

MARKET BULLETIN

REF: Y4202

Title	Principles of Enforcement Action
Purpose	To inform the market about the "Principles of Enforcement Action" which describe different types of conduct that may result in Lloyd's taking enforcement action.
Type	Event
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Deadline	None
Related links	The Enforcement Byelaw (No. 6 of 2005) can be found at: http://www.lloyds.com/NR/rdonlyres/31AD95F0-250F-4DD1-A927-75F7E6ACE876/0/April08EnforcementByelaw.pdf ; and the Underwriting Requirements, Chapter 5 can be found at: http://www.lloyds.com/NR/rdonlyres/B810F389-6450-4ED5-82A5-EE8857B58B7D/0/March07Underwritingrequirementspart5_dec06.pdf

Background and Purpose

Lloyd's may bring enforcement proceedings in respect of Misconduct, as described in the Enforcement Byelaw in respect of conduct that is (i) discreditable; (ii) detrimental to the interests of the Society, members, underwriting agents or Lloyd's policyholders or others doing business at Lloyd's; or (iii) a breach of Lloyd's requirements.

The Market Supervision and Review Committee, which is responsible for investigations into matters of possible misconduct, has prepared the Principles of Enforcement Action (the "Principles") attached to this Market Bulletin as Appendix 1.

Whilst the Principles do not provide a comprehensive list of the circumstances in which Lloyd's might take enforcement action, they are intended to provide assistance to the market in identifying the types of conduct that may result in action being taken.

Previous Lloyd's disciplinary cases (cited by reference to their Lloyd's Case numbers) are also mentioned, providing examples of each of these types of conduct. It should be noted that the cases are for illustrative purposes only and a decision to take enforcement action in any particular circumstances will take into account all the relevant facts.

Further information

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APPENDIX 1

Principles of Enforcement Action

1. Enforcement proceedings may be brought in respect of conduct that may be regarded as: (i) discreditable; (ii) detrimental to the interests of the Society, members, underwriting agents or Lloyd's policyholders or others doing business at Lloyd's; or (iii) a breach of: the Lloyd's Acts or Byelaws; a requirement of the Council; or a direction or order of the Enforcement Board, an Enforcement Tribunal or the Appeal Tribunal.
2. Lloyd's enforcement jurisdiction includes members, managing agents, members' agents and their directors, partners and workers with the following sanctions being available: permanent or temporary ban from the Lloyd's market; public censure; and/or a fine. The FSA has responsibilities for supervising managing agents, members' agents, coverholders, brokers, individual controllers and approved persons. The FSA will use its enforcement powers in some cases according to the FSA's policy set out in their Decision Procedure and Penalties manual (<http://fsahandbook.info/FSA/html/handbook/DEPP>) and the Enforcement Guide (<http://fsahandbook.info/FSA/html/handbook/EG>).
3. Lloyd's and FSA entered into "Co-operation Arrangements" in August 2007 (http://www.fsa.gov.uk/pubs/other/fsa_lloyds.pdf) in order to ensure that, where FSA and Lloyd's are both responsible for regulation, an effective working relationship is maintained. These Arrangements, *inter alia*, provide for: the sharing of information; the avoidance of unnecessary duplication; and the factors for deciding who should take the lead, in respect of the investigation of and enforcement against, firms and individuals working in the Lloyd's market.
4. The Market Supervision and Review Committee ("MSARC") is the committee responsible for the investigation and enforcement of disciplinary matters by Lloyd's in the Lloyd's market. In determining whether the facts and matters in any particular case should be the subject of proceedings, MSARC will have regard to all relevant matters including any previous guidance given by the Lloyd's Appeal or Disciplinary Tribunal, for example as to the meaning of misconduct.
5. The principles set out below, whilst not a comprehensive list of the circumstances in which Lloyd's might take enforcement action, describe types of conduct that are likely to result in such action. Previous Lloyd's disciplinary cases (cited by reference to their Lloyd's Case numbers) are also mentioned¹, providing examples of each of these types of conduct. It should be noted that the cases are for illustrative

¹ The descriptions of cases below are not intended to be a substitute for the full facts and matters as provided in the relevant case bulletins or tribunal decisions.

purposes only and a decision to take enforcement action in any particular circumstances will take into account all the relevant facts.

Principle 1 Any act of dishonesty.

It has been made clear in a number of previous Appeal Tribunal and Disciplinary Tribunal cases that Lloyd's is satisfied that dishonesty has no place in the Lloyd's market. For example, the President of the Appeal Tribunal has stated – "the message must go out again from the Lloyd's Appeal Tribunal that dishonesty will never be tolerated in the Lloyd's market" (Case no. [LDB/9712/38](#)).

Principle 2 The misappropriation, or causing or permitting the misappropriation, of money or other property (especially for direct or indirect personal gain).

This principle is demonstrated in the cases below:

- *In Cases no. [LDB/9702/2 MLP](#) and [LDB/9902/06](#), two underwriters who had misappropriated stolen cars recovered by their syndicates were banned from the Lloyd's market.*
- *Disciplinary cases of discreditable conduct against Brokers often involved the misappropriation of funds for indirect personal gain. For instance, in Case no. [LDB/9708/18](#), premiums were retained for reinsurances that had not been placed with underwriters. The Broker was banned from Lloyd's.*
- *An example of direct gain in a Broker case is provided by Case no. [LDB/9810/17](#). The Broker was found guilty of discreditable conduct and banned from Lloyd's for misappropriating funds in an Insurance Broking Account.*

Principle 3 The creation or use, or causing or permitting the creation or use, of false or misleading documents or other information.

This principle is demonstrated in the cases below:

- *In Case no. [LDB/9401/4](#), an active underwriter was found guilty of discreditable conduct, publicly censured and fined, for providing misleading documents to syndicate auditors and approving misleading syndicate accounts.*
- *The use of false or misleading cover notes/slips/debit or credit notes etc for indirect gain was a common theme in many discreditable conduct Broker cases. For example in Case no. [LDB/9708/18](#), a Broker who issued false cover notes, was banned from the Lloyd's market.*

Principle 4 Breach or causing or permitting a breach of a person's fiduciary or agency obligations related to the conduct of business in the Lloyd's market (for example, by making or permitting the making of a secret profit or failing to account for monies).

This principle is demonstrated in the cases below:

- *In Case no. LDB/0511/01, an active underwriter was found guilty of discreditable conduct in that he accepted personal inducements which he failed to disclose to his employer. He was banned from the Lloyd's market.*
- *In Case no. LDB/0105/03, a deputy active underwriter failed to disclose relevant interests, in this case in a coverholder, and to account for secret profits. As a result he was banned from the Lloyd's market.*
- *The making of a secret profit was commonly the basis for disciplinary action against Brokers. In Case no. LDB/9705/13, the Chairman of a Lloyd's Broker, admitted discreditable conduct, being his knowledge that a secret profit had been taken and he was banned from the Lloyd's market for 6 months.*

Principle 5 Failure or causing or permitting a failure to deal openly and honestly with, or provide clear and accurate information to, members, policyholders, counterparties or other relevant parties.

This principle is demonstrated in the cases below:

- *In Cases no LDB/0805A and LDB/0805B there was a failure by the directors of a Managing Agent to provide external parties i.e. capital providers with necessary information. They were banned from the Lloyd's market and subject to a fine and censure.*
- *In Case no. LDB/0112/09, a Managing Agent failed to disclose relevant information to members about imminent transactions of potential financial consequence and admitted discreditable conduct. A fine and censure were imposed.*
- *In Case no. LDB/9705/11, a Managing Agent admitted misconduct for failing to inform members of an increase in syndicate stamp. The Managing Agent was publicly censured.*
- *In Case no. LDB/9712/40, a Managing Agent failed to produce the required information in its syndicate accounts and was found guilty of breaches of the Syndicate Accounting Byelaw. It was banned from acting as a Managing Agent.*

Principle 6 Any act or omission, or the causing or permitting of any act or omission, capable of damaging Lloyd's brand, licences or the Central Fund or otherwise likely to bring Lloyd's or the Lloyd's market into disrepute.

This principle is demonstrated by the following:

- *In Case no. LDB/0310/05, the director of a Managing Agent was fined for agreeing to pay to a Lloyd's Broker a sum in excess of that which might*

otherwise have been paid by way of brokerage in order to secure the employment of one of the Broker's employees. The director's conduct was considered to present "a risk of harm to Lloyd's policyholders, the Society its members or others doing business at Lloyd's".

- *The Co-operation Arrangements between FSA and Lloyd's dated August 2007 provide that the factors which would tend towards a disciplinary case being conducted by Lloyd's, rather than FSA, include cases where the conduct in question poses significant risks to Lloyd's reputation, licences and the Central Fund.*

Principle 7 Failure or causing or permitting a failure to manage or safeguard properly, honestly or prudently monies or other assets held on behalf of policyholders or members in accordance with the terms of any applicable trust or agreement.

This principle is demonstrated in the cases below:

- *In Cases no LDB/0805A and LDB/0805B, although not the subject of the settled cases, the Lloyd's notices of censure explained that the proper safeguarding of PTF assets was of fundamental importance "and that the use of PTF assets for the purposes of funding capital raising is an improper use of such assets".*
- *The misuse of accounts was commonly the basis for disciplinary action against Brokers. For example in Case no. LDB 9711/37/B, the Managing Director of a Broker dishonestly misused funds held in an Insurance Broking Asset account as an incentive to obtain business and was banned from the Lloyd's market for one year.*

Principle 8 Failure or causing or permitting a failure to deal with Lloyd's in an open, honest and transparent manner or to ensure that Lloyd's is promptly informed of any matter which it reasonably ought to know.

This principle is demonstrated in the case below:

- *In Case no. LDB/0112/09, a Managing Agent failed to disclose to Lloyd's important information about the prospective sale of the issued share capital of its parent company and was publicly censured and fined.*

Principle 9 Failure or causing or permitting a failure to organise and control the business of an underwriting agent in a responsible manner or to maintain proper records and systems for the conduct of its business and the management of risk.

This principle is demonstrated in the cases below:

- *In Case no. LDB/0205/08, a Managing Agent was publicly censured and fined. The Managing Agent admitted a number of failures to manage responsibly and control its business, including: lack of proper records and systems in relation to its US credit life business; inadequate controls over coverholders; inadequate systems for monitoring premium receipts; inadequate checks as to business written by reference to its business plan etc.*
- *In Case no. LDB/0103/02, misconduct was admitted by the Managing Agent, which was publicly censured and fined, for failing to prevent an unauthorised third party from conducting Lloyd's business as an unapproved coverholder.*