

The complaint

Mr H and Mr H complain that Society of Lloyd's ("SOL") has unfairly declined a claim under a civil liability professional indemnity policy.

Any reference to Mr H and Mr H, and SOL includes respective agents and representatives. And for ease of reading, I will refer to the joint complaints as a singular "*Mr H*" throughout.

What happened

The background of this complaint is well known between parties and has been detailed at length elsewhere. So, I've summarised events.

- Company F managed a number of properties for Mr H.
- Following a dispute regarding a breach of contract, the matter went to a tribunal. The tribunal ordered Company F to pay sums in relation to linen costs and fees charged relating to online bookings made on third party websites.
- Company F went into liquidation before any payment was made to Mr H.
- So, Mr H sought to claim on Company F's professional indemnity policy, which is underwritten by SOL.
- SOL declined the claim on a number of grounds, including a particular exclusion (5.12 in the policy) that stated it would:

"...not be liable in respect of any Professional Services, Claim, liability, compensation, Investigation and Enquiry Costs, Claimant's costs and expenses or insured costs' arising 'directly or indirectly from or in respect of the return, refund or disgorgement or any professional fees, charges, commissions or other remuneration or whatsoever in nature received by, paid or payable to the Insured in connection with the Professional Services."
- Mr H brought the complaint to this Service. Amongst their arguments they responded specifically to the 5.12 exclusion, stating the claim in question was *not* for reimbursement of professional fees and instead was for an amount of damages, awarded by reason of a breach of law – which the policy *does* respond to.
- One of our Investigators looked into what happened and didn't uphold the complaint. She was satisfied the amounts awarded from the tribunal judgement (that were being sought) were excluded under 5.12. She said claimed for were the return or refund of professional fees or charges related directly or indirectly from amounts payable to Mr H in the capacity in which he's claiming given Company F's liquidation – in connection with the property management – as described in the exclusion.
- Mr H disagreed, providing a detailed response. In summary he argued:
 - The tribunal's judgement was for breach of statute, and reiterated the claim was a civil claim for damages/compensation arising from breach of a statute to which the relevant SOL policy responds.
 - In putting his argument forward, Mr H refers to various documents within his

submission. And he details the history of the claim related to booking fees, and the tribunal's determination and calculations in awarding redress. Mr H argues the amount awarded in no way reflects fees or charges and therefore the exclusion should not apply.

- Mr H states the policy indemnifies the insured against civil liability for *"compensation and Claimant's costs and expenses in respect of any Claim first made against the Insured and notified to the Insurer during the Period of Insurance resulting from the conduct of the Professional Services by the Insured in respect of any act, error or omission occurring after the Retroactive Date"* and specifies civil liability is defined as *"legal liability arising from any civil cause of action including but not limited to:(3): Breach of Statute"*.
- Mr H says the exclusion in question cannot apply to this claim as it is not directly or indirectly from or in respect of the return, refund, or disgorgement of any professional fees, charges, commissions or other remuneration.
- The Investigator looked again but remained of the opinion that it was fair for SOL to conclude the amounts awarded by the tribunal had arisen directly or indirectly from professional fees and or charges, and therefore the claims were excluded.
- Mr H reiterated his position, highlighting again he believed the tribunal had not decided on a matter related to fees charged on online booking sites, that the decision provided by the tribunal did not return or refund any professional fees.

So, the complaint has been passed to me for an Ombudsman's 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.

Having done so, I'm not upholding this complaint. I'll explain why.

- My role as an Ombudsman at this Service requires me to say how I think a complaint should be resolved quickly and with minimal formality. That means I'll focus on what I consider to be the crux of the complaint. Mr H's submissions to this Service span many pages. Within this decision I won't be responding in similar detail. This is not intended as a discourtesy, but a reflection of the informal nature of this Service.
- Where I don't comment on every point made by the parties, that's not to say I haven't seen or considered them. I have carefully considered all points raised by both parties, but I do not consider it necessary to specifically reference them in reaching my decision. And when considering what's fair and reasonable in the circumstances, I have taken into account the relevant law and regulations, regulator's rules, guidance and standards and codes of practice.
- Given the history of this complaint – I will begin by considering the 5.12 exclusion as this seems to be the main point in issue. Simply, if I'm satisfied the claim has been fairly and reasonably excluded by SOL using this exclusion, the remaining points that have been discussed elsewhere will fall away. So, I will begin by looking at the policy terms and this particular exclusion which state:

"The Insurer shall not be liable in respect of any Professional Services, Claim, liability, compensation, Investigation and Enquiry Costs, Claimant's costs and expenses or Insured Costs:

5.12 Professional Fees

arising directly or indirectly from or in respect of the return, refund or disgorgement or any professional fees, charges, commissions or other remuneration or whatsoever nature received by, paid or payable to the Insured in connection with the Professional Services."

- "Professional Services" is defined in the policy to mean "*the Professional Services of the Insured specified in the Schedule*" which here is Property Management.
- The key dispute here stems from a disagreement between parties on whether the tribunal judgement order to make payments meets this above exclusion.
- SOL states the tribunal orders clearly relate to a refund of fees or commissions unduly obtained by the Insured and is contrary to Mr H's assertion the tribunal decision did not make any findings in relation to professional fees.
- Mr H puts forward the tribunal's judgement was for breach of statute, and the claim in question is a civil one for damages/compensation arising from breach of a statute to which the relevant SOL policy responds.
- So, I've carefully read the tribunal judgement. There were two claims that were successful within the judgement, these fall under claims five and nine respectively within the judgement.
- Under claim five the judgement begins "*This was a claim for a refund of prepaid linen fees for each unit.*" I find this compelling evidence to support SOL's position that the subject matter of claim five was about professional fees related to linen.
- Under claim nine the judgement begins "*This claim related to fees charged in relation to bookings obtained via platforms such as...*[lists online platforms]." Again, I think the judgement is clear on the subject matter of the claim – that is professional fees in relation to bookings.
- In both of these instances the judgement goes on to discuss events and sums ordered that relates to these causes.
- Mr H has argued the matter is entirely separate to any professional fees as the claim is about the judgement's order, not the professional fees in question. But simply put, the exclusion says this could be either direct or indirect. And I'm satisfied the tribunal order to pay the funds in question stems from the respective claims described in the tribunal's decision and arose directly or indirectly to those professional fees.
- So for these reasons I'm satisfied both claims five and nine are excluded by this policy and I'm not persuaded it would be fair and reasonable to direct SOL to depart from these terms.
- Mr H has made reference to the definition of loss in the policy and said it should indemnify him against a breach of statute. But in either instance, the exclusion applies here as the subject matter in question, either directly or indirectly, concerns professional fees. Mr H has also said the tribunal's redress should persuade me the claim does not relate to professional fees – but I disagree. I read the tribunal decision as clear in what the respective claims were about – professional fees – and the redress it ordered will either fall into the direct or indirect return, refund or disgorgement of any professional fees, or the broader "*other remuneration or whatsoever nature received by, paid or payable to the Insured in connection with the Professional Services.*"
- As I'm satisfied SOL has fairly applied this exclusion, and so fair of SOL to reject the claim, making a determination on the other exclusions relied upon by SOL is unnecessary.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mr H to accept or reject my decision before 27 October 2023.

Jack Baldry
Ombudsman