

# MARKET BULLETIN

REF: Y4197

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<b>Title</b>	Members' Compensation Scheme
<b>Purpose</b>	To advise the market of the new Members' Compensation Scheme Byelaw
<b>Type</b>	Event
<b>From</b>	Sean McGovern Director & General Counsel 0207 327 6142/ <a href="mailto:sean.mcgovern@lloyds.com">sean.mcgovern@lloyds.com</a>
<b>Date</b>	16 October 2008
<b>Deadline</b>	None
<b>Related links</b>	<a href="http://www.lloyds.com">www.lloyds.com</a>  <a href="http://www.lloyds.com/NR/ronlyres/5FC5999F-0195-467E-8F8C-DD953DF98C2A/0/Oct08MembersCompensationScheme.pdf">http://www.lloyds.com/NR/ronlyres/5FC5999F-0195-467E-8F8C-DD953DF98C2A/0/Oct08MembersCompensationScheme.pdf</a>

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Following the previous market consultation (see bulletin Y4049) the Council of Lloyd's has made the new Members' Compensation Scheme Byelaw (No. 3 of 2008). This Byelaw establishes the Members' Compensation Scheme, provides the criteria and procedure for claims under the Members' Compensation Scheme and establishes the Members' Compensation Panel. It replaces the Members' Compensation Scheme Byelaw (No.15 of 1989).

The byelaw is available on [www.lloyds.com](http://www.lloyds.com) under "Acts and Byelaws" or can be accessed via the following link -

<http://www.lloyds.com/NR/ronlyres/5FC5999F-0195-467E-8F8C-DD953DF98C2A/0/Oct08MembersCompensationScheme.pdf>

Council also made the attached Guidance Notes to provide guidance to the Panel regarding the operation of the Scheme.

Any queries on this bulletin may be referred to Paul Brady, Lloyd's Legal on [paul.brady@lloyds.com](mailto:paul.brady@lloyds.com) or 0207 327 5750.

## Guidance

1. This guidance has been made by the Council under paragraph 9 of the Lloyd's Members' Compensation Byelaw (the "Byelaw").

### *Judgments and awards*

2. A judgment or award (together, a "judgment") that in the ordinary course would be treated as satisfying the Panel of the matters set out in paragraphs 5 (a).(i) of the Byelaw (for the purpose of this guidance referred to as "want of probity") would be of the following nature:
  - a. the allegations of want of probity were made in proceedings;
  - b. the person on whose part there is alleged to have been want of probity was given the opportunity to be heard in the proceedings,
  - c. the allegations were tested on the evidence in the proceedings;
  - d. the judgment made reasoned findings, on the evidence, of want of probity.
3. A judgment that in the ordinary course would be treated as satisfying the Panel of the matters set out in paragraphs 5 (a).(ii) of the Byelaw (for the purpose of this guidance referred to as "failure to account") would be of the following nature:
  - a. the allegations of failure to account were made in proceedings;
  - b. the underwriting agent was given the opportunity to be heard in the proceedings,
  - c. the allegations were tested on the evidence in the proceedings;
  - d. the judgment made reasoned findings, on the evidence, of failure to account.
4. Generally a summary judgment would be capable of being a judgment of the type described at 2 and 3 above.
5. A default judgment would not be a judgment of the type described at 2 and 3 above.

### *Exceptional circumstances*

6. It is appreciated that an applicant may be prejudiced if the Panel did not have a discretion in exceptional circumstances to allow an application to be made without a

judgment. However in exercising that discretion the Panel should also have regard, among other matters:

- a. to the interests of any person who may be affected (in terms of reputation or otherwise) by its decision;
  - b. to the fact that any compensation will be paid from the New Central Fund and may be recovered from underwriting agents and members who have no liability to the applicant.
7. Accordingly, an applicant must provide the Panel with a judgment which has the nature described above. However, in exceptional circumstances the Panel may agree in its discretion that it is appropriate for an application to be made without a judgment. Examples may include where it can be demonstrated that
- a. before a responsible, independent, body, allegations had been made, heard and tested and findings had been made by that body as in 2 or 3 above. Examples of such a body include a statutory regulator or some forms of disciplinary tribunal;
  - b. allegations had been made as in 2a or 3a, had been clearly admitted by the person on whose part there is alleged to have been want of probity, or (as in the case of a failure to account) by the underwriting agent, and there was no reason to doubt that the admission was made on the merits;
  - c. allegations had been made as in 2a or 3a and the person on whose part there is alleged to have been want of probity is prepared to submit to the jurisdiction of the Panel and appear before it to answer questions and to have the relevant allegations put to him; and
  - d. obtaining a judgment of the type described at 2 and 3 above has proved to be impracticable because, for example, the person on whose part there is alleged to have been want of probity will not respond to the proceedings or cannot be found.
8. In an appropriate case the Panel may hold a preliminary hearing with the applicant for the purpose of determining whether a judgment of the required nature exists or whether the Panel agrees in its discretion that it is appropriate for an application to be made without a judgment.