

## **The complaint**

A limited company, which I will call S, has complained about the handling of a claim under its business insurance policy with certain underwriters at Society of Lloyd's.

Mr S, as a director of S, has brought the complaint on its behalf.

## **What happened**

In March 2020, S made a claim under the policy for business interruption losses arising from the Government's response to the Covid-19 pandemic.

The underwriters rejected the claim but later told S it would review the claim when the court had determined the Financial Conduct Authority's ("FCA") test case. After the Supreme Court issued its judgement on the test case, the underwriters accepted S's claim. It made a settlement of just under £37,000 in April 2021. It made some deductions as it said S was underinsured.

S remains unhappy about a number of issues, which I've summarised below:

- The claim was not acknowledged initially and was finally settled in April 2021, almost a year after the claim was made.
- The delay caused financial hardship and S had to take a 'bounce-back loan' of £50,000, which it has to repay.
- The delay also caused both directors of S significant health issues. It affected them personally, the business, the staff, brand and client confidence, none of which has fully recovered.
- Due to the pressure of dealing with the claim, S employed accountants and its own loss assessors to help pursue the claim, at huge cost.
- 86 hours of directors' time (which at £120 amounts to £10,320) was spent trying to pursue the claim.

Mr S says the underwriters should provide total financial compensation of £35,000.

One of our Investigators looked into the matter. She did not think the underwriters were responsible for the cost of the loan. However, she said S could make a claim for the accountancy fees; and recommended the underwriters pay £250 compensation for the delay in dealing with the claim.

The underwriters do not accept the Investigator's assessment. They say the FCA adopted the position that insurers could defer reaching a final determination on any claim concerning the clauses being considered and that may be impacted by the FCA test case. It was therefore entitled to wait until the outcome of the appeal to the Supreme Court of the test case, before proceeding with S's claim which it said was within a reasonable time of the Supreme Court's judgement. Essentially the underwriters say the delay was out of their control.

S does not accept the Investigator's assessment either. It says the £250 compensation she proposed is nothing for the underwriters and does not adequately reflect the substantial amount of time and additional costs the delays caused it in trying to pursue the claim, as well as the mental stress for the directors.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

### **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.

#### Bounce back loan

S said it took out the loan of £50,000 in May 2020, due to the delay in settlement of the claim. The loan is 0% interest for the first year and then 2.5% interest per annum from the first anniversary of the loan, so from May 2021.

I agree with the Investigator that it is likely S might not have taken the loan in May 2020, if it had known the claim would be paid. However, the claim was paid in April 2021, before interest started to accrue on the loan. So S had the option to repay part of the loan to the value of the claim settlement before interest started to accrue. Given this, I do not consider that the underwriters are responsible for the cost of the loan.

#### Loss adjuster and accountant's fees

S says it instructed its own loss assessor and accountants to deal with the claim. The underwriters told us that the policy will cover reasonable accountant's fees but these have never been claimed. S has told us it spent around £900 on accountant's fees but it will need to provide proof of those costs to the underwriters and ask them to consider that under the terms of the policy.

S says it took the claim as far as it could but had to instruct the loss assessors to "*help us clarify our rights and progress*". The underwriters do not accept that it was necessary for a loss assessor to be instructed and I agree. I have not seen any convincing evidence that S was unable to deal with the complaint itself and so do not intend to require the underwriters to meet this cost.

#### Indemnity period and claim settlement

S is also unhappy that the settlement is not as much as it was expecting. It says this is because the underwriters spread the settlement over a 24 month period, instead of a 12 month period.

The business interruption section of cover provides an indemnity period of 24 months for most sections of cover under that section. However, for the notifiable diseases section of business interruption cover (which is the section of cover relevant to this claim) the maximum period of indemnity is three months. This means that it will cover the business interruption for up to a maximum period of three months. The underwriters did assess the claim for the period end March to end June 2020, so I consider it applied the correct indemnity period.

However, the underwriters also applied a deduction as it said S was underinsured. The loss adjuster's report says the business interruption cover of £500,000 over 24 months was less than the actual risk the underwriters were asked to cover. I think this might be what S is

referring to. The underinsurance deduction was not part of the complaint raised with Society of Lloyd's, so I cannot address that in his decision but if S wants us to look into that, we can do as a separate complaint.

#### Time taken to deal with the claim

S submitted the claim to the underwriters at the end March 2020. It was not until mid-July 2020 that the underwriters provided their response, which was to refuse the claim. The underwriters did review the claim following the Supreme Court judgement and settlement was made in April 2021.

The underwriters say that the FCA guidance at the time was that insurers could wait until the test case before re-assessing claims.

Whilst I understand the difficulties insurers faced with claims of this nature, the clarity provided by the courts in the test case has shown that S had a valid claim and that the underwriter's decision to decline the claim in 2020 was incorrect. I do therefore think that the underwriters should have paid S's claim sooner.

It is reasonable that an insurer will need some time to assess any claim and then time to assess the settlement. I consider a reasonable time to do this on a claim of this nature would be around a month from when S made the claim.

My role is to consider what a business might or might not have done wrong and to put a customer back in the position they would have been in had things happened as they should have. Because the underwriters turned down S's claim, it was without funds that it should have had. However, S took out a bounce back loan in May 2020, for more than the value of the claim. As part of this loan formed the money S should have received from the underwriters, I don't think it was without the money for this period.

S has also asked for significant compensation for the effect the delay had on the business and its directors. I can only make an award that recognises the impact on the eligible complainant. In this instance, the eligible complainant is a limited company, rather than any individual. A limited company cannot suffer distress or frustration and so I can't make an award in this category. I can make an award for inconvenience. There was management time involved in chasing calls to arrange the insurance. However, we do not normally pay an hourly rate for the time involved and there would have been time involved in dealing with the claim in any event. Having taken everything into account, I consider £250 to be reasonable for this.

I intend to uphold this claim in part and require the underwriters to pay S the sum of £250 compensation for the delay in settling its claim.

**My final decision**

For the reasons set out above, I uphold this complaint and require certain underwriters at Society of Lloyd's to pay S the sum of £250 compensation for the inconvenience caused by its handling of its claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 17 January 2023.

Harriet McCarthy  
**Ombudsman**