

complaint

Ms B complains about the way Society of Lloyd's has handled a number of claims made under her legal expenses policy.

All references to Lloyd's include its claims handlers.

background

I issued a provisional decision on this complaint in February this year. An extract from that decision follows:

"Ms B has had a dispute about building works done to her home which has led to a number of claims made under her legal expenses policy.

Ms B has complained to us previously about these issues so there is an overlap between previous ombudsman decisions and what she's now complaining about. Where there's an overlap and the matter's already been decided by another ombudsman I won't be able to comment.

Ms B wants to claim against the following:

- a law firm instructed by Lloyd's who negligently advised there was no cover under Ms B's policy to pursue her building work claim.*
- the barrister who advised on the above claim.*

She wants the following:

- Lloyd's to instruct a barrister from London to advise on her potential claims.*
- She wants her claim to be reviewed and accepted. She asked for Lloyd's to get an advice on the chances of success of her case against the law firm. Alternatively she wants Lloyd's to sue that barrister. She said that the barrister Lloyd's instructed has been negligent.*

Ms B's complaint has come directly to me for a decision.

my provisional findings

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

Ms B has asked for her claim to be reviewed and essentially accepted by Lloyd's.

She wants to bring a claim against a firm of solicitors who said that Lloyd's didn't have to provide cover for Ms B's claim for the work done to the house. Ms B has complained about the fact that a legal executive was advising and not a partner but this was considered and rejected in a previous ombudsman's decision. Also we're not able to interfere with how law firms allocate their cases. Lloyd's instructed a barrister to advise on the prospects of this potential claim. The barrister said that the advice on cover was incorrect but that the law firm wasn't negligent in giving the case to a legal executive. He suggested that another legal opinion is obtained on this claim but by the same firm.

Lloyd's offered to instruct another solicitor's firm from its panel firms. Ms B wanted a barrister instead. Lloyd's said there was no need as a barrister had just advised on this claim. I think Lloyd's acted entirely reasonably in this instance. It followed the advice it got from a barrister and as far as I can tell that advice was sensible.

Ms B feels that the barrister was negligent and sought to protect the solicitors firm and Lloyd's. I'm not able to look at complaints made against barristers. If Ms B feels this way she can complain to his chambers, his regulatory body or the Legal Ombudsman.

In her complaint to us Ms B said that Lloyd's should sue this barrister because his advice was negligent. Lloyd's said Ms B hasn't raised this before. Also Lloyd's no longer provides legal expenses insurance to Ms B and hasn't done so for almost a year now. If she wants to make a new claim now, this would fall outside her period of cover. So Lloyd's wouldn't cover it.

I have looked at the policy that was provided to Ms B. Lloyd's provided legal expenses cover on a "claims made" basis. So for a claim to be considered, it would have to be made during the period of cover. So if Ms B wants to bring this claim now, Lloyd's would probably be entitled to reject it on this basis. And I'm not persuaded that there's any reason for Lloyd's to disregard this and cover this claim.

The barrister was instructed by Lloyd's. So Lloyd's was his client. I note Ms B said that she was his client. But this barrister was instructed by Lloyd's to advise on whether Lloyd's should fund this claim. Therefore he wasn't acting for Ms B. But she would be able to complain to his chambers or the Bar Council if she's unhappy with his advice. And if she's not happy with the way her complaint is dealt with she can go to the Legal Ombudsman.

In any event I don't think Ms B has been prejudiced by the barrister's advice. Even if it is negligent, she is free to get a second opinion. As far as I know she hasn't. So as things stand there's no conflicting legal opinion which says that Ms B's claim against the solicitors has reasonable prospects of success.

Ms B has also complained that she was not copied into correspondence between Lloyd's and other parties. Lloyd's said it would be unreasonable to expect it to routinely do this. I agree. And Lloyd's isn't obliged to do this under its policy. It also says that it followed its normal process and I'm not aware of any insurer who would act differently so I think Lloyd's decision is reasonable.

Overall I think that Lloyd's has dealt with Ms B's claim fairly and reasonably. And I think the reasons for rejecting it have been valid and justified. For that reason I won't be asking it to get another barrister's advice or to review and accept the claim.

my provisional decision

For the reasons above, I'm not thinking of upholding Ms B's complaint against Society of Lloyd's."

developments and findings

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

Lloyd's didn't have anything to add further to my provisional decision.

Ms B asked for copies of the documents I considered in reaching my provisional decision. This information was sent to her by special delivery. It couldn't be emailed because it involved a large number of documents. After delivery was attempted the parcel was left at Ms B's local delivery office for her to collect. We sent an email to Ms B to let her know that the parcel was ready for collection and provided her with the tracking number. Because the item wasn't collected it's been returned to us.

Ms B has had the opportunity to receive the documents that were sent to her. And I haven't relied on anything that Ms B needs to have seen to be able to comment on my provisional decision. As far as I'm aware Ms B hasn't disputed the fact that a proposed claim against the barrister would fall outside Lloyd's period of cover. And as far as I know she hasn't had any conflicting legal opinion that says that her proposed claim against the solicitors has a reasonable chance of being successful. She also hasn't given any new reasons as to why she thinks Lloyd's should copy her into all its correspondence with other parties; which is something I consider to be unreasonable. So given this, it's appropriate for me to proceed to a final decision.

As there have been no new developments since my provisional decision my findings remain as they were in that decision.

my final decision

For the reasons above, I'm not upholding Ms B's complaint against Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 11 April 2016.

Anastasia Serdari
ombudsman