DRN-4723739

The complaint

A limited company, that I will refer to as W, complains about the handling and decline of its public/commercial liability claim by Society of Lloyd's.

What happened

The following is intended only as a brief summary of events. Additionally, although both parties are represented, I have largely just referred to W and Lloyds for the sake of simplicity. References to Lloyds includes Society of Lloyd's and its underwriters and agents generally. Other parties are referenced only where this is necessary for clarity.

As far as is relevant to this decision, W operates as a business specialising in automatic baler machines. It designs, supplies and maintains these on behalf of third parties. W had a commercial insurance policy underwritten by Lloyds.

In January 2022, employees of W attended the premises of a third party (N), to carry out works on a baler machine. A fire started at these premises causing significant damage. And N notified W of an intention to claim against W for the cost of this damage. W in turn contacted Lloyds seeking cover under the policy.

Lloyds obtained a report from a firm of forensic investigators. This concluded that the most likely cause of the fire was the activities of W. And said that the pit in which the works took place ought to have been cleared of combustible materials. The report also said there was other combustible material present within a few metres of the works W was carrying out.

On the basis of this report, Lloyds declined the claim referring to the following condition present in W's policy:

> "Heat Conditions
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> It is a condition precedent to Our liability that whenever blow-lamps, propane torches, angle grinders, oxy-acetylene or similar burning, cutting or welding equipment, hot air guns, or soldering or brazing equipment are used, You must comply with the following minimum precautions:
>
> (a) before starting work
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> (i) You shall appoint a competent Employee to be responsible for fire safety and ensuring compliance with these requirements…
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> (iv) the appointed Employee shall examine the vicinity of the place where the heat is to be applied (including the area on the opposite side of any wall, floor, ceiling or partition) and shall ensure that all loose combustible materials are removed to beyond a radius of 15 metres. Combustible material which cannot be removed (including floors) must be covered and fully protected by overlapping sheets or screens of non-combustible material…"

As well as communicating this outcome to W, Lloyds' solicitors (R) also wrote to N's

solicitors stating:

> "…[Lloyds] is satisfied that most likely cause of the fire was the hot works which were being carried out by the Insured's employees at the premises. It is also satisfied that the manner in which the Insured's employees carried out these works breached conditions of their liability insurance policy regarding the performance of hot works, compliance with which is a condition precedent to cover.
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> The breaches in question appear to have led directly to the outbreak and spread of the fire. As such, any liability which the Insured may incur to [N] in respect of loss or damage caused by the fire is excluded from cover."

N's solicitors then wrote to W confirming it was pursuing the liability claim, and referenced R's letter in doing so.

W complained about the decline of the claim, the handling of the claim generally (as well as the subsequent handling of the complaint), and about R having provided this information to N's solicitor.

Lloyds did not alter its position on the claim. It did apologise for R having passed on the information above to N, and offered £150 compensation for this, but said that this had not prejudiced W's position.

W brought its complaint to the Ombudsman Service. However, our Investigator did not uphold it. She felt that Lloyds had acted appropriately when relying on the condition above to decline the claim. She also did not consider the actions of R when communicating with N's solicitor were something that she could consider, as R carrying out its legal role is not a regulated activity.

As W remained unsatisfied, its complaint was passed to me for a decision. I issued a provisional decision on 22 March 2024. The following is an extract from that decision:

> "…whilst W has made a number of arguments covering a range of issues, I am not going to address each of these within this decision. Instead, I am going to look at the situation holistically and will focus on what I consider to be the key issues. These are whether the decline of the claim was fair and reasonable, whether the general service provided by Lloyds was appropriate, and whether Lloyds is responsible for R having passed on the information above – and if so, what the impact of this was.
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> Decline of the claim
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> Lloyds has relied upon a condition precedent to its liability to decline the claim. This effectively means that where a policyholder, in this case W, has not complied with that condition, it is unable to bring a claim relating to the circumstances. In such cases, it is ultimately not necessary for the insurer to determine the actual cause of loss. There are exceptions to where breach of a condition can be relied upon, as I will refer to below.
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> In this case, the condition relates essentially to making sure the area around the works was clear of combustible material. It is not disputed that the works involved use of equipment relevant to the condition (for example an angle grinder and an oxy-acetylene gas axe).
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> W has disputed whether material left within the pit in which the baler was situated was combustible. Ultimately, it seems this material ignited and was a significant factor in the fire. So, it would seem difficult for me to conclude that it was not combustible. I appreciate the argument that many materials are combustible if exposed to enough heat for enough time. However, in a situation where material caught fire either as a result of the works W was carrying out, or one of the other

potential causes W has referred to, for example careless handling of smokers' materials, I would consider this material was combustible.

Regardless, it is evident – and does not appear to be disputed – that other inarguably combustible material was within a 15-metre radius of the works. This includes stacks of cardboard.

By not having this material removed, W was seemingly in breach of the condition above.

As I have said, there are exceptions to the application of a breach of a condition. As set out in the Insurance Act 2015, where a policyholder shows that the breach of the condition could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred, an insurer is not entitled to rely on the breach to decline the claim.

W has said that the arrangement of the baler and surroundings mean that it would not have been possible for sparks to ignite the material in the pit. So, this material not being removed (whether combustible or not) did not increase the risk of the fire. The images and report from the forensic investigator does not seem to agree with this. However, even W's position here is accurate, this does not alter the position in relation to the other combustible material in the surrounding area. W has not shown that the non-removal of this material did not increase the risk of the loss.

W has also argued that the condition is not clear. And that it would not be possible to comply with it. But I am not persuaded by either of these arguments. I consider the condition is clear that combustible material should be removed from the 15-metre radius if it can be removed. And if not, it should be covered by non-combustible material. W did not ensure either of these happened.

Taking everything into account, I am satisfied that Lloyds has acted fairly and reasonably by relying on breach of the above condition to decline the claim.

The service provided

W has raised a number of concerns over the service provided by Lloyds. I do not intend to address each of these specifically though, which is in line with the informal nature of the Ombudsman Service. I should also point out that complaint handling itself is not a regulated activity, so my consideration of the events is largely limited to the claim handling and the general communication/customer service provided that was ancillary to this.

W considers the report from Lloyds' investigator should have been shared with it prior to the decline. However, I do not consider this was necessary. The report was created for the purposes of Lloyds coming to its own conclusions on the validity of the claim. I do not consider Lloyds was required to advise W that the report was being initially made for use by Lloyds in this regard. This report has since been shared, which I consider is appropriate. And W has been able to refer to this in appealing the decision on the claim.

W is unhappy with some of the contents of Lloyds' investigator's report. However, I do not consider these ultimately change the conclusion of whether W was in breach of the above condition. So, I do not consider it necessary for me to address these specifically.

W also considers the communications from Lloyds to have been inappropriate. However, having read these, I am unable to agree. Whilst W may have wanted more detail, or for Lloyds to have offered more sympathy in its correspondence, I consider the information provided was largely accurate and contained the required level of detail, in a professional manner. This is what Lloyds is required to provide. Being, for

example, more sympathetic may be a desire of policyholders, but it is not a requirement on an insurer – so whether or not the communications provided this is not something I can consider.

The claim was promptly investigated by Lloyds, and was declined within what I would consider a reasonable timeframe given the circumstances. The communications from Lloyds were clear as to why this decision was being made. W may not agree with this decision, but I am unable to agree Lloyds general customer service was inappropriate.

The information passed onto N

It is however clear that the information referred to above should not have been passed onto N. Lloyds has acknowledged this and apologised, offering £150 compensation.

Our Investigator did not feel this was something she could consider. This is where I differ in my conclusions. The Investigator's conclusion is largely based on the fact that the provision of legal services by a solicitor (or similar) is not a regulated activity. This is true, and the Ombudsman Service is likely to conclude, especially in situations where a solicitor is contracted to act on behalf of a policyholder – for example in defending a claim from a third party – that it is unable to consider any alleged mistakes by that solicitor.

However, the situation here is somewhat different. As W has said, R was acting as Lloyds' agent in this matter. And the letter itself is also not likely to be considered as being specifically the provision of a legal service – R was merely passing on Lloyds' decision to both parties. Lloyds may not have seen the content of the letter, but it was aware of and happy for R to communicate the fact the claim had been declined to N.

Taking these points into account, I do consider that Lloyds was responsible for the letter being sent to N's solicitor and, indirectly, for its content.

I do not consider the fact a letter was sent, nor that this confirmed the policy would not provide cover in the circumstances, to be an issue. Lloyds was entitled to confirm to the third party that it was not liable and so would not be involved any further. W has suggested other wording that could have been used to achieve this, but I do not consider the wording actually used in this aspect to be of great concern.

However, the inclusion of details around the likely cause of the fire and that Lloyds considered W to have been responsible for this was not appropriate or necessary.

The question that remains is what the impact of this was.

W has said that its position has been prejudiced by the content of the letter. It has said that N may not have reached the same conclusions. And that N directly referenced Lloyds' conclusions when pursuing the claim, and may not have had the confidence to pursue this without R's letter.

I do appreciate W's position here. It is clear that N has taken note of Lloyds' conclusions around the cause of the fire. And N should not have been made aware of these – at least not in this manner.

However, I am unable to agree that the sharing of this information has most likely resulted in a substantial change to the eventual outcome. The letter from N's solicitor following R's letter does not only refer to the conclusions of Lloyds. And, especially given the size of the claim, I am not persuaded that N would not have pursued its claim if it had not been for R's letter.

Additionally, it seems unlikely that the conclusions of a now non-relevant third party (i.e. Lloyds) will be determinative of the eventual claim outcome. Breach of the conditions of insurance, and even being the cause of the fire, do not mean that W will

> be found responsible for negligence as alleged by N. N will need to produce its own evidence to support this position.
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> That said, I can appreciate that the contents of R's letter has not assisted W and has caused material detriment. As a limited company, W is unable to suffer distress. And given it was likely to have to defend the claim against N regardless, I do not consider this likely to be significant. But I do think W has been caused inconvenience and reputational damage has been caused by R's letter, and that £150 is not sufficient to address this. I consider Lloyds should pay W an additional £500 to compensate W for this.
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> I appreciate W will not be satisfied with this as an outcome to its complaint. But for the reasons set out above, I consider this to be fair and reasonable."

I invited both parties to respond. W said it fundamentally disagreed with the findings, said it was unclear how £500 was appropriate compensation in the circumstances, but made no detailed representations.

Lloyds did not consider that the £500 was merited. It said that the apology and £150 offer were appropriate given the error did not have any knock on effect, as it did not provide any evidence against W or prejudice W's position. Lloyds referred to the examples of awards the Ombudsman Service includes on its website.

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 have come to the same conclusions as in my provisional decision, largely for the reasons set out above.

I appreciate W disagrees with the findings reached generally, but has not provided any further comment in regard to the majority of these. So, I will not reiterate the reasoning above. And with no further comment or evidence, I have come to the same outcome.

Both parties disagree that the £500 award of compensation is appropriate in the circumstances.

I note Lloyds' reference to the examples on our website. It has referred to the examples where we have previously awarded between £100 and £300, and said that these included situations where there was a single mistake. Lloyds feels this applies to the current complaint. Lloyds said that the website examples for awards between £300 and £750 might relate to situations where there has been significant inconvenience, and it does not consider W had experienced this as a result of the error.

Whilst I understand that financial firms do use the examples on our website as guidance on how to compensate customers, it is necessary to bear in mind that these are specific to the circumstances. As the website says:

> "…it's important to remember that we review each case on its individual merits – and consider the impact caused to the particular consumer specifically."

Lloyds has accepted that cases need to be determined on their own individual circumstances. But highlighted that, as a commercial entity, W was itself unable to experience distress. Lloyds did not consider there to be a level of inconvenience or reputational damage that warranted the additional £500 suggested.

I agree that, as a limited company, W is unable to suffer distress. But would point out that if the complainant in a case such as this was a natural person, it is likely I would direct the respondent business to pay an even higher level of compensation. To refer back to the website, there are examples of awards of £1,500 and £5,000 where information has been sent to the wrong party. Again, those examples are specific to their individual circumstances. But they do highlight that the distress an individual suffers can have a significant bearing on compensation.

W did not suffer distress though. I appreciate its directors would likely have been significantly upset by the circumstances, and by the information being passed onto N. However, this is not something I can take into account. I am limited to thinking about the actual impact on W as a commercial entity.

W considers that the error may have led N into pursuing a claim it otherwise would not have. Lloyds does not consider there to have been significant inconvenience nor reputational damage.

I am not persuaded that the information provided to N led to it pursuing a claim it otherwise would not have. It had already signalled its intention to bring the claim, and the information in R's letter is limited in terms of whether W would be liable to N. It is important to note that the claim N was bringing was essentially based on an allegation of negligence, and even if W failed to comply with the requirements of its insurance policy this does not mean it was acting negligently in terms of any duty owed to N. N will still have had to satisfy itself that there was a reasonable prospect of demonstrating such negligence, and I don't consider the letter from R led to this.

However, I do think that W will have suffered more than a modest level of inconvenience around this. Not only have they had to raise this concern with Lloyds and go through the process of trying to get this point resolved, they will likely have had to incorporate R's comments into any defence of the claim. Thinking about whether R's comments have had a material bearing on the claim will have involved W's solicitors. And I also consider that informing a third party that a policyholder's actions are in breach of conditions concerning how they carry out their work is something that would be likely damaging to their reputation.

Taking all of this into account, whilst I do not consider Lloyds' (and its agent's) actions have significantly increased the likelihood of the claim or changed its outcome, I am not persuaded that an apology and £150 is appropriate compensation for this error.

Putting things right

To put things right, Society of Lloyd's should pay W £500 further compensation.

My final decision

My final decision is that I uphold this complaint in part. Society of Lloyd's should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 3 May 2024.

Sam Thomas
Ombudsman