

The complaint

Mr R, a sole trader, complains about the handling and settlement of his commercial insurance claim by Travelers Insurance Company Limited.

What happened

The following is intended only as a brief summary of events. Mr R operates as a garage and held a commercial insurance policy underwritten by Travelers. In early 2020 his premises suffered storm and flood damage. As well as damage to the premises, a number of cars – belonging to both Mr R/his employees and customers – were damaged.

Mr R contacted Travelers to claim on the policy. Mr R also instructed his own loss assessor, who I will refer to as H.

The claim took some time to progress. Partly this was as a result of the COVID-19 pandemic which developed around the same time. An interim payment of £22,750, including £8,000 towards business interruption losses, was made in March 2020. And some of the repairs were authorised. There were disputes over whether other issues had been caused by the storm/flooding.

Around a year later, Travelers confirmed the settlement for the damage to premises. However, Travelers said that Mr R was underinsured and applied an “average clause” contained within the policy to the claim. It was also not until October 2021 that damaged cars were removed from Mr R’s premises. In terms of the claim for losses caused by business interruption, Travelers ultimately said that nothing further above that already paid in respect of this was due.

Mr R complained about the settlement and handling of the claim, ultimately referring his complaint to the Ombudsman Service.

An initial view was issued by one of our Investigators, setting out that he did not consider it fair or reasonable that Travelers apply the average clause in the policy to the claim on the basis Mr R was underinsured. This was because the provisions of the Insurance Act 2015 (the Act) were relevant to the circumstances and Travelers had not contracted out of these.

The Act essentially says that a claim settlement can only be reduced where there has been a breach in the duty of fair presentation (which was effectively what Travelers were saying had happened), where the insurer would have done something different had there been no breach. And the Investigator did not consider Travelers had demonstrated this was the case, so it should not reduce the amount payable under the claim. He also thought Travelers should pay Mr R £500 compensation.

A further view was issued by another Investigator, endorsing the view above. It also explaining that the Investigator considered Travelers had considered the business interruption losses correctly. But that Travelers was partly responsible for delays in collecting the damaged cars, and should pay a further £250 compensation to reflect this.

Travelers accepted the Investigator's recommendations, but Mr R did not. Largely his disagreement was with the business interruption element of the view, although he was still unhappy with the delay in collecting the vehicles.

Ultimately, the Investigator was unable to resolve the complaint and it was passed to me for a decision. I issued my provisional decision on 16 February 2024. The following is an extract from that decision:

"Both parties have made numerous submissions across a range of issues. However, whilst I can confirm I have considered all of these, I do not intend to address each point that has been raised. Instead, I am focussing on what I consider to be the key issues. I should also say that whilst both parties have made number submissions – our case file contains several thousand pages – neither party has been particularly clear with their calculations nor explanations throughout the process.

The issue of potential underinsurance has been resolved. And there does not appear to be any ongoing dispute over the settlement of the damage claim itself. The issues are largely limited to the business interruption claim.

I will briefly say that, for the reasons set out by the Investigators, I do not consider it appropriate for Travelers to adjust the claim settlement for any underinsurance. In the circumstance, this is not a remedy open to it under the Act.

Mr R was able to partially reopen during this period, in part by renting additional premises. As such, he did not suffer a total loss of income – and indeed in some months made more than he had in previous years.

Comparing the figures over the relevant claim period with previous years, both parties seem to agree that the losses (including the increased costs of working covered by the claim) are around £22,000 to £23,000. The issue is how much of this is attributable to the covered event (the storm/flood damage) and how much is attributable to the other circumstances at the time. The other main circumstance at the time was the COVID-19 pandemic. This was not an event that was covered by Mr R's policy, and the policy does allow for the insured losses to be adjusted to take this into account.

It seems clear that the COVID-19 pandemic would have had some impact on Mr R's business had it not been damaged by the storm/flood. The question is how much of an impact would there have been, and hence how much can the actual losses experienced be adjusted to take this into account.

In situations like this, it is almost impossible to know exactly what the impact would have been. Comparisons with other similar businesses can be helpful, but care must be taken to take into account the differences with these businesses – including their size, location and specialisations. Mr R's business may have been impacted more than the average across his industry or less than this.

Details of a number of different methods of calculating the estimated loss due to the physical damage have been provided.

Before dealing with that though, it is necessary to consider the general trend Travelers has applied to Mr R's business. Travelers has considered this to be a negative trend of 4%. There was a 4% downward trend between the 2019 to 2020 figures. However, I am not persuaded this is entirely fair and reasonable. The figures for the years prior to this period show an increase, and taking an average across a

four year period there is a positive trend of 1%. However, Travelers has also provided the relevant calculation based on there being a flat trend. Given a small increasing trend over the four-year period, but a drop in the last year, applying a flat trend seems appropriate.

The initial calculation by Travelers was based on some broad assumptions. The loss adjuster applied a figure of 10% to April and May 2020 to estimate how much work Mr R would have been able to carry out had it not been for the physical damage. I.e. that 90% of the work would not have been possible anyway due to the pandemic. A similar approach was taken to November 2020, but using an estimate that 20% of normal work would not have been possible as a result of the pandemic. Apparently, the anticipated boost in September 2020, when much of this delayed work would have been carried out, was excluded to give the benefit solely to Mr R.

After applying the rate of gross profit, Travelers has said that this resulted in an estimated loss of just under £11,000 plus increased cost of working that Mr R had incurred (around £4,700), less savings estimated to be around £8,000. It was based on this that Travelers made the £8,000 interim payment.

It isn't clear that the assumptions Travelers, or its loss adjuster, have used here are appropriate. Whilst there is almost undoubtedly likely to have been a decrease in the amount of work Mr R's business would have received due to the pandemic, whether this was a 90% - rather than 80%, 70%, etc. – is unclear. And nothing has been provided to evidence that this estimate is anything other than a best guess from the loss adjuster.

H and Mr R disputed that these assumptions were appropriate, and provided figures on vehicle usage. Travelers has agreed to incorporate the reduction of usage of light commercial vehicles as well as that of cars. I note Mr R has not demonstrated an equal split of work between these two classes, and Travelers' decision here is beneficial to his claim.

Travelers has then used these vehicle usage figures as a way of estimating how much work Mr R's business would get. The expected income has been calculated based on that achieved in the year prior to the flood, on a monthly basis. This has then been adjusted based on the reduction in vehicle traffic. And then to apply the rate of gross profit.

I have included a table below setting out part of the calculation used, as it is not clear Mr R has been provided with this already.

Month	Total Expected turnover (£)	Vehicle usage	Expected turnover adjusted for usage (£)	Actual turnover (£)	Loss (£)
Feb-20	6,555	100%	6,555	4,912	1,643
Mar-20	7,865	80%	5,268	6,612	-1,344
Apr-20	6,056	37%	2,241	903	1,338
May-20	9,160	55%	5,038	724	4,314
Jun-20	7,894	76%	5,999	3,286	2,713
Jul-20	7,510	89%	6,684	6,946	-262
Aug-20	6,033	96%	5,792	7,258	-1,466
Sep-20	8,285	99%	8,202	6,876	1,326
Oct-20	7,878	93%	7,327	4,512	2,815
Nov-20	6,757	79%	5,338	4,338	1,000
Dec-20	4,831	79%	3,816	2,792	1,024
Jan-21	7,506	61%	4,579	3,578	1,001
Feb-21	6,555	69%	4,523	2,495	1,086
Total					15,188

Once this figure is adjusted to take into account the rate of gross profit of 70.8%, the above calculation resulted in the estimated loss of gross profit being £10,753. This is slightly lower than using the broad assumptions above.

I note H has calculated the estimated turnover for February 2021 as being 1% higher than that in 2020, based on there being a 1% trend. However, as above, it is fair and reasonable to apply a flat trend. So, using the figure of £6,555 for February 2021 seems appropriate.

The figures show that Mr R was able to achieve a higher level of turnover in several of the months within the indemnity period than he had in the equivalent months of the previous year.

In terms of the figures for March 2020, Travelers has considered the reduction in vehicle usage in two parts – before and after the lockdown restrictions came into force. It should be noted that the lockdown measures were not imposed at a single point in time, and there is some argument over the exact date that could be used. But I consider that using 24 March 2020 is reasonable in the circumstances.

However, whilst this is in principle appropriate, the actual calculation provided does not appear to be correct. Travelers has apparently applied this to the expected turnover for February, rather than March. The difference here would equate to just over £1,000. So rather than a negative loss (i.e. an increase) in the actual turnover of £1,344 for this period, this actual turnover was only around £300 higher than expected.

Mr R has said that the increase seen in July and August was a result of increased work following the first lockdown, as more people were using their cars rather than public transport, and many repairs/services had been delayed and would now be carried out. And that this is part of the other circumstances that needs to be taken into account when adjusting for the COVID-19 pandemic – i.e. that it is necessary to remove both the positive and negative impacts of this other circumstance. In principle this is correct.

It is clear that using vehicle usage figures to calculate the estimated loss is not an exact science. More usage of vehicles is unlikely to translate directly to the amount of work required on them. There are many other factors that are likely to play a role. I do consider that using these figures is a good starting point, but an insurer would need to bear in mind other aspects of the situation.

Travelers' calculations relating to this period indicate that it has not adjusted the expected income for the months after the first national lockdown to take this likely increase into account though, and I do not consider this to be fair or reasonable. Travelers did, apparently, make an adjustment of this nature when coming to its initial offer. But this has not been reflected in the calculation above.

The months when the turnover was greater than expected were in July and August. And this correlates with the end of the first national lockdown in July 2020. So, I consider Travelers should have taken this into account in the above calculation.

This does mean that the calculation above does need to be adjusted with the loss of turnover being closer to £18,000 (depending on the increased work attributable to the end of the lockdown period). However, this would still mean the loss of profit would be somewhere around £12,700.

The increased costs of working would need to be added to this, and any savings Mr R achieved as a result of not being fully open due to the damage would have to be deducted.

H has apparently estimated the savings relating to the damage as being £7,500. Travelers has used a figure of £8,000.

There is more dispute over what the covered increased costs of working should be. Travelers have allowed for £1,737, whereas Mr R is claiming for just under £6,600. Some of the costs being claimed for have apparently been included in the settlement of the physical damage claim (i.e. they are for repair work). The main dispute relates to around £3,000 of additional rental costs Mr R is claiming for.

Mr R has said that the reason there isn't this degree of difference between the rents paid prior to the damage and in the year of the claim is that he had vacated a premises in 2020. So, a straight comparison is not possible. However, this would also mean that a straight comparison between the work Mr R's business was seemingly able to complete would also not involve a straight comparison. From January 2020 onwards, Mr R would always have had less workspace and so would seemingly have

been able to carry out less work. These means that it might be necessary to reduce the expected turnover figures in the table above to reflect this. If this adjustment would result in a reduction of the expected turnover by £3,000 or more, than the current position is in Mr R's favour.

Taking this into account, on balance, Travelers' settlement offer of £8,000 seems fair and reasonable. Using a figure of £12,700 as the loss of gross profit, an increased costs of working figure of £2,000, and the lower savings amount of £7,500, Mr R would have already received an overpayment on the settlement. Travelers has not sought to recover this sum.

Mr R and H have referred to other sources which indicate the impact to his business from the pandemic was around 10% to 15%. However, I am not persuaded by the estimate in this article, which appear to just be generalised comments from a member of the industry. And given the calculation above, once corrected, amounts to an overall adjustment of around 22%, I consider this is fair and reasonable.

Mr R has said that the delays with the damaged cars being collected caused a further decrease in his ability to carry out work. He has said that the storage of one of these vehicles in his premises caused a 25% loss of workspace. And that the storage outside the building of other vehicles meant this space could not be rented and caused environmental issues. He considers this increased his losses, and that he should also be paid storage charges.

However, whilst this may have impacted the "actual turnover" figure above, any loss here has been met already. Additionally, it is clear that Travelers was waiting for information from H relating to both the cars and the business interruption losses, and this caused the delay in progressing these two issues. It was not until October 2021 that H provided the information Travelers' needed.

Travelers did send some chasers for this information, but I agree with our Investigator that it could have done more here. However, I also agree that requiring Travelers to pay modest compensation to Mr R for this is appropriate in the circumstances.

There were general delays throughout the claims process. Partly these were whilst Travelers was waiting for information, which in itself was delayed as a result of the impact of the pandemic. However, again, I feel that Travelers could have progressed matters quicker and communicated better.

Ultimately, my role in considering the aspect of this complaint relating to the settlement of the business interruption claim, is to determine whether Travelers' offer is fair and reasonable. And, whilst there are some discrepancies with the calculations, I consider that Mr R has received an appropriate settlement offer. As I have said, it is unlikely to be possible for the exact losses to be known. But Travelers has taken the submissions of Mr R and H into account and has provided a settlement offer that is in excess of the relevant calculations (even once corrected). As a result, I am unable to fairly and reasonably ask Travelers to do any more here."

Travelers has seemingly accepted the outcome in my provisional decision and has already begun to make the required settlement payments to Mr R.

Mr R made a number of comments. He referred to another report about vehicle usage during 2020, produced by RAC, and said that this stated car usage had started to return to normal levels in September 2020. So, Mr R felt the figures relating to the months after this should

increase to 90% or 100%.

Mr R also thought Travelers should have been more proactive in relation to the removal of the damaged vehicles on his property. And Mr R thought £750 was not sufficient compensation in the circumstances.

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 have come to the same conclusions as in my provisional decision, for the same reasons.

Mr R has referred to an RAC report. He has not provided a copy of this, but from his comments I understand that this is the publicly available report found here <https://www.rac.co.uk/drive/features/report-on-motoring-2020/>. I do note the statement in this report that car usage levels had started to return to normal in September 2020. But this is in line with the figures Mr R and H have previously relied upon (as set out above), which show vehicle usage at 99% for September 2020.

What the RAC report does not comment on is what then happened. After this point in time, the second national lockdown (as well as more localised restrictions) was introduced. The figures set out above suggest that this resulted in a decrease in vehicle usage. And it is reasonable that this is taken into account.

Ultimately, the figures on vehicle usage that Travelers has relied upon are those that Mr R and H provided. And I am not persuaded that Travelers relying on these is inappropriate. So, for the reasons set out above, I consider that Travelers' settlement of the claim in relation to this is fair and reasonable.

As above, Travelers should not be applying any underinsurance adjustment to this or any other part of the claim.

Mr R has said that Travelers should offer more compensation in relation to the time taken to removed the damaged vehicles. I do agree that Travelers ought to have been more proactive than they were. But I also need to bear in mind that Travelers were not solely responsible for the delays here. For a large portion of this time, Travelers was waiting for H to provide necessary information. Whilst Travelers could have chased for this more proactively, I do not consider it should be held solely responsible.

Taking everything into account, I consider that £750 compensation for this and the other issues Mr R experienced – but that ought to have been avoided – is appropriate. Making a claim of this nature is inherently likely to involve significant inconvenience. And it is only the avoidable issues that Travelers was responsible for that can be taken into account.

Putting things right

Your text here

If it has not already done so, Travelers Insurance Company Limited should:

- Recalculate the claim settlement without making an adjustment for underinsurance and pay this settlement to Mr R

- Pay Mr R £750 compensation for the avoidable trouble and upset caused to him by Travelers' handling of the claim.

My final decision

My final decision is that I uphold this complaint. Travelers Insurance Company Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 19 April 2024.

Sam Thomas
Ombudsman