

## The complaint

K, a company, complains about a claim it made on its Society of Lloyd's ('Lloyd's') business protection policy for business interruption, which Lloyd's declined.

K says this was unfair.

Mrs B has brought this complaint on behalf of K, but I shall refer to all submissions as being K's own for ease of reference.

## What happened

K made a claim on the business interruption section of its business protection policy to Lloyd's. The claim related to reduced footfall to its shop as a consequence of urgent work required to a third-party property situated 3 meters away in order to make it safe, which K says had a significant impact on its sales.

The effect of the work was that the road in front of K's shop was closed from mid-October 2022 to vehicle traffic at all times. Signage was erected at the end of one entrance saying '*Road Ahead Closed*' with cones and additional signage partially blocking the highway. Scaffolding was erected on the building subject to the work which partially obscured the view of K's shop and K says this reduced the passable street space from 6.8 meters to 1.2 meters for pedestrians. K says the scaffolding only came down at the end of July 2023 so the interruption to its business lasted for around 9 months.

Lloyd's considered the claim and decided that the policy didn't engage because it couldn't be shown the issues K was complaining of caused a hindrance of access to the use of K's business premises in accordance with the relevant term set out in its policy. Lloyd's said this was because the road in question is usually pedestrianised for the majority of the day and notices were posted at its entrances to make clear that businesses were open as usual. In addition, they said no parking was normally available on the street, such that it would deter customers that might usually park there from accessing K's shop. Unhappy, K referred its complaint to the Financial Ombudsman Service.

Our investigator considered K's complaint and concluded it should be upheld. She said the scaffolding caused an obstruction which limited people from walking down the road and as a result accessing K's shop. She also thought K had shown enough evidence to support that there had been an impact on its sales as a result of this and therefore asked Lloyd's to reconsider K's claim.

Lloyd's didn't agree. They made a number of detailed assertions. I've summarised them as follows:

- There's been no change in access to K's shop. This was only access by pedestrians as the road was previously closed to vehicles during business hours.
- The reason for footfall decreasing could be down to a number of reasons and isn't causative. Given that K sells high end jewellery, the cost of living crisis, must play a

factor in its revenue reducing.

- The narrowing of the street wouldn't to any reasonable person mean they're hindered from accessing it.
- Bottlenecking as a result of the narrowing of the street also can't be considered a hindrance in the same way that inclement weather or noise can't be considered to amount to this.
- The policy requires the hindrance needs to be caused by the actions of the civil authority closing the road to vehicle access or the erection of the scaffolding and there's nothing to support this.
- The reduction in the width of the street amounts to about half the width and not the 1.2 meters referred to by K.
- They have a legal opinion that supports their position.
- Their loss adjuster's report supports that there are many people on the street passing through or shopping so it can't be any more difficult to access.

Because of this 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 uphold K's complaint for broadly the same reasons set out by the investigator. These are my reasons.

The starting point is the policy terms. The prevention of access extension under the business interruption section of the policy says:

*"It is hereby agreed that subject to the terms and conditions of this insurance loss as insured by Item 1 of this Section resulting in prevention or hindrance of access to or the use of the premises solely in consequence of:*

*a) Damage (as defined herein) to property in the immediate vicinity of the premises,  
b) Restriction imposed by order of a Civil Authority consequent upon any other sudden and unforeseen emergency which is likely to endanger life or property in the vicinity of such premises shall be deemed to be lost resulting from damage to property insured by the Insured at the premises."*

There's no dispute that the work to the third-party property prevented access to K's shop. The relevant term here is whether there was a hindrance of access to K's shop as a result of a restriction imposed by an order of a civil authority consequent upon any other sudden and unforeseen emergency which is likely to endanger life or property in the vicinity of such premises. In this case there were traffic restrictions, signage and cones imposed by the local authority and the emergency scaffolding erected by the third party which would most likely have been put in place subject to an emergency application for permission from the local authority. This was because the third-party property was considered an immediate safety concern. So, what remains is for me to determine is whether the restrictions in place amounted to a hindrance.

'Hindrance' is not defined by the policy, so I've applied the ordinary dictionary definition which states *"a thing that provides resistance, delay, or obstruction to something or someone."*

I've thought carefully about what both parties have said and considered the images provided by K of the various restrictions in place, including the narrowing of the road, the scaffolding and the signs pointing out that the road is closed. And whilst I take on board that the road was never open to vehicles during business hours and that the signs do show pedestrians can pass, taken together, I think that they do obstruct or provide resistance to foot flow.

The scaffolding itself obstructs a walking view of K's shop unless you pass directly in front of it and in order to do that, one must walk through the considerably narrowed part of the street on one side. The parties have both made submissions about this being a particularly busy area. So, at times when the street is busier I can quite appreciate why pedestrians might seek to avoid that part of the street given its narrowing, which appears to be over half of the street itself. And given the signage and scaffolding, it's also quite possible that pedestrians might be put off accessing the street when viewing it from a distance despite signage showing that businesses are open as usual. As such I can quite understand why K says that this has impacted on its sales. And I think this is enough to amount to obstruction to K's business premises.

Lloyd's loss adjuster who considered the position on the ground says:

*"Certainly, at the time of our visit to the shop pedestrians appeared to be walking in both directions past the shop without hinderance and in significant numbers. However, we cannot state the presence of the signs partly across the highway have not put off a number of tourist/visitors who may have elected to take an alternative route. We therefore consider it will be somewhat difficult to refute the Insured's contention the trading of the business has been impacted by the hindrance brought about by the actions of the Local Authority."*

He also says that the belief by K and other business owners is *"that many pedestrians simply take the view they cannot traverse the road and simply go another route."*

Given the above, I'm persuaded that that the restrictions to the road in terms of signage, with cones and scaffolding significantly reducing the width of the road 3 meters away from K's shop has hindered access to its shop. And the summary provided by Lloyd's legal adviser of its view of the claim doesn't change my mind. Because of this I think it was unfair for Lloyd's to decline K's claim. I've set out what they need to do to put things right below.

### **Putting things right**

Lloyd's should now:

- Reconsider K's claim subject to the remaining policy terms.
- If payment is made to K, Lloyds should pay interest on that amount at 8% per year simple one month from the date of the claim until payment is made.

### **My final decision**

For the reasons set out above, I uphold K's complaint and direct Society of Lloyd's to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 26 December 2023.

Lale Hussein-Venn  
**Ombudsman**