

The complaint

P, a company, complains about a claim it made on its Society of Lloyd's (Lloyd's) commercial legal expenses insurance policy.

P says Lloyd's treated it unfairly by declining to cover its claim.

What happened

I issued a provisional decision in respect of P's complaint against Lloyd's in which I said the following:

"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'm departing from the investigator's findings and not upholding P's complaint. Before I explain why I wish to acknowledge the volume of submissions made by both parties in the complaint. Whilst I've read everything they've said, I won't be addressing it all. That's not intended to be disrespectful, rather it's representative of the informal nature of the Financial Ombudsman Service.

These are my reasons for my decision:

- The starting point is the policy terms. They don't provide cover for "...any claim arising from or relating to ...any actual or alleged act, omission or dispute happening before, or existing at the start of the policy, and which the insured knew or ought reasonably to have known could lead to a claim." The issue for me to determine here is therefore whether the claim that P made is one that related to an alleged act that existed before the start of the policy and whether P ought to have reasonably known about this.*
- In this case it's clear to me from the claim filed at Court that the amount owed to P by its former client fell due on 23 October 2019. This was a considerable period of time before the policy started to run, which was in March 2021. Given the claim P has made against its former client sets out the date of the breach being before the policy was in place, I'm satisfied that the alleged act being claimed for occurred before the start of the policy. This does not appear to be in dispute.*
- The debate between Lloyd's and P is in relation to whether P ought to have reasonably known this breach could lead to a claim. P says that it didn't expect to receive the sum it is claiming for (which was in relation to a retention) on 23 October 2019. It says this was because the pandemic stalled the majority of projects at the time which led to delays in snagging being completed by P for its former clients. The terms of the contract stipulated that this needed to occur before the retention was released to P. P also says that relations were good between the parties, which it has evidenced with copies of cordial communications. And it wasn't until August 2021 that P says it became aware that a claim was likely. This was when its former clients appointed claims consultants to act against it. On the other hand, Lloyd's says the pandemic isn't relevant because the first Covid-19 lockdown didn't take place until March 2020, some five months after the retention was due. In addition, P had six months from when the work was completed to finish any outstanding issues, which is accounted for in the six-month retention period. In*

total the snagging and retention period equate to 11 months before the first lockdown began. Lloyd's also say that the policy started to run 16 months after the retention monies were due, which was ample time for P to identify that there might be a problem that could give rise to a claim before the policy was in place.

- I've thought about what both parties have said and particularly how P has pleaded its case. I'm satisfied that despite the Covid-19 restrictions, there was a very long period (16 months) of P not receiving the retention due to it in its claim before cover started to run. So even if I accept there were some delays in snagging taking place, and further work going on either side of the Covid-19 lockdown, I think that P ought to have been reasonably aware that there was a problem (in relation to receiving its retention) that could reasonably give rise to a claim at some point in that time period. I accept that relations between P and its former clients were friendly at particular points and that P was asked not to attend the former client's property during the first lockdown, but this doesn't mean that P shouldn't have reasonably been aware there was a problem during the entire 16 months preceding cover. And the fact that P is claiming for the retention from 23 October 2019, some 16 months prior to the policy being in place, suggests to me that it should have been concerned this might not be paid to it at some point before March 2021, even if that was immediately before. For that reason, I don't think Lloyd's were wrong to decline P's claim in the way that they have.
- P has said that it was unreasonable for Lloyd's to accept its claim in the first instance then decline it once a Barrister's opinion was obtained on the merits of the claim. From what I've seen, it wasn't clear that P's dispute was one that originated before the start date of the policy until a Barrister's opinion was obtained. And when this came to their attention, Lloyd's did make the position clear to P. I appreciate this was disappointing, but it doesn't lead me to the conclusion that Lloyds needed to cover P's claim. Insurance is subject to terms and conditions and in this case, I'm satisfied that it was reasonable for Lloyd's to decline P's claim when they became clear the matter in dispute was pre inception. It follows that they didn't need to do anything further in respect of the costs P incurred in litigating their claim. As such I won't be considering P's complaint about whether they had the freedom to choose their own Solicitor under the terms of the policy because the claim isn't one that is covered regardless.
- Lloyd's carried out a full and thorough review of P's claims journey and identified various failings on their part, including unclear communications and failures to respond to P or explain the current position. They've offered P £1,000 in compensation in respect of this. As the investigator explained, P is not a natural person so we can't compensate it for any stress that might have been caused to its staff. In this case I would only make an award for inconvenience caused to P as a result of Lloyd's actions. The kind of monetary award I would make in the circumstances of P's complaint for the failings complained of, (including allegations that Lloyd's lost evidence) are modest compared to the offer Lloyd's has made, so I think this amount is more than fair in the circumstances. From what I've seen, this wasn't a claim that was capable of cover so I don't think Lloyd's actions have caused any significant prejudice to P's claim as it was one they would always have had to fund in the circumstances.
- Finally, P is unhappy about the information they were given about the identity of the underwriter of the policy. Whilst I understand why P might have found this frustrating, like the investigator in his first view, I think that this made no difference to P's ability to claim on the policy. P was able to do this, even though the claim wasn't one that was eventually determined by Lloyd's to fall within cover."

I asked both parties to provide me with any further comments or evidence for me to consider. Lloyd's have not responded but P has. It disagrees with my findings. In summary it says:

- I have misunderstood the significance of 23 October 2019.

- This date is the deadline for submission of the snagging list not the date of the retention became payable.
- The retention only became payable once the snagging was completed and signed off by the client.
- They've supplied a timeline to show the snagging and repair process was ongoing until 28 September 2020.
- The pandemic meant access was restricted to the client's property and that a further list of work was received from the client in January 2021 to complete when Covid 19 restrictions were fully lifted in July 2021.
- It's unreasonable for Lloyd's not to factor in any delays as a result of the Covid 19 restrictions.
- They first became aware of a dispute in August 2021 when the clients appointed claims consultants to act against them.
- They want the findings set out in the investigator's view to be reinstated.

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 P's complaint should not be upheld for the reasons set out within my provisional findings and these additional reasons below.

The policy started to run in March 2021. Even in its response to my provisional decision, P says that the clients were permitted six months from handover to identify and submit a list of snagging items. They say handover occurred on 23 April 2019. But even if I accept that the operative date for snagging items to be confirmed to P was 23 October 2019 and that the retention wasn't payable until that work was complete, that still leaves 16 months for the work to be completed thereafter and the retention to be paid before cover was in place. And in any event that account seems to be at odds with what P has set out in their pleadings.

Even with the disruption of the pandemic, restricting access to the clients' property, it's clear from what P has said that the client was asking P to do more and more snagging well beyond the date stipulated by the contract and not in accordance with it. On P's account that snagging list was due on 23 October 2019. The fact that snagging was still being provided to P throughout 2020 and even in January 2021 without the retention being released as planned, to my mind suggests there was a problem here P should reasonably have been aware of either with the quality of their work or the fact that payment might not be forthcoming, certainly before cover engaged in 2021. And even if P might not have considered this before, that doesn't mean that as a commercial entity they ought not to have. The timeline for the project was clearly set out and both parties knew what was expected of them and when. The pandemic did cause some complications but the period of 16 months between handover and policy inception without payment being made is simply too long in my view for P to claim it couldn't reasonably have been aware of a problem before it took out cover. For those reasons I'm not satisfied that P has been able to successfully establish that it wasn't aware of something that could reasonably lead to a claim before the policy was in place.

My final decision

I don't uphold P's complaint against Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 15 December 2025.

Lale Hussein-Venn
Ombudsman