DRN-4666554

The complaint

Mr P’s complaint is about the excess applicable to a claim he made on his Society of Lloyd’s (‘Lloyds’) medical malpractice liability insurance policy.

Mr P says Lloyds applied a significantly higher excess to a claim he made than is applicable and as such feels that they treated him unfairly.

In this decision all references to Lloyds include their claims handlers.

What happened

Mr P took out medical malpractice liability insurance with Lloyds which was renewed by him in 2021.

In 2022 Mr P made a claim on his Lloyds medical malpractice liability insurance policy for cover to deal with a malpractice claim made against him by one of his patients concerning a surgery he performed in 2021. Lloyds accepted the claim in the first instance, but Mr P was told he would need to pay a policy excess of £100,00 in respect of the claim.

Mr P says the applicable excess is £15,000 and not the £100,000 applied by Lloyds. Lloyds on the other hand say that when Mr P’s policy renewed in 2021, a retroactive date was applied for all claims that might be made against Mr P arising on or after 15 October 2018, which meant that a policy excess of £100,00 was applicable to them from that point.

Mr P says this is unfair and that the previous policy excess of £15,000 should be applicable. Unhappy, he referred his complaint to the Financial Ombudsman Service.

Our investigator considered Mr P’s complaint and initially upheld it on the basis that Lloyds hadn’t made clear there was going to be a significant change to the policy through the application of the retroactive date at renewal in 2021. As such he didn’t think it was fair for Lloyds to apply the excess contained in it. The investigator said that Lloyds should only be applying the £15,000 excess and that they should pay Mr P £150 for the inconvenience caused to him as a result of the position they took.

In response to the investigator’s view, Lloyds said they weren’t responsible for the information given to Mr P at the renewal of the policy and that the terms of the 2021 policy were applicable in this case. They also gave information about why the retroactive date had been applied with reference to Mr P’s claims history.

Our investigator reconsidered Mr P’s complaint in light of these submissions and said it shouldn’t be upheld. He said this was a claim made policy so the claim had been considered correctly by Lloyds and that the policy excess had been applied reasonably. The investigator also said it wasn’t Lloyds’ responsibility to warn Mr P about the change in the policy terms- rather this was down to the broker who Mr P renewed his policy with. Mr P doesn’t agree so the matter has been passed to me to determine.

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 so, I won't be upholding Mr P's complaint. I'll explain why below. Before doing so I wish to make it clear to the parties that I won't be deciding whether the complaint has been made up against Lloyds correctly as Lloyds have now accepted that they are the underwriter of the policy Mr B took out. As such there's no issue in dispute for me to determine in respect of that.

The incident that gave rise to the claim Mr P made was the surgery that took place in 2021. In 2022 Mr P made a claim on his Lloyds policy for cover to defend a claim against the person he performed the surgery on. Lloyds have said that the policies Mr P took out were claims made policies, which means they consider claims against the policy in force when the policyholder makes a claim for cover and not when the event that gave rise to that claim arose. In this case Lloyds say that the claim was made against the 2021 policy because this was the cover in force when Mr P made his claim to them in 2022.

I've considered what Lloyds have said in relation to the policies Mr P took out and renewed with them and I agree that they've correctly considered the claim under the 2021 policy. The policies are claims made which means that they provide coverage when a claim is made against it, regardless of when the claim event occurred. This isn't unusual in policies like Mr P's- particularly because there can be a delay between when events occur and when potential claimants might bring claims against the policyholder. In Mr P's case, the 2021 policy says:

"The insurer agrees to indemnify the insured against legal liability to pay compensatory damages or awards within the claim jurisdiction (including where applicable claimants' legal costs and expenses) for any claim:

a) first made against the insured and/or
b) arising out of any circumstance(s) which the insured shall first notify,

during the period of insurance and notified to the insurer in accordance with the terms of this policy, as a result of any bodily injury caused by actual or alleged malpractice by the insured in the conduct of the business."

Mr P has said that the actual claim that was made against him was during the 2020 policy year, but he didn't notify this to Lloyds at the time. He's explained that normally claims about the type of surgery he performs are very large but less than 1-2% turn into actual claims. Mr P feels that it's unreasonable for Lloyds to require him to inform them of every small complaint when the majority of these issues are settled before they turn into anything.

I understand the point that Mr P is making but the policies he took out have reporting requirements for any potential claims- whether or not they turn into anything later on down the line. And in this case the policy will only cover claims first made against Mr P during the period of insurance in which the claim was notified to Lloyds. As the claim wasn't notified to Lloyds during the 2020 policy year, I can't say the excess applicable to that year applies to Mr P's claim here.

I appreciate there's a significant difference in the policy premium in the 2020 policy versus the retroactive exclusion that was placed on cover in 2021. But I don't think that's unfair in the circumstances. I've seen a considerable claims history for Mr P between 2018 and 2020, three of which had considerable reserves attached to them. In light of this I can understand why Lloyds placed the retroactive exclusion in 2021.

It’s not for me to dictate how insurers should price their policies both in relation to premiums and excesses. As long as their pricing accords with their underwriting criteria, we wouldn’t usually interfere in these kinds of decisions. That said, Mr P’s complaint isn’t about the way in which the 2021 policy was priced- it’s about which policy year was applied to his claim. For the reasons I’ve set out, I think it was right for Lloyds to consider his claim under the 2021 policy because they were notified of the claim within this policy year and this accords with how their terms say claims should be considered.

I can see Mr P’s policy was renewed through a broker. If Mr P remains unhappy about the way in which that policy was sold to him in 2021, he can raise that with the broker directly. It’s not however something I can consider in this complaint because Lloyds didn’t sell him that policy- rather they’ve applied the terms relevant to his claim. For the reasons I’ve set out above, I think they’ve done so correctly here.

My final decision

I don’t uphold Mr P’s complaint against Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 9 April 2024.

Lale Hussein-Venn
Ombudsman