

The complaint

T, a riding school, complains about a claim it made on its equestrian insurance policy, which Society of Lloyd's declined to cover.

T's complaint is brought by Miss G.

What happened

Miss G made a claim on T's Society of Lloyd's equestrian insurance policy for cover to defend a claim brought against T by a third party who fell off a horse and sustained injuries.

Society of Lloyd's considered the claim and appointed a loss adjuster. The loss adjuster determined the claim had been notified almost 20 months after the incident claimed for took place and that this had prejudiced Society of Lloyd's position. As such Society of Lloyd's declined the claim as it hadn't been notified immediately after the occurrence that gave rise to it in accordance with its policy terms.

Miss G doesn't agree with the stance Society of Lloyd's have taken. She said the matter was notified as soon as she became aware of a claim against T and that she had no reason to believe that a claim would be made before she notified them.

Our investigator considered T's complaint and concluded that it shouldn't be upheld. Miss G doesn't agree so the matter has been passed to me to determine,

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.

Having done so, I won't be upholding this complaint for the same reasons set out by the investigator.

The starting point is the policy terms. They say:

"The Insured shall give immediate notice in writing to the Underwriters of any occurrence that may give rise to a claim under this Policy and shall give all such additional information as the Underwriters may require. Every claim, writ, summons, notice of adjudication, referral notice or process and all documents relating thereto shall be forwarded to the Underwriters immediately they are received."

Miss G says that whilst she was aware of the incident that gave rise to the claim, there was nothing that led her to believe that a claim would be forthcoming until she received a letter of claim from the third party's Solicitor. She feels that the incident wasn't something the third party could say was attributable to T in any way and therefore wasn't something she had to notify Society of Lloyd's about sooner.

I've considered what both parties have said and in particular the information Miss G gave

about the claim to Society of Lloyd's loss adjuster. She provided an account of the incident that gave rise to the claim, which involved the third party falling off a horse from T's riding school, becoming unwell and falling unconscious. Emergency services were called and the third party was then air lifted to hospital. The nature of the third party's injuries described by Miss G and their subsequent effect on the third party are undoubtedly serious in nature.

Given the nature of the incident and the subsequent effect of it on the third party, I'm not persuaded that this was something a reasonable policyholder would have considered wasn't an occurrence that could give rise to a claim. The incident occurred during a riding session that T supplied. I appreciate that Miss G disputes T was responsible for the injuries the third party sustained but that doesn't mean that this wasn't an occurrence that could give rise to a claim. The merits of the claim itself are, to that end, of no consequence- it's the possibility of a claim arising from such an occurrence that is and given the way in which things unfolded, I think it's reasonable to assume that a claim might have followed from the third party. Because of this I agree that T ought to have reported the claim as soon as possible after the incident occurred.

In reaching this conclusion I don't agree with Miss G's Solicitor that the reporting obligation itself is unclear, ambiguous or open to interpretation in the circumstances of this particular incident. And as the investigator has said, I think that T as a business, should reasonably have been aware that an incident such as the one the third party made against T, could well have given rise to the claim that followed.

In deciding T's complaint, I've also given thought to whether Miss G's failure to report the claim sooner prejudiced Society of Lloyd's position. If it hadn't, I might have been inclined to reach a different outcome to T's complaint. But I'm satisfied that it did. Society of Lloyd's have set out persuasive reasons why they weren't able to properly investigate or establish the legal position some 20 months after the incident. In particular, they refer to difficulties now collecting contemporaneous statements from Miss G as well as the other witness. There are now missing items that might otherwise have been available shortly after the incident occurred, such as T's rider registration form which sets out the declared competence of the rider (and so was key to the crux of the claim), the signed rider's code of conduct and the post incident communications including messages that might support Miss G's account of how the incident unfolded. Without these items I can see why Society of Lloyd's considers its position has been prejudiced and I don't think it's unfair for it to reach this conclusion it has given the allegations being made by the third party against T. To be clear, I'm not making any findings about the merits of the third party's claim in reaching this conclusion; rather I'm focussing on Society of Lloyd's inability to properly investigate the matter in the absence of evidence that would have been available had the claim been made shortly after the incident took place.

In reaching this conclusion, I've not considered Society of Lloyd's suggestion that the claim could be declined on reliance of the policy requirement for the rider registration form and verification /documentation of ability/competency to be kept up to date. That's because I think it was reasonable for them to decline cover in the way that they did on reliance T's failure to notify its claim shortly after the occurrence which gave rise to it took place.

Finally, Miss G has said that she can provide evidence of everything Society of Lloyd's have said is missing to help support T's claim. If she's able to do this, then I would expect Society of Lloyd's to consider things further. But as matters stand, I won't be asking them to do anything more based on the position they've taken in response to T's complaint.

I know my decision will come as a disappointment to Miss G but I hope I've provided a thorough explanation of why I won't be upholding T's complaint.

My final decision

For the reasons set out above, I don't uphold T's complaint against Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 28 July 2023.

Lale Hussein-Venn
Ombudsman