

The complaint

A company I'll refer to as B has complained that Society of Lloyd's unfairly turned down its claims for business interruption and rent payable after it was impacted by the Covid-19 pandemic.

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

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

What happened

B held a business interruption insurance policy with Lloyd's. It claimed on its policy in March 2020 after its business was impacted by a reduction in custom from abroad and then forced to close by the Government Act in response to the national pandemic.

Lloyd's appointed loss adjusters to look into B's claim but ultimately turned it down. They said Covid-19 hadn't caused physical damage to B's premises and there hadn't been an occurrence of Covid-19 at its premises either.

In June 2020, B submitted a further claim for the same period due to a loss of footfall in the area and for rates payable. Lloyd's said B's policy didn't provide cover for these either, for the reasons already given.

B complained to Lloyd's as it thought its claim should be covered. It said it relied on trade from abroad and restrictions to international travel combined with social distancing measures meant its business had been impacted before being forced to close by the Government Act in response to the pandemic. B thought that the Government had specified that insurance claims should be covered in these circumstances.

B said that Covid-19 was a notifiable disease and the nature of its customers and the location of its premises meant it was most likely that there had been a case of Covid-19 at its premises. However, B didn't think Covid-19 needed to be at its premises for the policy to provide cover and added that the definition of the word 'occurrence' could be interpreted to mean the likelihood of there being a case of Covid-19 given B's business and surrounding environment.

Lloyd's said the policy required B's closure to have been due to an occurrence of a notifiable disease at the premises. And while Covid-19 was a notifiable disease, they thought B's business had been impacted by the measures put in place by the Government, rather than by someone at the premises having Covid-19.

Unhappy with Lloyd's response, B brought its complaint to our service. It said it was likely someone at its premises had Covid-19 but there wasn't testing available at that time. Our investigator looked into B's complaint. He found that the policy would only provide cover if B had closed due to an occurrence of a notifiable disease at the premises. As he didn't think B had demonstrated that there was most likely a case of Covid-19 at its premises he didn't think the complaint should be upheld.

B disagreed and asked for an ombudsman's decision. It said the word 'occurrence' should include the likelihood of a case being at its premises and it was impossible to establish whether any of its customers had Covid-19.

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 has made a number of detailed points. Due to the informal nature of our service, I don't intend to address every point he's made but will instead focus my decision on what I see as the central issues to this complaint.

B has also complained about the renewal of its policy in 2020 however, that is being dealt with separately.

I'm sorry to hear that the pandemic and the Government's related actions had an impact on B. 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 has acted fairly, reasonably and in line with the terms and conditions of the policy when declining B's claim.

It doesn't seem to be in dispute that Covid-19 didn't cause damage to property. So, I'm going to focus on the extension in B's policy for disease, infestation and defective sanitation which covers loss resulting from:

*"The occurrence at the premises of
(a) murder, suicide or food or drink poisoning
(b) a notifiable human infectious or contagious disease excluding acquired immune deficiency syndrome (AIDS) or an AIDS related condition
(c) vermin, pests or defective sanitation"*

In order for this extension to provide cover, there would need to be a loss resulting from the occurrence of a notifiable human infectious or contagious disease at B's premises. I've thought about B's point that the word 'occurrence' could be interpreted to mean the likelihood of the disease being at its premises. I think it's clear from the wording of the extension that the disease needs to have occurred at the premises, so I've considered the information I have to decide if B has demonstrated there was most likely a case at its 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 claimant 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 occurred 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 its policy covers.

I've considered that B is located in a busy area and that B thinks some of its customers would have likely had Covid-19. However, to uphold B's complaint I'd need to decide that it was more likely than not that someone at its premises had Covid-19. I have to bear in mind that most people at that time didn't have Covid-19 and in this case, I haven't seen sufficient evidence to indicate that there was a case of Covid-19 at B's premises. So, this extension doesn't provide cover for the circumstances of its claims.

I understand that B thought the Government's comments at the beginning of the pandemic meant that claims such as this should be paid, but that was still dependant on the specific terms in the policy providing cover for the circumstances of the claim.

I appreciate this isn't the outcome that Mr B was hoping for, but having considered the matter very carefully, I don't think I can fairly require Lloyd's to pay 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 28 October 2021.

Sarann Taylor
Ombudsman