

The complaint

Mr P is unhappy that Society of Lloyd's hasn't paid benefits from two income protection policies.

What happened

Mr P was employed as a pilot by a company I'll refer to as 'C'. C is the policyholder for two group income protection policies, of which Mr P is the beneficiary.

The first policy covers mandatory group loss of licence (MLOL). The policy includes a benefit for temporary and long-term inability to fly – this is a percentage of pre-disability earnings for temporary inability to fly and a lump sum for long term inability to fly.

The second covers individual voluntary loss of licence (VLOL) and includes a further benefit for long term inability to fly benefit. This is a lump sum is determined by the level of cover the beneficiary has selected.

Mr P was diagnosed with a medical condition in 2020 and was unable to work. He received some sick pay from his employer, but his contract of employment was terminated in August 2021. Mr P says he hasn't received all the money that he's due to be paid under the income protection policies. His claim was accepted, and he received payments under the MLOL policy for temporary benefit in June, July and August 2021. Society of Lloyd's records show that four payments of benefit had been made to the policyholder, C.

Mr P complained to Society of Lloyd's. Society of Lloyd's reviewed Mr P's complaint. In their final response letter, they said the underwriters have confirmed that cover can only be purchased and continue to be offered if the individual remained employed by the policyholder. They said that Mr P was no longer employed by C and Society of Lloyd's had correctly reviewed the claim in line with the policy terms and conditions.

Unhappy, Mr P complained to the Financial Ombudsman Service. Our investigator looked into what had happened and upheld the complaint. She explained that the policy terms did make it clear only employed crew members could claim. But she highlighted that there was a caveat to the relevant exclusion which said it wasn't relevant when the reason for the cessation of employment was disability. She thought the evidence suggested Mr P's employment was terminated because of his illness and/or disability. The investigator recommended Society of Lloyd's reconsider the claims Mr P had made and make suitable arrangements to pay Mr P, as the beneficiary.

SOL didn't agree and reiterated the policy terms which, they say, means Mr P doesn't have any rights to enforce benefits under the policy as it was held by C. They maintained that Mr P was not employed by C from August 2021 and therefore was no longer covered under the policy. They said the contract of insurance required the policyholder to prove that they continue to have a valid claim, which was standard practice. Furthermore, they said Mr P's employment was terminated as a result of his sickness record, not his disability.

Mr P also made further comments in response to the view. He said he'd incurred legal costs

and had lost out financially because he'd not received the benefit payments when he should. He also highlighted that he had faced a lot of worry and uncertainty at a difficult time. So, he wanted compensation for the distress and inconvenience caused. Mr P also got in touch to say that C had paid him a further four months' worth of benefit in December 2022.

The investigator issued a second opinion. She said it would now be fair for Society of Lloyd's to pay the benefit from the point it was stopped until the point it was reinstated (and pay 8% simple interest on top). She also recommended Society of Lloyd's pay Mr P £250 compensation for the distress and inconvenience he'd experienced and said they needed to make a suitable arrangement with Mr P to receive the benefit payments directly.

Mr P didn't think the compensation of £250 recognised the significant life-changing effects he'd suffered. Society of Lloyd's said the policy terms were clear and unambiguous and they were acting within the terms of the policy when the claim was terminated. They also said that payments couldn't be made to Mr P directly unless C asked them to. Society of Lloyd's also said that, whilst there had been further developments with the claim since the complaint was referred to the Financial Ombudsman Service, this didn't affect whether the underwriters acted correctly in terminating the claim when they did.

The investigator reviewed Mr P's comments and increased the compensation she was recommending to £350. Mr P asked that the ombudsman reviewed this level of compensation. Society of Lloyd's maintained their position that they had acted correctly.

They said only C had the right to make a claim and it was their responsibility to make payment to Mr P. The case was passed to me to make a decision. I asked Society of Lloyd's to provide more information to clarify a few points. They confirmed they'd had a request from the policyholder to pause the claim and later reopened it at their request. Society of Lloyd's says it is for the policyholder to decide if they want to claim and that the temporary benefits have been paid up to date. They also clarified that Mr P hadn't yet made a claim for permanent loss of licence as yet. That means a claim for the lump sum benefits under the VLOL and MLOL policies hadn't yet been made by Mr P or assessed by Society of Lloyd's.

In March 2023 I issued a provisional decision. I said:

The relevant rules and industry guidelines

The relevant rules and industry guidelines say that Society of Lloyd's has a responsibility to handle claims promptly and fairly and they shouldn't reject a claim unreasonably.

I've also taken into account the relevant Principles set out in the Financial Conduct Authority Handbook which include:

- Principle 1 – a firm must conduct its business with integrity
- Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly
- Principle 8 – A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

The policy documentation

The MLOL policy documents say:

Introduction

The Insurer will pay the Benefits defined in this Policy if an Insured Crew Member becomes Disabled in the circumstances set out in this Policy. The payment of Benefits is always subject to the terms and conditions of this Insurance. The Insured must pay the premium as and when it falls due.

Any payments under this Insurance will be made to the Insured on behalf of the Insured Crew Member unless the Insured, at the Insured's sole discretion, instructs the Insurer in writing to pay the Insured Crew member directly prior to any individual

Benefit being paid under this insurance...

Rights under the Insurance

This is a group insurance, an agreement between the Insured and the Insurer, intended for the benefit of Insured Crew Members.

Insured Crew Members must comply with certain conditions stated in this Insurance but neither the Insured Crew Members nor any party other than the Insured has any right to enforce any of the Benefits under this insurance.

'Disabled/Disablement/Disability' is defined as:

Failing to reach and maintain the required medical standards for all Medical Certificates held by an Insured Crew Member with the result that the Insured Crew Member is unable to undertake flying duties.

Under the heading 'Benefits' the policy says:

Temporary Inability to Fly Benefit

If an Insured Crew Member becomes Disabled during the Period of Insurance as a consequence of Bodily Injury or Illness and the Disablement continues for longer than the Waiting Period then the Insurer will pay the Temporary Inability to Fly Benefit shown in the Schedule of Benefits for each subsequent full month (and the relevant proportion of any partial month) for which the Insured Crew Member remains Disabled during the Benefit Period provided that:

- If the Benefit payable is dependent on the Insured Crew Member's age the age at the date of the start of Disability shall prevail;
- The Insurer will not pay more than 80% of the Pre-Disability Earnings of the Insured Crew Member in respect of Temporary Inability to Fly Benefit less any amount receivable as sickness benefit under any state or private scheme or insurance from any source.

Temporary Inability to Fly Benefit automatically and immediately ceases on the first to occur of the following:

- The Insured Crew Member ceasing to be employed in their Occupation with the Insured other than as a consequence of a Disability covered by this insurance;

- The Insured Crew Member attaining the Maximum Age Limit;
- A payment becoming due for Long Term Inability to Fly benefit or
- The death of the Insured Crew Member.

Was it fair for Society of Lloyd's to stop paying the temporary benefit available under the MLOL?

Based on the evidence available to me I think it's reasonable to conclude Mr P met the definition of disablement. His licence was revoked by the Civil Aviation Authority due to his medical condition – it says his medical certificate is deemed to be suspended. He was unable to complete his flying duties as a result.

Society of Lloyd's accepted the claim but stopped paying Mr P on the instruction of the policyholder, C. Mr P has provided evidence of an email dated 14 September 2021 which suggests that's most likely to be the case. Society of Lloyd's position is, in summary, that the policyholder is the only party with the right to enforce any of the benefits available under the policy.

But, even if that's the contractual position, Society of Lloyd's still has an overarching responsibility to treat Mr P, as a beneficiary of the contract of insurance, fairly. The claim was accepted and paid to Mr P for four months. The policy documentation suggests Society of Lloyd's has the discretion to accept claims and investigate them. In my experience it is not common industry practice for employers, as group policyholders, to direct an insurer about whether a claim should be accepted or terminated. That's something that the insurer is responsible for, taking into account the relevant policy terms.

Society of Lloyd's hasn't provided me with any information, or referred to any compelling information in the policy terms, which clearly sets out that the policyholder has the sole discretion to pursue or determine the outcome of a claim, for example directing it to be paid or not. The term they've referred to says:

Insured Crew Members must comply with certain conditions stated in this Insurance but neither the Insured Crew Members nor any party other than the Insured has any right to enforce any of the Benefits under this insurance.

The term says the policyholder can enforce the benefits under the policy, but it makes no reference to the policyholder having any discretion about the payment of claims to the beneficiary. I don't think it's clear that this term means the policyholder has the right to determine whether a claim should be paid or not. I don't agree this term is clear and unambiguous as Society of Lloyd's has suggested. I think it's for Society of Lloyds to determine, not the policyholder, whether there's a valid claim that should be paid.

I've also taken into account whether it was reasonable to decline further payments to Mr P after he left employment in August 2021. Based on the current evidence available to me, I don't think it was. The policy terms say:

Cover under this Insurance ceases automatically in respect of an insured crew member once... The Insured Crew Member ceases to be employed in his Occupation with the Insured other than as a consequence of a Disability covered by this insurance

Mr P's letter of termination confirms his diagnosis and sets out the amount of sick leave Mr P had taken. It goes on to confirm that he was unfit to fly in August 2021 and was expected to be medically grounded for a period of around four to six months (subject to review). A similar assessment had been made in March 2021. C said that based on the information available he was unable to perform the inherent requirements of the job as a pilot and it would cause unjustifiable hardship to C to continue to accommodate Mr P.

I think there is a sufficiently clear link between Mr P's disablement, as defined by the policy, and his employment ending. So, I think it would be reasonable to conclude from this information that his termination was as a consequence of a disability covered by the insurance policy. That's because the medical condition caused the absence from work and ultimately led to the termination of employment.

Taking all of the above into account I don't think it was fair and reasonable for Society of Lloyds to stop making benefit payments to C simply because they asked for those payments to be paused. I don't think that was treating Mr P, as the beneficiary of the policy, fairly.

Society of Lloyd's has confirmed more recently that they reopened and reinvestigated Mr P's claim. They say that all benefits have been paid up to date and the final temporary benefit payment will be in early April 2023. That's consistent with the information Mr P has provided as he also recently confirmed that he'd received the outstanding payments from September 2021 until November 2022.

Based on the evidence I currently have I don't think there's any outstanding benefit to be paid to Mr P as the payments have been reinstated and backdated. If either party has any further representations to make on this point, they should let me know when they respond to my provisional decision.

Should Society of Lloyd's consider claims for lump sums under the VLOL and MLOL policies?

I've already explained the relevant policy term says Mr P wasn't covered if his employment with C ended. But the same exception I've outlined above applies. And, on the basis of the current evidence that's available, I think Mr P's employment did end as a consequence of a disability covered by the insurance policies.

Upon receipt of the claims documentation I think Society Of Lloyd's should reconsider whether Mr P has a valid claim for a lump sum under both MLOL and VLOL in line with the remaining policy terms and provide him with a written response to both claims.

I make no finding about the merits of either claim as it's not been fully assessed yet. If Mr P is unhappy with the outcome of the MLOL or VLOL lump sum claim (or how much any settlement is) he may be entitled to make a further complaint to the Financial Ombudsman Service. The Financial Ombudsman Service could only consider any such complaint if Mr P has complained to Society of Lloyd's first.

Should Society Of Lloyd's pay further compensation for distress and inconvenience?

I've taken into account Mr P's representations and I'm intending to increase the compensation for distress and inconvenience to £1500.

Mr P has explained that the decision to stop paying the claim has had a significant

impact on his day to day life for over a year. He says he was passed between the various parties and the matter was only resolved when he took various legal actions to address the decision to stop paying the claim. He spent a lot of time and effort arranging legal representation and this was detrimental to his overall day to day life. Mr P described how the overall impact caused him significant hardship, anxiety and stress on a daily basis for over a year.

Some of this distress and inconvenience was due to the issues Mr P was having with his former employer. But I also think Society of Lloyd's was responsible for causing Mr P distress and inconvenience as a result of their decision to act on C's instruction to stop paying the claim.

Mr P has also highlighted that he was not receiving income from May 2021 and was financially dependent on receiving the payments. Consequently, when the claim payments were stopped, he's explained it impacted on his overall lifestyle but also on his ability to pay for day to day necessities such as food and petrol. This had a substantial impact as he was the sole earner in the family. He said this caused him a significant amount of stress and anxiety, at a time when he was also experiencing poor health due to his medical condition.

I don't think it was reasonable for Society of Lloyd's to stop paying Mr P's claim. And, I think this decision caused him substantial distress and inconvenience for over a year. I think not having this income caused a lot of disruption to Mr P's daily life over a sustained period of time and had a substantial impact on him throughout this time.

I appreciate that Mr P feels a much higher figure is justified but I think £1500 fairly reflects the distress and inconvenience caused. It's also not the role of the Financial Ombudsman Service to penalise Society of Lloyd's with punitive measures, such as fines or other financial penalties.

Putting things right

I'm intending to direct that Society of Lloyd's needs to put things right by paying Mr P £1500 compensation for the distress and inconvenience caused by stopping the claim payments.

I've outlined above why I think £1500 is fair and reasonable in the circumstances of this case.

I've thought about whether Society of Lloyd's should pay 8% simple interest per annum on the benefit payments. I think it should pay 8% simple interest per annum for the payments which were not made between September 2021 and December 2022.

Mr P missed out on the money he should have received when Society of Lloyd's stopped paying his claim on C's instruction. I don't think that decision was fair and reasonable in all the circumstances. I've taken into account that Society of Lloyd's considers it shouldn't have been paid as they say they acted on the policyholder's instructions. I've explained above that I don't think this was fair and reasonable and so I think they do need to pay interest on the missed payments.

The interest on the missed payments should be paid to Mr P directly as there is no contractual requirement for this to be paid to the policyholder. That's because the payment for interest is not a benefit that's payable under the policy so it doesn't need to be paid to the policyholder.

Mr P has provided what he considers to be the right calculation of interest. Society of Lloyds should provide a breakdown of the interest calculation in response to my provisional decision.

If Society of Lloyd's considers that it's required by HM Revenue and Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr P said he accepted my provisional decision. He highlighted that he was paying for additional cover for the VLOL policy and was unsure if his coverage had reduced since his employment was terminated. He said he would welcome clarification on this point. Although he said he'd hoped for a higher level of compensation he accepted my reasons for the amount I'd awarded and the interest. In further correspondence Mr P asked me to consider directing Society of Lloyd's to make future payments to him directly.

Society of Lloyd's made a number of further representations. In summary, they said:

- The policy pays C the amount they pay their aircrew when they are unable to carry out their duties so all payments are at C's discretion, unless the insurer is instructed otherwise.
- The insurer's conduct should be assessed against the nature of a group policy.
- There was an express contractual term which reinforced that Society of Lloyd's obligations were owed to the policyholder, not Mr P.
- It wasn't entirely accurate to say that the insurer stopped payment at C's request. The broker stopped presenting requests for settlement at the request of C. They can only respond to claims that are submitted.

So, I need to make a 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 still upholding Mr P's complaint for the reasons I'll explain.

I've considered Society of Lloyd's representations, including the caselaw that they've referred to. But they haven't changed my thoughts about the overall outcome of this complaint.

Mr P is the beneficiary of, but not a party to, the contract of insurance between C and Society of Lloyd's. But he is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through Society of Lloyd's.

The reasonableness of Society of Lloyd's actions isn't solely dictated by whether or not Mr P would be able to enforce the contract. I remain of the view, for all the reasons I set out in my provisional decision, that Society of Lloyd's hasn't acted fairly and reasonably in all the circumstances.

Those reasons were not predicated on Mr P's ability to bring a legal claim under the contract

– they were based on what was set out in the insurance policy and whether Society of Lloyd's acted fairly in all the circumstances.

Furthermore, I've considered what Society of Lloyd's has said about the broker stopping presenting requests for the claim. There was a valid claim and benefit had been paid. And, in any event, Society of Lloyd's has now been aware for a very long time of the circumstances which led to the payments P being stopped. They haven't disputed the validity of Mr P's claim. So, bearing in mind the rules and overarching principles I outlined in my provisional decision I'm still not persuaded Society of Lloyd's has acted fairly.

I'm aware that Mr P has concerns about the level of cover he had and whether it's reduced. However, that's not something I can consider as part of this complaint. I can only consider the points he raised in his original complaint.

I also can't fairly direct for other future benefits under the policy be made to Mr P directly as Society of Lloyd's hasn't considered those claims yet or reached a decision about them yet.

Society of Lloyd's didn't provide a breakdown of interest in response to my provisional decision. But they'll need to calculate that interest and make the payment direct to Mr P with together with a breakdown of how it's been calculated.

Putting things right

I'm directing Society of Lloyd's to put things right by paying Mr P £1500 compensation for the distress and inconvenience caused by stopping the claim payments.

I've thought about whether Society of Lloyd's should pay 8% simple interest per annum on the benefit payments. I think it should pay 8% simple interest per annum for the payments which were not made between September 2021 and December 2022. The interest on the missed payments should be paid to Mr P directly as there is no contractual requirement for this to be paid to the policyholder. That's because the payment for interest is not a benefit that's payable under the policy so it doesn't need to be paid to the policyholder. As I've outlined above Society of Lloyd's should provide a breakdown of their calculation to Mr P.

If Society of Lloyd's considers that it's required by HM Revenue and Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. It should also give Mr P a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I'm upholding Mr P's complaint about Society of Lloyd's and direct them to put things right in the way I've outlined above.

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

Anna Wilshaw
Ombudsman