

The complaint

Mr E's complaint is about the handling of his claims on his Society of Lloyd's ('Lloyd's') legal expenses insurance policy.

Mr E says he was treated unfairly.

In this decision all references to Lloyd's include their claims handlers.

What happened

Mr E's complaint follows another Ombudsman's decision dated 22 March 2022. I won't recite the facts surrounding the complaint that was the subject of that decision to save to say they were particularly involved and both parties are aware of them, as well as the outcome of Mr E's complaint. Instead, I'll focus on the issues in this particular complaint.

This complaint is in relation to matters considered by Lloyd's in their final response letter dated 15 June 2023, namely Mr E's submission that Lloyd's told him the merits of his claim needed to be more than 51% and not 50% as set out by the policy and Lloyd's decision to only reconsider Mr E's claim if he's able to provide a Barrister's opinion setting out that his claim has over 51% prospects of success.

I realise Mr E wanted this Service to consider the remainder of the points he put to Lloyd's that are referenced within their final response letter dated 15 June 2023 as having been determined by another Ombudsman in her final decision dated 22 March 2022, but we wouldn't usually look at these again. If Mr E feels that there is material new evidence which has subsequently become available that is likely to affect the outcome of the other Ombudsman's decision dated 22 March 2022 and is able to supply that then he can refer that to this Service to consider. But as things stand, I haven't currently seen anything that supports that so I will proceed to determining the matters I have set out above.

Our investigator considered Mr E's complaint. She said that it was reasonable for Lloyds to require the merits of any claim Mr E wanted to make to have 51% or greater prospects of success as this accorded with their policy terms and that Lloyd's were entitled to require Mr E to obtain an opinion from a professional of equal standing to the advice they'd obtained if he wanted to dispute their assessment of the merits of his claim. Because of this the investigator did not uphold Mr E's complaint.

Mr E did not 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 don't uphold Mr E's complaint. I'll explain why.

The starting point is the policy terms. They say that in order for Lloyd's to fund a claim under their policy, it must have reasonable prospects of success. "*Reasonable Prospects*" are

defined as:

“... where the insured has a greater than 50% chance of successfully pursuing or defending the claim.”

I appreciate that Mr E might have interpreted this to mean that it was sufficient for his claim to have 50% prospects of success, but I don't agree. The policy requirement is for prospects of success to be determined at *greater than 50% chance of successfully pursuing or defending the claim*, which means they would need to be 51% or more in order for Lloyd's to fund his claim. We don't think that's unfair. Court action can be expensive. In the same way we wouldn't expect a litigant to fund the cost of proceedings if advised they're unlikely to succeed, we wouldn't expect an insurer to either. As long as an insurer has taken advice from a suitably qualified legal professional, the advice itself is fully reasoned and not based on factual inaccuracies or obviously wrong, we would generally think it's reasonable for an insurer to rely on it.

Turning now to Lloyd's position that Mr E would need to obtain a conflicting legal opinion from a legal professional of equal standing in order to dispute the advice they relied on to turn down his claim. In this case Lloyd's obtained the opinion of a Barrister which didn't support the claim had reasonable prospects of success. Mr E has questioned why the advice of a Solicitor to dispute this is not enough. Lloyd's have made the point that the matters the Barrister was asked to advise upon were particularly complex and specialist and that it's unclear whether the limitation period for some or all of the claims he wanted to bring have expired. They take the view that it would not be appropriate for the opinion to be open to challenge unless it's obtained from a legal professional of equal standing.

I agree with this view. It accords with our general approach and ensures fairness given the potential disparities that might occur if Mr E were to rely on the opinion of a legal professional who was not a specialist in the area of law they were being asked to advise upon or of equal standing. As such it's up to Mr E whether he wants to seek alternative advice from another Barrister himself. At present it's not clear whether he has already done so. If so, he's entitled to present that to Lloyd's to consider.

My final decision

For the reasons set out above, I don't uphold Mr E's complaint about Society of Lloyd's.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 3 October 2024.

Lale Hussein-Venn
Ombudsman