DRN-4516135

The complaint

Mr M is the sole trader of a business I'll refer to as M. He complains about the way Society of Lloyd's (SOL) handled a claim under M's Commercial Combined insurance policy.

What happened

The details of this complaint are known to all parties, so I won't repeat them again here. Instead, I'll summarise my understanding and focus on giving the reasons for my decision.

M used a premises as a gym and fitness centre, and it incepted a policy with SOL in June 2021 for its equipment, amongst other things. The gym was closed in 2021 due to a structural problem with the premises. Then, in early 2022, a storm resulted in water ingress. M therefore raised a claim to SOL it says totalled roughly £177,000.

SOL appointed a loss adjuster who obtained reports from specialists to validate the claim. They concluded, broadly, that only three items of equipment were damaged as a result of the storm. And other items were damaged due to wear and tear as a result of them not being used and flash rust while the premises was closed.

SOL also had concerns over the adequacy of the sum insured and evidence M provided as proof of ownership of the equipment. M says it provided SOL with everything it could. It says the equipment was purchased over a number of years, was never rented, or borrowed, and it no longer held receipts.

M had also become a sole trader after a limited company Mr M was a director of was placed into administration. This happened roughly four months before the policy started. And M says it purchased equipment back from the insolvency practitioner but wasn't provided with an itemised invoice showing the value of items purchased, or ownership, amongst other things. This cost M roughly £18,000. It said it had to sell and scrap equipment as it was forced to leave the premises by the landlord.

SOL continued to request information from M to validate the claim. it also asked M to provide a value at risk to establish whether underinsurance could impact any claim settlement.

SOL also said the entity named as the insured on the policy wasn't M as a sole trader. And said the previous limited company Mr M was a director of had an unsatisfied County Court Judgement (CCJ) that wasn't declared when M bought the policy. SOL says had it known about this information, it would have increased the policy's premium by 37.5%.

The claim has been running since early 2022 but hasn't progressed to settlement due to several issues raised by SOL. It says it will settle the claim for damaged equipment subject to further information from M – information it says it can't provide. M told SOL it wasn't happy with the way the claim had been handled, and delays caused M financial impact, distress, and inconvenience. As Mr M remained unhappy, he brought a complaint to our Service on M's behalf.

The Investigator recommended the complaint be upheld in part. He didn't think SOL had

demonstrated M was underinsured as it hadn't provided what it considered to be an adequate sum insured. He thought SOL had demonstrated it had a remedy under the Insurance Act 2015 to proportionately settle any claim.

He thought the claim hadn't progressed as SOL were asking M to provide further information M couldn't provide. And he was persuaded that, on balance, M had an insurable interest in the items damaged as part of the claim. He therefore recommended SOL reconsidered the claim in line with the remaining terms.

A resolution couldn't be agreed following our Investigators view, so the case was passed to me. I issued a provisional decision on 6 December 2023 which set out the following:

'What I've provisionally decided – any why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Underinsurance

SOL say the claim settlement could be reduced because it doesn't think the sum insured provided by M when it took out the policy was sufficient. The relevant law about this is the Insurance Act 2015 (The Act). It sets out the duty on the policyholder when taking out the policy – and potential remedies available to the insurer if the policyholder doesn't fulfil their duty. So, I'm satisfied it's fair and reasonable to take into account the law in the circumstances of this case.

The Act requires a policyholder to provide a fair presentation of the risk. So, my starting point is considering the question SOL says M answered unreasonably. In this case, the policy was sold through a broker. M says the broker asked it what the value of the gym equipment was.

SOL isn't responsible for the sale, the question(s) asked, or any surrounding guidance or support provided during the sale. But it's responsible for setting out to the broker what information is required in order to fairly assess the risk.

SOL queried the adequacy of the sum insured during the claim validation process. M asked whether this meant the value of the equipment if replaced as new, or was based on the condition it was in. This suggests M was merely asked for the value of the gym equipment. I've not seen any supporting evidence from SOL which shows the information it asked the broker to gather for it to assess the risk.

M also says it based its answer on previous accounts information which showed the equipment on the books was roughly £90,000. And the equipment not on the books was estimated to be worth £50,000. The sum insured was £172,500 and the declared value was £150,000. It seems this is the amount M requested to be insured for. SOL haven't provided a sum insured amount they consider to be adequate, and it's been unable to do this because M is unable to provide a value at risk.

It's important to say the onus is on an insurer to show the answer provided by M was unreasonable. I'm not satisfied it's done that here. Therefore, I currently don't think SOL has demonstrated there's been a qualifying breach under The Act. Therefore, it follows, I currently don't think it would be fair or reasonable for SOL to make a deduction to the claim settlement for underinsurance.

Previous liquidation and CCJ

SOL say M failed to provide a fair presentation of the risk it was required to under The Act when not declaring a previous insolvency record and CCJ for the liquidated company Mr M was a director of. It says had it been made aware of this when M took out the policy as a sole trader, the following action would have been taken:

'As there is a single CCJ and a single liquidation we'd consider each risk on its individual merits and these two factors wouldn't have presented the risk in the best light. That said, our underwriting guide would let us write a risk with these issues.

A risk with a single CCJ can be written with a 10% load and a risk of a single previous liquidation can be written with a 25% load. So it is possible the risk could have been written with a total loading of 37.5%.

NOTE: the loading of 37.5% has been achieved by loading the original rate by 10% then loading that rate by 25%.'

I also note, however, within a report dated 10 May 2022, carried out on SOL's behalf, the agent made the following comments:

'3.11. The adverse financial information was referred to you in relation to claim reference [X] and Underwriters advised the following:

It seems we were not aware of the insolvency or the CCJ, however the only SOF is dated 2016 and I believe both the insolvency and the CCJ post-date that. In that sense we have not asked the question (in the form of requesting a revised SOF) of the Insured and I don't think we can [rely] on the non-disclosure in any sense. It's probably fair to say that the insolvency which may have been caused by, or at least exacerbated by, the COVID-19 pandemic would have been viewed very sympathetically and would not have affected the terms applied.'

The report also states the circumstances surrounding the insolvency were said to be related to the Covid-19 pandemic.

Further, M has provided a proposal form which the broker sent to SOL in November 2021. Importantly, M was asked to: 'Please elaborate on any statements which are inaccurate and provide further information that you feel is material in the space below or on a separate sheet of paper.' In the space below, it is noted the limited company Mr M was a director of was put into administration in 2021 and the gym started again with M as a sole trader.

It's not clear whether SOL were informed of this information at the time the policy was taken out. I say this because the proposal form sets out it required cover to start from June 2021 but was later signed and dated by M in November 2021. It was then emailed to SOL by the broker the following day. But it's fair to say SOL were aware of a single insolvency record several months prior to the 2022 claim – but didn't take any action with this information. And the comments noted in the report I've included above suggest SOL wouldn't have relied on non-disclosure in any case in respect of the limited company's previous CCJ or single liquidation.

SOL later said M failed to provide a fair presentation of the risk in this respect. It classified it as neither deliberate nor reckless. But given what I've set out above, I'm not satisfied I could fairly conclude M failed to provide a fair presentation of the risk. Therefore, I don't think SOL has demonstrated there's been a qualifying breach under The Act here either. It follows, I currently don't think it would be fair or reasonable for SOL to proportionately settle any claim settlement in respect of the 2022 insured event.

The claim

As mentioned above, a storm damage claim has been running since early 2022 without progress. SOL asked M to provide further information to validate the claim. M said it provided everything it possibly could to SOL given the challenges surrounding the length of time that's passed since purchasing equipment. And the insolvency practitioner's inventory list doesn't make clear what items were owned by M / Mr M following the purchase of items totalling roughly £18,000. What isn't disputed here is M did purchase equipment back from the limited company, and there's no evidence to support equipment was borrowed or rented in the past. Therefore – all things considered – I'm satisfied that, on balance, it's fair to conclude M had an insurable interest in the equipment that was damaged by the insured event. I'll return to this point later.

SOL's loss adjuster arranged for specialists to inspect the equipment while on the premises. It was found three items of equipment were directly damaged as a result of the insured peril. I acknowledge M thinks other items were damaged, and I've reviewed the videos it provided. But I find the specialist report most persuasive here.

An initial report dated May 2022 set out the agent was satisfied there was an incident of water ingress. They considered some of the damage was attributed to equipment left standing within the premises for an extended period without being used, following closure of the premises, in 2021. Therefore, a specialist report was recommended be undertaken to investigate further.

A further report was provided following a physical inspection at M's premises. This concluded, broadly, that while water did run across the gym floor, only three items, which were directly below where the ceiling collapsed, had any form of contamination from the insured event. The contamination sustained was determined to be minor.

The other equipment within the gym was said to have also had some level of contamination to it, in the form of flash rust, and this was deemed to be unrelated to the insured event. It concluded damage to other equipment was caused by a combination of use of the equipment and the closure of the gym since 2021. SOL relied on these findings during the claim validation process when assessing the damage. I'm satisfied it was fair and reasonable for it to do that.

The items said to have been damaged were two cross-trainers and a treadmill. Within the insolvency practitioners inventory list, SOL point out some items are noted as saying 'Property of Director & excluded', suggesting these items were owned by the previous limited company. But other items – such as treadmills and cross-trainers – do not include this note. Returning to my earlier point – I've not seen anything to show these items were owned by the limited company.

M also requested indemnity under the business interruption section of the policy. SOL said the policy wouldn't cover this given the premises was closed prior to the 2022 claim, in 2021. I think that's reasonable. I say this because I don't think the business interruption section of the policy is intended to cover these circumstances.

Included in M's claim were items such as a fire alarm system, flooring, turnstiles, and CCTV, amongst other things. Within the videos provided by M, water can be seen dripping through one of the CCTV camera fittings in the ceiling.

M was directed by SOL to raise a claim for these items against its landlord's buildings insurance policy. These items weren't assessed and reported on by the specialists, but that report does set out the resultant damage – in their professional opinion – was limited to three

items of equipment. It seems SOL didn't take steps to assess and validate these items M claimed for.

As with any insurance claim, it's for a policyholder to demonstrate they've suffered loss or damage resulting from an insured event. Therefore, M will need to substantiate its claim for these items, and SOL should consider this as part of the claim, in line with the policy terms.

Summary

For the reasons I've set out above, I don't think it would be fair or reasonable for SOL to make a deduction to any claim settlement because I'm not satisfied it's shown M failed to make a fair presentation of the risk under The Act. To be clear, this is in relation to underinsurance, and the CCJ and single insolvency record concerning a limited company Mr M was a director of.

I'm satisfied that, on balance, M had an insurable interest in the equipment SOL concluded was damaged as a result of the 2022 insured event. Therefore, to progress this longstanding dispute, SOL must reconsider M's storm damage claim in line with the remaining policy terms. It should also consider M's claim for other items it was told to redirect to the landlord's buildings insurance policy.

My provisional decision

For the reasons I've set out above, my provisional decision is I uphold the complaint. I intend to require Society of Lloyd's to settle M's complaint in line with my instructions above.'

Responses to my provisional decision

SOL didn't agree. It set out, broadly, that:

- It is unreasonable for a claim to progress without M providing the further information it requested. And it shouldn't be too onerous on M to go and obtain it.
- It is unreasonable for SOL to be expected to consider a claim for items it redirected M to claim under its landlord's buildings insurance policy. Based on the evidence currently available, these items would be covered by a buildings policy rather than M's policy with SOL.
- It is reasonable to consider a proportional settlement due to potential underinsurance.
- The policy was sold to M by a broker. It was the broker's responsibility to ensure M had the correct cover in place. Therefore, it is reasonable to proportionately settle any claim had cover been arranged correctly.

Mr M, on behalf of M, responded to say, broadly, that:

- Neither the structural problems with the premises nor the water ingress incident were as a result of something M had caused. And water ingress could have been avoided if a contractor had replaced the guttering system following the works done by the landlord's contractor.
- If SOL would have put right the damage straight away, then M could have started trading again.
- The specialist who visited the property only inspected the equipment directly underneath the damaged ceiling. The equipment was later inspected with a view to decontaminating all of it.

I'll now go on to set out my final decision on what I consider to be a fair, reasonable, and

proportionate resolution to this complaint.

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 haven't been persuaded to deviate from the outcome I provisionally reached, for broadly similar reasons I set out within that decision.

I say this because I'm not satisfied SOL has demonstrated there's been a qualifying breach under the Insurance Act 2015. I say this in respect of its concern over potential underinsurance, and the previous CCJ and liquidation of a limited company Mr M was a director of. It was M's broker who informed SOL through the proposal form of the previous liquidation of the limited company to correct things. Information SOL didn't take any action with despite receiving it several months prior to the 2022 claim.

I set out my reasons in detail within my provisional decision, and so I don't intend to repeat them again here. It follows, however, I don't think it would be fair or reasonable for SOL to make a deduction, or proportionately settle, any claim settlement in respect of the 2022 incident.

This is a longstanding dispute that's been running since early 2022. My role here is to weigh up all the evidence and decide what I consider to be a fair, reasonable, and proportionate resolution to this complaint.

Regarding the claim, I set out I was most persuaded by the specialist report here on the items damaged as a result of the 2022 incident. Those items included two cross-trainers and a treadmill. M says the specialist only inspected items directly underneath the damaged ceiling, but I'm not persuaded to agree that was the case here. I say this because the report commented on the condition of other items of equipment located in other areas of the premises.

I also note M says a quote was provided to decontaminate all items of gym equipment. But I couldn't fairly conclude that this repair work was SOL's liability for the claim. I say this because, as explained above, I'm most persuaded by the specialist report that three items of equipment were damaged as a result of the 2022 incident. And while a full quote to decontaminate all items was provided, SOL's liability would be limited to covering repairs to the items damaged by the insured event only. That's because the report said other items were damaged due to wear and tear, and flash rust, not considered to be as a result of the 2022 incident.

I acknowledge central to this complaint is SOL's concerns over proof of ownership. M says it's provided everything to SOL it possibly could against the backdrop of challenges faced with the time that's passed since items were purchased. I've seen no evidence to show M had borrowed or rented equipment previously. Given what was reported to have been damaged by the claim, I'm not satisfied that, on balance, it's fair, reasonable, or proportionate for the claim to continue running without any progress. I'm satisfied, based on all the evidence and information I've seen, M had an insurable interest in the items said to have been damaged by the 2022 incident.

As mentioned previously, the specialist didn't report on the other items said by M to have been damaged by the 2022 incident. I note SOL say these items should be considered as items that would be covered by the landlord of the buildings insurance policy. But it doesn't seem a validation process was carried out by SOL in this respect. So, I think it's fair and

reasonable for these items to be considered by SOL, in line with the remaining policy terms.

Finally, M argues if SOL would have put right the damage straight away, then M could have started trading again. But I've kept in mind the specialist report that found the majority of the equipment damage wasn't related to the 2022 incident. So, I can't safely conclude if SOL would have settled the claim based on their liability for it (as set out by the specialist), it's more likely than not M would have started trading sooner.

Putting things right

For the reasons I've set out above, I don't think it would be fair or reasonable for SOL to make a deduction to any claim settlement because I'm not satisfied it's shown M failed to make a fair presentation of the risk under the Insurance Act 2015. This is in relation to underinsurance, and the CCJ and single insolvency record concerning a limited company Mr M was a director of.

I'm satisfied that, on balance, M had an insurable interest in the equipment SOL concluded was damaged as a result of the 2022 incident. Therefore, I'm satisfied requiring SOL to reconsider M's storm damage claim in line with the remaining policy terms to be fair, reasonable, and proportionate here. So, it must now do that. It should also consider M's claim for items it was told to redirect to the landlord's buildings insurance policy.

My final decision

For the reasons I've set out above, my final decision is I uphold the complaint. I now require Society of Lloyd's to settle M's complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 12 January 2024.

Liam Hickey
Ombudsman