

The complaint

Mr and Mrs H are unhappy with what Society of Lloyd's did following a claim Mr H made on their legal expenses insurance policy.

What happened

Mr H has a long running dispute over his pension entitlement. He made a claim on his legal expenses policy in July 2020 for assistance. The claim was accepted and panel solicitors appointed. Matters progressed and in 2022 the pension administrator accepted Mr H was entitled to benefits under its plan. However, in December 2022 it said it wouldn't backdate payments to Mr H's actual retirement date.

Lloyds agreed to obtain counsel's opinion on this issue. Counsel advised at the start of March 2023 there were strong grounds for saying the administrator was in breach of the scheme rules. However, he questioned whether it was worth pursuing litigation as the administrator had indicated a higher level of pension would now be paid. So Mr H might not have suffered any loss.

Mr H says counsel accepted in mid-March he had suffered an immediate loss and the panel solicitors (with assistance from counsel) wrote to the pension administrator about this. As a response wasn't received within the 28 days given in the letter Mr H asked Lloyds to fund a complaint to the Pensions Ombudsman. The panel solicitors said the administrator was awaiting information from the pension provider to enable it to respond.

Lloyds didn't think it was proportionate to fund a Pensions Ombudsman referral while discussions were ongoing and a response from the provider might resolve the matter. At the start of May an offer was received from the administrator. That led the panel solicitors to ask further questions about how that had been reached. A revised offer was received in June. Following that the panel solicitors organised a conference with counsel who suggested an outstanding issue should now be referred to the Pensions Ombudsman. I understand that referral was made in August. Lloyd agreed funding for associated costs the following month.

Our investigator thought Lloyds acted reasonably in initially declining to fund a Pensions Ombudsman referral. And he thought if Mr H had been concerned about missing the deadline for such a referral to be made he could have taken that forward himself.

Mr H didn't agree. He said counsel confirmed in March 2023 he would suffer an immediate loss and a referral to the Pensions Ombudsman should be made. But it then took Lloyds five months to approve the costs for doing so. He didn't think it was his responsibility to make the referral and thought there had been unacceptable delay by Lloyds here.

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.

I appreciate this matter has been ongoing for some time and I understand how frustrating the delay in receiving his pension has been for Mr H. However, in this decision I'm considering the complaint he's made to us about delay by Lloyds in agreeing funding for a referral to the Pensions Ombudsman. And I can only consider what happened prior to Lloyds issuing its final response on the matter on 30 June 2023. If Mr H is unhappy with what subsequently happened that would need to form part of a fresh 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. In this case Lloyds has accepted Mr H's claim is one his policy covers. However, it's a condition of cover a claim has reasonable prospects of success which his policy defines as a "*greater than 50% chance of the insured successfully pursuing or defending the claim...*"

As a new issue had arisen in December 2022 I think it was right Lloyds agreed to obtain counsel's opinion on whether that would have reasonable prospects of success. Counsel's view was the claim did have a strong chance of winning but he was unclear what loss Mr H had suffered. Mr H says counsel subsequently accepted he had suffered a loss and that led the panel firm to approach the policy administrator to see if they would make a revised offer.

Mr H thinks when the administrator didn't respond within the timeframe set out in that letter Lloyds should have authorised funding for a referral to the Pensions Ombudsman. He's referenced counsel's advice from mid-March which said that should happen. I've not seen that advice and I'm not clear that's information which was provided to Lloyds. From the correspondence I've seen it was only sent the advice counsel gave at the start of March.

But, in any event, I don't think it was unreasonable of Lloyds to say it wouldn't authorise funding for a referral at that point. The policy terms say it covers legal costs and expenses which it defines as "*Reasonable legal costs and disbursements reasonably and proportionately incurred by the appointed advisor on the standard basis and agreed in advance by us*". It also requires an insured to "*minimise any legal costs and expenses*".

In this case the panel solicitors told Lloyds at the end of March they had received a positive response from the pensions administrator advising they would soon be responding with settlement options. After the deadline for a response had expired it chased for this and advised Lloyds matters were now being considered by the pension provider. The panel firm said it was optimistic a reply would be received within the next four weeks.

Given that, and the policy requirements I've referenced, I think it was reasonable of Lloyds to say it wouldn't be providing funding for a Pensions Ombudsman referral as the expected response from the administrator might resolve matters. That response was received at the start of May and led the panel solicitor to ask further questions of the administrator. It did take time for its response to be provided but updates were provided and I think it's fair to say discussions were ongoing. I don't think Lloyds could reasonably have been expected to fund a Pensions Ombudsman referral until it was clear those negotiations had broken down. In my view that didn't take place in the period I'm considering in this decision.

I appreciate Mr H was concerned not making a referral might mean he didn't meet the deadlines set by the Pensions Ombudsman for that to happen. However, I don't think he'd have required additional funding to log his complaint with the Pensions Ombudsman; he'd only have needed to complete their form and include a copy of his complaint letter. And he had panel solicitors acting for him. I think if they had any concerns about the complaint deadline approaching that's something they could have advised him about.

Mr H has also questioned what we would consider an acceptable period of delay by a business. That's not something I need to address in this case because I don't agree there has been delay which Lloyds is responsible for. An earlier referral wasn't made to the Pensions Ombudsman because Lloyds decided that wasn't something it would be appropriate to do. I appreciate Mr H disagrees with that decision but I think Lloyds acted in line with the policy terms and had reasonable grounds for making that decision. I don't think the time taken for a referral to be made results from something it got wrong.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mrs H to accept or reject my decision before 11 April 2024.

James Park
Ombudsman