DRN-5434812

The complaint

R – a limited company – complains about the handling and claim decision reached by Society of Lloyd's (SOL) under a commercial property owner's insurance policy.

Mr V – a company director of R – has brough the complaint on its behalf.

What happened

R owns a property it rents to tenants. The property comprises of two commercial units with two flats above. Mr V held a tenancy agreement with tenants for two commercial units and a flat which I'll refer to as "flat A", and a separate agreement with another tenant for the second flat I'll refer to as "flat B" in this decision.

Mr V self-managed the property, he inspected it every three months, with the last inspection taking place in July 2023. He's said he didn't receive rent for the commercial units and flat A in August 2023. This led to him serving a payment demand to tenants in October 2023. Mr V said the tenants became difficult and he couldn't access the property. Then, in November 2023, a neighbour notified Mr V the police had forced entry to the property and found the illegal cultivation of drugs. Mr V raised a claim through his broker for the resultant damage.

Mr V has said the broker directed the claim to the wrong respondent. The claim reached SOL in March 2024. It appointed a loss adjuster, made enquiries, and accepted the claim in part. It agreed to cover the damage and loss of rent for flat A, but it said the commercial units were unoccupied as defined by the policy (which limited cover), so it didn't agree to cover the damage or loss of rent. SOL also said it wasn't certain if Mr V was claiming for any damage to flat B, and Mr V would need to provide further evidence, and it wouldn't cover any loss of rent as the tenant broke the tenancy agreement early – with Mr V's agreement.

Mr V didn't think SOL acted fairly. Regarding the commercial units, he said during the July 2023 inspection, it was found tenants were storing business inventory ahead of opening, but the business wasn't in operation. He also said the tenants were trading from the rear of the units, so he considered them occupied. He has said the damage to the units was done by the tenants from flat A and therefore the claim should be met in full.

Mr V complained to SOL. He said it requested frequently information it already had, it caused significant delays, service issues, financial hardship to R, and its claim decision wasn't a fair and reasonable one.

SOL responded to the complaint initially offering R £250 compensation for the service issues. And it later responded, in February 2025, with its final response letter. This set out the following key points:

- The commercial units were unoccupied and therefore the policy wouldn't respond to the resultant damage or loss of rent claim.
- It would cover claim-related damage and loss of rent for flat A, and loss of rent would be considered up until the settlement of the repairs to flat A to acknowledge the avoidable delays it was responsible for.

- Damage to the roof space between the two flats would be covered under the policy.
- Should Mr V want to claim for any damage to flat B as a result of the claim-incident, he would need to provide further supporting evidence of the same. But it maintained its decision not to cover any loss of rent for flat B.
- It offered to increase the compensation to £650 in total to recognise the inconvenience caused to R as the result of the overall service issues.

Mr V didn't think this was a fair and reasonable outcome, so he asked our Service for an impartial review.

The Investigator recommended the complaint be upheld in part. While she thought SOL took, broadly, reasonable steps to resolve this complaint, she recommended SOL covered loss of rent for flat A from the date of loss, rather than when it was notified of this claim. She wasn't persuaded SOL's position had been prejudiced by the late claim notification.

Mr V agreed with the Investigator's assessment regarding SOL covering damage to the roof space, damage and loss of rent for flat A, and compensation of £650. But he reiterated his position regarding the remainder of the buildings damaged by the claim-incident.

SOL said Mr V was accruing loss of rent before it was notified of this claim – which was some four months later. It therefore said these costs were incurred prior to the notification of loss, these are R's losses, and it shouldn't be required to cover the same, as Mr V prejudiced its position as the result of notifying it of the claim late.

As no resolution could be reached, I must decide the 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.

I recognise I've summarised the complaint in less detail than it's been presented. There is substantial correspondence for this complaint. I have read it all. Our rules allow me to focus on what I consider to be the key issues, and to address those issues in the manner I consider appropriate. Nor do I intend to respond to each point raised. This isn't intended as a discourtesy – it simply reflects the informal nature of our Service.

Having reviewed this complaint, I've reached the same overall conclusions to that of the Investigator, for the same reasons. I accept this will disappoint Mr V (and SOL). I'll explain why.

Commercial units

Mr V has set out why he thinks the policy should respond to the resultant damage to the units. It's not disputed damage was caused to the units during the illegal cultivation of drugs. But it doesn't follow that because damage was likely caused by the tenants of flat A during this process, that the claim should be met. SOL has said these units were unoccupied more than 30 days in the lead up to the loss and therefore the policy wouldn't respond.

The policy defines the term unoccupied as:

> *"Unoccupied*
> *…*
> *2. For the purposes of non-residential Insured Premises, means closed for business or not occupied for its usual business purposes, for any period of more than 30*

(thirty) consecutive days."

I find this definition to be clear, fair, and not uncommon. The policy goes on to say:

> *"If any Building or any portions thereof becomes Unoccupied, the Insurer shall be liable for Damage solely caused by or resulting from fire, lightening, explosion, aircraft or other aerial devices or articles dropped therefrom, unless otherwise agreed in writing by the Insurer"*

Mr V has said, in brief, when he inspected the property in July 2023, the tenants were storing inventory ahead of opening for business, having entered the agreement early to avoid disappointment on missing out on renting the premises. He also said they were trading from the rear of the units. I am not persuaded to agree with Mr V that the circumstances he's described support the property was open for business or occupied for its usual business purposes (occupied). Further, Mr V informed SOL following the July 2023 inspection the business was not in operation. Nor am I satisfied there is strong supporting evidence to demonstrate the tenants were trading from the rear of the property, which seems most unlikely.

I've also considered whether the policy should respond to Mr V's loss of rent claim for the commercial units. The policy says:

> *"Loss of Rent Receivable*
>
> *1 In the event of Damage to the Property Insured caused by an Insured Peril, which results in the interruption of or interference with Rent Receivable, the Insurer will indemnify the Insured for the Loss of Rent Receivable arising from such interruption or interference occurring during the Period of Insurance which is not otherwise excluded, subject always to the limits, terms, conditions and exclusions of the Section of the Policy"*

While the damage was likely caused during the process of the illegal cultivation of drugs, I don't find the policy should respond to Mr V's loss of rent claim for the units, as cover was limited, and damage therefore wasn't the result of an insured peril.

It follows I am satisfied SOL's decision to decline the damage to the units and loss of rent to be fair, reasonable, and not contrary to the evidence.

Flat A

SOL agreed to cover the damage to flat A and Mr V's loss of rent. I am satisfied this is fair. It also agreed to cover the damage in the roof space between the flats which is fair and, as I understand it, Mr V has agreed to this part of the settlement.

The outstanding dispute in relation to flat A is the loss of rent period. Within SOL's final response dated February 2025, it said loss of rent was still being considered, and while the policy was a 12-month indemnity policy, it agreed to consider loss of rent up until the settlement for the repairs to flat A due to the delays it was responsible for causing.

SOL didn't think the loss of rent period should start from the date of loss given it wasn't notified of the claim until March 2024. It has said this prejudiced its position as it had no control over mitigating this loss period and costs already existed prior to notification of this claim.

While I acknowledge SOL were notified of this claim outside the policy claims conditions, I

am not satisfied its position was made materially different by the late claim notification. Had things gone the way they should have, I think, on balance, it's more likely than not SOL would have covered Mr V's loss of rent from the date of loss. SOL has also acknowledged it was responsible for increasing the lifetime of this claim, and so I am not persuaded to agree its position has been prejudiced, or by requiring it to cover Mr V's loss of rent from the date of loss would mean it would have to pay costs it otherwise wouldn't have been required to cover.

Therefore, it follows that I find in these specific circumstances it's fair and reasonable to require SOL to cover Mr V's loss of rent from the date of loss to the date the settlement for repairs to flat A was completed.

Flat B

As I understand it, Mr V hasn't raised a claim for claim-related damages to flat B, as no damage was noted. SOL has said it will consider evidence Mr V provides in the event he seeks to make a claim. I am satisfied that's fair.

Mr V has said the tenant residing in flat B decided to end the tenancy agreement early which he agreed to in the circumstances. And while Mr V has said this was a result of the claim-incident, I'm not persuaded the tenant left as the result of damage following an insured event – which is what the policy responds to. So, it follows while I empathise with the circumstances Mr V faced, I find SOL's decision to decline loss of rent for flat B was a fair and reasonable one.

Compensation

I acknowledge this has been a difficult, upsetting and frustrating time for Mr V. He's described the ongoing impact this has had on R, its finances, and him personally regarding his health. The Investigator informed Mr V that this Service is unable to require a firm to pay compensation for the distress and upset caused to a limited company (or its director/s), but she considered the overall service provided by SOL, and the inconvenience to R.

I've also reviewed this, and while I find SOL ought to have handled matters much better at times – and with a more appropriate level of service, I find its compensation amount totalling £650 to recognise these issues to be fair, reasonable and proportionate. I've further noted Mr V has accepted this payment in recognition of the same. Therefore, it follows that I don't require SOL to increase this.

Putting things right

For the reasons I've set out above, I now require Society of Lloyd's to cover R's loss of rent from the date of loss to the date of settlement for the repairs to flat A.

My final decision

My final decision is I uphold this complaint. I now require Society of Lloyd's to settle this complaint in line with my instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 30 May 2025.

Liam Hickey
Ombudsman