

The complaint

A limited company that I will refer to as R complains about the decision of Society of Lloyd's to decline its commercial insurance claim for property damage.

What happened

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved in this matter, for the sake of simplicity, I have just referred to R and Lloyds. Any reference to Society of Lloyd's or Lloyds includes its underwriters and agents.

R operates a restaurant and held a commercial insurance policy with Lloyds. In June 2023, a body of water built up in the carriageway outside of R's premises and the passage of vehicles through this caused an ingress of water into the premises. The premises suffered damage and R claimed on the policy. Lloyds declined the claim, relying on the following exclusion:

"All sections of this policy exclude loss or damage caused by flood other than directly resulting from escape of water from fixed water tanks, apparatus, or pipes. This clause forms part of the Additional Terms and Conditions Applicable to the Policy"

R disagreed with this and complained. Essentially, it said that the cause of damage was the passage of vehicles that had splashed water onto/into the premises. And it did not consider this to be damage caused by a flood. Even if the pooling of water in the carriageway was a "flood", R considered the passage of vehicles was a new intervening cause.

Lloyds did not alter its decision though, and R brought its complaint to the Ombudsman Service. However, our Investigator did not uphold the complaint. He considered that Lloyds had appropriately applied the terms of the policy to the circumstances of the claim.

As R remained unsatisfied, its complaint has been passed to me for a decision.

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 am not upholding this complaint. I'll explain why.

R has made a number of submissions. I would like to reassure R that I have considered all of these, but I am not going to directly respond to each of the points raised. Rather I am focussing on what I consider to be the key issues. This is not intended to cause any offence to R, but instead is in line with the informal nature of the Ombudsman Service.

The circumstances of the claim are largely undisputed. The dispute relates to whether the cause of damage to the premises was "flood". This is not a term that is defined within the policy. So, this would be interpreted as it is commonly understood, taking into account

relevant law (including the judgment in *Rohan Investments Ltd v Cunningham* [1998] Lloyd's rep. I.R. 190 that the investigator has already referred to).

Ultimately, whilst I note the arguments raised, I consider there was a flood outside R's premises. I also consider that once water had entered the premises there was likely a "flood" within the premises themselves, that actually caused the damage. The video footage provided shows that there was a depth of water that had built up within the premises. And this is likely to constitute a "flood" in of itself. It is notable that R's own estimate for repairs has been produced on the basis that the repairs are required "due to flooding damage".

Even ignoring for the moment whether the build up of water within the premises was a flood in of itself, I am not persuaded that it would be reasonable to say that the passage of vehicles outside the premises constituted a wholly separate and distinct cause of loss. The underlying cause of damage was the build-up of water in the street, i.e. a flood. I do not consider this build-up of water was due to escape of water from fixed water tanks, apparatus, or pipes. The fact that additional activity then resulted in the movement of this water into the premises does not change the fact that the underlying cause was the flooding.

This additional activity was the normal activity of the passage of vehicles, and it is not suggested that this – in the absence of the initial flooding – would have caused the damage being claimed for. At best, it could be said that there are two causes of loss that are similar in their efficiency. However, given one of these is excluded, that exclusion applies to the claim.

It follows that I consider Lloyds acted fairly and reasonably when applying the policy exclusion to the claim. And, in these circumstances, I am unable to ask it to do more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 18 March 2024.

Sam Thomas
Ombudsman