

FROM: General Manager, Regulatory Proceedings
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SUBJECT: DISCIPLINARY REVIEW
SUBJECT AREA(S): Changes to Lloyd's Disciplinary Arrangements
ATTACHMENTS: No
ACTION POINTS: **Managing and Members' Agents to note the changes made**
DEADLINE: **None**

The purpose of this bulletin is to inform the market of recent changes to Lloyd's disciplinary arrangements.

Lloyd's Regulatory Plan 2000 contained a commitment to a thorough review of Lloyd's disciplinary arrangements with a view to expediting and streamlining the process. There was also a need to take into account the likely requirements of the Financial Services Authority in this area and any implications of the Human Rights Act 1998 which came into effect in October 2000. The changes outlined in this bulletin have been developed in consultation with the Monitoring and Investigations Committee prior to endorsement by the Lloyd's Regulatory Board. The Council of Lloyd's made the required byelaw amendments at its meeting on 6 December 2000 to take immediate effect.

New Reserve Powers

The Council has agreed to an important enhancement of the enforcement regime by introducing the following new reserve powers. These are:

- power to order restitution
- power of suspension in a variety of circumstances and
- power to publish the existence of investigations and inquiries in appropriate cases.

Restitution

Lloyd's now has the power to direct that a person or firm regulated by Lloyd's should pay restitution to anyone adversely affected by their actions where there has been a breach of a Lloyd's requirement. It is not intended that this power should be viewed as an alternative to litigation or arbitration but it may avoid the need for the victim to pursue such remedies. Restitution will only be directed where there has been a breach of a regulatory requirement which has directly resulted either in a loss to those affected or in a profit accruing to the offender. It is not intended to apply to losses incurred in the normal course of business.

In deciding whether to order restitution, the relevant tribunal will take into account

- the availability of other remedies
- whether those persons affected are clearly identifiable and whether the loss suffered can be readily quantified
- how many people are affected and how significant the loss is to them and
- the conduct of the persons affected.

There is a right of appeal to the Lloyd's Appeal Tribunal in respect of any order for restitution.

Suspension

Lloyd's power to apply administrative suspension to individuals has been enhanced and an individual may now be administratively suspended with immediate effect if it is considered 'necessary or desirable in the interests of the Society, its members or policyholders'. The fact of suspension will not be published until after the individual has been given the opportunity to make representations to the Administrative Suspension Committee.

Lloyd's has also introduced an additional power to suspend an individual in the following circumstances:

- in disciplinary proceedings, if the Disciplinary Tribunal considers that a registered individual is not fit and proper to carry out the functions he is performing then the Tribunal will be able to suspend him immediately
- if any individual within Lloyd's jurisdiction is not fit and proper to carry out the functions which he is doing then he can be suspended by a tribunal, with a right of appeal to the Lloyd's Appeal Tribunal.

Publication

It is Lloyd's general policy not to comment on the existence or otherwise of an investigation or disciplinary proceedings until after it is finalised. This can however lead to a perception that action is not being taken on apparent misconduct. It has therefore been agreed that in exceptional circumstances the existence of a formal inquiry can be publicised at the discretion of the Investigations Committee, following a request from the Director of Regulation.

Streamlining the Disciplinary Processes

Although Lloyd's disciplinary processes have successfully dealt with a substantial number of cases since 1996 (when the last major review took place) it was felt that there was scope for streamlining the process. The following changes have therefore been implemented:

1. **Earlier Consideration of Preliminary Issues** – to allow preliminary issues to be resolved as quickly as possible a number of procedural changes have been made including the introduction of a pre-trial meeting at which the parties will be required to explore the scope for narrowing any factual disagreements.
2. **Extension of Time Period for Settlement** – previously it was only possible for the parties to reach a settlement during a relatively short period following the laying of charges. Now the Disciplinary Board can agree settlement at any time before a Tribunal is appointed. Also a Tribunal can now agree settlement at any time before the substantive hearing starts.
3. **Introduction of Guideline Standards** – to guide Tribunals on the prompt production of findings, penalties and cost decisions and the reasoned decision.
4. **Clarification of Lloyd's Jurisdiction** – in a small number of cases delays had been caused by disputes about Lloyd's jurisdiction. The relevant byelaw provisions have now been clarified.

Human Rights Act Issues

Lloyd's has been advised by Counsel that the existing disciplinary arrangements were satisfactory in respect of the new legislation. However, further steps have been taken to ensure that greater independence is afforded in the appointment of members of the Disciplinary Board and Disciplinary Tribunals, including *inter alia* granting security of tenure to Disciplinary Tribunal members and ensuring that they are not also members of Council or of any Lloyd's Board or Committee.

Questions

Any queries about the contents of this bulletin should be addressed to Noel Lawson, General Manager Regulatory Proceedings. This bulletin is intended to provide guidance only and is not a substitute for the byelaws governing Lloyd's disciplinary procedures, copies of which are available from Noel Lawson. This bulletin is being circulated to all underwriting agencies and market associations.

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