

The complaint

T, a limited company, has complained that Society of Lloyd's unfairly declined its business interruption insurance claim. T is also unhappy with the way the claim was handled.

Mr and Mrs T, directors of T, have brought the complaint on T's behalf.

What happened

T runs a restoration and conservation business. It had a business interruption policy with Lloyd's which ran from 9 August 2019 to 8 August 2020.

In April 2020 the Financial Conduct Authority announced its intention to obtain a court declaration aimed at resolving the uncertainty around the validity of many business interruption insurance claims ("*the test case*").

T made a claim to Lloyd's in May 2020 after the business was affected by Covid-19. In June 2020 Lloyd's told T that its preliminary assessment was T's losses weren't covered by the policy but that the claim might be impacted by the test case.

In January 2021 the Supreme Court issued its judgment in the test case. As a result of that judgment Lloyd's asked T for information regarding its claim.

The policy covered T for losses resulting from restrictions on the use of its premises due to physical loss or damage and restrictions imposed by a local authority. In October 2021 Lloyd's declined the claim. It said there hadn't been any physical loss or damage to T's premises. It also said there were no restrictions on the use of T's premises as it hadn't been required to close during the various lockdowns.

T disagreed. It made the following points:

- It was unable to deliver any work online.
- Its experienced staff were unable to work from home.
- The equipment and materials needed are often heavy and need to be operated in the controlled atmosphere of the workshop.
- Orders were cancelled or reduced, particularly from hotels and restaurants which had to close during the lockdowns.
- It couldn't generate new business due to travel restrictions.

Lloyd's thought these losses resulted from general market issues and/or the result of restrictions on individuals' right to travel, neither of which were covered by T's policy. It offered T £75 compensation for the way it had handled the claim.

I issued a provisional decision explaining why I was minded to uphold the complaint in part. An extract from my provisional findings is set out below:

"T's policy covered:

“...loss of income and increased costs resulting directly from the interruption of your business caused by physical loss or physical damage to property...”

I haven't seen any evidence that T's business was interrupted because of any physical loss or physical damage to its property or other property as a result of Covid-19 or the Government's restrictions. So I'm satisfied that T hasn't shown it has a valid claim under this part of the policy.

The policy also says:

“we will also pay you for the loss of income and increased costs resulting from the restrictions on the use of your premises:

i. imposed by the local authority”.

Lloyd's hasn't made an issue of the fact that the lockdown restrictions were imposed by the Government rather than a local authority.

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 set out which businesses were required to close for the emergency period. The businesses required to close by these regulations were largely those where members of the public might attend. Significantly, businesses that operated with little in the way of public interaction were not specifically required to close. T's business wasn't one of the types of business specifically directed to close by these regulations.

T says that the message from the Government was that non-essential businesses should close and it classes its business in that category. I agree that T wasn't providing an essential service. But I don't think that matters. In my opinion the Government's focus was on closing non-essential high street businesses such as hairdressers, clothes shops etc which might be visited by the general public.

So, I agree with Lloyd's that the regulations did not direct T to close. I do appreciate that many businesses in the sector T provides services to, such as hotels and restaurants, were directed to close. And that the consequence of this was that T had less work. But T's policy does not provide cover for, what is effectively, a downturn or loss of market. As a result, I don't consider it would be fair for me to require Lloyd's to cover T's claim on this basis.

These regulations did impose other restrictions on people that would have likely had an impact on businesses that were able to remain open. For example, the restrictions on movement that required people to remain at home without a reasonable excuse. But it was a reasonable excuse for someone to travel to work where it was not reasonably practical for that person to work from home. Also, T's commercial customers would have been allowed to visit its premises for work purposes. Consequently I don't think these restrictions would have prevented T's business from remaining open either.

T says that it wouldn't have been possible for staff or clients to keep socially distanced whilst on its premises and it wasn't possible for its staff to work safely in its studio. If T had kept its studio open during the first lockdown, it would have needed to carry out a health and safety risk adjustment and have specific measures in place. But I haven't seen any evidence that it incurred a loss of income or increased costs because of any such requirements. Instead, T has told us:

“When the government ordered schools, shops, hotels, restaurants, funeral parlours, parks and churches to close, we deduced as a non-essential business we were also required by law to close.”

Unfortunately T’s conclusion was incorrect. So, while there may have been restrictions on the use of T’s premises if it had remained open, I don’t think this was the reason it suffered a loss.

I appreciate my decision will be disappointing to T. But, having considered the matter carefully, I don’t think I can fairly require Lloyd’s to pay its claim.

I’ve also looked at how Lloyd’s handled T’s claim. In February 2021 it appointed a loss adjuster to investigate the claim. The loss adjuster contacted T by email and said it would like to discuss the claim with it. T replied the next day giving its contact details. At the end of April T chased the loss adjuster because he hadn’t contacted it. They had a call in early May. On 7 June 2021 T provided the information requested by the loss adjuster. There was some correspondence between the loss adjuster and T’s accountant in July about the extent of T’s losses. I appreciate it must have been very disappointing for Mr and Mrs T to find that T’s claim was later declined after they had been put through this process. I can only award compensation for the inconvenience suffered by T as it is the complainant.

I also think there was a failing on the part of Lloyd’s in asking for information that required work by T’s accountant when it should have been clear to it that the claim wouldn’t be accepted. In the circumstances I think the sum of £200 is fair and reasonable to compensate T for the delay in handling the claim and the trouble it was put to in providing information unnecessarily.

In addition I think Lloyd’s should reimburse T for the unnecessary accountancy costs involved it incurred. I understand the costs were £990 in total. As a result of having to pay these fees T lost the use of funds that it would otherwise have had. To put this right Lloyd’s should pay interest on the amount of the fees at a rate of 8% simple a year from the date T paid the fees to the date of settlement.”

In summary Mrs T said they were very disappointed with my provisional decision and had been put through years of stress and inconvenience.

Lloyd’s had previously told us it would pay T’s accountancy fees plus interest as a gesture of goodwill. It didn’t challenge the £200 compensation.

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.

As T and Lloyd’s don’t have any further evidence for me to consider, I see no reason to depart from my provisional findings and they now form part of this final decision.

I can understand that it must have been very disappointing for Mr and Mrs T that I haven’t upheld T’s complaint. I do appreciate that they have suffered a lot of stress as a result of the way the claim has been handled. As explained above, unfortunately for them in considering this complaint I can only look at the effect Lloyd’s claim handling had on T. As a limited company T can suffer inconvenience and I remain of the view that the sum of £200 is appropriate to compensate T for that.

Putting things right

To put things right I think Lloyd's should:

- reimburse T for its accountancy costs of £990 if it has not already done so;
- pay T interest on the accountancy costs of £990 from the date on which such costs were paid by T until the date of settlement. Interest is simple interest at the rate of 8% a year.
- pay T compensation of £200 (less any amount already paid in this regard) for the delay and inconvenience it caused.

My final decision

For the reasons set out above, I uphold this complaint in part and require Society of Lloyd's to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 24 April 2023.

Elizabeth Grant
Ombudsman