

summary of complaint

Mr R is unhappy as underwriters at The Society of Lloyd's rejected a claim under his malpractice insurance. He is also unhappy as underwriters did not give him run-off cover.

background to complaint

Mr R used the services of a solicitor for representation at a hearing held by his profession's regulatory body. The regulator suspended Mr R's registration.

Underwriters rejected Mr R's claim as they said he had not been negligent. Mr R's policy only covered him for malpractice. In addition, underwriters said no claim or potential claim against Mr R for damages had been made and Mr R had not incurred expenses as a result of a claim or potential claim. In his reply, Mr R argued that professional misconduct is closely related to malpractice.

As to run-off cover, underwriters did not offer it to Mr R as they felt he had not disclosed full details of an earlier matter. Mr R disputed this and underwriters subsequently agreed with him. However, they still refused to give him run-off cover.

our initial findings

The adjudicator wrote to underwriters stating that Mr R's negligent act, error or omission was committed in or about the conduct of his occupation and business. If the matter was simply a personal dispute between Mr R and another, it would have been outside of the regulator's remit. Underwriters disagreed with the adjudicator's view. They also argued that Mr R's conduct was not negligent.

The adjudicator then wrote to Mr R stating he did not have a valid claim as his conduct was not negligent but deliberate and intentional. Furthermore, the adjudicator said underwriters were under no contractual obligation to give Mr R run-off cover.

In Mr R's response, he wrote he had acted negligently by breaching his duty of care. The adjudicator noted Mr R's points. Nevertheless, he still did not consider Mr R's claim for legal costs was covered. This was because the policy covered all sums the insured became legally liable to pay as damages but Mr R had not been found legally liable to pay damages. Mr R accepted the adjudicator's opinion. However, he said he wanted a decision from an ombudsman on the issue of negligence.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of Mr R's complaint.

The policy wording states underwriters will:

'... indemnify the Assured ... against all sums which the Assured shall become legally liable to pay as damages ... arising out of

any bodily injury, mental injury, illness, disease or death of any patient caused by any negligent act, error or omission committed by the Assured in or about the conduct of the Assured's occupation or business as stated in the Proposal or Declaration, or Good Samaritan Acts, (hereinafter referred to as "Malpractice") ...

PROVIDED ALWAYS THAT:

(a) such Malpractice results in a Claim being first made against the Assured during the Period of Insurance ...'

The first requirement in the policy is that the policyholder shall become legally liable to pay damages. As Mr R was not legally liable to pay damages, I cannot find that his claim for legal costs is covered.

Mr R has asked me to provide a decision on the issue of negligence. I do not believe there is a compelling reason for me to give my view on whether Mr R carried out a negligent act, error or omission. This is because the first requirement in the policy providing cover has not been met, so that issue would not influence this current complaint.

my final decision

I make no award against The Society of Lloyd's.

Christopher Tilson
Ombudsman