

complaint

Ms B has complained about Society of Lloyd's refusal to fund a claim she made under her legal expenses policy and for the way it handled it.

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 an ongoing dispute with her former employers for a number of years. This has led to several claims under her legal expenses policy.

She's also had a dispute about building work done to her home which has also led to a number of claims.

Ms B has complained to us previously about these issues so there may be 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 police for exacerbating a pre-existing medical condition by not interviewing her former employers and the builders. And she wants to claim against the barrister who advised on her potential claim against the police.

She wants Lloyd's to instruct a barrister from London to advise on her claim and she wants her claim to be reviewed and accepted. She believes the advice Lloyd's already got is negligent. Or she wants Lloyd's to sue the barrister who provided this advice.

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 wants to sue the police for exacerbating her pre-existing injury. This is because the police hasn't interviewed her former employer and its members. It's also not interviewed the builders that she blames for her unfinished house repairs.

It is a term of Ms B's policy that for a claim to be accepted it has to have reasonable chances of succeeding in court. We consider this to mean it has to have a 51% or more chance of succeeding. This is a term that I've come across in all legal expenses policies I've seen and not one I consider to be unfair or unreasonable. Insurers can't be expected to fund claims that are likely to fail just as a privately paying client wouldn't.

Lloyd's instructed a barrister to advise on this potential claim. The barrister said that the chances of Ms B succeeding against the police are 10-15%. So Lloyd's didn't fund the claim. It's not for us to review or comment on the legal advice given unless it's obviously wrong. I've looked at this advice and I don't believe that to be the case.

Ms B said the barrister didn't consider all the issues and didn't rely on case law to support his opinion. But I can't see any persuasive evidence that this is the case.

Ms B wanted the barrister to also advise on her claims against her former employer and the builders. But Lloyd's made it clear from the start that the barrister was only commenting on the claim against the police for failing to interview people Ms B is claiming against. It said that the claims Ms B wanted the barrister to comment on had already been considered by our organisation and rejected. Having looked at the previous decisions I agree with Lloyd's. There would've been no point asking the barrister to advise on claims that an ombudsman has already determined were correctly declined.

Ms B said that the barrister was negligent. She said Lloyd's should've never instructed him. But he was on a list of barristers and Ms B chose him to provide the advice. Ms B indicated that because his chambers aren't based in London he wasn't qualified to deal with her claim. But he has years of experience in the area he was asked to advise on so I don't believe that where his work is based has any bearing on whether he can advise Ms B or not.

Ms B complained that there was a delay in instructing this barrister. But from what I've seen a large part of the delay was caused by her amending Lloyd's instructions. So I can't see that any delay was caused by Lloyd's and, even if it had been, it hasn't prejudiced Ms B because her claim had no prospects in any event.

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 need 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 these claims.

In any case, as the barrister was instructed by Lloyd's to advise on whether Lloyd's should fund this claim, he was acting for Lloyd's and not Ms B. So while Ms B is of course free to complain to his chambers or the Bar Council if she's unhappy with his advice, she didn't have a contractual relationship with him.

If she doesn't think his opinion is correct and that Lloyd's shouldn't therefore rely on it to refuse to fund her claim, it is still open for her to provide another barrister's 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 police 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 this was unreasonable. I agree. And Lloyd's isn't obliged to do this under its policy. Lloyd's said this is its process for all its clients. 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 police 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