

## The complaint

Mr M is a sole trader. He has complained that Society of Lloyd's ("Lloyd's") didn't pay him enough to settle his business interruption insurance claim.

For ease of reading, reference to Lloyd's will include anything done by the underwriters.

## What happened

Mr M held a business protection insurance policy with Lloyd's to cover his guest house. He claimed on his policy for loss of income after a neighbour's wall collapsed on 15 February 2020. Mr M said this prevented customers from accessing his premises.

Lloyd's appointed a loss adjuster to look into the claim. The loss adjuster said that the Local Authority had closed the road to vehicles and pedestrians as a result of the collapsed wall.

The loss adjuster also said:

*"Closure of [name of road] has, undoubtedly, hindered access to the Insured's premises [name of road] is a single track one way road.*

*Due to its restricted width it is not possible for vehicles to turn around and with the road now being blocked there is, effectively, no vehicular access to Insured's premises at all.*

*The only way to, now, access the Insured's premises is on foot for a distance of approximately one quarter mile half of which is up a one in four hill. This will clearly have an affect [sic] on bookings.*

*However, we expect bookings to be affected by the current Corona Virus pandemic."*

Lloyd's accepted that access to Mr M's premises was hindered but didn't think it was prevented. It said Mr M didn't have to close his premises as there was access from the other end of the road.

Lloyd's said it could understand why Mr M would want to have told its guests about the problems with access and, if those guests cancelled as a result, those cancellations would be considered. However, Lloyd's said the policy was designed to put Mr M back into the position he would have been in if not for the collapsed wall, and his business would have been closed anyway from 23 March due to Government Regulations in response to the Covid-19 pandemic. It also thought that there would have been a downturn in business in the weeks leading up to 23 March due to the pandemic. On the basis of this reasoning, Lloyd's offered Mr M £600 to settle his claim.

Unhappy with Lloyd's response, Mr M brought his complaint to our service. He said there was no vehicular access to the property, and he couldn't get access to any deliveries. He said he'd told potential customers about the blocked access and removed the property from

online booking systems. Mr M added that bookings are usually made close to the date of the stay and provided evidence from an online booking system which showed that for the same period in the previous year many stays were booked within a month of the date of the stay.

Mr M thought his losses for the period between 15 February and 23 March were around £2,800. He confirmed that he wasn't claiming for losses beyond this date under this claim.

In September 2020, Lloyd's told us that it thought Mr M's claim/complaint was impacted by the Financial Conduct Authority's Business Interruption Insurance 'test case' so it couldn't provide any further information until that case had concluded.

In September 2021, Lloyd's said it was maintaining its decision in relation to Mr M's claim. It also provided a social media post indicating that parking for the property was not at the premises.

Lloyd's said it had now paid Mr M £648 for his claim, which included 8% interest due to the delay in making payment. Lloyd's also let us know that it had now paid a separate claim, up to the policy limit, for losses arising from Covid-19 and relating to the period after 23 March 2020.

Our investigator considered Mr M's complaint and recommended it be upheld. While he recognised that Lloyd's could take a downturn in the business due to Covid-19 into account when reaching a settlement, he didn't think it was fair and reasonable, or in line with the terms and conditions of the policy, for Lloyd's to only pay for cancelled bookings. He recommended Lloyd's pay Mr M for losses based on his previous year's takings, at a rate of 100% for the period 15-29 February and at 50% for the period 1-23 March, plus interest at 8%.

Mr M accepted the investigator's recommendation, but Lloyd's didn't. Lloyd's said it had already paid the policy limit for Mr M's claim for losses caused by Covid-19. And while it used the date of 23 March as the start of the claim it could have taken account of losses from 4 March, due to the prevalence of Covid-19 in the area from that date.

Lloyd's said that, as parking had never been available at Mr M's premises, access had always been hindered to some extent and it thought it had interpreted the cover fairly as it had paid Mr M for cancelled bookings caused by the collapsed wall. Lloyd's said the previous year's income couldn't be used to accurately determine the losses as that didn't take account of fluctuations in other conditions, such as the weather.

As Lloyd's didn't agree with our investigator, it asked for 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 business interruption section of Mr M's policy includes cover for interruption as a result of:

***“DAMAGE to property in the vicinity of the PREMISES which prevents or hinders the use of or access to the PREMISES”***

It doesn't seem to be in dispute that property in the vicinity of Mr M's premises was damaged. The loss adjuster's report says that access was 'undoubtedly' hindered, so I'm satisfied that there was damage to property in the vicinity of Mr M's premises which hindered the use of or access to his premises.

I don't think it's relevant that parking wasn't previously available at the premises as I think guests would often want to drop off luggage or guests at the premises before parking their vehicle.

Given that Mr M's existing bookings cancelled when told about the access problems, I think it reasonable that he took the decision to close his premises rather than take bookings which would then likely cancel. So I think the losses covered by the policy are not just the cancelled bookings but also those bookings which would have occurred if not for the hindrance.

Lloyd's accepted Mr M's claim, but I don't think the settlement it offered was fair and reasonable. I'll explain why.

Under 'Basis of Settlement' the policy says that Lloyd's will indemnify the insured as follows:

*"In respect of the reduction in **GROSS INCOME** the amount by which the **GROSS INCOME** during the **INDEMNITY PERIOD** falls short of the **STANDARD GROSS INCOME** due to the **DAMAGE**..."*

The words in bold capitals have specific meanings in the policy. They are:

Gross income:

*"the money paid or payable to the **INSURED** in the course of the **BUSINESS** less the net cost of consumable goods"*

Standard gross income:

*"the **GROSS INCOME** during that period in the twelve months immediately before the date of the **DAMAGE** which corresponds with the **INDEMNITY PERIOD** to which such adjustments will be made as necessary to take account of the trend of the **BUSINESS** and of the variations in or other circumstances affecting the **BUSINESS** either before or after the **DAMAGE** or which would have affected the **BUSINESS** had the **DAMAGE** not occurred so that the figures thus adjusted will represent as nearly as may be practicable the results which but for the **DAMAGE** would have been obtained during the relative period after the **DAMAGE**"*

Indemnity period:

*"the period beginning when the **DAMAGE** occurs and ending when the results of the **BUSINESS** cease to be affected by the **DAMAGE** but not later than 24 months after such **DAMAGE** occurs"*

I think this means Lloyd's needed to consider the gross income of the business during the period in which access to the premises was hindered by the damage from the wall compared with the gross income of the business in the corresponding period within the last year prior to the hindrance. Given the seasonality of a guest house business, the same period in the previous year would be a reasonable starting point for the comparison. Lloyd's could, however, take account of any trends in the business which might have affected it, if the damage to the wall hadn't occurred.

Lloyd's thinks that Covid-19 would have had a significant impact on Mr M's bookings. It's impossible for me to know exactly how much Mr M's business would have been

impacted by Covid-19 between 15 February and 23 March, so I've reached a decision based on what I think is fair and reasonable in all the circumstances.

Before I set out my reasoning on these losses, I note that Lloyd's said it could have considered Mr M's losses from 4 March as being caused by Covid-19 rather than by the collapsed wall, due to the prevalence of Covid-19 in the area at the time. Lloyd's said that, for this reason, its settlement to the maximum of its liability in Mr M's separate claim for losses caused by Covid-19 should apply to the period starting 4 March. However, as Lloyd's chose to consider this separate claim from 23 March - as M would have been closed anyway after that date due to Government Regulations - I think it's fair and reasonable for me to consider losses caused by the damaged wall up to that date.

I can see from a tourism website that accommodation occupancy in February 2020 was consistent with what it had been in February 2019. This indicates to me that there most likely wasn't a downturn in Mr M's business during this period due to Covid-19. I'm also persuaded by the information Mr M has sent that shows many bookings were made at short notice, so the accommodation not being booked isn't enough to demonstrate that it wouldn't have been booked if it had remained open. Therefore, I think it's fair and reasonable for Lloyd's to pay Mr M's loss of gross income at a rate of 100% for the period 15-29 February on the basis that the full prior year gross income for the same period provides a reasonable estimate for what Mr M's gross income would have been in 2020 but for the collapsed wall.

The website shows that there was a reduction in occupancy from 75% in March 2019 to 37% in March 2020. The website doesn't break down the occupancy into weeks and I have to bear in mind that most accommodation would have closed towards the end of the month following the Government announcement on 24 March. I also think a lack of bookings due to Covid-19 would have become more likely as the month continued. For these reasons I do think there would have been a downturn in business in 2020 compared with 2019, but I'm not persuaded that there wouldn't have been any bookings between 1-23 March if Mr M's premises had been open. Therefore, I think the fair and reasonable outcome would be for Lloyd's to pay Mr M's claim at a rate of 50% for the period 1-23 March, ie by applying a deduction of 50% to the gross income of the same period in 2019.

In summary, I think the fair and reasonable outcome for this complaint is for Lloyd's to pay Mr M's claim for a loss of gross income:

- from 15-29 February on the basis that his gross income would have been the same as it was in this period in 2019; and
- from 1-23 March with a 50% deduction applied to the gross income of this period in 2019 to account for the downturn in business due to Covid-19.

Lloyds may deduct from this total amount the £600 it has paid Mr M previously to settle the claim.

As Mr M has been without money he should have had, Lloyd's should pay interest at a rate of 8% simple per year on the additional settlement from the date it offered the original settlement amount of £600 to the date it makes payment.

### **My final decision**

My final decision is that I uphold this complaint and require Society of Lloyd's to:

- Pay Mr M's claim for a loss of gross income from 15-29 February 2020 on the basis that his gross income for that period would have been the same as in the same period in 2019.
- Pay Mr M's claim for the period 1-23 March 2020 by applying a 50% deduction to the gross income in the same period in 2019 to account for the downturn in business due to Covid-19.
- Deduct from this total amount the £600 it has paid Mr M previously to settle the claim.
- Add interest to the additional settlement amount at a rate of 8% simple per year from the date Lloyd's offered the original settlement amount of £600 to the date Lloyd's makes payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 April 2022.

Sarann Taylor  
**Ombudsman**