

The complaint

K, a business, complains about a claim it made on its Markel International Insurance Company Limited (Markel) business insurance policy.

K says Markel unfairly declined its claim.

What happened

In 2020 K's business premises was flooded so it relocated to temporary premises.

The business required a license to operate. K obtained a temporary license to allow it to do so at the temporary premises. The license eventually expired but was not renewed.

K says it had no option but to close its business at that point. As such it claimed on its business insurance policy to cover its losses incurred in doing so, such as making redundancy payments to its staff.

Markel declined the claim. It said the policy didn't offer cover for the claim K was making and that the decision to close the business was K's so the policy wasn't operative in any event.

K feels Markel's stance is unfair. It says the decision to close was out of its hands because it couldn't operate without a license. It also says it couldn't return to its original premises because refurbishment works hadn't yet completed and the changes needed to ensure the premises was compliant with current legislation weren't viable.

Our investigator considered K's complaint. He concluded that the circumstances surrounding the closure of K as a business didn't trigger policy coverage and that the claim K was making wasn't covered by the terms in any event. K doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I don't uphold K's complaint for broadly the same reasons set out by the investigator. I've explained why below.

The starting point is the policy terms. The loss of registration section of the policy that K is seeking to claim on engages if:

"...during the period of insurance and from any cause outside Your direct control the registration of the Insured or other persons which enables You to carry on the Business as stated and at the Premises as specified in the Schedule is cancelled under the provisions of any legislation governing such registration We will pay or make good to You all loss that You may sustain in respect of the depreciation in value of Your interest in the Business covered by the cancellation of the registration."

The claim K is making here is not for depreciation in value of its interest in the business. It's for the costs associated with making its staff redundant. That's not the same thing that's covered by this section of the policy. So, I don't think the claim K is looking for cover for is available.

But even if K wanted to make a claim for depreciation in value of its interest in the business, it would have to show that the closure of K came about due to the registration being *cancelled* as a result of circumstances beyond its direct control. Markel say that K chose to close its business rather than carry out the works required to its original premises to allow it to carry on trading from there.

I've thought about what both parties have said in this complaint and in particular K's submissions about how the licenses to its temporary premises ended. From what I've seen the work to its original premises hadn't completed by the time the licenses to its temporary premises expired. And by the time that happened there was a requirement for significant structural changes to be made to things like the window height to the original premises in order to allow it to be compliant with a Government scheme. I know that might have meant it wasn't viable to make these changes at all and that the timing of the temporary license expiring meant it wasn't possible to do so in time even if those changes were possible. I also understand that K's preference was to continue to operate at its temporary premises, that it feels it was given some earlier indications it might be able to do so and that it had relied on this in the hope it could continue to operate there. But I don't think any of these circumstances amount K's license being *cancelled* as a result of causes outside its direct control.

The licenses to operate at temporary premises were always temporary in nature. Whilst K might have been given verbal indications they might be extended beyond expiry, I haven't seen anything persuasive to suggest that they were assured this would be the case. And their expiry doesn't to my mind amount to cancellation, which is a requirement for the policy term I've quoted above to engage.

It's unfortunate that the work to K's original premises weren't complete by the time the temporary licenses expired and that new stipulations applicable to its business meant it was no longer compliant with current legislation. But I don't think this means the policy is capable of providing cover in this case. In order for the term to engage it would have been necessary for the licenses applicable to K's premises to be *cancelled* due to circumstances beyond its control. For the reasons I've set out, I don't think I can say that was the case. If K's license to its original premises had been cancelled and K could have shown this was due to circumstances it couldn't control, I might have taken a different view. But in this case, K took what was no doubt a practical decision to close its business in the circumstances. That doesn't however mean that Markel were obliged to provide it with cover or that the policy engages in those circumstances.

My final decision

I don't uphold K's complaint against Markel International Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 27 September 2023.

Lale Hussein-Venn
Ombudsman