

## **The complaint**

Miss S complains that Financial & Legal Insurance Company Ltd (“F&L”) rejected a claim on her legal expenses insurance policy.

Where I refer to Financial & Legal Insurance Company Ltd, this includes its agents and claims handlers acting on its behalf.

## **What happened**

Miss S took out an after the event legal expenses insurance policy in relation to a legal claim she was pursuing. The policy covered her opponent’s costs and disbursements if her case was not successful.

After proceedings were issued Miss S made an application to the court to amend the particulars of claim. Her application wasn’t successful. The court struck out her claim and ordered Miss S to pay the defendants’ costs.

When her solicitors tried to claim on the policy, F&L said Miss S could not make a claim because there’s no cover where proceedings are struck out due to procedural error or default. Miss S complained but F&L didn’t change its decision.

F&L later said it was also entitled to reject the claim because Miss S had breached policy terms that required her to notify it of any settlement offers that had been made, and she had received several offers but hadn’t told it about any of them.

Miss S referred her complaint to this Service but our investigator didn’t think it should be upheld. She said the court order was clear that the main reason the claim had been struck out was because Miss S’ claim didn’t comply with the procedural rules.

Miss S disagrees and has requested an ombudsman’s decision. She says

- F&L failed to respond to her complaint properly, in accordance with the relevant rules.
- “Procedural error” is not defined in the policy terms. There are many possible ways to interpret this and it’s difficult for a consumer to understand what it covers or when it may be used. But it’s intended to address the most basic and obvious errors, which are wholly procedural or administrative, and that wasn’t the case here.

## **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 where Miss S' court case is not successful. That's the case here but F&L says it doesn't need to cover the claim because of an exclusion in the policy terms and because she is in breach of the policy conditions.

When it originally rejected the claim F&L relied on an exclusion, which says there is no cover for

*"Opponent's Costs and/or Own Costs and Disbursements if the Proceedings are struck out due to procedural error or default."*

"Procedural error" isn't defined in the policy terms. Miss S says this is unclear and it's difficult for a consumer to understand what it covers or when it may be used, but it's intended to address the most basic and obvious administrative errors. She also says even if some of the failings identified by the judge were procedural, many of the issues concerned the merits of the case and it's possible the outcome would have been the same without any potential procedural error. So the case wasn't struck out solely due to procedural errors.

I've considered her arguments carefully but I think it was fair for F&L to rely on this exclusion.

Where something isn't defined in the policy terms, the usual approach is to give the words their ordinary meaning. An error is simply a mistake, or getting something wrong, while "procedural" means relating to a procedure or process. On that basis, I don't think the phrase "procedural error" is unclear. It refers to making a mistake or doing something wrong in respect of procedural matters, as opposed to the merits of the case.

There are procedural rules (the Civil Procedure Rules) and Practice Directions that should be followed when pursuing litigation. If a party to a case doesn't comply with those rules and their case is struck out because the rules have not been followed, then I think it's fair to say the case was struck out due to a procedural error.

The judge made a number of comments about this, including the following:

- The rules of court provide that the particulars of claim should contain "*necessary particulars*" and practice direction PD 53 says that in claims such as Miss S' claim there are specific things that "*the claimant must specify in the particulars of claim...*"
- "*...there has been a failure to provide the necessary particulars required by PD 53...*"
- "*...the latest draft of the particulars of claim... does not comply with the requirements of PD 53.*"

He also said "*the Defendants have been put to unnecessary trouble and cost by the chaotic manner in which the claimant has chosen to conduct this litigation*"

I appreciate that the judge also considered the underlying merits of the case, and there were reasons relating to the merits that contributed to his decision. But it's clear the failings identified above concern procedural issues and also led to the decision. Miss S failed to comply with the procedural rules and the case was struck out, and costs awarded, because of the way she had conducted the case.

In these circumstances, I think it was fair for F&L to conclude that these were procedural errors, and they led to her case being struck out.

F&L also referred to breaches of conditions that required Miss S to notify it of any settlement offers that had been made. There were several offers but Miss S didn't tell F&L about them. If she had done so, it could have considered whether cover should continue but it lost the opportunity to do that. Instead, Miss S continued with the case which the court then struck

out, ordering her to pay all the costs. That might have been avoided.

Miss S has referred to a note prepared by her barrister explaining why, in his opinion, the case wasn't struck out due to procedural error. He said it was done after a lengthy hearing about the merits of the case. But he didn't refer to the judge's comments about breaching the procedure rules and practice directions. He wasn't giving an impartial view, since he had been involved in drafting the particulars which were criticised by the judge. And he didn't refer to the fact Miss S was in breach of other policy conditions too. Taking these factors into account, I think it was reasonable for F&L to maintain its position.

F&L says these were "conditions precedent" to cover – meaning if they are breached, there is no cover. I still need to consider whether it was fair to apply these terms. I know the events leading to the court case and the litigation itself were very distressing for Miss S, and having her claim rejected has added to that – particularly as she now faces a large legal bill. But taking all of these circumstances into account, I think F&L's decision not to provide cover was fair. It wouldn't be fair to expect F&L to pay costs where those costs have arisen as a result of the way Miss S' case was dealt with.

F&L didn't provide a final response to Miss S' complaint as required under the relevant rules. It wanted to see the full file of papers from the solicitors, which were not provided. In any event, while a final response wasn't provided F&L had set out its position so Miss S was aware of the reasons for her claim being rejected and was able to refer her complaint to this Service.

### **My final decision**

My final decision is that I don't uphold the complaint.

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

Peter Whiteley  
**Ombudsman**