies shall be read as Transferring Jersey Policies.

2.2 Paragraphs 11 (*Effective Date*), 14 (*Modifications or Additions*) and 15 (*Third party rights and governing law*) of the UK Scheme shall not form part of and shall not be incorporated into this Jersey Scheme.

2.3 This Jersey Scheme is ancillary to the UK Scheme. Nothing in this Jersey Scheme shall operate so as to prevent or conflict with any transfer provided for by the UK Scheme.

3. **JERSEY EFFECTIVE DATE**

3.1 This Jersey Scheme shall become effective, and the Jersey Effective Date shall occur simultaneously with the UK Scheme becoming effective in accordance with its terms.

3.2 If the Transferor and the Transferee agree that this Jersey Scheme should become effective after 00:00 BST on 30 June 2020, the Transferor and the Transferee must apply

to the Court for a further order, specifying any time and date after 00:00 GMT on 30 June 2020 which, subject to the consent of the Court, shall then become the Jersey Effective Date for the purposes of this Jersey Scheme and this Jersey Scheme shall then become operative on and from the time and date so specified, provided that:

- (a) the JFSC shall be notified in advance and as soon as reasonably practicable, and shall have the right to be heard at any hearing of the Court at which such application is considered;
- (b) such application shall be accompanied by a supplemental report from the Independent Expert to the effect that the proposed amendment will not materially adversely affect the security of benefits of holders of the Transferring Jersey Policies and such supplemental report shall be published on the websites of the Transferor and the Transferee within five days of such application; and
- (c) a notice of the making of such further order is published on the websites of the Transferor and the Transferee within five days of the making of such further order.

3.3 If this Jersey Scheme shall not have become effective on or before GMT 00:00 on 30 June 2020 or such later date, if any, as each of the Transferor and the Transferee may agree and the Court may approve), the provisions of this Jersey Scheme shall lapse.

3.4 This Jersey Scheme shall not become effective on the Jersey Effective Date unless on or prior thereto the Jersey Order shall have been made.

4. MODIFICATIONS OR ALTERATIONS

4.1 The Transferor and the Transferee may, as required, consent for and on behalf of the parties hereto and all other persons concerned to any modification of or addition to this Jersey Scheme or to any further condition or provision affecting the same which, prior to its sanction of this Jersey Scheme, the Court may approve or impose.

4.2 Subject to clause 4.3, at any time after the sanction of this Jersey Scheme, the Transferee and, if in existence at the relevant time, the Transferor, shall be at liberty to apply to the Court for consent to amend this Jersey Scheme, provided that in any such case:

- (a) the JFSC shall be notified in advance and not less than 21 days from the date the JFSC acknowledges such notice of a proposed change must elapse prior to any hearing of the Court at which such application is considered and the JFSC shall have the right to be heard at such hearing; and
- (b) such application shall be accompanied by a certificate (supported by a report which has been prepared on the basis of the most recent available financial information) from an independent actuary to the effect that in his opinion the proposed amendment will not:
 - (i) adversely affect the persons who were holders of policies issued by the Transferee immediately prior to the Effective Date; or

- (ii) adversely affect the persons who were holders of the Transferring Jersey Policies.

If such consent is granted by the Court, the Transferee may amend the terms of this Jersey Scheme in accordance with such consent.

- 4.3 The consent of the Court shall not be required in relation to minor and/or technical amendments to the terms of this Jersey Scheme (including amendments to correct manifest errors and/or to reflect changes required by law or regulation, including changes in generally accepted actuarial practice and/or minor or technical amendments) that are agreed by the Transferor and the Transferee, provided that the JFSC has been notified of the same and has either (i) indicated within that it does not object thereto; or (ii) a period of 21 days has passed commencing on the date of receipt of the notification by the JFSC without the JFSC indicating any objection thereto.

5. SUCCESSORS AND ASSIGNS

This Jersey Scheme will bind and enure to the benefit of the successors and assigns of each of the Transferee and the Transferor.

6. GOVERNING LAW

This Jersey Scheme shall be governed by and construed in accordance with Jersey law.

SCHEDULE 1 Interpretation

1. In this Jersey Scheme, unless inconsistent with the subject or context, the following expressions bear the meanings respectively set opposite them:

Court	means the Royal Court of Jersey.
FSMA	means the Financial Services and Markets Act 2000.
Jersey Effective Date	means the date upon which this Jersey Scheme becomes effective in accordance with its terms.
Jersey Order	means an order made by the Royal Court pursuant to Schedule 2 to the Law and/or Article 27 of the Law sanctioning this Jersey Scheme and any order (including any subsequent order) in relation to this Jersey Scheme made by the Royal Court pursuant to the Law.
JFSC	means the Jersey Financial Services Commission.
Law	means the Insurance Business (Jersey) Law 1996.
Transferring Jersey Assets	means any and all property of the Transferor comprised in or attributable to the Transferring Jersey Business as at the Effective Date including (without prejudice to the generality of the foregoing): (a) the rights, benefits and powers of the Transferor under or by virtue of the Transferring Jersey Policies; and (b) all rights and claims (in contemplation, present or future, actual or contingent) against any third party in relation to the Transferring Jersey Business or arising as a result of the Transferor having carried on the Transferring Jersey Business.
Transferring Jersey Business	means the whole of the general insurance business effected and/or carried out by the Transferor in or from within Jersey immediately prior to the Jersey Effective Date including without limitation, all rights, benefits and powers of the Transferor under or by virtue of the Transferring Jersey Policies and the Transferring Jersey Assets and all liabilities and obligations of the Transferor under or by virtue of the Transferring Jersey Liabilities.

Transferring Jersey Liabilities

means any and all liabilities whatsoever of the Transferor comprised or attributable to the Transferring Jersey Business or otherwise arising in connection with or in relation to the carrying on of the Transferring Jersey Business as at the Jersey Effective Date including (without prejudice to the generality of the foregoing):

- (a) all liabilities arising from, under or in connection with the Transferring Jersey Policies;
- (b) all liabilities arising under or in connection with lapsed, surrendered, expired and reinstated policies written and/or assumed by or on behalf of the Transferor;
- (c) all liabilities in connection with quotations made by or on behalf of the Transferor which were not proceeded with and/or which did not become policies of insurance for any reason whatsoever (including due to an administrative or proceeding error); and
- (d) all liabilities for damages (including compensatory, consequential, exemplary, punitive, bad faith or similar or other damages) which relate to the marketing, sale, underwriting, issuance, delivery, cancellation or administration of any Transferring Jersey Policy including (without limitation); (1) any amount in respect of interest arising in connection thereto or in connection with any payment made in respect thereof; (2) any amount in respect of any additional liability or an increase in liability to taxation of a policyholder or former policyholder when compared to that person's liability to taxation if the event or series of events giving rise to the relevant damages had not occurred; and (3) any liability arising out of or relating to any alleged or actual act, error or omission by the Transferor or its agents, whether intentional or otherwise, with respect to any such Transferring Jersey Policy including:
 - (i) any alleged or actual reckless conduct

or bad faith in connection with the handling of any claim arising out of or under such Transferring Jersey Policy; or

- (ii) the marketing, sale, underwriting, issuance, delivery, cancellation or administration of such Transferred Jersey Policy.

Transferring Jersey Policies means all policies (including all constituent parts of a policy) written by the Transferor prior to the Jersey Effective Date comprised in the Transferring Jersey Business together with all proposals for insurance received by or on behalf of the Transferee prior to the Jersey Effective Date but which are subsequently underwritten and which form part of the Transferring Jersey Business.

UK Scheme means the insurance business transfer scheme pursuant to Part VII of the FSMA for, amongst other things, the transfer of the UK insurance business of the Transferor.

2. In this Jersey Scheme, unless the subject or context requires otherwise:
 - (a) words and expressions defined in the UK Scheme shall have the same meanings as are given to them in the UK Scheme; and
 - (b) expressions used in this Jersey Scheme which have meanings under the Insurance Business Law shall bear those meanings.
3. Without prejudice to the generality of paragraph 2.1 of this Jersey Scheme, the principles of interpretation set out in clause 1.2 of the UK Scheme shall be incorporated by reference into and shall form part of this Jersey Scheme as if reproduced herein, *mutatis mutandis*.

