

## **The complaint**

Ms W complains that Society of Lloyd's declined a claim on her legal expenses insurance and said the policy was void.

Where I refer to Society of Lloyd's, that includes its agents and claims handlers acting on its behalf.

## **What happened**

Ms W instructed solicitors to pursue a personal injury claim for her. They entered into a conditional fee ("no win no fee") agreement with her and Ms W took out an after the event insurance policy. This covered her for certain costs, including court fees and other disbursements such as expert reports.

The legal advice was that that some aspects of the claim were not likely to succeed but she did have prospects of success on at least one aspect – her solicitors put it at between 57% and 65%.

Expert evidence was obtained and proceedings were issued, but in July 2019 counsel advised that, having reviewed all the evidence, the claim was not likely to be successful. The solicitors emailed the advice to Society of Lloyd's but it wasn't received as an incorrect email address was used.

In December 2019 the defendant produced evidence of video surveillance, which it said showed Ms W had not been honest about the extent of her injuries. They made a claim for the court to make a finding of dishonesty.

When Ms W's solicitors told Society of Lloyd's about this, it decided to withdraw cover and said the policy would be declared void, because it considered it was a false claim. Ms W complained but Society of Lloyd's didn't change its decision. It said this was based on the video footage and as there was no evidence to disprove the defendant's claims, it had to accept she had made a false claim.

When Ms W referred the complaint to this Service, our investigator concluded it wasn't fair to decline the claim and void the policy. She recommended that Society of Lloyd's pay reasonable costs in line with the policy terms up to 18 July 2019, together with interest on ny costs Ms W had already paid, and compensation of £300 for the distress and inconvenience caused to Ms W.

Society of Lloyd's disagrees and has requested an ombudsman's 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 industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

The policy provides cover for the costs of Ms W's opponent, together with disbursements incurred by her solicitors, in certain circumstances. It would cover the disbursements incurred in this case, unless Society of Lloyd's can show a policy term allows it to refuse the claim. It has relied on the following term:

*"If you make a claim which is fraudulent or false this policy shall become void and all benefit under it will be forfeited."*

Society of Lloyd's says it does not consider this to be a fraudulent claim, but it is a false claim. I've considered whether it was fair for Society of Lloyd's to rely on this term to reject the claim and say the policy is void.

Society of Lloyd's relies on email correspondence from the solicitors, in particular saying they advised it was likely the court would find Ms W had been dishonest, and it's not necessary for the court to make a finding – it's enough that the legal advice led it to believe dishonesty would be found.

I agree there doesn't necessarily have to be a finding by the court but in the absence of that, there would need to be some persuasive evidence this was a false claim.

The defendant accepted Ms W had been involved in an accident and may have suffered some injury, but said she exaggerated the extent of that. The evidence of dishonesty is the video evidence.

It doesn't appear that Society of Lloyd's actually saw that evidence. In its final response to Ms W's complaint, Society of Lloyd's said its decision was based on the findings in respect of the footage and, as there was no evidence to disprove those claims, they had to accept she had made a false claim. I don't think that was the case.

The defendant had only provided edited footage that showed short periods of activity by Ms W on five dates across a 14 month period.

Ms W gave a signed witness statement in which she provided an explanation for what was shown in the video clips. Amongst other things, her points included:

- She was diagnosed with a serious condition and considered disabled by the Department for Work and Pensions, which assessed her several times.
- She had said she was in continuous pain, but had also explained that her symptoms fluctuated.
- The video didn't show the full picture – these were short clips taken on a few days and only gave a snapshot of what she was doing on those days.
- She gave an explanation of the incidents, for example that she was advised to jog for short periods as part of her rehabilitation process, but struggled afterwards and needed painkillers.

The defendant provided the video evidence in support of a counterclaim against Ms W. There was evidence to contradict the video and the defendant very quickly withdrew from its position and agreed to a 'drop hands' settlement, which may indicate some doubts about the strength of its case.

The onus is on Society of Lloyd's to show Ms W's claim was false and I don't think it has done that. It relied on the comments from the solicitors, but the solicitors didn't say it was likely the court *would* find dishonesty, but that it *may* make that finding. Their other correspondence was contradictory. And as I've said, Ms W provided a detailed rebuttal of the video evidence but Society of Lloyd's doesn't appear to have taken that into account.

Counsel advised that the chances of success for Ms W's claim had fallen below 50% and Society of Lloyd's could reasonably have withdrawn cover based on that. Counsel said Ms W's credibility was key, but made the point that credibility is not the same as dishonesty. Counsel wasn't asked to advise on the video evidence and this wasn't considered by the court.

Taking all of these factors into account I don't think, in the circumstances of this case, Society of Lloyd's has done enough to show the whole claim was false. So it should pay any costs or disbursements that would have been covered by the policy, up to the date of the last counsel advice of 18 July 2019.

The decision to void the policy and not cover the claim was very upsetting for Ms W, and she has been left having to deal with a claim by her solicitors for substantial costs, which has caused her unnecessary worry. She should be compensated for the distress and inconvenience caused by this.

### **My final decision**

I uphold the complaint and direct Society of Lloyd's to pay:

- reasonable costs and disbursements in line with the policy terms, incurred up to 18 July 2019, and - if Ms W has already paid any of these - interest at 8% a year simple from the date of payment to the date of settlement;
- compensation of £300 for the distress and inconvenience caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 10 January 2025.

Peter Whiteley  
**Ombudsman**