The Society of Lloyd's v Brooks and another
Queen's Bench Division
134 NLJ 680, The Times 12 March 1984, The FT 13 March 1984, (Transcript:Association)
HEARING-DATES: 6 March 1984
6 March 1984

COUNSEL:
P Scott QC and J Thomas for the plaintiff; A Heyman QC and R Franks for the defendants.
PANEL: Neill J
JUDGMENTBY-1: NEILL J
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NEILL J: Before the court is an originating summons issued by the Society of Lloyd's (whom I shall call "Lloyd's") on 3rd January 1984. By this summons Lloyd's seeks certain declaratory relief. The defendants are two underwriting members of Lloyd's against whom disciplinary proceedings have been instituted. The summons before me is of some general importance because it concerns the disciplinary powers of Lloyd's over its members: in particular it raises the question whether Lloyd's has now any right to institute disciplinary proceedings in respect of alleged acts or defaults done or committed before 5th January 1983. Both parties agreed that the matter required to be heard as soon as possible and arrangements were made for an expedited hearing.

I propose to start by giving some account of the events which have given rise to the present proceedings. On 23rd July 1982 the Lloyd's Act 1982 (the 1982 Act) was passed by Parliament. The Act repealed much of the earlier legislation relating to Lloyd's which dated back to the Lloyd's Act 1871. One of the reforms introduced by the 1982 Act was the establishment of a body called the Council of Lloyd's. This new Council was given the power to make byelaws, including byelaws to provide for the establishment of a Disciplinary Committee or Committees and for the establishment of an Appeal Tribunal. It was contemplated in the Act, however, that an interval would elapse before the new Council could meet and before it could make any new byelaws. Schedule 4 contained certain transitional provisions.

The Council met for the first time on 5th January 1983 and on that date made ten new byelaws. I should mention the titles of some of these byelaws:

Inquiries and Investigations.

Misconduct, Penalties and Sanctions.

Disciplinary Committees.

Appeal Tribunal.

Council Stage of Disciplinary Proceedings.

Meanwhile and shortly before the new Council met for the first time the old Committee of Lloyd's had set in train an enquiry into various matters relating to syndicates underwritten by the first defendant. On 8th August 1983 the report of this enquiry was considered by the appropriate committee of the Council. As a result it was resolved to bring disciplinary proceedings against the two defendants. The disciplinary proceedings were instituted by letters sent to the two defendants dated 17th November 1983 with which were enclosed a number of written charges and other documents. The defendants were informed that the matter had been referred to the Disciplinary Committees and that the charges would be heard by a single Disciplinary Committee.

On 24th November Messrs D.J. Freeman & Co. wrote to Lloyd's on behalf of the two defendants. In that letter they foreshadowed some of the arguments which have been developed by counsel before me. In particular they contended that the Disciplinary Committee should not be asked to consider any charges arising from events taking place prior to 5th January 1983. They also made reference to an amendment to the January 1983 byelaw entitled "Interpretation" which had been made by the Council on 24th October 1983. The amending paragraph was in the following terms:

"To avoid any doubt as to the meaning and application of the byelaws, it is declared that the duties, powers and functions imposed and conferred by any byelaw made under Lloyd's Act 1982 were and are exercisable and applicable in relation to any act, default, event or other matter whenever taking place or arising, whether before or after the commencement of Lloyd's Act 1982, and accordingly that the persons referred to in paragraph 1 of the byelaw entitled 'Misconduct, Penalties

and Sanctions" are guilty of misconduct if they act or fail to act as specified in such paragraph 1 at any time whether before or after the coming into effect of the said byelaw and may be subject to any of the penalties or sanctions specified in paragraph 2 of the said byelaw".

The solicitors acting for the defendants argued in their letter that this amendment could not override the provisions of the 1982 Act.

Following the receipt of this letter by Lloyd's further correspondence took place. I do not need for the purposes of this judgment to refer to this correspondence in detail. It is sufficient to state:

(a) That the disciplinary proceedings against the defendants were adjourned pending an application to the High Court.

(b) That the paragraph amending the interpretation byelaw was revoked.

(c) That on 19th December 1983 amendments were made to the byelaw entitled "Misconduct, Penalties and Sanctions" (which I shall call the Misconduct byelaw) by the introduction of a new paragraph 1A and by the addition of a proviso at the end of paragraph 2.

(d) That on 3rd January 1984 the present summons was issued. The effect or purported effect of the December amendment of the Misconduct byelaw was more restricted than that of the October amendment to the interpretation byelaw. Thus, though the amendment was directed to acts or defaults before 5th January 1983, the new provision ensured that a member could not be found guilty of misconduct unless the act or default would have both constituted misconduct under paragraph 1 of the Misconduct byelaw at the time when the charge was brought and would have also constituted "an offence" under the relevant provision of the earlier legislation.

With this introduction I turn next to the relevant provisions of the Lloyd's Acts 1871 to 1982. The members of Lloyd's were incorporated into a body corporate with perpetual succession and a common seal by Section 3 of the Lloyd's Act 1871 (the 1871 Act). The circumstances leading to the incorporation of Lloyd's are set out in the preamble to the 1871 Act. The 1871 Act provided for a Committee of Members to be called the "Committee of Lloyd's", but the power to make byelaws and to exclude from membership was vested in the members as a whole. Section 24 of the 1871 Act contained povisions specifying the particular purposes for which byelaws could be made and also conferred the power to make "generally such byelaws as from time to time seem requisite for the better execution of this Act, and the furtherance of the objects of the Society" though it was also provided that any byelaw made by the Society should not be repugnant to the law of England, or to any provisions of the Act. Section 25, however, provided that no byelaw should be made by Lloyd's providing for exclusion from membership for any cause. The right to exclude from membership was contained in the 1871 Act itself. I do not need to make any detailed reference to sections 21, 22 and 23 of the 1871 Act (which related to exclusion from membership for fraud, bankruptcy and non-payment of subscriptions), but the provisions of section 20 are important. I should set out the relevant parts of section 20 (as amended by the Lloyd's Act 1911):

"If any member of the Society -

1 violates any of the fundamental rules of the Society;" (I may observe in parenthesis that these fundamental rules were set forth in the Schedule to the 1871 Act) "or,

2 is guilty of any act or default discreditable to him as an underwriter or otherwise in connexion with the business of insurance -

he shall be liable to be excluded from membership of the Society by the votes of four-fifths of such members of the Society as are present at a meeting of the Society specially convened for the purpose, with notice of the object by circular issued to every member six days at least before the day appointed for the meeting, there being present and voting at the meeting one hundred members at least, but a member shall not in any case be deemed for the purposes of this section to have violated any fundamental rule, or be guilty of any act or default as aforesaid, unless the fact of such violation or guilt has been first ascertained and determined by the award of two arbitrators..."

The section then contained provisions concerning the appointment of the arbitrators and for the resolution of the matter in the case of a difference between the arbitrators.

I should also notice before I part from the 1871 Act that by section 42 it was provided that nothing in the Act should confer on Lloyd's any right or power to exclude any person from membership by reason of anything done or omitted before the

passing of the Act, but at the same time the section preserved the right of Lloyd's to take action in cases in which the old Establishment or Society of Lloyd's could have taken action had the Act not been passed.

So matters remained for 40 years. By the Lloyd's Act 1911, however, a new penalty of suspension was introduced. I should set out the relevant parts of section 12(1) of the Lloyd's Act 1911:

"If it be established to the satisfaction of the Committee at any meeting to be held by them in accordance with the Act of 1871 or the byelaws made thereunder that any Member of the Society has been guilty of any act or default discreditable to him as an underwriter or otherwise in connection with the business of insurance including guarantee business the Committee may be a resolution of a majority of not less than five-sixths of the Members of the Committee present at any meeting duly convened for the purpose at which not less than ten Members of the Committee are present resolve that such Member shall for such period not exceeding two years as they shall determine be suspended from carrying on insurance business including guarantee business as a member of the Society..."

The subsectioin, however, also contained a proviso as follows:

"Provided that any such Member so suspended may within seven days of receipt of notice of any such resolution give notice in writing to the Committee of his desire to appeal to a General Meeting of the Society against the resolution of the Committee under this section and if such notice of appeal be given by such Member the Committee shall summon a General Meeting of the Society... and the resolution of the Committee shall be submitted to the Meeting for confirmation and the Meeting shall have power to confirm the same and the decision of the Meeting shall be final and in the event of any such appeal and pending such confirmation the resolution of the Committee shall be inoperative".

Sections 12(1) and 12(2) contained further provisions whereby if an appeal were made to the members in General Meeting a resolution to confirm the decision of the Committee had to be passed by a majority of not less than three-fourths of the members present and voting (or, if a ballot were demanded, voting by ballot) and a minimum quorum of 100 Members had to be present at the meeting.

Such then were the main disciplinary rules affecting members of Lloyd's before the enactment of the 1982 Act, though for the sake of completeness I should mention that under section 23 of the 1871 Act the Committee of Lloyd's had the power to exclude a member from the use of the rooms of the Society if the member was in arrear with his subscription or other sum payable under the byelaws for three months or more. The features of what I may call the old system on which Mr. Heyman placed particular reliance were the following:

(a) A member could not be expelled unless there had been an adverse finding by the arbitrators or umpire followed by a resolution passed at a meeting of members.

(b) The meeting of members required a quorum of 100 and the vote in favour of expulsion had to be by a majority of four-fifths of the members present.

(c) The lesser penalty of suspension was subject to similar safeguards. The initial decision in favour of suspension had to be taken by a majority of the Committee of not less than five-sixths of the members present and at a duly convened meeting attended by not less than 10 members of the Committee. Accordingly, if, for example, only 10 members of the Committee were present, 9 out of the 10 members would have to be in favour of suspension.

(d) The decision of the Committee as to suspension was subject to an appeal to the members in General Meeting. At this General Meeting a quorum of 100 members was required and the suspension could not be confirmed unless a majority of not less than three-fourths of the members present and voting voted in favour.

(e) The tribunal which ultimately decided the fate of a member was therefore a tribunal of his peers. [Mr. Heyman argued that this was an important safeguard in a case such as the present because in the report which was submitted to the Council a doubt had been expressed as to whether until recently more than a handful of those in Lloyd's appreciated that there might be 'anything remotely wrong in an active underwriter effecting reinsurance of his syndicates with a reinsurance company in which he or those who employed him had an interest'.]

(f) There were only two types of penalty which could be imposed and the requirements which had to be satisfied before the imposition of either of the penalties were an important protection and safeguard to the individual member.

I turn now to consider the Lloyd's Act 1982. The preamble is of some importance and merits attention. I shall set out a number of the paragraphs:

"(2) By the said Act of 1871 there was established a committee of members of the Society called the Committee of Lloyd's to have the management and superintendence of the affairs of the Society and to exercise all the powers of the Society (except as in the said Act provided), subject to control and regulation by a general meeting of the members of the Society:

(3) By the said Act of 1871 the members of the Society in general meeting were empowered to make byelaws for the purposes provided in that Act and generally for the better execution of the Act and the furtherance of the objects of the Society, and byelaws have from time to time been so made:

(5) Since 1968 the number of persons resident outside the United Kingdom admitted as members of the Society and the total number of members of the Society have both greatly increased so that it is no longer practical or expedient for the members of the Society to exercise in general meeting the powers reserved for them by the Acts hereinbefore mentioned:

(6) It is expedient in order to enable the Society to regulate the management of its affairs in accordance with both present-day requirements and practice and the interests of Lloyd's policy holders that -

(a) there should be established a Council of Lloyd's to have control over the management and regulation of the affairs of the Society;

(b) the said Council should have power to make byelaws for the purposes of such management and regulation, including byelaws making provision for and regulating the admission, suspension and disciplining of members of the Society, Lloyd's brokers, underwriting agents and others; and

(c) certain provisions in Lloyd's Acts 1871 to 1951 should be amended or repealed..."

The preamble provides an avenue of approach to the ascertainment of the intention of the legislature.

I come next to section 6 of the 1982 Act. I should set out the first two subsections:

"(1) The Council shall have the management and superintendence of the affairs of the Society and the power to regulate and direct the business of insurance at Lloyds and it may lawfully exercise all the powers of the Society, but all powers so exercised by the Council shall be exercised by it in accordance with and subject to the provisions of Lloyd's Acts 1871 to 1982 and the byelaws made thereunder.

(2) The Council may -

(a) make such byelaws as from time to time seem requisite or expedient for the proper and better execution of Lloyd's Acts 1871 to 1982 and for the furtherance of the objects of the Society, including such byelaws as it thinks fit for any or all of the purposes specified in Schedule 2 to this Act; and

(b) amend or revoke any byelaw made or deemed to have been made hereunder".

In the context of the present case I need refer to two only of the paragraphs in Schedule 2. The Schedule is headed "Purposes for which byelaws may be made" and opens with these words:

"Without prejudice to the generality of the powers vested in the Council by subsection (2) of Section 6 (Powers of the Council and of the Committee) of this Act, the Council may pursuant to that section make byelaws for the following purposes..."

The relevant paragraphs are:

"(26) For empowering the Council to suspend (for such maximum period as may be specified by byelaw) any of the following from transacting, or being concerned or interested in the transaction of, the business of insurance at Lloyd's or any class or classes of such business, that is to say:

(a) A member of the Society;..."

(27) For regulating the grounds on which and the manner in which a member of the Society may be disciplinary proceedings be suspended or excluded from membership or required to cease underwriting temporarily, or indefinitely, or subjected to any lesser penalty prescribed by byelaws, including, but not limited to, a fine and the posting of a notice of censure in the Room".

The provisions relating to the establishment of the Disciplinary Committee and the Appeal Tribunal are contained in section 7 of the 1982 Act. I should set out the relevant parts of this section. Section 7(1) provides:

"The Council shall by byelaw -

(a) (i) Establish, provide for the constitution of and define the powers of a Disciplinary Committee or Committees, provided that the majority of the members of any such Disciplinary Committee shall be members of the Society (who need not be members of the Council); and

(ii) Subject to subsection (3) below, specify the grounds upon which in furtherance of the objects of the Society disciplinary proceedings may be instituted against and penalties or sanctions may be imposed upon any member of the Society..."

(b) (i) Establish, provide for the constitution of and define the powers of an Appeal Tribunal to hear and determine appeals (whether or not in the exercise of its disciplinary powers and functions),...; and

(ii) Specify the class or classes of decisions, findings, orders, acts or omissions against which there shall lie a right of appeal to such Appeal Tribunal".

Section 7(2) provides:

"All disciplinary powers and functions of the Council, except the power to confirm, modify or grant dispensation in respect of any penalty or sanction imposed by a Disciplinary Committee or the Appeal Tribunal, shall be exercisable only by a Disciplinary Committee and, in respect of appeals which lie from decisions, findings, orders, acts or omissions of a Disciplinary Committee, only by the Appeal Tribunal".

Section 7(3) provides:

"The grounds upon which disciplinary proceedings may be instituted and penalities or sanctions may be imposed by virtue of byelaws made pursuant to subsection (1) above, may include breach of or failure to observe any regulation or direction made or given pursuant to subsection (6) of section 6 (Powers of the Council and of Committee) of this Act, provided that: ..."

I do not consider that it is necessary to make reference to the provisos to section (3) which have no direct application in the present case.

The only other sections to which I need refer in detail are sections 16 and 17.Section 16 provides:

"Any byelaw made under Lloyd's Acts 1871 and 1951 shall be deemed to have been made by the Council in the exercise of its power under this Act and subject to the provisions of Schedule 4 to this Act such byelaws shall continue in full force and effect unless and until revoked by the Council pursuant to the said power".

Section 17 provides:

"The transitional provisions contained in Schedule 4 to this Act shall have effect"

Finally, I should set out the terms of Part II of Schedule 4:

"OTHER TRANSITIONAL PROVISIONS

9 Until the first meeting of the Council, Lloyd's

Acts 1871 to 1951 shall, subject to the provisions of this Schedule, continue to have effect as though this Act had not been passed.

10 The Council may in preferring any charge against any person refer to, and the Disciplinary Committee in hearing that charge may have regard to and take into account, any act, default or other event which takes place before this Act comes into force.

11 Section 20 (Exclusion from membership for violation of fundamental rules, &c) of the Act of 1871 (including the Schedule to that Act setting out the fundamental rules of the Society), Section 12 (Power of Committee to temporarily suspend Members) of the Act of 1911 and byelaw 87(VI) of the byelaws made pursuant to Lloyd's Acts 1871 to 1951 shall continue to have effect until a Disciplinary Committee shall be established by byelaws made under this Act, and where proceedings have been commenced against any person under either of such sections or under such byelaw, they may be continued in all respects until concluded as if the section or byelaw under which the proceedings had been commenced continued in full force and effect". I should also mention that by virtue of section 15 and Schedule 3 of the 1982 Act section 20 of the 1871 Act and section 12 of the 1911 Act were repealed. Having set out the relevant provisions of the new legislation, I can now turn to examine the submissions which were put forward. I propose to start by summarising the arguments advanced on behalf of the two defendants.

Mr. Heyman Q.C., developed his case on the following lines:

(1) That, save to the limited extent provided in paragraphs 10 and 11 of Schedule 4, the Council was not given any power to take disciplinary proceedings in respect of any alleged acts or defaults which had taken place before the Act came into force.

(2) That there was therefore no power to make byelaws such as the Misconduct byelaw in its amended form which purported to make members liable to penalties for acts or defaults done or committed before the Act.

(3) That the construction of the Act for which Lloyd's contended and the byelaws which they sought to support offended against the rule that all statutes are prospective and that retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature. In this context Mr. Heyman referred me to a number of authorities, including passages in Volume 44 of Halsbury's Laws of England (Fourth edition); Croxford v Universal Insurance Co. [1936] 2 KB 253; and R. v Griffiths [1891] 2 QB 145.

(4) That though paragraph 10 of Schedule 4 allowed the Council to "refer to... and the Disciplinary Committee... to have regard to and to take into account" earlier acts, defaults or events, the paragraph on its proper construction did not permit the inclusion of such matters in any charge which might be preferred under the new procedure.

(5) That before the 1982 Act the defendants had the right to have any alleged defaults subjected to the scrutiny of their peers. I have already drawn attention to the features of the old system on which Mr. Heyman particularly relied. The new byelaws purported to subject the defendants to a different and potentially less favourable tribunal and to expose them to a new and wider range of penalties. In the absence of clear words in the 1982 Act the defendants' accrued rights could not be taken away or interfered with.

(6) That furthermore the Misconduct byelaw in its original form as made in January 1983 was not apt to deal with past acts or events and that therefore the defendants acquired an immunity from proceedings which a later amendment to the byelaws could not remove or affect. He drew attention to the judgment of the Privy Council in Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553, where Lord Brightman, in the context of the expiry of a period of limitation, spoke at page 563 of "an accrued right to plead a time bar".

Mr. Peter Scott Q.C., on the other hand on behalf of Lloyd's submitted that it was the plain intention of Parliament as expressed in the 1982 Act to give wide powers of self-regulation to the Society and to transfer the overall control from the members to the Council. He drew particular attention to the wording of sections 6 and 7 as well as to paragraphs (5) and (6) of the preamble and suggested that paragraphs 10 and 11 of Schedule 4 were probably inserted as an added precaution rather than as necessary provisions. Indeed paragraph 11, said Mr. Scott, was clearly superfluous in view of section 16(1)(e) of the Interpretation Act 1978. Moreover, paragraph 10 when properly construed did not limit the powers of the Council or of the Disciplinary Committee in any way but on the contrary gave explicit authority for the inclusion in disciplinary charges of matters which had taken place before the passing of the Act. Finally, said Mr. Scott, it was contrary to commonsense to imagine that Parliament intended to confer immunity from disciplinary proceedings in respect of acts or defaults which took place before January 1983 but which were not investigated or did not come to light until after that date.

Subject to a reservation to which I shall return later I am satisfied that Mr. Scott's submissions are correct. In my judgment it was the intention of Parliament to invest wide powers in the new Council, including wide powers to make byelaws. The

power to make byelaws conferred by section 6(2) is permissive and the purposes set out in Schedule 2 to the Act do not exhaust that power. The power is not unlimited however, because the byelaws have to "seem requisite or expedient for the proper and better execution of Lloyd's Acts 1871 to 1982 and for the furtherance of the objects of the Society", but subject to this constraint I can see nothing in section 6(2) itself to suggest that the Council is inhibited from investigating or dealing with past conduct. Nor can I see any limitation in paragraph 27 of Schedule 2 to prevent the Council making a valid byelaw to treat past conduct as a ground for disciplinary proceedings. Section 6(2)(a) and paragraph 27 of Schedule 2 have to be read, of course, in conjunction with the mandatory requirements of section 7(1(a)(ii), but neither here nor in section 7(3) do I see any indication in the language used to suggest that the specified grounds upon which disciplinary proceedings may be instituted have to exclude past events.

One turns therefore to Schedule 4 to see whether the Transitional Provisions, which have to be read with the rest of the Act as a whole, cast any doubt on the matter. It seems to me that paragraph 10 when properly construed provides support for the proposition that previous conduct can be the subject of disciplinary proceedings. The language used is quite general and no attempt is made in the paragraph to lay down how charges are to be framed. I am unable to see that the words "the Council may in preferring any charge against any person refer to... any act, default or other event which takes place before this Act comes into force" can reasonably be interpreted as prohibiting the Council from including such matters in the charge itself. Moreover, Mr. Heyman's construction of Schedule 4 would lead to the surprising result that whereas proceedings which had been commenced could be continued in accordance with paragraph 11, conduct which was under investigation but in respect of which no charges had yet been formulated could not be dealt with under either the old or the new machinery. It is to be remembered that in the instant case the original enquiry was initiated by the old Committee in November 1982.

It is still necessary to consider, however, whether despite the absence of any words in the Act itself restricting the powers of the Council, the rules which have been developed for the interpretation of statutes lead to the conclusion that the Council is not empowered to take disciplinary action in respect of past conduct. At this stage it is appropriate to draw a distinction between:

(a) Provisions which purport to apply new standards of conduct to acts which have taken place in the past, and thereby create new offences which take effect retrospectively; and

(b) Provisions which purport to deal with past acts by means of a new machinery.

In the present case Mr. Heyman expressly conceded that the Misconduct byelaw as amended by the December amendment did not fall into category (a).In my view he was plainly right to make this concession because of the terms of subparagraph (b)(i) of the new paragraph 1A. I am therefore at present concerned with a byelaw in category (b). In my judgment there is no principle of law which invalidates the Misconduct byelaw as amended by the December amendment. The general presumption against retrospection does not apply to legislation concerned with matters of procedure. Mr. Heyman argued that since the decision of the Privy Council in Yew Bon Tew v Kenderaan Bas Mara [1983] 1 AC 553 the distinction between statutes relating to procedure and other statutes could no longer be maintained and that in each case the question to be considered was whether the statute if applied retrospectively would impair existing rights and obligations. For my part I do not accept that the Privy Council, who were considering the special problems to which limitation provisions give rise, intended to throw doubt on the general presumption that procedural statutes are intended to be fully retrospective. There may, of course, be cases where a new body is set up to take over from an existing body and where in the circumstances an express authority would be required to enable the new body to deal with matters which had occurred before it came into existence. But in the present case I am concerned with a continuing entity for which Parliament has prescribed certain structural changes.The legislation plainly preserves the continuity of the Society of Lloyd's but provides new machinery to deal with the problems to which paragraphs (5) and (6) of the preamble draw attention.

Furthermore, I do not accept that the defendants had accrued rights to what may be called a trial by peers or an accrued right to be exposed to only particular types of penalty. It is true that before 1983 the method of dealing with disciplinary offences had the characteristics to which Mr. Heyman drew attention, but as I see the matter it was the plain intention of Parliament to introduce a new method because of certain weaknesses of the old. I can find nothing either in the 1982 Act itself or in the general law to prevent the new method and the new machinery from being applied to past events. It seems to me, with respect, to be a misuse of language to speak of accrued rights in this context. Moreover, it is to be remembered that the defendants have the safeguard set out in the proviso at the end of paragraph 2 of the Misconduct byelaw as amended. I also find myself unable to accept the argument that because the January byelaw in its original form made no reference to past conduct the defendants thereby acquired an immunity akin to the protection afforded by a time bar. If the Council has the power to make a byelaw on the lines of the December amendment, as I consider that it does, I do not understand why the omission from the byelaw in its original form of any express retrospective provisions should have conferred on the defendants any immunity from future proceedings. It may be that the position would have been different if the Council had

left the matter for, say, ten years and had then amended the byelaw with a view to investigating events in the distant past. In those circumstances the question might then have arisen as to whether the byelaw could be set aside as being unreasonable: see Kruse v Johnson [1898] 2 QB 91. But that is not this case.

It will be remembered that I said earlier that I had one reservation about Mr. Scott's submissions. He argued that, subject to the question of unreasonableness, the Council had the power under the 1982 Act to make byelaws which would in effect create new offences to deal with past conduct. In the light of the wording of the December amendment it is not necessary for me to express a concluded view on this point.Nevertheless I think it right to express my doubt as to whether such a power is conferred by the Act. The general rule is that clear words are required to take away from a defendant a defence which he would have had at the time when he did the relevant act. In R. v Griffiths [1891] 2 QB 145, Lord Coleridge, C.J. said this at page 148:

"It seems to me a very strong thing to hold that a defence which was open to a man at the time he did the acts complained of has been taken away by the retrospective operation of a subsequent statute".

These words seem to me to be of general application.

On the present summons, however, I am concerned with the byelaws in their present form and incorporating the December amendment to the Misconduct byelaw. In my judgment the Society of Lloyd's are entitled to bring disciplinary proceedings in accordance with these byelaws in respect of acts or defaults done or committed before January 1983. It may be that the parties will wish to direct argument to the precise wording of the declarations which should be made but in principle I am prepared to make the declarations as sought.

DISPOSITION:
Judgment for the plaintiff with costs. Leave to appeal granted.

SOLICITORS:
Linklaters & Paines; DJ Freeman & Co.