

The complaint

A company I'll refer to as U has complained that Society of Lloyd's ("Lloyd's") unfairly turned down its business interruption insurance claim, after it was forced to close by the Government's response to the Covid-19 pandemic.

Mr M, a director of U, has brought the complaint on U's behalf.

For ease of reading, reference to Lloyd's includes anything done by the underwriters.

What happened

U held a business interruption insurance policy with Lloyd's. It claimed on its policy after being forced to close by the Government's response to the national Covid-19 pandemic. U thought its claim should be covered under either the extension for denial of access or the extension for disease.

Lloyd's turned down U's claim. They said the extension for disease would only provide cover if U's closure was due to a case of Covid-19 at U's premises, but U had closed as a result of the Government's response to the pandemic. Lloyd's said the extension for denial of access didn't provide cover as that required the business interruption to be due to damage to property within a one-mile radius and they didn't think Covid-19 had caused damage to property.

As U was unhappy with Lloyd's response, it brought its complaint to our service.

U told us that one of its business partners had had to self-isolate for two weeks from 16 March 2020.

Our investigator looked into U's complaint but didn't recommend it be upheld. He didn't think there was enough evidence to conclude that it was most likely someone at U's premises had Covid-19, so he didn't think the extension for disease covered the claim. He also didn't think that the extension for denial of access provided cover for U's claim as he didn't think Covid-19 had caused damage to property within a one-mile radius of U's premises.

U disagreed and asked for an ombudsman's decision. It said the claim was similar to the circumstances of a previously successful claim where access to its premises was prevented by fly tipping. It also said that the meaning of the word 'loss' includes a loss of money, which is what had happened. U said the wording of the policy should reasonably be interpreted to cover the circumstances of the claim or be read in U's favour if it was ambiguous.

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'm sorry to hear that the pandemic and the Government's related actions had an impact on U's business. However, I'm not going to uphold its complaint. I'll explain why.

Business interruption insurance offers protection from risks common to a business, but different policies can provide different types of cover. What is and isn't covered is set out in the policy terms and conditions. I've therefore looked carefully at this particular policy to see if Lloyd's have acted fairly, reasonably and in line with the terms and conditions of the policy when declining U's claim.

Denial of access

The relevant part of this extension says:

"Subject to the conditions of this Section Loss or Damage resulting from interruption or interference with the Business in consequence of Loss or Damage (as within defined) to Property within a one mile radius of the Premises or Loss or Damage to which shall prevent the use of the Premises or access thereto whether the Premises or Property of the Insured therein shall be damaged or not shall be deemed to be loss resulting from Loss or Damage to Property used by the Insured at the Premises..."

The policy defines 'loss or damage' as "*Tangible loss destruction or damage*".

For the first part of this extension to provide cover, the interruption or interference with U's business would need to be in consequence of tangible loss, destruction or damage to property within a one mile radius of U's premises. I haven't seen anything to indicate that Covid-19 caused loss, destruction or damage to property within a one-mile radius which prevented the use of, or access to, U's premises.

I think this policy could have been drafted more clearly but I believe the second part of this extension would provide cover where there is loss or damage to something that prevents the use of, or access to, U's premises. However, as above, I haven't seen anything to indicate that Covid-19 caused loss, destruction or damage to something which prevented the use of, or access to U's premises.

Therefore, when considering the wording of this extension as a whole, I don't think it provides cover for the circumstances of U's claim.

I accept that the meaning of the word loss in other contexts could mean loss of money, and that losing money is tangible; however, in an insurance context the wording 'loss or damage' is generally accepted to mean a physical loss and I think the wording 'destruction or damage' after 'tangible loss' indicates this meaning in this policy.

Moreover, the loss or damage would need to have been the cause of the prevention of access to U's premises. This causation was present in U's previous claim following an incidence of fly-tipping. However, in the current circumstances it was Covid-19 and the Government's actions that prevented access to U's premises, rather than any 'loss or damage'.

So I'm afraid I don't think this extension provides cover for the circumstances of U's claim.

Disease

The relevant part of this extension covers

“Closure or restrictions placed on the Premises on the advice or with the approval of the Medical Officer of Health of the Public Authority as a result of a notifiable contagious and/or infectious human disease manifesting itself at the Premises”

For this extension to provide cover, the policy requires the closure or restrictions placed on the business premises to have been the result of a case of a notifiable contagious and/or infectious human disease manifesting at the premises. Covid-19 is a notifiable disease, so I've considered the information I have to decide if it's more likely than not that there was a case of Covid-19 manifesting itself at U's premises.

Widespread testing wasn't available towards the start of the pandemic, and the Government advised people to avoid using health services if they were displaying symptoms of Covid-19, save for emergencies. It's therefore rare that a business will be able to produce a positive test result from that period. To treat that as a minimum requirement would, in my view, be unfair.

Therefore, it's necessary to take a more pragmatic approach, and to consider whether other evidence can be provided that supports, on balance, that Covid-19 manifested itself at the insured premises. As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that it's suffered a loss which its policy covers.

U said one of its business partners isolated for two weeks from 16 March 2020 due to symptoms of Covid-19. But I haven't seen any other evidence to support this apart from U's testimony and I also have to bear in mind that many people with symptoms of Covid-19 at that time didn't actually have the disease. I also haven't seen anything to indicate that the symptoms were present while the business partner was at U's premises. For these reasons, I'm not persuaded that it's most likely that there was a case of Covid-19 manifesting itself at U's premises.

I appreciate this isn't the outcome U was hoping for, but having considered the matter very carefully, I don't think I can fairly require Lloyd's to pay U'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 U to accept or reject my decision before 10 September 2021.

Sarann Taylor
Ombudsman