

**Value for Money Guidelines
for
UK law firms & their overseas offices**

1. Introduction

1.1 **“Value for Money”** (“VfM”) means establishing and achieving the **Most Likely Outcome** (“MLO” - see Paragraph 8) by

- Deciding the **key issues** through obtaining and assessing the **appropriate** facts and information
- Deciding upon the **most efficient strategy and tactics**
- Setting a realistic costs **budget proportional** to the sums in dispute
- Agreeing the MLO, the costs’ budget and the strategy with the Club and Member, and **managing expectations**
- **Pro-actively managing** the case as well as costs, resources and timetables
- Having **“No Surprises”**

1.2 The Members / clients of the Clubs / businesses managed by Thomas Miller look for a consistent and high level of service. We aim not only to meet, but consistently to exceed Members’ expectations. You have a key role in this.

“Member” includes any insured / client of a business managed by us. “Club” includes any insurance business managed by us. Where the instructions are received on behalf of one of our businesses for itself, these Guidelines should be interpreted accordingly.

1.3 Your partners and staff are experienced people which is the reason we appoint you. We expect you to show initiative, forward thinking and creativity as well as deploying good commercial judgement. With this in mind we recognise that it may not always be appropriate to follow these Guidelines precisely. We expect you to take responsibility for the cases that you are handling and we look for good communication and interpersonal skills combined with efficient running of each case.

1.4 Nevertheless, while every case is unique, there are many similarities which exist throughout different categories of cases, and there should be consistency of overall approach to each case as outlined in these Guidelines: they may be departed from but only for good reason.

1.5 Although these Guidelines focus primarily on those matters where you are instructed to handle a claim fully, you should use them as is appropriate on matters where you receive limited instructions e.g. to provide advice on quantum.

1.6 You should ensure that each fee-earner working on our files

1.6.1 is aware of the nature of the business relationship between you and us and the key terms of the Relationship Agreement.

1.6.2 has a copy of these Guidelines and fully understands them.

1.6.3 has a working knowledge of our relevant businesses and that of any Member for whom you regularly act.

1.7 If you need assistance in training your staff, please contact the **Thomas Miller Group Director of Professional Suppliers** (“Thomas Miller GDPS”). Otherwise the costs of briefing / training your staff are to be borne by you.

1.8 These Guidelines are based on work that was carried out between us and a number of law firms in 2002. They have been simplified, and updated in 2008. There are separate Billing Guidelines.

2. People working on our files

- 2.1 The **Thomas Miller Claims Executive** is the nominated Claims Executive on each file who has overall responsibility for management of the case, liaising with the Member, coordinating the resources and achieving the MLO.
- 2.2 The Thomas Miller GDPS will each year approve with your Relationship Manager the fee-earners (and their hourly rates) in your firm (including assistants, marine managers, legal managers and trainees) who may be instructed by Thomas Miller Claims Executives. A fee-earner whose hourly rate changes or who is promoted needs to be reapproved for use at his/her new level. See Paragraph 2.10 of the Billing Guidelines.
- 2.3 With the agreement of the Thomas Miller GDPS new fee earners may be added during the year. In respect of all fee-earners, you will be required to provide certain background information about their specialisms etc.
- 2.4 The Thomas Miller Claims Executive will appoint the **Case Lawyer** on a new case from those approved pursuant to Paragraph 2.2. The Case Lawyer need not be a Partner, provided that the Case Lawyer has agreed with the Thomas Miller Claims Executive, who is the Partner responsible for supervising the Case Lawyer.
- 2.5 The Case Lawyer will agree with the Thomas Miller Claims Executive who else may work on the case - selected from those approved under Paragraph 2.2.
- 2.6 The Case Lawyer is responsible to the Member and the Thomas Miller Claims Executive for:
- 2.6.1 the management of the legal aspects of the case, (including other suppliers appointed by the Case Lawyer);
 - 2.6.2 achieving the MLO;**
 - 2.6.3 ensuring “No surprises” especially from changes to the MLO and the costs;**
 - 2.6.4 keeping the Thomas Miller Claims Executive and the Member advised, preferably in advance, of every significant step in the handling of the case to be undertaken by you, or any other external expert instructed or retained by you.
- 2.7 If any fee-earner's workload becomes too great or they become ill or cease to be employed by you, you are immediately to discuss with the Thomas Miller Claims Executive(s) transferring the files to another fee-earner. It may also be appropriate to involve the Thomas Miller GDPS. A Thomas Miller Claims Executive also may, with good reason and reasonable notice, require you to substitute a fee-earner working on a case with another fee-earner of the same level.

3. Other suppliers

- 3.1 If you appoint other suppliers, e.g. counsel or experts:
- 3.1.1 Whenever possible, the Thomas Miller Claims Executive is to be consulted about whom to appoint and for what purpose and should give his / her (preferably prior) approval to the appointment.
 - 3.1.2 Instructions given to them should be clear and set out what is required and by when.
 - 3.1.3 A copy of these Guidelines is to be given to them and you should try to ensure that they are followed, insofar as they are relevant (note that we may in due course issue separate guidelines for other types of supplier). If the Case Lawyer feels that a supplier is not following the Guidelines satisfactorily, he / she should discuss with the Thomas Miller Claims Executive what action should be taken.
- 3.2 In due course, we expect to have agreements in place with a number of experts and chambers and our preference will normally be for you to instruct such experts or the Counsel in such chambers.
- 3.3 In general you are expected to make appropriate use of Counsel - including, as a method of cost control.

4. The Member

- 4.1 In many matters the Member is your client and, accordingly, you owe your principal professional obligations and responsibilities direct to the Member. In addition, the Club is potentially liable for the costs and the reimbursement of the claim - subject to the Member's terms of cover (except in the case of the Defence Club where the claim is the responsibility of the Member) - and as such you owe certain duties and obligations to the Club.
- 4.2 We would expect to see all communications between you and the Member just as we would expect to share all communications between you and ourselves with the Member. If a Member wishes to see communications between us and external suppliers, we have no objection to that and, equally, we would wish to have available to the Thomas Miller Claims Executive all material communications between all external suppliers (including you) with other members of the team or direct with the Member. Suppliers will also be entitled and expected to comply with any professional obligation to keep Members informed of the progress of their cases.
- 4.3 Management of expectations is a key role both for the Case Lawyer and the Thomas Miller Claims Executive; it is essential therefore that you understand the needs and expectations of the Member. To ensure that the Member's legitimate expectations are properly managed, you should avoid giving recommendations and advice that lack commercial reality.
- 4.4 If there is an inconsistency or a lack of openness that cannot be resolved by discussion (for example a Member instructing a law firm not to send copies of material documents to the Club) a potential conflict may have arisen which will need to be addressed through your Relationship Manager and the Thomas Miller GDPS. It is the responsibility of the Thomas Miller Claims Executive and the Case Lawyer to raise any such issues as soon as they perceive a problem.
- 4.5 Conflicts can arise which might mean that you have to cease all involvement in the case on behalf of the Club. In the event of such conflict you should continue thereafter solely to represent the Member, whilst a different law firm will be instructed on behalf of the Club.

5. Case Management

5.1 General

The Thomas Miller Claims Executive and the Case Lawyer are responsible for working collaboratively to achieve the MLO through:

- 5.1.1 Collecting and investigating only **appropriate** facts and issues, which are likely to be relevant.
- 5.1.2 Regularly re-assessing the MLO, tactics and strategies in the light of new facts and issues.
- 5.1.3 Project managing the case in accordance with the agreed strategy, by ensuring as much as possible that:
- Only those steps are taken which are necessary, appropriate and potentially add value.
 - Appropriate deadlines are put in place and all steps are taken in accordance with those deadlines.
 - Budgets are agreed and maintained with invoices in line with the budget ("No Surprises").
 - Appropriate resources are involved, or available, and perform in accordance with their defined role and expectations of them.
- 5.1.4 Being aware of the many factors which can inhibit, delay or derail the successful conclusion of a case, and maintaining constant vigilance to avoid or prevent, wherever possible, those factors having an adverse effect on successful resolution of the case.
- 5.1.5 Creating and / or taking opportunities to settle the case below or in line with the MLO.
- 5.1.6 Maximising all opportunities to recover monies from third parties and to minimise payments out to third parties.

5.2 *Communications*

- 5.2.1 All written communications should be by e-mail where possible.
- 5.2.2 They should be succinct, clear, and be easily understood by the recipient(s) - information overload is to be avoided; reading a communication incurs costs. Circulation of correspondence which adds no value or which is not material should be avoided.
- 5.2.3 Each written communication including e-mail should include
- o All recipients' references
 - o The name of the ship / case and its description
 - o The names of the recipients
 - o Clear headings
 - o An executive summary for lengthy letters covering:
 - The reason for the communication
 - A brief summary of any new facts
 - Your positive and reasoned recommendations
 - Any actions required, by whom and by when, particularly the next action
 - Any recommendation for changes to the MLO / budgets
- 5.2.4 You should be aware that all our claims documents are stored electronically in our OASIS claims handling system. Therefore we strongly encourage you to scan documents (in preference to photocopying – otherwise we have to do it) and send them to us and the Member by e-mail. We can receive e-mails of unlimited size but if you wish to send us several large documents at the same time, please put each one in a separate e-mail with the document title in the heading and our claims file details including our reference in the body of the e-mail (this is important as our incoming our e-mails are automatically filed provided they contain our full reference). Note: Original documents should usually be retained by you or the Member.

5.3 *Meetings*

- 5.3.1 Meetings (or conference calls) can add real value, and are therefore to be encouraged when there are a number of material issues to be resolved, reviewed or decided and telephone or email will be less effective for achieving this.
- 5.3.2 The time spent and cost involved should be proportionate and appropriate to the case and the strategy.
- 5.3.3 Where appropriate, there should be a pre-agreed agenda and minutes should be produced with an executive summary as in Paragraph 5.2.3.

5.4 *Actions & dates*

- 5.4.1 Whenever any major activity takes place on an ongoing case, a date for the next activity, or alternatively a review date, should always be agreed upon, and this should be confirmed in correspondence.
- 5.4.2 Action dates should be adhered to by you and us. It is perfectly acceptable for your staff to prompt us into action or to remind us of actions that we should be carrying out.
- 5.4.3 If a timescale is unrealistic, this should be resolved as early as possible.
- 5.4.4 Issues arising out of time bars should be discussed and acted on in good time - ensuring timely action is **your** responsibility, unless clearly agreed otherwise.

5.5 *Travel - Safety*

- 5.5.1 If the Thomas Miller Claims Executive requests you to travel or you recommend that you do so, you must:
- o satisfy yourself that the planned travel does not constitute a threat to the traveller's health, safety and welfare and in case of any doubt should seek advice from appropriate sources
 - o follow the advice received, e.g.

- a. obtain all or any recommended vaccinations, inoculations and medication (the reasonable costs of which may be claimed as an expense);
- b. restrict the scope or itinerary of the trip in order to avoid areas of concern;
- o discuss any concerns that you may have with the Thomas Miller Claims Executive.

5.5.2 Ultimately it is your responsibility to decide whether your traveller should go or not.

6. Instructions

- 6.1 Where possible the Thomas Miller Claims Executive will phone the chosen Case Lawyer to confirm he can act and to enable the Case Lawyer to verify that you have no conflict of interest - if the Thomas Miller Claims Executive or the Member has not made it clear in respect of what entity(ies) you are instructed, you should seek clarification. The Case Lawyer will also be expected to comply with any professional obligation to ensure that the Member agrees with instructions given on their behalf.
- 6.2 When the Case Lawyer is first instructed on a new case, the Thomas Miller Claims Executive must give / confirm instructions in writing (with a copy to the Member) in the form set out in Appendix A. The Case Lawyer is to chase for them if not received. If any documentation attached is not in a satisfactory state you should ask the Thomas Miller Claims Executive to put it in good order.
- 6.3 On receipt of each new instruction from a Thomas Miller Claims Executive, the Case Lawyer is to
- 6.3.1 carry out any necessary money laundering checks (or other compliance checks) that you wish to make (you may not rely on the fact that Thomas Miller or any Club managed by it may have undertaken checks on a Member);
 - 6.3.2 ensure that you understand the scope of your instructions - except in an emergency it is not acceptable to accept broad instructions "to do all that is necessary" or "please advise"- further clarification should be sought;
 - 6.3.3 consider and agree with the Thomas Miller Claims Executive who else must be involved in order to comply with any legislation or code of practice;
 - 6.3.4 unless otherwise agreed, within a maximum of no more than three working days (possibly less) of receipt send (with a copy to the Member) a Confirmation of Instructions as set out in Appendix B, together with an estimate of the costs of, and a due date for, the first CAR.
- 6.4 If you are instructed prior to our having been notified of the case, it is your responsibility at the earliest possible opportunity after becoming aware of a Club's coverage of the matter to inform us, in writing, of as much of the information in Appendices A and B as you can as well as:
- o An outline of what you have been instructed to do, steps taken so far, details of any advice given, copies of major items of correspondence to date and the costs incurred to date.
 - o If any retainer letter has already been sent to the Member, a copy must be sent to Thomas Miller.
- 6.5 If you know or believe that the client is a member of one of the Clubs managed by us and you believe that we do not know about the case, you should try to ensure that the Member tells us as soon as possible or authorises you to do so.
- 6.6 On receipt of the above, the Thomas Miller Claims Executive must reply:
- o acknowledging receipt
 - o confirming or otherwise the proposed next steps;
 - o confirming what costs-to-date are covered (note that if there has not been timely advice to the Club of the claim, the Member may be at risk for some or all of the costs) and, in the case of Defence, confirming up to what point costs are covered;
 - o identifying if there are any issues relating to cover;
 - o supplying any of the information / instructions set out in Appendix A which you do not already have.

7. Assessment & Strategy - Case Assessment – Standard Reporting Form (CAR)

- 7.1 It is essential that, at the earliest possible opportunity, sufficient knowledge of material facts and relevant issues is obtained so that a realistic and achievable MLO (Most Likely Outcome) and the strategy and tactics for achieving that MLO can be agreed upon by all those involved including the Member.
- 7.2 A CAR (Case Assessment Report) should be produced in all cases and should take the form of a clear, concise, well reasoned and sustainable executive summary (of between 2 to 5 - exceptionally 10 - pages), which sets out the facts, the issues, the strategy and the MLO. Unless the case is very complex, the CAR should follow the framework set out in Appendix C. Lengthy supporting notes are to be avoided unless required and authorised by the Thomas Miller Claims Executive
- 7.3 **The costs incurred in producing a CAR should always be proportionate to the value that is likely to be achieved.** Particularly in larger cases, it may be appropriate to engage experts and counsel to assist in the preparation of the CAR as well as taking preliminary witness statements.
- 7.4 Where you are only given limited instructions, you are not required to complete a CAR but you may find it useful to use the relevant headings and a similar structure as appropriate.

8. Budgeting & Estimating

- 8.1 **For our Clubs, as with any insurer, certainty is fundamental (“No Surprises”). At the outset of a case we establish an estimate for the case and a budget for the fees: these are refined as the case goes along. As you will appreciate between the various Clubs there are slight differences in approach. We, however, set great store on the accuracy of such estimates, particularly as they are used to calculate solvency (a regulatory and financial requirement). Accuracy in this area is arguably from each Club’s perspective the most important factor that you should bear in mind.**

- 8.2 Estimating the case and budgeting the costs are intended to

- 8.2.1 Ensure “**No Surprises**” and manage expectations;
- 8.2.2 Enable the Thomas Miller Claims Executive to establish an accurate Club estimate (**bearing in mind this is a regulatory and commercial imperative for the Club - substantial movements in the MLO / budgets (plus or minus) are undesirable**);
- 8.2.3 Enable assessment of the strategic options to be weighed against the costs associated with each option;
- 8.2.4 Track expenditure as the case progresses (we will receive your bills categorised by UTBMS codes and so can track expenditure against the budget);

but this should not inhibit the appropriate use of discretion or prevent those involved from taking additional steps which are necessary or which might add value.

- 8.3 You are to provide the Thomas Miller Claims Executive with an accurate budget of your costs (including arbitrator’s, counsel’s, experts fees etc) and your view on the Most Likely Outcome of the case itself (including the other side’s costs etc) - at the same time as you produce the CAR. The Thomas Miller Claims Executive will agree the MLO of the case and the fees’ budget of the various advisers (including you) with the Case Lawyer. Both the Case Lawyer and the Thomas Miller Claims Executive should review the MLO and Fees budget from time to time (at least 6 monthly). One should inform the other of any significant matter which causes them to think that the MLO or the Budget should be changed.
- 8.4 At the time of delivering the CAR, you must confirm the expenditure to date.
- 8.5 To deliver your budgets and MLO on a case, you are to use the CAR Spreadsheet. Further guidance on its completion is included within the spreadsheet.
- 8.6 Both the claim(s) and the costs should be assessed on the basis of the Most Likely Outcome, which means your realistic assessment of the most likely best achievable outcome of the case taking account of the conclusions in the CAR. The Budget includes your realistic assessment of the fees (of all parties, including if appropriate the other side’s fees) needed to achieve that outcome. You should not “pad” either figure in the hope that your performance will appear better. We will assess a number of factors including substantial

movements (plus or minus) in the MLO/budgets as well as through comparison with the eventual outcome - see Paragraph 11 - Performance Measures.

8.7 It is recommended that you complete the Budget as follows:

8.7.1 The Budget should be broken down on an MLO basis into the stages as defined by the UTBMS codes (See Appendix B of the Value for Money Billing Guidelines) - at least at major UTBMS code level - i.e. the worksheet marked "Simple Budget". In the case of substantial fees and expenses (in excess of \$200,000) more detail is required as set out in "Detailed Budget"

8.7.2 You should complete the Budget on the basis that the case will proceed to a hearing. If you think the case is likely to be settled earlier, you should put this in the CAR.

8.7.3 Where relevant, budgets should also be obtained from any experts, counsel, arbitrators etc that you have engaged or intend to engage

8.7.4 You (and any other suppliers) should make an educated estimation of the time likely to be used and it should take account of the time likely to be involved in the management and administration of the file, communications and meetings between each external supplier and the Thomas Miller Claims Executive and/or the Member, and communications between each member of the team involved in dealing with the case.

8.7.5 The costs should include:

- o All your fees
- o Counsel's fees (broken down into the 4 main UTBMS code levels)
- o Experts' fees
- o Arbitration / mediation costs
- o Disbursements (for you and others)
- o Your best estimation of the other side's costs, if applicable.

8.8 In estimating the case on a an MLO basis, you should split the case into its components e.g. separating collision liabilities from cargo liabilities and take into account:

8.8.1 Potential recoveries from third parties and all other key factors which may impact on quantum.

8.8.2 Any absolute cap on the amount of any liability

8.8.3 Interest over the anticipated length of the claim;

8.8.4 The percentage of contributory negligence of the Claimant in personal injury claims.

8.9 Under Strategy in the CAR you should consider the risks of an outcome that is worse than MLO (e.g. that there is a 10% chance that the case could be lost for a considerably worse figure).

9. Implementation and Review of the CAR

9.1.1 The Recommendation in Paragraph 10 of the CAR is critical. You should obtain from the Thomas Miller Claims Executive acceptance of your recommendation, before taking any significant steps to put that recommendation into effect.

9.1.2 You should agree with the Thomas Miller Claims Executive how to, and who will, obtain the Member's acceptance. Note that even in the case of Defence claims you should assess the Most Likely Outcome of the claim itself; this will assist in setting expectations.

9.1.3 If the Recommendation is changed significantly in the light of discussions, you should modify the CAR and issue a new version which contains the agreed Recommendation, including, if necessary a new version of the CAR Spreadsheet with revised MLO and fees budget.

9.2 Once the Recommendations have been agreed, you should agree with the Thomas Miller Claims Executive who will be responsible for ensuring that all other suppliers have clear instructions on their role and are aware of their budget.

- 9.3.1 Throughout the case you should review and update CAR, including the MLO and budget in the CAR Spreadsheet, so that it represents current thinking on the cases. Changes from the previous version should be highlighted in red or by using the “Track Changes” facility in Microsoft Word.
- 9.3.2 Substantial changes should be discussed and agreed with the Thomas Miller Claims Executive and the Member.
- 10. Pro-active Resolution of Claims**
- 10.1 **A case should be resolved as expeditiously as possible.** Whenever appropriate, you should be ready to take advantage of any opportunity to settle the case at or around the MLO.
- 10.2 The CAR process and the pro-active management of a case are critical to its successful resolution. There are, however, other factors which need to be considered, including:
- 10.2.1 **A lack of initiatives** to settle or to agree an appropriate medium for settlement at an early stage. This can sometimes be addressed by more thorough and early consideration of dispute resolution processes including mediation, small claims procedures, Falca arbitrations, documents alone arbitrations, meetings of experts, or the encouragement of direct face-to-face meetings between the Member’s representatives and the representatives of opposing parties.
- 10.2.2 **Lack of time / lack of focus:** In many cases, this can be avoided by better appreciation of priorities, greater delegation, and better time management.
- 10.2.3 **Unrealistic expectations:** this may arise from points of principle being taken by Members (for example, they may not wish to settle because of the identity of the other party, or through our not having explained well enough the true realities of a case and the associated costs) Sometimes this can be dealt with by better communications with the Member, including face to face meetings, but in overall terms the problem should be assisted by the provision of better, fuller and more realistic advice, explanation and recommendation to the Member. The CAR is specifically designed to achieve consensus at an early stage and subsequently.
- 10.2.4 **Intransigence and/or inexperience on the other side:** It is often the case that whilst one party accepts the reality of a settlement, they are simply unable to enter into a realistic and sensible dialogue with the opponent. Sometimes this may result from personality clashes. Resort to a more detailed use of the CPR rules or other tactical devices may sometimes be appropriate; sometimes there may be commercial leverage available.
- 10.2.5 **Reliance on others for information / advice / progression of proceedings** (for example, slowness in foreign proceedings, multi-party disputes and so forth): Whilst difficult to circumvent, this can be aided by clear explanation to foreign correspondents of the case strategy and deadlines. Once they, in turn, have given clear and full advice on the length of time and procedures likely to be involved, the entire process should then be managed in accordance with set criteria and deadlines resulting from that advice.
- 10.3.1 Our preference is to settle cases earlier rather than later especially in cases where the Club is liable for paying the claim. **Insurers like the certainty that comes from turning estimates into paid claims (“No surprises”).**
- 10.3.2 You should always bear in mind the size of the costs (**including** experts etc **and** the other side’s costs) in fighting a case and you should advise the Thomas Miller Claims Executive if you believe that the costs are becoming, or are likely to become, out of proportion to the case - **proportionality**. The Thomas Miller Claims Executive will discuss with you and the Member what possible action, if any, can be taken. In the case of the Defence Club it is the Member who has the liability / is seeking a recovery; the Club is only at risk for the cost. Nevertheless, you must still bear in mind the proportionality.
- 10.3.3 Where there is a liability to pay some of the costs and fees incurred by the other side:
- o It is essential that these are carefully scrutinised and every legitimate and acceptable effort made to minimise the amount eventually paid - including Assessment, if necessary. Also we rely on you to ensure that the other side is put on notice where you believe that an activity of theirs is inappropriate or excessive.

- o Often the other side's lawyers will accept substantially reduced sums in return for early payment which avoids a detailed review or Assessment process. So consider making an early offer slightly below what you believe to be the best possible outcome on costs; even if not accepted, such proposal may produce an acceptable counter proposal.

10.4 This approach should not lead to a belief that everything should be settled. We wish to maintain a reputation of being tough, sensible and fair. Organisations dealing with us on the other side should be aware that if a settlement is proposed, it will be made on the basis of having a clear view of the facts, issues involved and likely outcomes, and that any settlement proposals will be considered and realistic. They should equally be aware, however, that we are not a "soft touch", and that if the other side chooses to fight something in the hope that they will get more than that which is appropriate and realistic, the case will be fought aggressively and with a commitment to success.

10.5 Furthermore we recognise that you will from time to time be instructed to act against Clubs / Members. In such cases, while we recognise that you are bound to follow your client's instructions, we would hope that, where possible, you will apply the same standards and recognise how we manage our cases. We are concerned about the increasing cost of litigation in London and elsewhere.

11. Performance management

12.1 Performance measures and benchmarks are a critical part of achieving our objectives. They are a management tool which should enable us constantly to improve our service to Members and enhance best practice. They will be open, transparent and fair and be the subject of ongoing dialogue with our suppliers. They will provide the basis for providing regular and constructive feedback.

12.2 Those of our suppliers who deliver demonstrably better results and outstanding service will undoubtedly benefit. Those that consistently under-perform can expect fewer instructions or the loss of their status with us. This should be borne in mind when handling each individual matter.

12.3 Initially we do not propose to set any specific benchmarks or measures, but to work on a comparative basis (i.e. comparing one firm with another) using the information available to us. Account will be taken of the type of claims involved, and the information relied on, and our views and conclusions, will be matter for discussion with individual firms. Formal benchmarks and performance measures will gradually be introduced and applied, in a transparent manner, over a period of time.

12.4 There will be regular formal reviews with all our major suppliers. These will be more for Preferred Suppliers, to ensure an ongoing strength of relationship and to increase alignment of processes.

12.5 Though not exhaustive, benchmarks and performance measures will take account of the following factors:-

12.5.1 Accuracy of the MLO and the budgeting of costs (this is a critical measure - see Paragraph 8);

12.5.2 Average costs per case;

12.5.3 Costs as a % of the final claim;

12.5.4 Length of time between commencement and conclusion of a matter;

12.5.5 The ratio between Solicitor costs and third party disbursements.

12.6 We may ask our suppliers to provide reports to support performance management.

Appendix A - Standard Thomas Miller Letter of Instruction

Club: **Instruction date:**
Our Reference: **Thomas Miller Claims Executive:**
Ship (name) / Other mode of transport:

Case description:

You are instructed on behalf of the member to deal with the above case as set out below:

Case Lawyer in your firm:

Instructing Member

Name:
Contact:
Address:
Phone Fax: Mobile:
e-mail:

To be kept advised of: Everything / key documents only / documents relevant to the party / not at all

Role of the member in this matter: [e.g. owner, charterer, manager, NVO, port, terminal etc.]

Other Parties involved on Member's side (to be kept advised as shown):

Name:
Contact:
Address:
Phone Fax: Mobile:
e-mail:

Role: Broker / Co-insurer / Surveyor / Expert / correspondent

To be kept advised of: Everything / key documents only / documents relevant to the party / not at all

Other side:

Claimant / defendant:

Name:
Contact:
Address:
Phone Fax: Mobile:
e-mail:

Role: (e.g. charterer/ cargo claimant)

Other parties involved for the other side

Name:
Contact:
Address:
Phone Fax: Mobile:
e-mail:

Role: Lawyer/ expert / surveyor / third party

Brief description of the Case:

Instructions:

Next action and by when:

Documents attached:

Initial Budget (if appropriate), including, in the case of Defence, confirming up to what point costs are covered;

Variation from VfM Guidelines:

Appendix B - Case Lawyer's Confirmation of Instructions

Club:

Our Reference:

Your reference:

Ship (name) / Other mode of transport::

Case description:

Instruction date:

Confirmation Date:

We acknowledge receipt of your instructions.

Our staff to be involved in the case:

Case Lawyer:

Name:

Phone

Fax:

Mobile:

e-mail:

Other fee-earners:

Name:

Phone

Fax:

Mobile:

e-mail:

Role:

Prior to providing the first CAR, we advise as follows:

Brief résumé of early strategy / tactics:

Brief details of initial work:

Budget of fees and disbursements (including any other supplier) for this initial work:

Date when the first version of the CAR is expected to be produced:

Agreed variations to initial instructions:

Appendix C - CAR

A CAR should be produced in all cases and should take the form of a clear, concise, well reasoned and sustainable executive summary (of between 2 to 5 - exceptionally 10 - pages). It should be numbered and have the headings, as set out below. The bullet points identify examples of the issues that should be covered under each heading. If necessary you may attach supporting material, but lengthy supporting notes are to be avoided unless authorised and requested by the Thomas Miller Claims Executive. The costs incurred in producing a CAR should always be proportionate to the value that is likely to be achieved. As far as possible, please follow the paragraph numbering as consistency helps our Claims Executives.

Club: **Original Instruction date:**

Our Reference: **Your reference:**

Ship (name)/ Other mode of transport::

Case description:

CAR Date: **CAR Version number:**

1. **Parties involved** (including contact details: email, mobile, direct line -as appropriate)
 - o The Member including any subsidiaries involved in the case
 - o The Member's representatives e.g. brokers or other agents etc.
 - o The Claimants / Defendants (as the case may be), their legal representatives, their club / insurer.
 - o Potential third parties, their legal representatives, their club / insurer.
 - o Club correspondents, other lawyers, experts etc - if any of these have yet to be appointed, make recommendations and reasons for the recommendation (see Paragraph 3 of these Guidelines)

2. **Brief factual summary.**
 - o Include a chronology of key times / dates

3. **The claims arising – actual and potential claims + quantum.**
 - o The nature and type of all the various claims that may arise

The Most Likely Outcome of each claim should be assessed and entered in the CAR Spreadsheet. Calculating the MLO and fees budget are explained in detail in Paragraph 8 of these Guidelines.

4. **Security**
 - o Has it been
 - Given? Yes / no / may have to be provided
 - Received? Yes / no / should be sought
 - o If so, how much and by whom (e.g. name of bank or Club)

5. **Jurisdiction/s.**
 - o Consider the place of incident, relevant nationalities of Claimants and/or Defendants, domiciles or places of business etc.
 - o What jurisdictions (if more than one) are applicable to the case, including the laws of which country and/or the prescribed arbitral process?

6. **Summary of evidence collected / needed.**
 - o Will expert evidence be required? If so, what is the nature of that expert evidence, what are the experts likely to say.
 - o Details of relevant witnesses, their availability, likely evidence - it may be sensible - during the CAR preparation - to obtain some clear preliminary statements from key witnesses to ensure that there is a clear understanding of what those witnesses would say in the event of Court or arbitration proceedings reaching a hearing. ("No Surprises").

- Key available documents. Any missing or unavailable documents.
- Any other relevant evidence

7. Summary of key issues – cause – contracts

- The issues which are likely to be critical to the outcome of the case.
- What is the quality / credibility of the evidence - experts, witnesses, documentary evidence
- Any wider, commercial, economic or political factors that might be relevant.
- Information relevant to timescales and limitation periods, including date of incident, date on which damage occurred (if different from dated incident) and date of notification of claim or potential claim.
- Are there any particular legal issues or principles which will impact on the outcome of the case, and if so what are they?
- Identify any points of principle or of wider long-term importance to the Member or the Club.

8. Time Bars etc

- What time limits, time bars, limitation etc. apply to those claims?

9. Merits of Member's position

- Deal with each claim arising.

10. Strategy options.

- The strategy should review the strengths and weaknesses of the case, together with risks and costs of each option.
- Factors to be taken in to account include:
 - Establishing the likelihood of total success. For example, could the claim be resisted / won in full, if so how, what would be involved, and how strong is that possibility of success? What is the risk of a result that is worse than the MLO (e.g. going down for a sum that is considerably worse?
 - Are the other parties' claims or allegations realistic or unrealistic? If unrealistic, how can they be best persuaded of this?
 - What routes are available which might lead to an early and acceptable resolution? Are they viable? Is mediation a possibility?
 - What is the impact, if at all, of any issues of principle or other commercial, economic, legal or political issues?
 - Take account of the costs associated with each option (they may differ and may involve a degree of intelligent guesswork).
 - What are the risks of an outcome that is worse than MLO?

11. Recommendations

- Give your estimate of the Most Likely Outcome of the case together with the budget to achieve it (see paragraph 8).
- Choose the strategy option likely to achieve the MLO.
- Give the reasons for your choice.

12. Tactics

- Set out the methodology to be deployed to achieve the recommendation.
- Take into account other commercial, economic or political factors which may be of importance such as media or political considerations (for example, could this case be of interest to the media, and could that media interest be harmful to the Member's interests?), relationships between the Member and other parties involved.

13. Next steps

- Summarise next steps and actions together with key dates and likely timescales.
- Ensure that opportunities are not lost to mitigate or reduce the potential claim or to prevent or reduce losses.

- Much of the information required may be of a time sensitive nature. This needs to be quickly identified so that appropriate steps can be taken (e.g. to preserve physical evidence, to take and preserve samples or to obtain addresses or destinations)
- Time bars may also be applicable. It may be necessary to take action on this during the preparation of the CAR.