

## The complaint

Mr X complains about Society of Lloyd's (SoL) decision to apply a single indemnity limit to a number of claims he's made on a legal expenses insurance policy.

## What happened

Mr X held legal expenses insurance with SoL until December 2018. He made a number of claims on the policy, including two of particular relevance to my decision here. Claims were made against a housing association due to the condition of a property, one seeking the repair of the property and the other seeking compensation for personal injury.

SoL accepted these claims and funded Mr X's legal costs, including a solicitor (H) and those of a surveyor appointed to give an opinion on the condition of the property and cause of issues found within it.

In February 2019, after the policy cover had ended, SoL were informed by solicitors acting for Mr X on a related matter that he was seeking to take legal action against H and the surveyor, alleging professional negligence.

SoL said a condition of the policy was that all claims had to be notified within the period of cover, but accepted Mr X's claims as what it termed a "*gesture of goodwill*." It said that as these claims had the same original cause as the earlier claims (the condition of the property), only one indemnity limit of £100,000 would apply.

Mr X subsequently made a complaint about SoL's conclusion that only one indemnity limit applied. When SoL rejected the complaint, he referred it to our service. Our investigator thought it was unreasonable to apply a single indemnity limit, and that the claims against H and the surveyor should be considered separate claims, each with their own indemnity. SoL didn't accept this and asked for an ombudsman's decision.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The terms and conditions of Mr X's policy say:

*"Following an event that is covered by this section the insurer will pay your legal costs & expenses up to £100,000 (or other sum as stated in this section) for all claims related by time or original cause, including the cost of appeals."*

The terms and conditions go on to say that a claim must be "*reported to us during the period of insurance*."

In light of the conditions above, I think the condition requiring that claims be notified within the period of insurance only becomes relevant here if the claim being notified has a separate original cause to any previously notified claim. I say this because where a claim has the same original cause as a previous claim, it is effectively treated as a continuation of that

previous claim, as only one indemnity limit is applied. Where a newly notified matter is a continuation of an existing claim, it's fair to say that the notification condition doesn't apply.

I therefore think SoL has incorrectly referred to its original acceptance of Mr X's claim as a gesture of goodwill, when it's fairer to refer to it as a continuation of the earlier claim. SoL's position is that one indemnity limit applies because the claims against the surveyor and H have the same original cause – effectively making these claims a continuation of the claims against the housing association.

SoL says that even if I conclude that the claims against H and the surveyor have a different original cause to the claims against the housing association, it would be entitled to decline cover for such claims as they weren't notified of them within the period of cover. At that point, SoL says it would be entitled to accept costs relating to those claims on a goodwill basis. Where a goodwill gesture is made, it wouldn't be for me to comment on how that applied.

What I need to do, therefore, is consider whether the claims against H and the surveyor should be considered as having the same original cause as the claims against the housing association, or whether they have a different original cause. If I conclude they have a different original cause, then I need to consider whether it's fair and reasonable for the claims to be excluded from cover on the grounds of late notification.

#### *The original cause*

It isn't disputed that H and the surveyor gave advice in respect of Mr X's claims against the housing association. It also isn't disputed that the cause of the claims against the housing association was the condition of the property.

I'm satisfied that H and the surveyor should be considered distinct and wholly independent of not only each other but also the housing association. The advice given by each of them was given in a professional capacity, in line with their own expertise and qualifications.

The action Mr X seeks to take against H and the surveyor is for professional negligence, as he alleges they didn't diligently discharge their duties when they gave advice. The outcome of such claims wouldn't impact the housing association, or resolve the issues at the property.

H and the surveyor gave advice on the claims being made against the housing association and the condition of the property respectively. That advice seems to me to be the original cause of the claims for professional negligence. I think it's fair to say the original cause for a claim for professional negligence should be the advice or action which is alleged to have been negligent, as opposed to the matter which gives rise to that advice being given. What that means in this case is that the original cause should be the advice of H and the surveyor, not the condition of Mr X's property.

I conclude that the claims against H and the surveyor should be considered separate from the claims against the housing association. They have different original causes.

#### *The notification condition*

I now need to decide whether it's fair for SoL to exclude the new claims on the basis that they were notified after the policy cover ended.

On the face of it, the condition in the policy is clear that any claims have to be notified during the period of cover. However, I don't think it's fair for SoL to rely on this condition here, for a number of reasons.

The first is that the decision to end cover was taken by SoL – it wasn't that Mr X decided, at the end of the policy term to seek insurance elsewhere. SoL considered it no longer wished to insure Mr X, because of the number of claims that had been made. Mr X intended to continue being insured with SoL beyond December 2018, including the time when the claims were notified. If he'd done so the notification condition wouldn't have been relevant.

Secondly, I note that while the policy cover ended in December 2018, SoL was notified of the claim in February 2019. It seems to me that the intention of the condition referred to is to prevent claims being notified, and covered, many months or even years, after the cover ended simply because the event occurred within the period of cover. That isn't the case here. The notification was a matter of weeks after SoL decided not to renew Mr X's cover. It would seem to me unfair to exclude from cover a claim which was notified relatively closely to the end of policy cover. I'm also conscious that the involvement of H and the surveyor went back a number of years, and were actions SoL was aware of, having been party to the claims which led to the advice being given.

Finally, the circumstances of Mr X need to be taken into consideration. SoL was aware of his and his wife's ill health and vulnerability. I note in particular that the claim was actually notified by solicitors acting on their behalf (and who were being funded by SoL in respect of other actions). This suggests to me that Mr X's health issues were such as to render it difficult to notify SoL of the claim in accordance with the process and timescales stated in the terms and conditions of the policy.

In light of the above points, I conclude that it wouldn't be fair or reasonable for SoL to seek to decline cover for claims against H and the surveyor on the basis that the claims weren't notified during the period of cover.

### **Putting things right**

Having concluded that the claims against H and the surveyor should be treated as separate from the earlier claims, with different original causes and thus having their own indemnity limit for each claim, and that it wouldn't be fair to rely on the notification condition, I need to say how SoL should put things right.

From the information available to me, SoL hasn't identified any other terms or conditions which limit the cover available to these claims, or exclude them from cover entirely. I'm satisfied it should continue to assess and proceed with the claim in accordance with the remaining terms and conditions of the policy. The claims against H and the surveyor should be considered separate from previous claims and each other, with their own indemnity limit respectively.

### **My final decision**

It's my final decision to uphold Mr X's complaint. In order to put things right, Society of Lloyd's must consider Mr X's claims against H and the surveyor as separate claims, each having their own indemnity limit, in accordance with the remaining terms and conditions of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr X to accept or reject my decision before 6 July 2023.

Ben Williams  
**Ombudsman**