

## **The complaint**

Ms B is unhappy that Society of Lloyd's didn't provide appropriate assistance under the legal expenses insurance (LEI) section of her professional indemnity insurance policy ('the policy') when making it aware that she was facing a regulatory investigation.

## **What happened**

During the early part of 2019 Ms B was suspended by the business she was working for at the time. The working relationship subsequently ended because it concluded that she had made some inappropriate claims.

The business she was working for subsequently made a referral to a particular public body ('the public body') and at a meeting on 16 May 2019 ('the meeting'), the decision was taken to refer Ms B for counter fraud investigation and to a particular decisions panel.

Prior to attending the meeting, Ms B contacted Lloyd's for assistance. But ultimately, cover wasn't provided to appoint a legal representative to help Ms B respond to the allegations against her. She was, however, referred to the policy legal helpline.

After the meeting, and at her own cost, to ensure that she could continue to find and carry out work, Ms B instructed a lawyer to provide a voluntary undertaking making certain disclosures – including informing any prospective businesses she was engaged by about the matters being investigated. This was accepted and the undertaking was subsequently amended many months later.

At the start of 2020, Ms B made a claim on the policy for legal representation in relation to professional disciplinary proceedings she was subject to. That claim was subsequently declined in around March 2020 on the basis that the circumstances she wanted cover for wasn't an insured event under the policy.

Ms B continued to contest the reasons put forward not to cover her claim, and additional reasons were put forward by Lloyds to decline it.

Ms B didn't think she'd been treated fairly by Lloyd's so raised various concerns. Ultimately, on 27 July 2020, Lloyds concluded that it should investigate further whether the claim was covered as an insured event under the policy and said it would arrange for one of its panel law firms (the panel firm) to advise on this issue.

The panel law firm promptly confirmed the reasons why it considered Ms B's claim did amount to an insured event. Indemnity was then put in place under the policy. And the claims against Ms B were ultimately dropped later in 2020.

Ms B is unhappy about the way she's been treated by Lloyd's.

Our investigator looked into what happened and she didn't uphold Ms B's complaint. She didn't think Lloyd's had to do anything more.

Ms B raised additional concerns; that it had taken around seven months for Lloyds to confirm that her claim was covered under the policy from when she made the claim in early 2020.

Lloyds offered her £600 for any distress and inconvenience caused. Ms B says that's inadequate, and she'd like more compensation.

That complaint is being determined under a separate complaint reference. However, in response to a provisional determination that has been made in that complaint, Ms B has raised additional points that are more relevant to this complaint. In summary she's said:

- It's likely the allegations against her would've been dropped at the meeting had she had legal representation under the policy to assist preparing her response.
- She lost work – and considerable income – because of further action being taken against her at the meeting.

I issued my provisional decision in March 2022 explaining why I was intending to partially uphold this complaint. I confirmed that I was only considering the circumstances of this particular complaint. And although I was aware of another complaint brought to our Service by Ms B - the circumstances of which overlapped somewhat with this complaint - I explained that I'd focused on what happened between May 2019 and December 2019. And having done so, I explained why I intended to direct Lloyd's to pay Ms B £400 in compensation.

An extract of my provisional decision is set out below:

*"In its final response letter dated 3 December 2019 Lloyd's accepts that the service Ms B received following her request for advice and assistance when first being notified of the allegations against her about submitting inappropriate claims on 2 May 2019 was unsatisfactory. It accepts that she should've been directed to the correct point of contact and recommended she be paid £100 in compensation for this.*

*The final response letter also reflects (subject to the remaining terms of the policy) the policy does provide cover for her legal expenses in connection with professional hearings.*

*However, it's not clear why Lloyd's didn't consider whether cover was available when Ms B first contacted it for support shortly after receiving notification of the allegations – rather than being wrongly referred to another company for support, only to be told that that company no longer manages claims under the policy. And then being referred on to the law firm who operated the legal support helpline on behalf of Lloyd's under the policy.*

*Based on the allegations against Ms B and knowing that the allegations were being considered at a meeting on 16 May 2019, I think it should've considered whether cover was in place to assist with Ms B's preparations for the meeting.*

*So, I've gone on to consider whether what would most likely have happened if her claim was considered at that point. In all likelihood, I'm satisfied Lloyd's would've declined cover under the policy on the basis that – in its view - Ms B wasn't facing a regulatory investigation as defined by the policy. That's the position it took and maintained for a considerable period of time once Ms B did make a claim under the policy after the final response letter dated December 2019.*

*However, by its own later admission, that position was unfair and unreasonable, and it later accepted that Ms B was involved in a regulatory investigation, based on the advice of the panel firm.*

*So, had Lloyd's declined to cover the claim and declined to appoint a legal representative to represent Ms B at the time of first making it aware of the allegations against her – which she was required to respond to – it would've acted unfair and unreasonably.*

*Therefore, I think the crux of the issue I have to decide is what most likely would've happened if cover had been confirmed under the policy shortly after 2 May 2019. It's possible that a legal representative wouldn't have been appointed in time to consider the nature of the allegations against Ms B and substantially assist her when responding ahead of the deadline of 9 May 2019. Afterall, Ms B had only been given seven days to respond to the allegations. It's also possible that a legal representative would've successfully been able to request a postponement of the meeting on 16 May 2020 and an extension to the deadline to respond to the allegations.*

*However, even if Lloyd's had appointed a legal representative in time to assist Ms B to respond to the allegations, I'm not persuaded on the balance of probabilities that the outcome of the meeting of 16 May 2019 would've been any different.*

*Ms B was able to respond to the allegations by the deadline of 9 May 2018. The letter dated 20 May 2019 setting out the actions required as a result of the meeting which took place on 16 May 2019 reflects that Ms B's response was "very comprehensive". And I've seen the letter she provided along with the many appendices.*

*However, it goes on to say that the group who considered Ms B's representations "did not feel that the concerns had been adequately addressed" and decided to refer the matter to Counter Fraud for formal investigation and also to a particular panel to consider imposing formal conditions whilst the Counter Fraud investigation was ongoing.*

*I think the letter makes clear that based on Ms B's comprehensive representations she hadn't been able to alleviate the group's concerns that she'd acted inappropriately when making claims. The advice she ended up receiving from the legal helpline provided by the policy was to respond honestly to the allegations and Ms B said during that call that she'd identified a couple of claims that might not have been correct.*

*I know Ms B says she's aware of other cases involving other individuals in her profession which didn't progress after such a meeting as they'd had representation. However, I don't think it automatically follows that the allegations against Ms B would've been dropped had she received legal support when making her representations.*

*Ms B has told our Service on 15 July 2021 that she feels there was a 50/50 chance of the meeting on 16 May 2019 going in her favour had she been represented.*

*Ms B has provided our Service with a letter from the law firm she ultimately instructed to represent her after the meeting on 16 May 2019, dated 21 May 2019. It reflects:*

*"Given how much you've told [the public body] I'd be surprised if the counter fraud investigators thought it worth interviewing you, but we'll have to see. No-one can criticise you for not being transparent!"*

*Ms B's also provided our Service with a letter dated 26 August 2020 from the panel firm who was ultimately appointed by Lloyd's to represent her at the end of July 2020. This letter was in relation to the ongoing investigation. It reflects:*

*"From what I have seen, it appears to be a very minor allegation and I would be surprised if the investigation proceeded further."*

*But I'm not persuaded that either of these letters support that if she had been legally represented when initially preparing her response to the allegations that they would've been dropped at the meeting on 16 May 2019.*

*I also note that after the letter dated 20 May 2019 Ms B did instruct a lawyer at her own cost to support her with further representations. But the allegations weren't dropped until the end of 2020.*

*As I'm satisfied on the balance of probabilities that the same actions would've been taken after the meeting on 16 May 2019 whether or not Ms B had been legally supported when responding to the allegations against her, I'm also satisfied that the same sequence of events would've followed.*

*I know Ms B had other work lined up when being notified of the allegations against her. And, as a result, that offer of work was withdrawn and she says she lost a 'golden hello' payment of £5,000. I also know that she ended up having to inform prospective employers of the ongoing allegations against her which also made it hard for her to find work for a period of almost three months. I can appreciate this would've been a very difficult and worrying time for her, particularly as she says she had a child who depended on her and no family nearby. I also understand why she felt 'unemployable'. During that time, she says she was without a regular income and she had to take out loans to help with her living costs.*

*I've no reason to doubt what she says about that. However, as I'm satisfied that she was likely to have been in the same position even if she'd received legal support when initially responding to the allegations, I don't think it would be fair and reasonable for me to hold Lloyd's responsible for the situation she found herself in.*

*Ms B did incur around £2,000 in legal costs between 21 May 2021 and the end of December 2019 which she paid for herself. Had Lloyd's covered the claim at the outset, and had arranged legal representation for her under the policy, Ms B wouldn't have been responsible for those costs. However, in November 2020, Lloyd's reimbursed Ms B for these legal fees together with simple interest at 8% per annum. That's in line with what I would've reasonably expected it to have done.*

*Lloyd's has also offered Ms B £100 compensation for mis-directing her under the policy shortly after being notified of the allegations against Ms B in early May 2019. But I don't think this is enough to fairly reflect the distress and inconvenience Ms B experienced as a result of what Lloyd's did wrong here.*

*I accept that this would've been a very stressful time for Ms B, particularly as she was out of work, without a regular income for a period and facing allegations which were being investigated by the Counter Fraud. I don't think Lloyd's are reasonably responsible for any of these things.*

*However, I'm satisfied Ms B's distress would've been unnecessarily exacerbated by having to find the money necessary to pay for her own legal costs during 2019, particularly during the time when she out of work. I'm also satisfied that having some legal support when responding to the allegations prior to 9 May 2019 would've alleviated some of the stress she was feeling and having legal representation at the outset would've avoided the inconvenience of having to find and instruct her own lawyer to represent her".*

#### Responses to my provisional decision

Lloyd's replied setting out its comments around why the compensation for distress and inconvenience I'd provisionally directed Lloyd's to pay in this complaint might relate to the

other complaint she's brought to our Service - and for which it's already offered £600 in respect of.

Ms B replied raising several points, some of which she'd raised previously and have already been considered by me when making my provisional decision. Ms B has also provided some press articles which she says reflects that the allegations against her were comparatively minor. She's also said that she's made a request to the public body under the Freedom of Information Act 2000 and she's asked that I wait for the outcome of this request before finalising my decision.

Ms B has also said having her complaint split into two dilutes the seriousness of how she sees Lloyd's neglect and failure to represent her over the period covered by the two complaints (starting Spring 2019 to Summer 2020).

### **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, I partially uphold it. The further comments and information provided to me by the parties don't impact my provisional findings or decision, which I've set out above. That's because:

- I don't think it was inappropriate to deal with Ms B's complaints as separate complaints covering the period Spring 2019 to the end of 2019 and early 2020 to the summer of 2020. And I don't think she's been disadvantaged by this. Her concerns have been addressed and I've considered the totality of the information over the entire timeframe to ensure that the relevant evidence and arguments have been considered in respect of this complaint.
- I don't agree with Lloyd's that the compensation I proposed it pay to reflect the distress and inconvenience experienced by Ms B as a result of what it did wrong in early May 2019 potentially related to the other complaint Ms B has brought to our service about Lloyd's – and for which it's already paid £600 compensation for distress and inconvenience. In my provisional decision, I explained - based on the allegations against Ms B and knowing that the allegations were being considered at the meeting - I was intending to find that it should've considered whether cover was in place under the policy to assist with Ms B's preparations for the meeting. I haven't been provided with any information which alters my thinking on that point.
- But even if Lloyd's had appointed a legal representative in time to assist Ms B to respond to the allegations, I'm still not persuaded, on the balance of probabilities, that the outcome of the meeting would've been any different.
- Ms B has referred to a request under the Freedom of Information Act to ascertain the number of matters referred to type of panel meeting where the allegations against her were discussed in May 2019 and how many of those are then referred on. She says she made this request to support her submission that if she'd been represented - or received better expert support in respect of the meeting – it's unlikely that the onward referral would've been made. However, Ms B has confirmed that request was turned down by the public body for being too wide. So, she's now made a further request narrowing down the information requested. However, I don't think the information request Ms B has made is relevant to the issue I'm determining. Even if a large proportion of cases aren't referred on as a result of the meeting, I don't think it

means that had Ms B been represented in respect of the meeting, it's more likely than not that her case wouldn't have been referred on. The letter Ms B was sent after the meeting makes clear that Ms B made 'comprehensive representations' but she hadn't been able to alleviate the group's concerns that she'd acted inappropriately when making claims. And for the reasons set out in my provisional decision, I don't think being represented is, on the balance of probabilities, likely to have resulted in a different outcome.

- Ms B says if she'd had specialist support to prepare her submissions, she believes an essential part of her submissions would've been stronger and a further referral wouldn't have been made. She says the panel attributed more weight to that section of her submissions and that's the section – which if she'd had expert support with – it's unlikely the matter would've been referred on. She says her solicitor identified it as a weakness/pre-requisite of her submission and she believes this would've been identified before making her final submissions if she'd had expert support then. I appreciate that this is Ms B's view, but I haven't seen any evidence from her legal representative - or otherwise - which supports that this was the case. And the information she's requested from the public body wouldn't shed any light on the individual circumstances of her case.

So for the reasons set out above and in my provisional decision, I don't think it would be fair and reasonable for me to hold Lloyd's responsible for Ms B ultimately losing work as a result of the outcome of the meeting, and not being able to secure work for several months after.

However, I still think she experienced unnecessary distress and inconvenience as a result of what Lloyd's did wrong earlier in May 2019 by not considering whether cover was in place under the policy to assist with Ms B's preparations for the meeting then. To summarise that distress included finding the money necessary to pay for her own legal costs during 2019, particularly during the time when she out of work. I'm also satisfied that having some legal support when responding to the allegations to the May 2019 meeting would've alleviated some of the stress she was feeling. And having legal representation at the outset would've avoided the inconvenience of having to find and instruct her own lawyer to represent her.

### **Putting things right**

I'm satisfied that Lloyd's should pay Ms B £400 compensation for the distress and inconvenience she experienced because of what it did wrong, and the impact this had on her between the period May and December 2019 inclusive.

That includes the £100 it's already offered Ms B in its final response letter dated 3 December 2019. So, if that amount has been paid, Lloyd's can deduct this from the £400 I've directed it to pay.

To be clear, this award is separate to any compensation Lloyd's has offered in respect of the other complaint Ms B has raised in respect of issues stemming from early 2020.

### **My final decision**

I partially uphold this complaint. I direct Society of Lloyd's to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 5 July 2022.

David Curtis-Johnson

**Ombudsman**