Case Study: Business Interruption Insurance

BUSINESS INTERRUPTION INSURANCE POLICY CLAIM DECLINED

Themes: Business interruption risk insurance policy; interpretation of misleading or unclear language against the insurer; claim rejection

The complaint relates to a rejected business interruption insurance claim, for the loss of trade by the owner of a restaurant, because it was considered a non-insured event.

Miss F, who owned a restaurant, purchased a business interruption insurance policy to cover her for any future potential loss. Unfortunately, the restaurant had to close for just under a month due to a water leak in the building causing a loss of revenue from her business.

The building itself was insured by the landlord, who made a separate insurance claim through his insurer for "material damage" as "actual damage" was an event that was not covered by his policy. The landlord received compensation for surveyor costs, redecoration, loss of rent and a goodwill gesture. The surveyor's report confirmed that the water leak was not the restaurant's fault but was caused by moisture from the original masonry and from a freezer located in the premises above the restaurant.

Miss F made a claim to her insurance company for business interruption. This was declined because the damage was caused by dampness from a building construction defect, which was not considered a covered event under the policy. The insurer said the material damage condition would not come into effect because the building owner's insurer had only approved trace and access costs to identify the source of the water leak, not full coverage for the repair costs. As a result, Miss F's insurance company agreed to pay Miss F only £500.

Miss F subsequently made a complaint to CIFO. CIFO confirmed that Miss F's policy showed that business interruption due to damage was an acceptable claim and that the policy would pay for the business revenue lost for the period of closure. The condition of coverage was that the landlord's insurance was in force, covered the building premises against damage, and that a payment was made or liability admitted. Therefore, as the landlord's insurance company had made a payment and made an admission of liability, Miss F's insurance policy should have covered the business interruption.

Miss F's insurance company said that CIFO were interpreting the policy wording incorrectly and that the landlord's insurer had not paid for "actual damage" but only for "material damage". Therefore, the landlord's insurer making a compensation payment or admission of liability did not meet the requirement stated in Miss F's insurance policy. CIFO determined that this part of Miss F's insurance policy was not clear, and that the definition of "damage" was open to interpretation and dependent upon the coverage in the landlord's own insurance policy that had not been known by or provided to Miss F. In Miss F's policy, damage was defined as "loss destruction or damage" and does not state "actual damage". In general, when faced with such ambiguity in a policy drafted by the insurer, the ambiguity will be interpreted on the basis favourable to the consumer.

CIFO was minded to uphold the complaint and award Miss F £10,203 in compensation for her claim for lost business revenue and issued a provisional decision for comment by both parties. After additional consideration, the insurer agreed to the payment without the need for CIFO to issue a final binding decision.