

The complaint

R, a limited company, complains about what Society of Lloyd's did after it made a claim on its liability insurance policy.

What happened

In May 2019 a claim was made against R by a business (F) in relation to work it had carried out. R claimed on its liability policy with Lloyds and solicitors were appointed. Liability was subsequently admitted and settlement of the claim was agreed in January 2020. R then sought to make its own claim against F for unpaid invoices.

F said the agreement already reached was in full and final settlement so R couldn't bring that claim. R said that settlement had been agreed by Lloyds and thought it was responsible for the fact it couldn't recover its losses from F. It said Lloyds should pay it the amount it had sought to claim from F.

Our investigator thought Lloyds should have communicated the settlement to R prior to agreeing it with the other side. And he thought Lloyds should get a legal opinion on whether the settlement agreement did in fact prevent R from pursuing its claim. Lloyds didn't agree with his view but did obtain counsel's opinion on the settlement agreement. That said the agreement wouldn't prevent R from pursuing its claim against F.

I explained to R last month that we couldn't consider the actions (or inactions) of the panel solicitors who'd acted for Lloyds. So any actions they took (or didn't take) when negotiating and agreeing the settlement agreement with F's solicitors weren't something we could consider. If the panel solicitors had contacted Lloyds prior to agreeing that settlement then there might be a question over whether it should then have sought R's views on the settlement but they didn't appear to have done so.

In any event the legal opinion Lloyds had now obtained explained why the settlement agreement wouldn't prevent R from pursuing claims against F. So even if there was evidence of a failing by Lloyds, I didn't think R's position had been adversely affected by it. And so this wasn't a complaint I intended to uphold.

In response R's representatives said:

- R had raised the issue of the potential claim against F with Lloyds prior to settlement being agreed and had made clear it didn't want the claim settled until this was addressed.
- That information should have been passed on to the panel firm by Lloyds but wasn't. And if it had been the panel firm would likely have challenged the wording of the acceptance from F's solicitor which referred to this as being *"in full and final settlement of all claims between the parties"*.
- Counsel's opinion wasn't determinative of what view a judge would take on whether R's claim against F had been compromised by the settlement agreement. As counsel had

been instructed by the panel firm this was not an independent or neutral report. And they continued to feel that R's outstanding claim had been settled by the agreement already reached and so Lloyds should take responsibility for this.

- Even if that wasn't the case R was nevertheless vulnerable to a court finding that the claim had been compromised by the settlement agreement. And so Lloyds should agree to compensate it in the event such a claim was unsuccessful because of that agreement.

So I need to reach a 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.

The relevant rules and industry guidelines say Lloyds has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

In this case the policy terms do give Lloyds the right to *"take over and conduct in the name of the Insured the defence or settlement of any claim..."*. So this does give Lloyds a contractual right to settle the claim how it chooses and it doesn't need the agreement or consent of a policyholder.

But I don't think it would be fair for Lloyds to simply act without taking into account R's position or other relevant evidence. And in this case, while it doesn't appear Lloyds had any input into the wording of the settlement agreement, I appreciate it was aware R had an outstanding claim it wanted to bring against F. It's not clear that information was passed on to the panel firm by Lloyds.

R argues settlement would have been agreed by that firm on different terms if that had been done. But the panel solicitor involved has said while he wasn't aware of a potential counterclaim the offer which was accepted by him *"was in respect of the claim brought, not all potential claims the parties may have or look to make against one another"*.

If that was the basis on which the panel solicitor thought settlement was being agreed I'm not persuaded knowledge of a potential claim from R against F would have led him to act differently. And if R's position is that he shouldn't have agreed settlement on those terms at all that would be a complaint about the actions of the panel firm which, for the reasons I've previously explained, isn't something we can consider.

In any event the counsel's opinion that has now been obtained is very clear as to why the settlement agreement wouldn't include any debt claim that R might want to bring in future. I appreciate it isn't determinative of what a judge might find but I think it is properly written and reasoned. And R's representatives haven't provided any contrary legal argument from a lawyer of equivalent standing. They are of course right to say counsel was instructed by the panel firm but I don't think that means his opinion shouldn't be relied on. Counsel will have been required to provide advice in line with his professional duties.

So, as it stands, there isn't any clear evidence to show R's position has been or will be adversely affected by the settlement agreement. If R does subsequently obtain further evidence which demonstrates a clear link between a failing by Lloyds and a loss to R, that could potentially form part of a fresh complaint. But I won't be directing Lloyds to take any further action in relation to the current complaint.

R has also asked for some of the information referenced in counsel's opinion to be disclosed to it. I don't believe that's information we hold so isn't something we can provide (and clearly

can't be something I directly relied on in reaching this decision). R is of course free to approach either Lloyds or the panel solicitors if it believes there's information they hold which it's entitled to see.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 11 September 2023.

James Park
Ombudsman