LLOYD'S

MARKET BULLETIN

REF: Y5067

Title	Enforcement Proceedings – Charles Christopher O'Sullivan
Purpose	To provide information regarding enforcement proceedings
Type	Event
From	Patricia Isherwood Secretary to the Lloyd's Enforcement Board
Date	1 March 2017
Deadline	
Related links	

In contested proceedings before a Lloyd's Enforcement Tribunal, Mr Charles O'Sullivan, a member of a LLP member of Lloyd's, has been found guilty of three charges of Discreditable Conduct. Two of the charges relate to the concealment of brokerage by Mr O'Sullivan in placing risks on behalf of clients. The third charge relates to dishonest deception of a third party to secure the payment of money.

As a result, the Lloyd's Enforcement Tribunal has imposed the following penalties on Mr O'Sullivan:

- Mr O'Sullivan's permission, consent, registration or right to transact or be concerned in or interested in the transaction of insurance business at Lloyd's or any class or classes of such business has been revoked permanently.
- Mr O'Sullivan's permission to enter the Underwriting Room and parts of the Society's premises has been revoked permanently.
- Mr O'Sullivan has been declared unfit and unsuitable to act as a member of a member of the Society which is a limited liability partnership.
- Mr O'Sullivan is to be censured in the terms of the attached Notice of Censure.

In addition, Mr O'Sullivan was ordered to pay £138,687 in respect of the costs of these proceedings.

Mr O'Sullivan appealed the decision of the Lloyd's Enforcement Tribunal to the Lloyd's Appeal Tribunal. The Lloyd's Appeal Tribunal upheld the decision of the Lloyd's Enforcement Tribunal subject to reducing the recoverable amount of Lloyd's costs by £10,000.

Mr O'Sullivan further made a request to the Council of Lloyd's pursuant to paragraph 34 of the Enforcement Byelaw for the Council to consider the sanctions imposed. The Council confirmed that the sanctions should remain as imposed by the Lloyd's Enforcement Tribunal subject to modifying the Notice of Censure, at the request of Mr O'Sullivan, to clarify that:

(1) In addition to the three charges for which Mr O'Sullivan was found guilty, Mr O'Sullivan was also charged with one charge of misconduct detrimental to the interests of the Society, which was abandoned by Lloyd's at the hearing; and

(2) The Lloyd's Enforcement Tribunal found not proved an allegation of grossing up in relation to one of the charges for which Mr O'Sullivan was found guilty.

Details of the events giving rise to these proceedings and of the charges are set out in the attached Notice of Censure.

Notice of Censure

Mr Charles Christopher O'Sullivan

Charles O'Sullivan was at the relevant times a member of a LLP member of Lloyd's and a managing director of the special risks division of Besso Limited ("Besso"). During the relevant times he later represented Bennett Gould & Partners (International) Limited ("BGPI") and Bennett Gould & Partners ("BGP"). Each of Besso and BGP were Lloyd's brokers. BGPI was an appointed representative of BGP.

Mr O'Sullivan has been found guilty of three charges of misconduct, namely engaging in or being associated with discreditable conduct as defined by paragraph 3 (a) of Part B of the Enforcement Byelaw.

In addition to these three charges Mr O'Sullivan was also charged with one charge of misconduct detrimental to the interests of the Society which was abandoned by Lloyd's at the hearing.

The following summary is based on the facts found by the Lloyd's Enforcement Tribunal.

Charge 1 related to the placing of physical loss and damage cover for a resort and hotel business in the Caribbean. The business had been introduced to Mr O'Sullivan (representing the intended placing broker) by a local producing broker. Prior to renewal in 2009 the placing broker (represented by Mr O'Sullivan) had been paid brokerage expressed as a percentage of the premium. For the 2009 renewal Mr O'Sullivan asked the producing broker to switch to an arrangement in which, as he put it, there would be "zero commission" and in lieu thereof the placing broker would be paid a fixed fee of US$150,000. That proposal was repeated by Mr O'Sullivan a fortnight later, on this occasion using the words "zero brokerage". The producing broker agreed to the proposal on behalf of the client assured.

At around the same time the assured made clear by email to the producing broker that it required any insurance quote to include a section setting out all fees, commissions and other remuneration payable (a) to the local producing broker and (b) to the London placing broker (represented by Mr O'Sullivan). That email was copied to Mr O'Sullivan personally. Relying on the exchange with Mr O'Sullivan about zero commission/brokerage, the producing broker responded to the assured saying that the remuneration payable to the

London placing broker consisted of the fixed fee of US$150,000 which he had agreed. That email was copied to Mr O'Sullivan personally.

In fact, and unbeknown to the producing broker, Mr O'Sullivan and his company placed the 2009 renewal on the same terms as to remuneration as in previous years, namely at a gross premium inclusive of 20% brokerage. Nothing was said to underwriters about the fixed fee and the producing broker (and the assured) were billed for the gross premium plus the fixed fee. In the process Mr O'Sullivan's company was able to collect by way of remuneration for the 2009 renewal both brokerage (of US$463,129) and the fixed fee of US$150,000. Meanwhile, to Mr O'Sullivan's knowledge, the assured had been informed (in response to the request to be told of all fees, commissions and remuneration) that the London placing broker was only being paid the US$150,000 fee.

For the 2010 renewal Mr O'Sullivan informed the producing broker that despite his best efforts the premium payable to the market had increased. If the assured was to continue to pay the previous year's price the fee would come down to US$74,410 which Mr O'Sullivan described as "less than half of last year's brokerage". In response to this plea the producing broker agreed to a pro rata reduction in his own remuneration. He would not have agreed to this if he had been told that Mr O'Sullivan's company was in fact being paid brokerage (worth US$406,700 in 2010) on top of the fixed fee.

The Tribunal concluded that Mr O'Sullivan made his 2009 proposal to switch from a percentage brokerage to zero brokerage plus a fee with the intent of retaining both brokerage arrived at as a percentage of the premium plus the newly agreed fee. This was dishonest. It was calculated to deceive both the producing broker and the assured and in fact did so.

The deception was aggravated by four further factors.

First Mr O'Sullivan knew that the assured was insisting on accurate information about fees and commissions paid to intermediaries. By his deception Mr O'Sullivan was ensuring that the producing broker would be duped into providing inaccurate and misleading information in response to the assured's request.

Second Mr O'Sullivan knew that the deception would enable his company to retain far more by way of remuneration than the assured (and the producing broker) were prepared to allow. It was a case of dishonestly obtaining remuneration by deception.

Thirdly the deception extended to underwriters who had made clear on their slips that they were only prepared to allow, eg., 20% brokerage "or Net Equivalent *downwards*". Mr O'Sullivan accepted that he knew that this terminology meant that he could reduce his remuneration below 20% (in the above example) but not increase it. What Mr O'Sullivan did was the opposite of this. He collected (for his company) both 20% brokerage and the fixed fee.

Fourthly the continuance of the deception into 2010 enabled Mr O'Sullivan to persuade the producing broker to give up part of the latter's own fee for the benefit of Mr O'Sullivan's company.

Charge one also included an allegation of misconduct in relation to grossing up which was not proved.

Charge 2 was concerned with the placement of reinsurance of business written by a coverholder in Bermuda. In the course of renewing that reinsurance in 2012 Mr O'Sullivan's company mistakenly committed to placing the protection at a cost which was around US$300,000 less than the rates currently achievable in the market. Mr O'Sullivan explained his predicament to the president of the coverholder with whom he enjoyed a close professional relationship. He was successful in negotiating terms under which the coverholder agreed to absorb one third of the loss faced by Mr O'Sullivan's company subject to a cap of US$50,000. It was a term of this deal that the brokerage earned by Mr O'Sullivan's company on the same business over the previous three years was to be brought into account when determining the amount of the loss.

In an email of 12 June 2012 to the coverholder Mr O'Sullivan estimated on the basis of a "quick review" that earnings from the previous years would be around US$38,000. He explained that the "exact numbers" would need to be worked out by his staff. In an internal email of 25 June 2012 the individual who had been deputed to run the exact numbers informed Mr O'Sullivan that the true figure was at least US$153,500. That individual sought approval of a draft message to the coverholder referring to earnings of "just over US$150K". If the earnings from previous years had been US$38,000 then the coverholder would have been due to contribute the US$50,000 maximum provided for in its agreement with Mr O'Sullivan. If, on the other hand, those earnings had been US$150K then the coverholder's contribution would have been reduced to around US$12K.

Mr O'Sullivan responded by directing his colleague to re-draft his proposed message to the coverholder so that it supported earnings of c US$38K. The colleague responded to this direction by preparing a second draft email which Mr O'Sullivan then amended in manuscript. That second draft as amended by Mr O'Sullivan was emailed to the coverholder on 25 June 2012. It was signed by both Mr O'Sullivan and his colleague. On the same day the colleague prepared a file note of a conversation between himself and Mr O'Sullivan relating to the preparation of that email. Two days later the colleague made a confidential report on what had happened to the group finance director of the parent company of his employer.

The Tribunal concluded that the changes which Mr O'Sullivan required to be made to the email sent to the coverholder on 25 June involved a dishonest deception of the coverholder which was intended by Mr O'Sullivan to enable him to extract the US$50K maximum payable under his agreement with the coverholder. Specifically the deception involved passing off a figure of c. US$38K for earnings over the previous years of account as one which had been verified internally by another member of Mr O'Sullivan's staff when Mr O'Sullivan knew that nobody within his organisation had been able to verify that number.

Charge 3 arises out of a professional relationship between Mr O'Sullivan and a producing broker in Canada going back many years. The agreed practice between them was that when billing the producing broker Mr O'Sullivan would add 10% to the net amounts which he had agreed to pay to London underwriters. The producing broker would then add a further 10% in order to arrive at the price charged to the reinsured.

In October 2010 Mr O'Sullivan was having difficulty in achieving the renewal price required by the Canadian producing broker for one of its larger clients. As a result that business was taken away from Mr O'Sullivan and placed by a different broker. It emerged in the course of that placement that in previous years Mr O'Sullivan had been earning brokerage of 25% or more on the same business. This was in breach of the agreement that when billing the producing broker Mr O'Sullivan would add 10% to the net amounts which he had agreed to pay to London underwriters. Mr O'Sullivan disputed this. When confronted with the underlying documents he protested that he had not known what had been going on.

Subsequent investigation revealed that not only had Mr O'Sullivan's company been taking substantially greater brokerage than had been agreed by the producing broker but also (a) that Mr O'Sullivan was aware of what had been going on and (b) that Mr O'Sullivan

personally had been taking steps to conceal the excess brokerage from the producing broker.

Particular attention was focussed on the 2010 renewal of the reinsurance of a primary insurer based in the Caribbean at the request of the producing broker in Canada. That insurer faced significant increases in reinsurance costs as a result of increases in the total insured value. To mitigate this the Canadian producing broker came up with a proposal under which (a) Mr O'Sullivan's company would receive 5% (rather than 10%) of the amounts to be paid to underwriters (b) the producing broker would add 2.5% brokerage (rather than 10%) and (c) the premium rate and discount would be adjusted in a way which appeared, on the facts known to the producing broker, to produce only a small reduction in the amounts payable to underwriters. The package as a whole would have been of significant benefit to the reinsured.

Mr O'Sullivan's response was an email of 24 June 2010 (of which he was a co-signatory) in which he rejected the suggestion on the grounds that underwriters were unlikely to find it appealing. The Tribunal found that this was deliberately misleading and calculated to discourage the Canadian producing broker from pursuing proposals which were liable to expose the excess brokerage which Mr O'Sullivan's company had been covertly retaining.

The Tribunal found that this conduct of Mr O'Sullivan was dishonestly designed to perpetuate the concealment of the excess brokerage which Mr O'Sullivan's company had been taking and in the process prevent the Canadian producing broker from pursuing a suggestion which would have been beneficial to the client reinsured. In all these respects the Tribunal found Mr O'Sullivan's conduct to be discreditable.

The following penalties have been imposed on Mr O'Sullivan:

A. Mr O'Sullivan's permission, consent, registration or right to transact or be concerned in or interested in the transaction of insurance business at Lloyd's or any class or classes of such business has been revoked permanently.

B. Mr O'Sullivan's permission to enter the Underwriting Room and parts of the Society's premises has been revoked permanently.

C. Mr O'Sullivan has been declared unfit and unsuitable to act as a member of a member of the Society which is a limited liability partnership.

D. Mr O'Sullivan's conduct has been required to be the subject of this Notice of Censure.

Mr O'Sullivan has been ordered to pay (a) £65,897[1] by way of contribution towards the Council's costs of the proceedings and (b) £72,790.02 towards the Tribunal's own costs.

In December 2012 Mr O'Sullivan's Subscriber's Pass was suspended as part of the inquiries which resulted in the disciplinary proceedings. The Tribunal took the view that the penal effect of the interim suspension of Mr O'Sullivan's pass was something which it ought to bring into account when assessing penalties. Absent the interim suspension of his pass, the Tribunal would have regarded the circumstances of the case as sufficiently serious to justify both permanent revocation ***and*** a fine in the region of £135,000. In the event the Tribunal took the view that Mr O'Sullivan's loss of earnings as a Lloyd's broker between the suspension of his pass in December 2012 and the Tribunal's Decision as to Misconduct in December 2015 was a sufficient penalty to stand in lieu of what would otherwise have been a substantial fine.

Lloyd's Enforcement Tribunal

[1] On appeal, the Lloyd's Appeal Tribunal reduced the amount recoverable by the Council in respect of its costs to £55,897.