

The complaint

Mr T, on behalf of M, complains about Society of Lloyd's trading as Lloyd's of London's (SoL) handling of an insurance claim he made following a burglary at M's trading premises.

Where I refer to SoL within this decision, this should be taken to include agents and representatives acting on its behalf.

What happened

M held insurance with SoL which covered various aspects of its activities. Among the insured perils were theft of goods from the premises and business interruption.

Following a break in and theft of items in November 2021, M made a claim. As a result of the break in, M's premises were closed and M stopped trading.

SoL made a payment to settle the stolen items in March 2022. In May 2022 it made an offer to settle the business interruption element of the claim to cover the period when M wasn't trading.

Mr T complained about the length of time the claim had taken to be settled. He also provided further documents in support of his view that the settlement for the business interruption element of the claim should have been higher.

SoL made a further settlement for the business interruption claim after reviewing the further information provided by Mr T. In response to his complaint, it acknowledged there had been delays during the claim and offered £350 as compensation to recognise this.

Mr T referred his complaint to our service. Our investigator agreed there had been avoidable delays but thought the compensation offered by SoL was suitable. Mr T didn't agree. He says the delays had a very serious impact on him and M. He's asked for an ombudsman's decision.

My provisional decision

I issued a provisional decision to both parties on 26 January 2023. In that provisional decision, I outlined that I was minded to require SoL to pay a further £400 in compensation, making £750 in total. I said:

My starting point here is that SoL has already agreed there were avoidable delays during the claim. Insurers have a duty to handle claims promptly and effectively. That hasn't happened here. What I need to do is decide what these delays were, and then what impact they had. Once I've done that, I'll need to consider how this should be put right.

I'm aware SoL made an initial payment for the business interruption and then a subsequent, increased payment. From Mr T's submissions to our service, it seems he agrees the original payment was based on information about M's turnover and profits, with further information suggesting a higher amount should be paid being provided subsequently which resulted in the increased settlement.

I can't hold SoL responsible for the delay between the initial payment and the subsequent payment. I haven't seen anything which suggests to me it could reasonably have made the increased settlement initially, or that it unreasonably delayed the further payment on receipt of the further information.

Before making any payment for the business interruption, SoL made a payment for stolen items. I've seen nothing to suggest that M couldn't have resumed trading on receipt of that payment. I'm satisfied that, in line with the relevant terms and conditions of the policy, the business interruption section of the policy would cover from the date of the break in to the date of settlement.

This means that financial losses arising from delays which occurred during the period between the break in and the settlement for stolen items have been taken into account when SoL made a payment for the business interruption – as the payment covered the period when the business was unable to trade, which would naturally include any delays in that period. The amount SoL has settled, and how that was calculated, isn't the subject of the complaint I'm considering.

It's agreed there were avoidable delays during this period. SoL were notified of the claim in late November 2021, and appointed loss adjusters to carry out enquiries into the claim. The loss adjusters initially reported back in December 2021 and were asked to undertake further enquiries. No meaningful progress was made on the claim until February 2022. It's agreed that the further enquiries could, and should, have been carried out earlier. I note that from February 2022 through until the settlement of the stolen items in March 2022 there was a regular flow of information and requests between SoL and the loss adjusters. That should have been happening in December 2021 and January 2022. I think it's fair to say that an avoidable delay of around 2 months has happened.

I think a further delay also needs to be acknowledged here. I can see from the initial loss adjusters' report to SoL that the likelihood of a business interruption claim was recognised. However, documents from M to support that claim weren't requested until March 2022, when the stolen items were settled. I'm unaware of any reason why Mr T wasn't asked, or couldn't have been asked, for information to support that element of the claim.

On that basis, I think it's fair to say the assessment (and therefore subsequent settlements) of the business interruption claim could have been carried out sooner. I'm aware that cover for the claim hadn't been agreed until March 2022 (although this could have been done sooner if the enquiries had been carried out and completed promptly) but that doesn't mean that obtaining and reviewing information relating to the business interruption claim couldn't have been done. The effect of not requesting that information as part of the initial claim assessment is that a further two months elapsed, after the settlement for the items was made, before any payment for the business interruption element of the claim was made.

I think the effect of these delays was considerable. Mr T's explained to us the impact the claim has had on his health. I know he's particularly unhappy that M was unable to trade over the Christmas period in 2021 as this would have been a particularly busy, and profitable, time of year.

I acknowledge that during that period there was a lack of clarity about what was happening with the claim, and while I agree that undertaking further enquiries was fair, the communication with Mr T about what was required, and the timescales for this, wasn't up to the required standard.

I don't think it's reasonable to say the claim could have been resolved prior to Christmas so that M could resume trading. Further enquiries were requested by SoL after the initial loss

adjusters' report in December 2021. Those enquiries were reasonable and proportionate, and I can safely conclude that they wouldn't have been completed before Christmas 2021 to allow SoL to confirm cover and make a payment so that M could resume trading.

It's also important to note the difference between the distress and inconvenience which arises as an almost inevitable effect of making a claim (and, in this case, the break in and theft of items leading to M being unable to trade), for which SoL isn't liable and that caused by the avoidable delays and lack of communication, for which SoL is liable. I don't think it would be fair for me to conclude that all of the effects on Mr T's health arise solely because of the avoidable delays to the claim. I don't have any medical or other evidence to support such a conclusion. It's very difficult for me to attribute all of the distress caused to Mr T to the avoidable delays, when I consider the wider impact of the break-in and the claim.

Having said this, I don't think the £350 offered to date as compensation properly recognises the impact on Mr T. A delay of around two months, with M not trading and a lack of communication and clarity would have had a significant impact on Mr T. I also think that progress on the business interruption claim could, and should have been made sooner, and it's likely as a result that payment for that element of the claim would have been made earlier, reducing the impact.

On balance therefore, I think that £750 compensation in total more properly recognises the distress and inconvenience caused. I think SoL should pay an additional £400 compensation due to the effects of the avoidable delays to the claim.

The responses to my provisional decision

Mr T, on behalf of M, didn't respond to my provisional decision.

SoL responded and said it disagreed with the £400 additional compensation I'd said should be paid. It asked for further reasoning for this, considering that it had already paid £350 in recognition of the delays which it considered fair in the circumstances.

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.

I've reviewed the comments from SoL, and the information available to me. I remain satisfied that SoL should pay an additional £400 in compensation. My reasons for this remain unchanged, but I'll add some additional detail in light of SoL's response to my provisional decision.

As I outlined in the provisional decision, I believe an additional delay occurred beyond the two months which has already been acknowledged. This was because no action was taken to request information relating to M's claim for business interruption until March 2022, despite SoL being made aware that a claim for this was likely back in December 2021. By not requesting detail of the business interruption claim until March 2022, this delayed any settlement of that element of the claim. Given the intention of such a settlement is to cover losses suffered by the business due to being unable to trade, it's fair to say that the impact of the delay I've highlighted would be considerable on Mr T and M. M had no income during the period from the theft in November 2021 and March 2022. A delay to a payment intended to cover the losses to M from that period could lead to cashflow issues and debts accrued remaining unpaid for example. I haven't been provided with any details of financial losses which are said to be attributable to this delay, so I'm not asking SoL to cover those.

It also needs to be considered that the delays to the claim have a direct impact on Mr T's livelihood. Without settlement of the claim, a decision regarding cover, an idea on timescales or any communication about what was happening with the claim, it left Mr T in a position of uncertainty about M's ability to trade. It also either limited or prevented any short term planning about how and when M could reopen. If there had been some certainty about the claim, then I think it's fair to say Mr T could have made or changed plans around M's future.

Given the impact of the delays, which have impacted two separate settlements to M, I don't believe the £350 which was offered by SoL properly compensated M. I remain of the view that a total of £750 more reasonably reflects the considerable distress and inconvenience caused to Mr T and M because the claim wasn't handled promptly and effectively.

My final decision

It's my final decision to uphold this complaint. In order to put things right, Society of Lloyd's trading as Lloyd's of London must pay an additional £400 compensation, making £750 in total.

This further compensation must be paid within 28 days of us telling Society of Lloyd's trading as Lloyd's of London that M accepts my decision. If it does not, it must pay simple interest at a rate of 8% per year on this amount from that date to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 March 2023.

Ben Williams
Ombudsman