

The complaint

M's complaint is about a claim she made on her malpractice/professional liability insurance policy which Society of Lloyd's ('Lloyd's') declined.

All references to Lloyd's include their claims handlers.

M is helped by a representative in this complaint, but I shall refer to all submissions as being M's own for ease of reference.

What happened

M claimed on her malpractice/professional liability insurance policy for cover to deal with a personal injury claim made against her by a client in respect of chin wax she performed.

Lloyd's considered the claim but concluded that it was excluded because M had failed to keep records and obtain an agreement or a consent form for the waxing treatment. They also turned down the claim on the basis that M had behaved in a way that admitted liability and said the policy excluded the cost of any settlements in these circumstances.

Unhappy, M referred her complaint to the Financial Ombudsman Service. Our investigator considered M's complaint and concluded that it should be upheld. She thought it was unreasonable for Lloyd's to rely on the policy exclusion requiring M to obtain a consent form given that it was not standard industry practice for consent forms to be completed for a waxing treatment. The investigator also said that M did not breach the policy condition in relation to admitting liability because she did not make an offer to her client in connection with any claim, in accordance with the policy wording. As such she said that Lloyd's should settle the claim M eventually agreed against her in the sum of £2,580 less any excess applicable, but in addition to interest at 8% per year simple from the date M settled the claim until it is paid by Lloyd's. The investigator also recommended that Lloyd's pay M £200 for the inconvenience their decision had on her business.

Lloyd's didn't agree, so the matter was passed to me to determine.

I issued a provisional decision in September 2024 in which I said:

"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 M's complaint. This is why.

The starting point is the policy terms. They say:

"Section 6

The insurer shall not be liable for:

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any claim or liability in respect of any client where the Insured does not have:

(a) an accurate and descriptive record of the procedures and treatments

(including all professional services rendered and products and equipment used) provided to the client; and

(b) a signed and dated: (i) written agreement or contract; or (ii) consent form from the client, which consent form explains the risks associated with the procedure(s) or treatment(s) provided.”

In this case M doesn't appear to have kept a record of the treatment carried out and obtained either a signed and dated agreement from the client or a consent form explaining the risks associated with the treatment carried out. This was confirmed by M in her email to Lloyd's dated 6 July 2023 when she said: "I normally get my clients to fill out a written consultation form but unfortunately on this occasion I made the grave mistake of only doing a verbal consultation." So, in this case it's clear that M's claim falls within the policy exclusion.

I've also noted that Section 8 of the policy states:

GENERAL CONDITIONS

4. RECORDS / CONSENT FORMS

As a Condition Precedent to the right of the Insured to be indemnified under this Policy, the Insured shall:

(a) maintain accurate and descriptive records of all professional services, products and equipment used in procedures and treatments;

(b) ensure that all clients sign and date: (i) a written agreement or contract; or (ii) a consent form for each procedure or treatment received which explains the risks associated with such procedure or treatment. For clients under the age of sixteen (16), it is a Condition Precedent to the right of the Insured to be indemnified under this Policy that: (i) the consent form is co-signed by the client's parent(s) or legal guardian(s); and (ii) the client's parent(s) or legal guardian(s) are present at all times whilst the procedure(s) or treatment(s) is / are being administered”.

The policy sets out that “Condition Precedent” means “a condition to any payment or indemnification under this Policy, any breach or non-observance of which shall mean no payment or indemnity will be provided under this Policy”.

So, the validity of the policy was essentially dependent on M complying with the obligation to have kept a record of the treatment carried out and obtained either a signed and dated agreement from the client or a consent form explaining the risks associated with the treatment carried out. In this case I've thought about whether it was fair for Lloyd's to rely on both the policy exclusion and the policy condition they've quoted.

M has made the point that it wasn't standard industry practice to comply with the obligations set out by either the exclusion or the condition in relation to non-invasive treatments such as a chin wax. Whilst that might be the case, I don't think that means that it was fair for Lloyd's to accept the claim in the absence of those records. I say so because I think M's actions have prejudiced Lloyd's position. Whilst it's right that neither the policy exclusion nor the condition make it a requirement for M to have obtained a consent form, they did require a written contract in the alternative. The terms don't specify what that sort of contract should have said, but I think it's most likely that such a document would be drafted to ensure a client agreed to accept the risks a treatment or procedure entailed before it was performed. And if that had occurred in this case, I think Lloyd's position would have been preserved. That doesn't mean that Lloyd's wouldn't necessarily have ended up having to settle a claim, but it would have given them a better chance of fighting it as presented had the client signed a

contract.

I also think that Lloyd's position would have been considerably strengthened if M had kept descriptive records of the equipment used in the procedures and treatments. That might have included details of the heat test M said she performed on her wrist, the heat setting the wax was set to and a description of the antibacterial product she used on the client. I know M has given evidence to Lloyd's about the equipment used in the procedures she performed but that evidence would have held considerably more weight, had it been kept contemporaneously and before the client made a claim against M.

Taken together, I think that M's failure to adhere to the policy condition means that Lloyd's position was prejudiced. As such I think it was fair for Lloyd's to rely on the policy exclusion and condition, I've referenced above to turn down M's claim.

Given my findings I haven't addressed whether it was fair for Lloyd's to also turn down M's claim on the basis that she behaved in a way that admitted liability because this makes no difference to the outcome of M's complaint."

I asked both parties to provide me with any further comments or evidence in response to my provisional findings. Lloyd's have not responded but M has. She's made the following points:

- The exclusion in relation to records and consent forms is extremely broad given that M's business is a beauty salon and provides wide ranging treatment options from simple to more invasive. The exclusion would also mean that M needed to keep written records for every customer and every treatment, which is unreasonable.
- M has a written consultation for the client but not a signed consultation form. It is not industry practice to obtain a signed consultation for a waxing treatment.
- The seller of the policy did not make clear that any or all of the treatments provided by M needed to have a signed record or consent form despite the policy making this a condition that these records be obtained and kept for five years.
- There is no reference to a requirement for a signed consultation form, which is deceptive. M says she had a consultation card for the client's treatment.
- Under the Schedule of Insurance, there are specific endorsement definitions that apply to different treatments making it a condition that all clients complete, sign and date a consultation form which includes the necessary before and after care advice. As waxing was not included in this, the position with regards to records has not been made clear enough in the policy.

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 remain of the view that M's complaint should not be upheld for the same reasons set out within my provisional findings.

The points M has made are largely a repetition of those made in support of her original complaint to the Financial Ombudsman Service, so I won't be addressing them all here as my provisional findings clarify my view of that points as a whole.

What I will say is that I don't think the exclusion Lloyd's has relied upon is too wide or unclear here. Whilst there are different sections of the policy that contain endorsements for different treatments, it doesn't mean that the sections I have quoted in my provisional decision are not applicable.

And whilst it's right that the exclusion I've referred to in relation to records and consent forms requires M to maintain accurate and descriptive records of **ALL** professional services, products and equipment used in procedures and treatments, this doesn't mean that the requirement is so onerous that I would find it not to apply. Equally the standards held by the beauty industry in relation to record keeping make no difference to my view that the policy exclusion Lloyd's have relied upon is applicable here. The terms of M's policy required M to do certain things in order for her cover to be effective. In this case she didn't do them so I can't say that Lloyd's need to pay her claim.

M has made some points about the relevant terms not being drawn to her attention during the sale of the cover. I'm not considering a complaint against the seller of the policy here. If M is unhappy about the way in which the policy was presented to her, she can raise that with the seller separately and/or complain to the Financial Ombudsman Service if she remains dissatisfied. In this complaint, I'm looking at whether it was fair for Lloyd's to turn down M's claim and for the reasons I've set out, I think it was.

Finally, M has said there is no reference to there being a need for a signed consultation form. Whilst that's right the policy sets out what is required under the exclusion I've quoted. M has not been able to supply any of the items required, namely an accurate and descriptive record of the chin wax, products and equipment used in that procedure procedures and a signed and dated written agreement or contract from the client or a consent for the chin wax explain the risks associated with it. For those reasons I don't think M's submissions make any difference to the outcome of this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 19 November 2024.

Lale Hussein-Venn
Ombudsman