

The complaint

A limited company, which I will refer to as N, complains about Society of Lloyd's decision to avoid N's commercial property insurance policy and so decline its claim.

What happened

The following is intended only as a brief summary of events. Additionally, although various parties have been involved, I have largely just referred to N and Society of Lloyd's. Any reference to Society of Lloyd's includes their underwriters and agents. For the sake of simplicity, I have also referred to there only being one claim, although the circumstances may have required more than one.

N operates as a property owner. It held a commercial property insurance policy underwritten by Society of Lloyd's, insuring an unoccupied property. The property was in a fairly poor condition. The policy had most recently renewed in June 2022. At the time of renewal, the declared value of the insured property was stated to be £1 million. The "inflation provision" was not included.

The policy included a number of conditions, including those applying to unoccupied premises. One of these was a requirement to "continue to keep the Premises clear of all moveable combustible material".

In October 2022, N's property suffered extensive damage from more than one fire. And N contacted Society of Lloyd's to claim for the loss. After investigating the claim, Society of Lloyd's said that the value that ought to have been declared for the property exceeded £1 million. A report Society of Lloyd's received said this value was over £5 million. Other reports indicated a value of over £2 million. Society of Lloyd's said that had the correct value been declared at the time of renewal, the policy would not have been offered.

Society of Lloyd's also said that the property contained lots of moveable combustible material. And said that N ought to have declared this when the policy was renewed also. Society of Lloyd's said that had N declared this, the policy would not have been offered for this reason either.

So, Society of Lloyd's avoided the policy and declined the claim. Society of Lloyd's did say that N was entitled to a refund of the policy premium though.

N complained about this, ultimately bringing its complaint to the Financial Ombudsman Service. Our Investigator thought Society of Lloyd's could've handled the claim better, and said that it should pay N £200 to compensate it for this. But the Investigator also thought that Society of Lloyd's had acted fairly and reasonably by avoiding the policy and declining the claim.

N remained unsatisfied, so 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 upholding this complaint in part. I'll explain why.

I will firstly say that both N and Society of Lloyd's have provided detailed arguments and submission. However, whilst I have considered all of these, I am not going to address each of the points made. Instead, I am going to focus on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

N is a commercial property owner. This means that, when taking out or renewing a policy, the Insurance Act 2015 imposes a duty of fair presentation on N. Essentially, this requires N to disclose all material circumstances that it knows or ought to know of. Or, failing that, to make a disclosure that puts an insurer on notice that it needs to make further enquiries. The disclosure of matters of fact needs to be substantially correct, and disclosure of matters of expectation or belief need to be made in good faith. Where a policyholder is found to have breached the duty of fair presentation, an insurer will be entitled to certain remedies. In the current circumstances, this would entitle Society of Lloyd's to avoid the policy if Society of Lloyd's would not have entered it had the duty of fair presentation been met.

So, there are effectively two key questions. Did N breach the duty of fair presentation? If so, would Society of Lloyd's have offered the policy otherwise?

One of the reasons Society of Lloyd's has given for avoiding the policy is the state of the property and that there was evidence of combustible material present. Society of Lloyd's has to an extent relied upon photos taken a number of months prior to the renewal date, and N has said that the property was not in this condition at the date of renewal.

The exact state of the property at the date of renewal is difficult to quantify – there was no independent inspection at this time. Society of Lloyd's has said that N would need to provide evidence of the site clearance, but the onus is on Society of Lloyd's to evidence that there has been a breach. Society of Lloyd's has though pointed to photos taken at the time of the fire, which show some evidence of combustible material (a cardboard box, a sofa, etc.) and also that some of the rubbish shown in picture from the pre-renewal inspection were still present.

On balance, it does seem somewhat likely that some moveable combustible material was present at the time of the fire. Given the site was not being actively used, it also seems likely this material was present since the point of renewal.

However, this is a debateable point, and I do not consider that I need to make a finding on this point. This is because I am satisfied there was a breach of the duty of fair presentation in relation to the value of the property. I'll explain why.

Estimating a rebuild or replacement cost isn't a matter of fact – it's a matter of expectation or belief. That means the key question is whether the sum insured given by the commercial customer, in this case N, was made in good faith. Essentially, if the statement of expectation or belief was honestly held, it was made in good faith. If it was made dishonestly or without good basis, it wasn't.

Society of Lloyd's has offered N a refund of the policy premium. This means Society of Lloyd's is not treating the alleged breach as deliberate or reckless (as the Act would allow

the premium to retained if it was). So, Society of Lloyd's do not consider the statement over the property value to have been dishonest.

The question is then, if the declared value was wrong, was it made without good basis?

N has said that it did not have the property formally valued prior to the renewal. And that its valuation of £1 million was based on informal advice received at the time, potentially verbal comments made by a surveyor who was assessing a different property. This supports the fact that N was not acting dishonestly. However, I don't think this is enough to satisfy the requirement to make the declaration in good faith. I don't consider informal advice is an appropriate good basis to make a declaration of such a material circumstance.

It seems an earlier assessment, in December 2021, said the existing use value was £920,000, but that the cost of refurbishing the site would be around £1,645,000 – a total of over £2.5 million. This report was prepared for and provided to N.

It is important to note that the policy defines the declared value as the cost of reinstatement, and the policy also provides that the basis of reinstatement is to rebuild the property to a condition that is as good as when new.

It is possible that N relied upon the £920,000 figure when setting out the declared value. Or that the informal valuation was based on the cost of reinstating the property to the condition it was in at the time of the comments. This is not an argument that it has made though. And given the requirement to set out the cost of reinstatement to the condition when new, I don't think this would have been accurate anyway. This would only have provided the value of the property in its dilapidated condition, which is not what the policy required.

N has said that valuations are subjective. And it is clear that there is some variation in the values given by the various expert reports that have been provided. As well as the report referring to a reinstatement value of over £5 million and this report from December 2021, a report from February 2023 that was provided to N concludes the reinstatement cost (to shell condition) as being £2.2 million. Part of the reason for the difference in values may be the condition to which the property is expected to have been returned.

It isn't clear that N has been provided with all of these reports. So, I have not relied on the higher valuation in my assessment. However, I don't consider it can be disputed that the value of N's property was at least £2 million. So, I consider that in declaring a value of £1 million without good basis for this, N was in breach of the duty of fair presentation.

I then need to consider what Society of Lloyd's would have done had N declared an accurate reinstatement value.

Society of Lloyd's has said that it would not have provided the policy. It has provided comments from its underwriter to support this position. I am conscious these comments have been made with the benefit of hindsight, and that there are not specific underwriting criteria setting out the limit that would have led to a decline. It is though clear that the decision on whether to provide cover would have been referred to an underwriter for individual consideration. And examples have been provided of other risks that have not been insured.

The circumstances of these risks are individual in nature and are not directly comparable with N's circumstances. But the discussions held around these risks do make it clear that the circumstances of N's property – including its value and condition – would have been something Society of Lloyd's would have been concerned with.

In the absence of clear criteria, I need to assess what I think would most likely have

happened. Taking into account the underwriter's comments and the evidence of other risks, I am persuaded that it is more likely than not that Society of Lloyd's would not have insured N's property had the accurate reinstatement cost been declared.

I do note N has referred to property owned by a linked company that is valued at more than £2 million, but that Society of Lloyd's has provided cover for. However, it is clear that this policy required there to be more than one underwriter splitting the risk between them. And this actually adds weight to the fact that Society of Lloyd's would not have offered the policy N had. N's policy was a contract between it and one underwriter. Whilst N may have been offered a contract between it and two underwriters, this would be a different contract. It would be a contract between different parties, so I do not consider it could be said to be the same contract. And, ultimately, I am satisfied that Society of Lloyd's would not have offered N the contract in question had there been no breach of the duty of fair presentation.

It follows that I consider Society of Lloyd's acted appropriately by avoiding N's policy and declining its claim. So, I am unable to fairly and reasonably ask it to do more here.

I do think that Society of Lloyd's ought reasonably to have handled the claim better though. I am conscious that this was a complex claim and would always likely have taken some time to resolve. It seems Society of Lloyd's was conscious of the potential impact its decision could have on N, and so acted to ensure it made the correct decision.

However, I do think that at times there were avoidable delays on Society of Lloyd's part. It took Society of Lloyd's from October 2022 until August 2023 to make its decision on the claim. Given the dates of the various reports, and even the comments of its underwriter (in June 2023), it isn't clear why this took so long. Most significantly though was the apparent lack of meaningful updates to N throughout much of the process.

N has said that as well as the prolonged state of uncertainty, this obstructed its ability to take remedial action. However, I am not persuaded that N would have been unable to take this action itself if it were necessary. And it ought to have acted to mitigate any impact of the circumstances.

N is a limited company. As such, it is a legal entity in its own right, and cannot suffer distress. It can be inconvenienced though. And I consider that the time taken and the lack of communication would have caused N significant inconvenience. I consider an award of £400 appropriately reflects this.

Putting things right

Society of Lloyd's should put things right by paying N £400 compensation.

My final decision

My final decision is that I uphold this complaint in part. Society of Lloyd's should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 17 January 2025.

Sam Thomas
Ombudsman