

The complaint

A company which I'll refer to as B complains that Society of Lloyd's ("Lloyd's") unfairly declined a claim under B's business protection insurance policy.

Mr S who is a director of B brings the complaint on B's behalf.

What happened

B holds a business protection insurance policy with Lloyd's. Mr S made a claim on that policy to cover B's losses arising from its closure as a result of the national Government-imposed lockdown in response to the COVID-19 pandemic.

Lloyd's declined the claim. It said B didn't have cover for the losses it was claiming as COVID-19 isn't covered under the terms of the policy. Mr S didn't agree. He said he thought the wording of the policy, specifically the wording for specified illnesses, meant that B's claim should be covered.

B complained to Lloyd's but Lloyd's explained that, although B's policy would provide cover in the event of certain specified diseases causing closure, COVID-19 wasn't one of the named diseases. Mr S wasn't happy with this response so brought the complaint to our service.

Our investigator considered B's complaint and didn't think it should be upheld. He said that, while he sympathises with Mr S's situation, he didn't think there was cover available under the policy. Mr S didn't agree so the complaint has been passed to me to decide.

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.

B is looking to claim on its business protection insurance policy. There are a range of business protection insurance policies on the market covering a range of different risks. When considering whether Lloyd's acted fairly in declining B's claim, the starting point is to consider the specific policy B took out.

B's policy included an extension which Mr S purchased to cover infectious diseases. The policy states that it provides cover for business interruption *"in consequence of closure of the Premises or part thereof on the order advice or stipulation of any Government or local authority as a result of...any human infectious or human contagious Disease (excluding Acquired Immune Deficiency Syndrome [AIDS] or an AIDS-related condition) manifested by any person whilst at the Premises or within a 25 mile radius of the Premises"*

The policy provides a definition for the term "Disease", which sets out a list of specified illnesses that are covered under the policy. However, COVID-19 isn't on that list.

Given COVID-19 wasn't in existence at the time the policy was entered into, I wouldn't expect it to be included in the list. But there are similar policies on the market that provide cover in the circumstances of the pandemic, e.g. policies which cover all notifiable diseases as set out and updated on a Government-defined list. B's policy is not like this – rather it sets out a defined list of the illnesses which are covered. And there is nothing in the wording of the policy which implies it would provide cover for any new illnesses which might emerge.

Lloyd's has also explained that the wording of the policy was reviewed in 2016, when it commenced its relationship with the underwriter. Following this, the process for adding any new diseases to the specified list would include approval by a senior underwriter and a new version of the policy being produced to show the amended list of specified diseases. So I think Lloyd's has deliberately set out a list of the specific illnesses it intended to cover.

The list of covered diseases does include SARS, so I've considered whether this would extend to cover COVID-19. However, I don't think SARS and COVID-19 are the same disease. The Government's list of notifiable diseases lists them as two separate diseases. And the World Health Organisation has also confirmed that *"while related, the two viruses are different"*, and it announced that COVID-19 was *"the name of this new disease on 11 February 2020"*. So based on the evidence I've seen, I don't think I can reasonably say that these two diseases are the same.

Mr S has referred to the Financial Conduct Authority's test case which he believes should affect the outcome of his complaint but, as our investigator explained, B's policy has a definitive list of specified diseases and this kind of policy wasn't the subject of the test case.

I was sorry to hear about the considerable financial impact the lockdown had on B. But for the reasons outlined above, and having considered the remaining terms of the policy, I don't think Lloyd's acted unfairly in declining B's claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 18 June 2021.

Sara Falzon
Ombudsman