

## **The complaint**

Ms T, as a sole trader, complains about the decision to decline her business interruption insurance claim made by The National Farmers' Union Mutual Insurance Society Limited. Ms T's claim relates to losses incurred following the COVID-19 pandemic.

## **What happened**

Ms T operates a holiday letting business and held a property owners' insurance policy. The policy offered a number of areas of cover, including for business interruption. Ms T's policy was underwritten by The National Farmers' Union Mutual Insurance Society Limited (NFU). The COVID-19 pandemic caused an interruption to Ms T's business and she claimed under the policy.

NFU declined the claim. It said the core business interruption insurance provided by the policy responded to situations where damage to property had caused the interruption, and that wasn't the case here. NFU also said that the two extensions to this cover that looked like they might respond, didn't in the circumstances. These were the Public Emergency extension, which NFU said excluded claims resulting from infectious or contagious disease. And the Human Diseases extension, which NFU said only provided cover in relation to certain specified diseases – and this list didn't include COVID-19.

As Ms T was unhappy with this decision, she brought her complaint about it to this service. However, our Investigator didn't think her complaint should be upheld. She thought NFU had applied the terms of the policy correctly and so didn't think NFU had acted unfairly or unreasonably by declining the claim.

Ms T remains unsatisfied and her complaint has been passed to me for a decision.

## **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.

Having done so, whilst I am sorry to hear about the considerable financial impact COVID-19 restrictions have had on Ms T, I won't be upholding her complaint. My reasons are substantially the same as the Investigator's.

I understand that Ms T's business was impacted in March 2020 due to the government-imposed restrictions. The nature of her business was such that she wouldn't have been allowed to continue operating after this time. So, the type of cover she's looking to claim under is business interruption insurance.

There are a range of business interruption insurance policies on the market covering different risks. For example, some only provide cover for basic things such as fire or flood, whilst others provide cover in more circumstances either as part of the policy or as optional add-ons. The starting point is to consider the specific policy Ms T took out.

The standard cover provided by the business interruption section of Ms T's policy, as well as a number of the extensions to this cover, is based on an interruption to the business of the insured which has been caused by damage to property. Whilst I appreciate the pandemic has caused substantial financial loss, I don't think COVID-19 caused damage to property which has led to an interruption of Ms T's business.

So, I don't think either the standard business interruption cover, or the extensions that rely on there having been damage, provide cover in the circumstances of Ms T's claim. And I think NFU acted fairly and reasonably in not meeting her claim under these areas of cover.

As NFU has said, there are two further extensions to the business interruption section of Ms T's policy which do not require there to have been damage to property, and which look like they might respond to the circumstances. I will deal with each in turn.

#### The Public Emergency extension

This extension says:

*"WE will pay for loss of INCOME arising from the actions or advice of a competent Public Authority, due to an emergency likely to endanger life or property occurring within the vicinity of the PREMISES, which prevents or hinders the use of or access to the PREMISES for a period greater than four consecutive hours.*

*WE will not pay for any loss resulting from infectious or contagious disease or the suspected or actual presence of an incendiary or explosive device."*

Ms T's business was interrupted by the actions or advice of a Public Authority, and this was due to an emergency likely to endanger life. However, this emergency was the COVID-19 pandemic. And COVID-19 is an infectious or contagious disease.

As this extension says that NFU will not pay for any loss arising from an infectious or contagious disease, and COVID-19 is such a disease, I am unable to fairly say that NFU should pay Ms T's losses that arose out of the COVID-19 pandemic under this extension. So, it follows that I cannot say that NFU were wrong to decline Ms T's claim under this extension.

I should also point out that even if this were not the case, the High Court in the FCA test case (*The Financial Conduct Authority (FCA) v Arch Insurance (UK) Ltd & Ors* [2020] EWHC 2448 (Comm)) found that terms such as this one were limited in their scope by the inclusion of the word "vicinity" in the manner set out in the clause above. The High Court found that such terms provided cover only for localised events, rather than national ones such as the COVID-19 pandemic. The relevant findings are at paragraphs 466 to 467 of the judgment. However, as I already consider losses from infectious or contagious diseases are not covered, it is not necessary for me to expand on this additional argument in this decision.

#### The Human Diseases extension

This extension reads:

*"WE will pay for loss of INCOME caused by the occurrence of any of the following diseases at the PREMISES which results in closure or restriction in use of the PREMISES on the order or advice of a competent authority:*

*..."*

The extension then goes on to list a number of diseases, but this list does not include COVID-19.

Having considered this term, I'm not persuaded this section of the policy would have provided Ms T with cover for the circumstances of her claim. This is because COVID-19 isn't one of the diseases listed in the definition.

When reaching this finding I'm mindful that COVID-19 is a new disease that no-one had the foresight to cover, and that it might not have been possible for NFU to include it in the policy at the time it was written. But I don't think that changes anything. That's because I don't think NFU intended to, or suggested they would, provide cover for all diseases. NFU deliberately chose to define the cover provided by reference to a static list of certain diseases.

I don't think the list is indicative of the kind of diseases that are included, I think it's an exhaustive list. There is nothing in the policy which implies that it provides cover for other diseases, including any new diseases which might emerge.

As I've said above, a range of policies are available. And some provide cover for all "notifiable diseases" – a list of diseases updated by the Government. These policies might, depending on the circumstances, provide cover. But this is not the type of policy Ms T has.

I think the purpose and effect of the policy Ms T has is to provide cover in the event of the diseases listed in the policy. There are many potential illnesses and diseases that the policy does not cover including, for example, SARS (another type of Coronavirus). I don't think the policy can or should fairly be read as covering any and all diseases that fall outside of the defined list set out above.

So, the policy clearly only intended to cover certain diseases. And I don't think it can fairly and reasonably be read in a different way.

Ms T's claim resulted from a disease that was not included in the list of covered diseases. As cover was not provided under this area of Ms T's policy for losses resulting from business interruption caused by COVID-19, I am satisfied NFU's decision to decline the claim was in line with the policy, and in all the circumstances of this case fair and reasonable.

Having considered the rest of the policy carefully, I do not consider there to be any area of cover that means NFU should have met Ms T's claim. I know this decision will be disappointing for Ms T, but I hope I've provided her with a thorough explanation of why this policy doesn't offer cover in the circumstances of this claim.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 28 January 2022.

Sam Thomas  
**Ombudsman**