



Claims: Legal and Practical Tips in a Transitioning Market

Client Webinar

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A business of Marsh McLennan

Speakers



Paul East

Senior Vice President, CLS
Practice, Risk Management,



Kate Pert

Complex Claims and
Disputes Advocate, Marsh
Advisory



Sam Tacey

Special Counsel
Cooley (UK) LLP



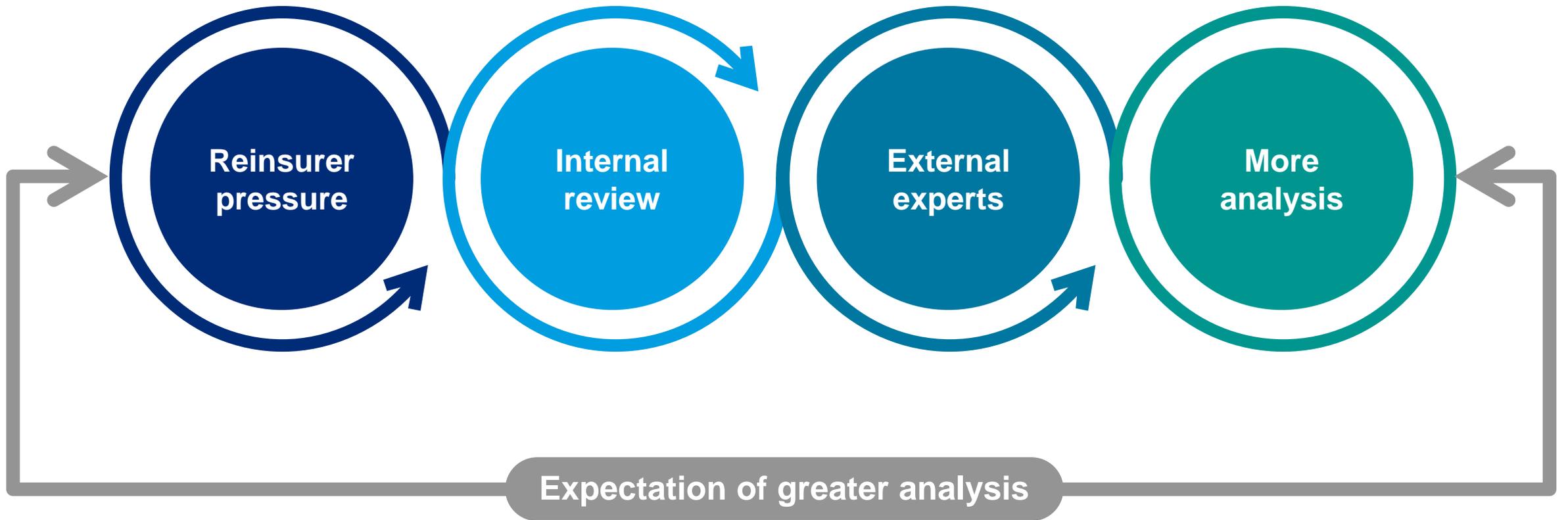
Alex Reynolds

Head of Specialty Claims –
UK&I, Marsh Specialty

Kate Pert

Complex Claims and Disputes Advocate









Sam Tacey
Special Counsel, Cooley (UK) LLP

Cooley

Claims in a Transitioning Market - Legal Issues

Focus on four topics:

1. Settlement of underlying claims
2. Cover for defence costs
3. Notice provisions and related issues
4. COVID-19 FCA Test Case and business interruption



Settlement of Underlying Claims (1)



- Proving Liability
 - Settlements without insurer consent
 - Settled law that insured must show actual legal liability, e.g. *AstraZeneca Insurance Company Ltd v (1) XL Insurance (Bermuda) Ltd. (2) ACE Bermuda Insurance Ltd* [2013] EWCA Civ 1660
 - Practical difficulties?

Settlement of Underlying Claims (2)

- Allocation of settlements
 - Even if liability is accepted for part of claim, issues can arise
 - See *Lumbermens Mutual Casualty v Bovis Lend Lease Limited* [2004] EWHC 2197 (Comm)
 - But contrast *Enterprise Oil Ltd v Strand Insurance Co Ltd* [2006] 1 Lloyd's Rep 500



Defence Costs

Audit

- Formal audits more common
- Consider relevance of CPR 44.5
 - Presumption that costs are reasonably incurred

Legal liability/allocation

- Similar legal liability issues may be raised in relation to defence costs
- Allocation of dual-purpose costs - e.g. *New Zealand Forest Products Ltd v New Zealand Insurance Co Ltd* [1997] 1 WLR 1237

Notice

- Notice often an area of contention
- Be extra wary of conditions precedent
- Aggregation provisions and notice
 - Ensure you are aware of requirements to notify serial or integrated losses/occurrences
 - Give careful thought to aggregation at notification stage



COVID-19 and the FCA Test Case



- Focus on one aspect of the decision
 - Causation and identification of the proximate cause of a loss
 - *Orient-Express Hotels Ltd v Assicurazioni General SpA* [2010] EWHC 1186 (Comm), overruled
 - Wider implications?
 - Area of effect BI losses
 - Complex property damage claims?
 - Unintended consequences?

Alex Reynolds

Head of Specialty Claims



Think “Insurance”



Pre-loss planning



Which policy?



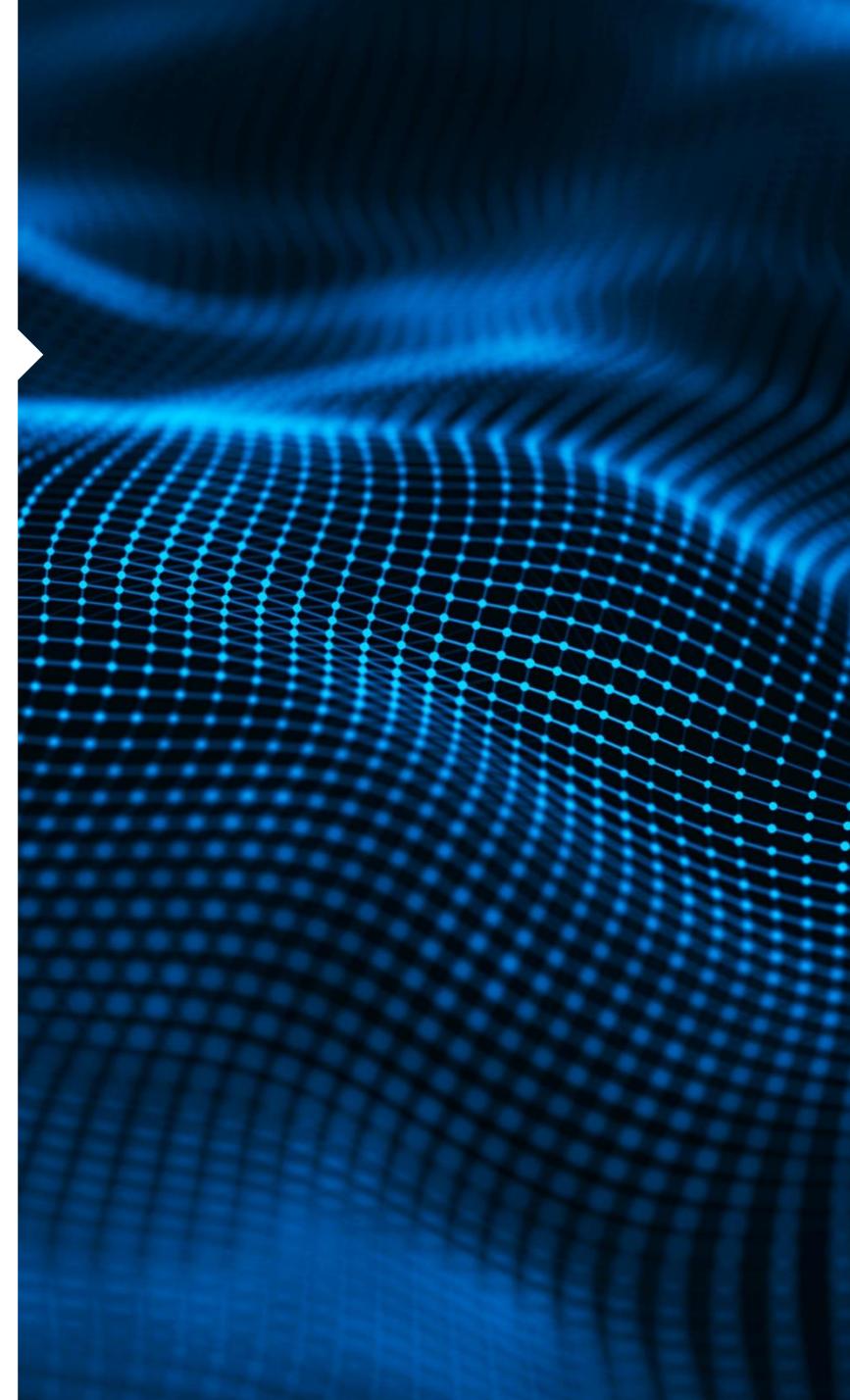
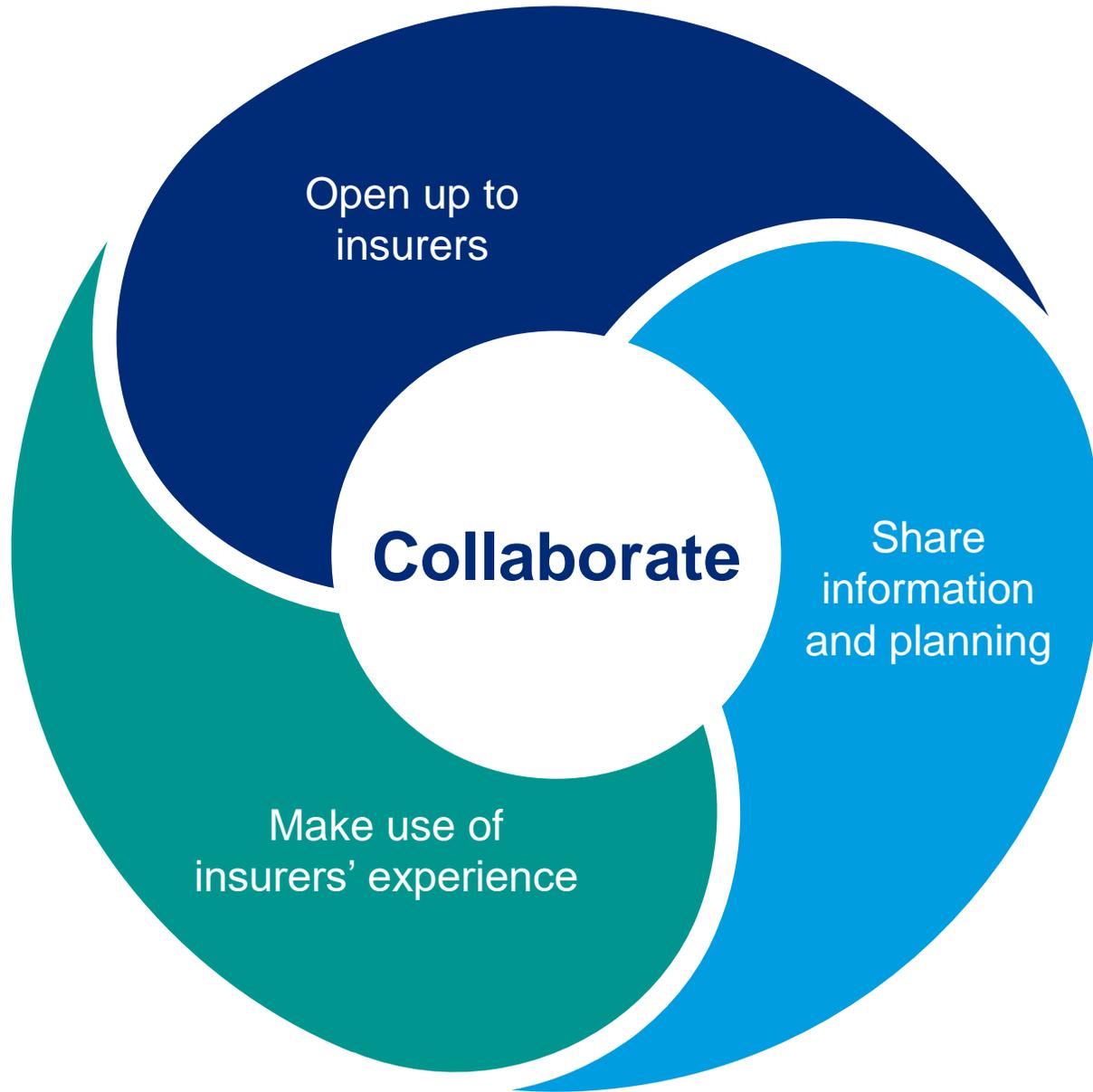
Crisis response
planning should include
the insurance claim



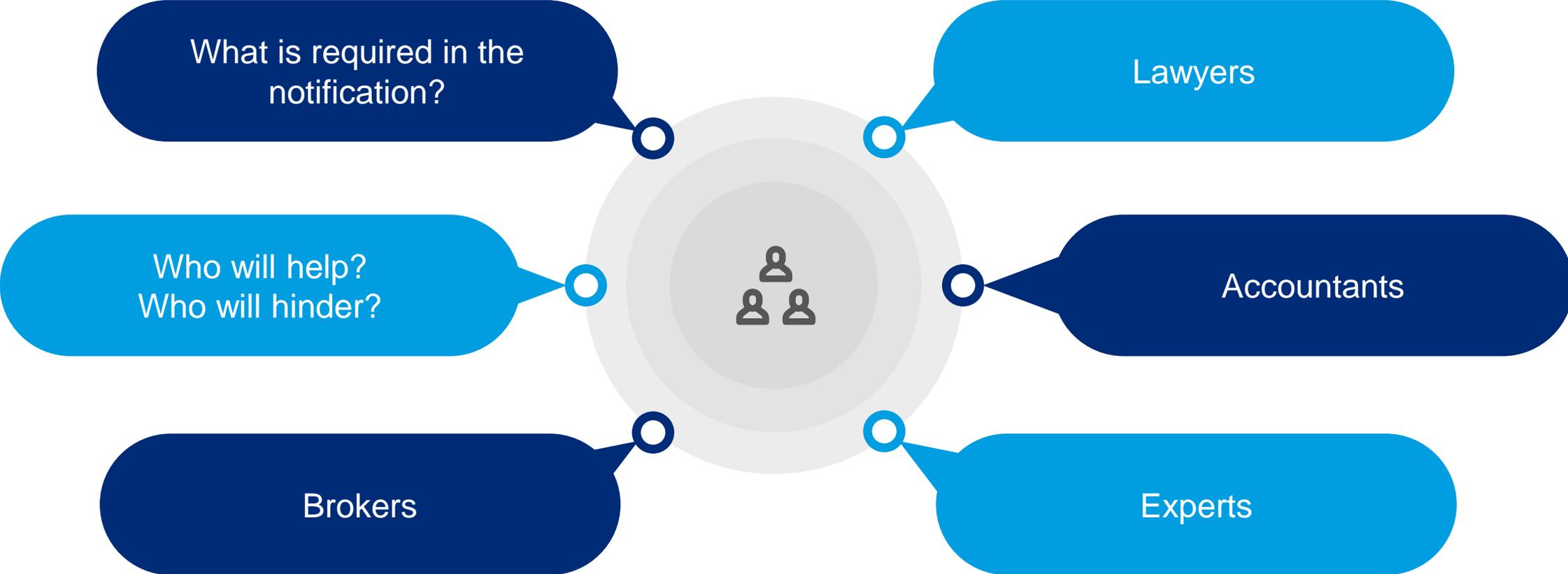
Put insurance on the
radar internally

Front Load





Pick the Right Team



Get Creative

Prioritise – what is important?

Speed? Amount?
Reputation?
Ongoing relationships?

If there's a dispute, the chances are it's reasonable – so how can you move forward?

Break the dispute down - identify easy wins on coverage?



Know When to Move On

What is the time
and cost of
continuing to
dispute?

Are you battle-
fatigued?

What makes sense
for the business?

Is every
stakeholder taking
a realistic stance?



Q&A

To submit a question, click on the **Q&A** icon on your screen. Type your question in the open area and click “SUBMIT.”

If a question is not answered during today's programme, someone from Marsh will respond as soon as possible.

Thank You



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