EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2026] CSIH 41
P341/26

Lord Malcolm
Lord Tyre
Lady Wise

OPINION OF THE COURT

delivered by LORD TYRE

in the Petition of

ROBERT CHEYNE TURCAN AND ANOTHER
as executors of the late Peter Douglas Miller Stirling-Aird

Petitioners

for

directions as to the distribution of the estate of a deceased underwriting member of Lloyd's of London

Petitioners: D. Welsh; Turcan Connell

14 August 2026

Introduction

[1] The petitioners are the surviving executors-nominate and testamentary trustees of the late Peter Douglas Miller Stirling-Aird, who died on 10 July 2004. During his lifetime, the deceased was an underwriting member of Lloyd's of London (a "Name"). The petitioners wish to complete the distribution of the deceased's estate by making over the residue to the beneficiaries entitled to it but are concerned that they are unable to do so because of the possibility of their incurring personal liability to a creditor of Lloyd's should a

claim emerge after all remaining assets have been distributed from the estate. In this petition under RCS 63.6A, they seek directions from the court as to whether they may fully distribute the deceased's estate without retention or further provision to meet any potential future claim which might be made against them in respect of any contracts of insurance underwritten by the deceased in the course of his business as a Name.

[2] In accordance with Rule 63.6A(4), the court remitted the petition to a reporter, Mr Robert Howie KC, to enquire into the facts and circumstances and to report. We are grateful to the reporter for his clear and comprehensive report.

[3] The deceased commenced underwriting at Lloyd's in 1974. His final year of personal underwriting on an unlimited liability basis was 1999. In this application, the petitioners seek directions only as regards the years 1993 and following. For the reasons explained in *Hutchison's Exrs, Petitioners* [2022] CSIH 51; 2022 SLT 1374, at paras [4] – [6] no Name now has any liability throughout the jurisdictions of the European Economic Area for any Lloyd's business in or prior to 1992. In recognition of the developments narrated in *Hutchison's Exrs* (above), Practice Note No 1 of 2024 (superseding Practice Note No 1 of 2006) now states, so far as material:

> "4. Recourse to a petition under RCS 63.6A should only be taken when the estate includes liabilities in respect of non-life business written by syndicates, of which the deceased was a member, and either—
>
> (a) … or
>
> (b) those liabilities have arisen in years of account at Lloyd's from and including 1993, and: (i) have been reinsured to close; or (ii) otherwise indemnified (such as by being protected by an Estate Protection Plan covered by Centrewrite Ltd or by EXEAT insurance cover provided by Centrewrite Ltd); or (iii) in respect of which any liability has been met by the New Central Fund established pursuant to the New Central Fund Byelaw (No. 23 of 1996) of Lloyd's (as amended), but there is a reason for apprehending the failure of such reinsurance or indemnity."

[4] As regards post-1993 liabilities, the 2024 Practice Note states, again so far as material:

> "5. In general, it will be sufficient that the remit to a reporter on an application under RCS 63.6A(2)(a) covers—
> (a) identification of the insurance business underwritten by the deceased;
> (b) confirmation from the documentation (which should be produced) of the reinsurance cover taken or other indemnity held and the steps taken by the New Central Fund in relation to any liability on which directions are sought by the petitioner;
> (c) where relevant, an assessment, based on the most recent publicly available information on the subject, of the current position of… the New Central Fund of Lloyd's;
> (d) … ; and
> (e) where it falls into the class mentioned in paragraph 4(b), whether there is any reason known to the reporter for apprehending the failure of the reinsurance to close or other indemnity taken out by the deceased Name's syndicates, and, if so, what that reason may be."

Protections against post-1993 liabilities

[5] The reporter observed in his report that as regards the 1993 and later years of account, syndicates have resorted to the method traditionally adopted within Lloyd's for protecting against future claims by securing reinsurance to close ("RITC"). This operates by means of a contract under which a syndicate carrying on business for the future accepts an inwards reinsurance obligation to the closing year syndicate in return for a premium, an assignation of all rights arising in connection with the reinsured business and the grant of the right to keep all recoveries and payments which may come to be made to it by reason of the assignation. It is expected that in consequence of this arrangement, Names in the closed year will not have to face the need to satisfy unmet claims against their closed year because they will be reinsured against that risk by the RITC syndicate. Only if the reinsurance should for some reason fail or become exhausted could a former Name find himself having to discharge at his own expense a crystallising contingent liability attaching to him as a member of the now closed syndicate year. The reporter noted that in its Annual Report and

Accounts for 2021, Lloyd's described this as a "rare event". The unlikelihood of a liability coming back to rest with the members of the originally underwriting syndicate is underlined by the fact that the syndicate accepting the inward reinsuring obligation will itself reinsure and then seek to reinsure to close after 3 years.

[6] The reporter also noted that in a situation where RITC were to fail, it is possible for an application to be made under paragraph 8 of the Lloyd's byelaw No 23 of 1996 to the New Central Fund of Lloyd's for assistance in extinguishing or reducing any liability of a member (or the estate of a deceased member). Neither that byelaw nor the provisions of the Lloyd's Acts under which such payment is permitted gives anyone any right to such a payment, which is at the discretion of the Council of Lloyd's. The reporter noted that as at the date of the 2021 accounts, no payment had been made from, and, indeed, no claim had been made on, the New Central Fund in the previous 2 years, and that the 2025 accounts made no mention of any such claim. The value of the fund as at 31 December 2025 was about £3.2 billion.

The deceased's post-1993 liabilities

[7] The petitioners have stated in affidavits to the court that RITC of all liabilities for the deceased's years of account from and after 1993 has been completed in accordance with Lloyd's traditional arrangement of reinsurance into succeeding syndicates. Written confirmation of this has been provided in a letter dated 8 February 2022 from Lloyd's Members Agency Services Limited. That letter also stated as follows:

> "Finally, Mr Stirling-Aird took out an Exeat policy in 2008 the purpose of which was to achieve early closure of his affairs at Lloyd's. Consequently, any Funds at Lloyd's applicable at the time would have been released as part of that process. There is no excess retention with an Exeat policy and as Mr Stirling-Aird did not have any

> outstanding underwriting liabilities, there should not be any further claims made on the policy."

[8] The reporter noted that Exeat policies generally related to years of account which for whatever reason remained open because RITC could not be obtained for them. An Exeat policy, according to the reporter's understanding, was intended to take the place of the RITC which could not be obtained and therefore to seek to reduce the risk to the Name or his estate. Unfortunately, the Exeat policy taken out by the deceased has not been traced and its exact terms are unknown, although the certificate of insurance indicated two syndicates to which it referred, one of which might still be open.

[9] In summary, if a claim were now to emerge in relation to the deceased's post-1993 underwriting business, the estate would have the following protections:

- RITC, secured in the traditional manner into succeeding syndicates;
- The Exeat policy taken out in 2008 to cover any remaining liabilities; and
- The possibility of a claim against the New Central Fund of Lloyd's.

[10] As regards the first of these protections, the reporter stated that there is no present reason to believe in the general failure or exhaustion of the specific RITC obtained by the syndicates in which Mr Stirling-Aird participated between 1993 and 1999. Nor did the reporter express any concern that should a claim require to be made on the New Central Fund, it would decline to or be unable to meet it. His conclusion was that, particularly in view of the fact that there exists an Exeat policy, albeit of unascertained terms, he saw no impediment to the grant of the directions sought by the petitioners and recommended that those directions be given.

Decision

[11] We accept the reporter's recommendation. The consequence of refusal of the directions sought would be that distribution of the estate could not take place because of the risk to the petitioners, in their fiduciary capacity, of emergence in the future of a claim by a Lloyd's creditor which could not be met in full by one or more of the protections described above. In the circumstances, that is a very remote risk indeed: it is, after all, the purpose of traditional RITC to obviate such a risk, and the acknowledged existence of the Exeat policy provides a further layer of comfort. We are satisfied that it is appropriate to afford the petitioners the protection of the court order that they seek, in order that they may proceed to complete the winding up of the deceased's estate.

[12] The question in the petition upon which the court's directions are sought is as follows:

> Whether the petitioners, as executors-nominate of the deceased, may properly carry out the deceased's testamentary instructions and fully distribute the deceased's estate without retention or further provision to meet any potential claim or claims which might otherwise be made against them in respect of any contracts of insurance or re-insurance underwritten by the deceased in the course of his business as an Underwriting Member of Lloyd's of London.

We answer the question in the affirmative. We find the petitioners entitled to the expenses of this application out of the executry estate.