

THE MEMBERS' OMBUDSMAN BYELAW

Commencement

This byelaw commenced on 2 December 1987, the first Ombudsman taking office from 1 January 1988.

Amendments

This byelaw was amended by

Members' Ombudsman (Amendment) Byelaw (No. 3 of 1989)
Miscellaneous Administrative Provisions Byelaw (No. 5 of 1992)
Miscellaneous Administrative Provisions (No. 2) Byelaw (No. 1 of 1993)
Corporate Members (Consequential Amendments) Byelaw (No. 20 of 1993)
Members' Ombudsman (Amendment No. 2) Byelaw (No. 3 of 1994)
Syndicate Accounting Byelaw (No. 18 of 1994)
Individual Registration Byelaw (No. 13 of 1996)
Underwriting Agents (Amendment No. 16) Byelaw (No. 15 of 1999)
Annual Subscribers Byelaw (No. 15 of 2000)
Amendment Byelaw (No. 9 of 2001)

Explanatory Note

(This note is not part of the byelaw.)

This byelaw establishes the office of the Members' Ombudsman.

The Council must appoint by special resolution an Ombudsman from two or more candidates put forward by the nominated members of the Council. He may hold office for a renewable term of up to five years. His duty is to receive written complaints from individual members of the Society in relation to any action taken by or on behalf of the Society (which includes the Council, the Committee, their sub-committees and the Corporation). If the complainant alleges he has suffered injustice in consequence of maladministration in respect of the action complained of, the Ombudsman may, subject to certain exceptions set out in the byelaw, investigate the complaint.

The Ombudsman conducts his investigations in private and, if he considers the complaint justified, may make appropriate recommendations. These may include a recommendation that ex gratia payments be made.

He must report to the Council and the complainant on the outcome of each complaint made to him. In addition, he must make a written annual report on his activities to the Council.

The Council of Lloyd's in exercise of its powers under section 6(2) of the Lloyd's Act 1982 by special resolution hereby makes the following byelaw.

1. Interpretation

The provisions of Schedule 1 to this byelaw shall have effect.

2. Appointment of Ombudsman

- (1) The Council shall appoint by special resolution in accordance with the provisions of this paragraph an individual as Ombudsman.
- (2) The nominated members of the Council shall submit to the Council the names of a candidate or candidates for appointment as Ombudsman provided that no person who is a member of the Society or an underwriting agent, or a director or an employee of a corporate member, or a director, partner or employee of a Lloyd's broker or underwriting agent, or an annual subscriber or a registered individual or a member of the Council or a member of the Disciplinary Committees or the Appeal Tribunal or an employee, officer or agent of the Society, or a person connected to any such individual shall be eligible for appointment as Ombudsman.

3. Term of Office

The Ombudsman shall hold office for such period (not exceeding five years) and on such terms as to remuneration, expenses and conditions of service as the Council may by special resolution from time to time determine. The person holding the office of Ombudsman may be reappointed at the expiry of a period of office.

4. Provision of support services

The Council shall provide from time to time at the request of the Ombudsman such premises, staff and equipment as he may reasonably require.

5. Deputy

- (1) If the Ombudsman is indisposed or otherwise prevented from carrying out his duties the Council may by special resolution appoint an individual eligible for appointment as Ombudsman to act as deputy for the Ombudsman for such period of time and on such terms and conditions as the Council shall by special resolution determine.

- (2) While such deputy holds office, this byelaw, except paragraph 3, shall apply to him as if he were the Ombudsman.

6. Resignation and removal from office

The Ombudsman shall vacate his office before his period of office expires only if:

- (a) he resigns by notice in writing to the Council, or
- (b) the Council resolves by special resolution to remove him from office and gives to him written notice of such resolution.

7. Powers and duties of the Ombudsman

- (1) The Ombudsman shall, in relation to any action taken by or on behalf of the Society, receive any complaint (which shall be in writing) from any member of the Society or from any -
 - (a) individual who was at any time after 30 November 2001 but is no longer a member of the Society;
 - (b) person or Scottish limited partnership which was at any time after 30 November 2001 but no longer is a quasi-individual member.
- (2) Any member or former member of the society referred to in sub-paragraph (1) having a complaint of the nature referred to in sub-paragraph (1) may approach the Ombudsman directly in relation to that complaint.
- (3) Subject to paragraph 8, where the complainant alleges that he has suffered injustice in consequence of maladministration in connection with the action as mentioned in sub-paragraph (1), the Ombudsman may at his discretion investigate the complaint.
- (4) Where the complainant makes no allegation that he has suffered injustice in consequence of maladministration, the Ombudsman shall not investigate the complaint but shall refer it to the Chairman and shall inform the complainant accordingly.
- (5) The Ombudsman may appoint (on such terms as to remuneration and otherwise as he shall think fit but which shall include a term as to confidentiality) any other person who in his view is suitably qualified to assist him in his investigation.
- (6) Where the Ombudsman conducts an investigation, he shall give notice of the complaint and his investigation to the Chairman and to any person to whom the complaint relates

and shall afford to the and such other person an opportunity to comment on the complaint.

- (7) The Ombudsman shall conduct every investigation pursuant to this byelaw in private and, subject to sub-paragraph (8) or the order of any competent authority or court of competent jurisdiction, neither the Ombudsman nor any of his staff shall disclose (whether in any report to the Council pursuant to sub-paragraph (9) or his annual report pursuant to paragraph 13 or otherwise) to any person any information concerning a complaint investigated by him from which it would or might be possible to identify the complainant or any information of a confidential nature which he has obtained in the course of his investigation.
- (8) Sub-paragraph (7) shall not prohibit the disclosure of information on such terms as to confidentiality as the Ombudsman shall think fit to the complainant or the Society as the case may be; or to any employee, consultant, adviser or agent of the Ombudsman to the extent that such information is reasonably required by that person for the purpose of performing his duties to the Ombudsman.
- (9) The Ombudsman shall facilitate the satisfaction, settlement or withdrawal of any complaint by making recommendations (which may include a recommendation that ex gratia payments of money be made) or representations to any person named in the complaint or to the Society or by such other means as seem appropriate. The Ombudsman shall report to the Council and to the complainant the outcome of the complaint. The Ombudsman may also make to the Council such representations or recommendations on matters of general importance which come to his attention as he shall think fit.

8. Limitation on power to investigate certain complaints

- (1) The Ombudsman shall not investigate a complaint:
 - (a) if the complaint has previously been referred to him provided that he may investigate the complaint if he is satisfied that evidence is now available in relation to the complaint which was not available when he previously considered the complaint;
 - (b) unless he thinks there is good reason to do so, if the action complained of occurred more than two years before the complainant first made the complaint in writing to him;
 - (c) where any party to the complaint has instituted proceedings in any court of competent jurisdiction or has made reference to arbitration in relation to the

complaint unless the proceedings have been discontinued or the reference to arbitration withdrawn prior to final judgment or award;

- (2) The Ombudsman shall not investigate a complaint about any action:–
 - (a) in respect of which the complainant has a right of appeal to the Appeal Tribunal provided that he may investigate a complaint where the complainant had (but no longer has) such a right of appeal if he is satisfied that in the particular circumstances it was reasonable for the complainant not to have exercised such a right of appeal, or
 - (b) which has been the subject of a decision by the Appeal Tribunal.
- (3) The Ombudsman shall not investigate any complaint about action taken by or on behalf of:
 - (a) a Lloyd's disciplinary committee; or
 - (b) the Appeal Tribunal; or
 - (c) a Lloyd's agent appointed pursuant to Byelaw No. 15 of 1983 (Miscellaneous Matters); or
 - (d) any subsidiary company of the Society listed in Schedule 2 to this byelaw; or
 - (e) any officer, employee or agent of any subsidiary company of the Society listed in Schedule 2.

The Council may from time to time by special resolution amend the list of the subsidiary companies of the Society in Schedule 2 provided that any subsidiary company of the Society whose day to day management is subject to the Society's supervision shall not be included in such list.

- (4) The Ombudsman shall not investigate any complaint about the institution or the conduct of any disciplinary proceedings before a Lloyd's disciplinary committee or before the Appeal Tribunal.
9. Power to decline to investigate complaints
- (1) The Ombudsman may decline to investigate a complaint if he considers that by reason of the subject matter of the complaint it is more appropriate that such complaint should be determined by a court of competent jurisdiction or by arbitration.
 - (2) The Ombudsman may, if he in his discretion thinks fit, decline to investigate a complaint which relates to action taken by a person other than the Society.

10. Procedure

Subject to the other provisions of this byelaw the Ombudsman shall in his discretion decide the procedure to be adopted in considering complaints, in conducting investigations, and in making recommendations or representations.

11. Evidence

The Ombudsman shall not be bound by any legal rule of evidence in considering complaints or conducting investigations and he shall not be bound by any previous decision made by him or any predecessor in office.

12. Powers to obtain information

The Ombudsman may require the Society to provide, within a reasonable period of time and upon such terms as to confidentiality as he shall think fit, any information or documents (including but not restricted to any minutes of the Council, the Committee, any committee or sub-committee appointed by the Council or the Committee) relating to the subject matter of a complaint.

13. Annual report

The Ombudsman shall make a written annual report to the Council describing the principal findings of his investigations or any conclusions which he may have drawn from them. Every such annual report shall be sent to members of the Society with the Lloyd's Annual Report and Accounts.

14. Expenditure

The Ombudsman shall limit his annual expenditure to an amount necessary to ensure the effective discharge of his duties. He shall keep a record of all costs and expenses incurred and state the total thereof in his annual report.

15. Commencement

This byelaw shall come into force on 2nd December 1987, and the first Ombudsman to be appointed under this byelaw shall take office with effect from 1st January 1988.

Schedule 1 - Interpretation

In this byelaw the following expressions have the following meanings:

“action” includes failure to act, and other expressions connoting action shall be construed accordingly;

“complainant” means the member of the Society who has made a complaint under paragraph 7 of the byelaw;

“member of the Society” includes the member’s executors, administrators or assigns;

“Names’ Interests Committee” means the Names’ Interests Committee of the Council;

“Ombudsman” means the individual appointed under paragraph 2 of the byelaw;

“person connected” means a parent, step-parent, spouse, brother, sister, son, step-son, daughter or step-daughter of an individual;

“reinsurance to close” has the meaning given to it in the Syndicate Accounting Byelaw (No. 18 of 1994);

“the Society” for the purposes of this byelaw means the Society itself and also any of its officers and employees and any person or persons in or to whom (whether individually or collectively) any powers or functions are vested or delegated by or pursuant to Lloyd’s Acts 1871 to 1982;

“subsidiary company” has the same meaning as in section 736 of the Companies Act 1985;

“syndicate” means a group of underwriting members of the Society underwriting insurance business at Lloyd’s through the agency of a managing agent to which a particular syndicate number is assigned by the Council of Lloyd’s.

Schedule 2 - Subsidiary Companies

Additional Securities Limited

Additional Underwriting Agencies (No.1) Limited

Additional Underwriting Agencies (No.2) Limited

Additional Underwriting Agencies (No.3) Limited

Additional Underwriting Agencies (No.4) Limited

Additional Underwriting Agencies (No.5) Limited

Additional Underwriting Agencies (No.6) Limited

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