

The complaint

S, a limited company complains about what Society of Lloyd's did following a claim it made on the legal expenses section of its business protection insurance policy. S is represented by its director, Mr M.

What happened

S had business protection insurance (which included legal expenses cover) with Lloyds between April 2014 and April 2015. In 2014 a gas pipe was installed in the flat above its shop by the leaseholder (the building itself was owned by Mr M in his personal capacity). S claimed on its policy with Lloyds in 2017 for assistance in pursuing a trespass claim.

Lloyds initially turned down the claim as it said it hadn't been notified to it while the policy was in force. But it subsequently established Mr M had contacted his broker at that time who didn't appear to have advised him to claim on his legal expenses policy. So it agreed to accept the claim in February 2018 and refer it to a panel firm to assess whether it had reasonable prospects of success (a requirement of the policy).

However, because of an error by Lloyds that referral wasn't made until October 2018. It appears the panel firm then agreed the claim did have reasonable prospects of success. Some issues relating to that delay have been considered as part of separate complaints. Lloyds agreed to pay S compensation for the inconvenience it was caused and cover legal fees it incurred privately for the period in which it thought the panel firm should have been appointed.

Subsequently S raised further concerns about the delay. It said in May 2018 Mr M had entered into a Tomlin order (under which court action is stayed on terms that have been agreed in advance between the parties). S said that prevented it from claiming the correct damages from the defendant, for example in relation to loss of business.

Lloyds didn't think this was something it was responsible for. It said it understood solicitors were acting at the time. So any advice given in relation to whether to enter into the agreement would be something they were responsible for. It didn't think any decision to do so had come about as a result of the accepted failing on its part in referring the claim to panel solicitors. However, it said if S could provide legal advice to show it had been prejudiced by this delay it would reconsider matters.

Our investigator thought a decision to enter into the Tomlin order was likely based on advice from the solicitors who were acting at the time. Any complaint about their actions would need to be directed to them. He hadn't seen any evidence Lloyds had involvement in the decision to pursue or agree to the Tomlin order. And he thought Lloyds agreement to reconsider matters if S was able to provide legal advice showing it had been prejudiced was reasonable.

S didn't agree. In summary it said:

- The crux of its complaint was the disruption to its commercial enterprise caused by Lloyds failure to provide assistance and its delay in referring the matter to a panel solicitor.
- The reason Lloyds wasn't involved in its claim at an earlier stage was because of what it believed was a pedantic dispute over notification. It accepted that if Lloyds had been involved earlier it wouldn't have dealt with the day to day management of the case but it would have had an oversight role
- It said it didn't have a solicitor at the time the Tomlin order was entered into because the solicitors were acting for Mr M in a personal capacity. And it thought if a panel solicitor had been appointed as they should have been S's business wouldn't have been impacted as it had. It said it didn't have the funds to obtain legal advice on prejudice and suggested Lloyds should pay these costs.

So I need to reach a final decision.

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.

The relevant rules and industry guidelines say Lloyds has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

S has raised broader concerns about the working of legal expenses insurance policies more generally. However, our role is to focus on the issues raised by the individual complaints that are brought to us – thinking about whether there has been a failing by a respondent business, if so, what impact has there been on the complainant, and what (if anything) does the respondent business need to do to put things right.

And in this decision I'm not considering complaints that have already been separately considered by our service. Nor am I looking at complaints that weren't referred to us in time. In particular I'm not looking at S's concerns about Lloyds initial decision to turn down the claim on the basis of late notification. The issue I'm considering is S's contention that the delay in referring the claim to panel solicitors led to a Tomlin order being entered into to its detriment.

In relation to that it's not in dispute Lloyds got something wrong here. It agreed the claim would be referred to panel solicitors in February 2018 but that didn't take place until October of that year. Lloyds has already covered solicitor's fees relating to that period and paid S compensation for the inconvenience it was caused. The issue I need to consider is whether there's a further loss to S because the lack of legal support led to a Tomlin order being entered into which wouldn't otherwise have been the case

I don't think the evidence supports that. Even if Lloyds had acted as it should, cover wouldn't have been available under S's policy from February 2018. In common with other legal expenses insurance policies S's requires that a claim needs to have reasonable prospects of success for funding to be provided.

It says cover is only provided where *"in civil claims it is always more likely than not that you or an insured person will recover damages (or obtain other legal remedy which we have*

agreed to) or make a successful defence". And that's something which would need to be assessed by a panel firm.

In this case I can see when matters were referred to that firm in October 2018 their assessment wasn't completed until sometime after April 2019 (five months later). That doesn't suggest to me this was a straightforward assessment. And while I appreciate it's nevertheless possible it would have been completed more quickly if referred in February 2018 I think it's unlikely cover would have been confirmed in advance of decisions needing to be taken about the Tomlin order which was entered into in May 2018. So even if there hadn't been a delay by Lloyds, S would have been in the same position in relation to that agreement.

Our investigator also thought S had access to legal advice from the solicitors that were already engaged with the claim at that time. In response Mr M said those solicitors were acting for him personally and it was he (rather than S) that entered into the agreement. However, although our investigator previously asked Mr M for details of the advice given by those solicitors in relation to the Tomlin order he hasn't been able to provide that.

So the evidence on this point is limited. But this complaint is made by S (not Mr M from whom it has a separate legal identity). As a result it's the impact on S I need to consider when thinking about what Lloyds got wrong. Mr M says it was he who entered into the Tomlin order which was presumably based on advice from the solicitors who were acting for him. If those solicitors were solely considering the interests of Mr M then that might have been to S's detriment but I don't see it would have made a difference if a panel firm had been acting for S; it would have remained for Mr M to decide whether to enter into the agreement or not.

On the other hand if Mr M's solicitors, while appointed by him, were also considering the interests of S then I don't see it has lost out because of the failure by Lloyds to appoint a panel firm earlier either. In that situation S would have had access to legal advice in relation to the Tomlin order. So that isn't something it's lost out on as a result of what Lloyds got wrong.

And in either scenario if S (or Mr M) think the advice provided by the solicitors was wrong that's something which those solicitors would be responsible for. I think their involvement means there isn't a causal link between what Lloyds got wrong and any detriment to S as a result of the Tomlin order. As a result I don't think it was unfair of Lloyds to conclude it didn't need to take further steps to address the impact of its delay in referring the matter to panel solicitors.

But it's made clear it would reconsider if S was able to provide legal advice in support of its position that it had been prejudiced by the delay as it relates to the Tomlin order. I appreciate that S may not be in a position to do so but I think that's nevertheless a reasonable position for Lloyds to take.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 March 2024.

James Park
Ombudsman