DRN-3125100

The complaint

F complains about the decision of Royal & Sun Alliance Insurance Limited to decline its business interruption insurance claim for losses arising out of the COVID-19 pandemic.

What happened

F held a commercial insurance policy underwritten by Royal & Sun Alliance Insurance Limited (RSA). The policy provided a number of areas of cover, including for business interruption. After F had to close its premises in March 2020, as a result of the COVID-19 pandemic, it claimed on its policy.

RSA declined the claim. A number of letters were exchanged between RSA and F's representative (along with some other parties not directly involved in this complaint). The focus of the discussions was largely on whether the "Disease" extension to the business interruption section of F's policy provided cover in the circumstances of F's claim. But ultimately, RSA said that it did not, primarily because F had not shown that a case of COVID-19 had manifested on F's premises prior to F's closure.

F was unhappy with this outcome and referred a complaint about it to this service. However, our Investigator didn't uphold the complaint. He acknowledged that whilst a number of F's customers had provided evidence that they had suffered from COVID-19, the evidence provided was that this had manifested after they had been at F's premises. And so, he didn't feel this met the requirement of the policy term.

As F remained unsatisfied, its 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 F, I won't be upholding its complaint. I'll explain why

The focus of F's argument has been on subclause "A" of the Disease extension and this is also what our Investigator's opinion letter focussed on. So, I too have focussed this decision on this subclause. However, I have considered the whole of F's policy and the business interruption section includes a number of other areas of cover. F's representative has, on other complaints, been made aware of this service's approach to these other areas of cover. But for the sake of completeness, I will briefly address them in this decision.

I understand that F closed its business in March 2020 just prior to the government-imposed restrictions, though the nature of its business was such that it wouldn't have been allowed to stay open after this time. So, the type of cover it'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 F took out.

The standard cover provided by the business interruption section of F'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 F'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 F's claim. And I think RSA acted fairly and reasonably in not meeting F's claim under these areas of cover.

There is an extension to the business interruption section of the policy that is not reliant on damage having caused the losses being claimed for. This is the Disease, Murder, Suicide, Vermin and Pests extension (the Disease extension). This provides cover for, in part, losses as a result of:

> "*A) 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 human disease manifesting itself at the Premises*
>
> *…*
>
> *C) closing of the whole or part of the Premises by order of the Public Authority for the area in which the Premises are situate as a result of defects in the drains and other sanitary arrangements at the Premises*
>
> …"

The main focus of the claim and complaint has been on subclause "A" and I will address this first.

In order for F's claim to be covered by subclause "A" of the Disease extension, a notifiable disease must have manifested on F's premises and this must have led to restrictions being placed on the premises. COVID-19 is a notifiable disease, and was at the time F closed. However, the key question in this complaint is whether COVID-19 had manifested itself at the premises by this point.

F has said that several staff members self-isolated due to having symptoms. But it hasn't provided any evidence that these employees had symptoms whilst at the premises. F has also provided testimony, and supporting medical evidence, from a number of customers who developed symptoms of COVID-19. However, these customers all seem to have developed symptoms after the date they were at the premises.

I consider that the term "manifesting" as it is used in F's policy refers to the person suffering the disease displaying symptoms. It is not enough, in the circumstances of this complaint, for a pre-symptomatic individual to have sustained the disease and been on the premises.

This can be contrasted with other policies that require only that a disease has "occurred". A disease may have occurred in a person prior to it manifesting. But F's policy requires the disease to manifest.

As F's policy requires that COVID-19 has manifested at the premises, the evidence needed for a claim to be met must show that an individual had symptoms of COVID-19 whilst at the

premises. And the evidence provided is that symptoms only arose after the time the relevant individuals had been at the premises. So, I don't consider the requirements of subclause "A" of the Disease extension to have been met. And it follows that I don't consider RSA acted unfairly or unreasonably when declining F's claim under this subclause.

F's representative has said that subclause "C" should also provide cover for the circumstances of F's claim, as it considers F's premises were forced to close as a result of proper sanitary conditions being unable to be maintained. However, I am not persuaded that a reasonable person, with the background knowledge of F's directors at the time the policy was entered in November 2019, would have interpreted subclause "C" to refer to an inability to enforce social distancing at F's premises. And it isn't clear what defect(s) at F's premises its representative considers there to have been. I do not consider the normal operation of a business can be called a defect and certainly this is not a defect specific to F's premises. So, I do not consider RSA were incorrect in not meeting F's claim under subclause "C" of the Disease extension.

Having considered the rest of the policy carefully, I do not consider there to be any area of cover that means RSA should have met F's claim. I know this decision will be disappointing for F and its directors, but I hope I've provided them 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 F to accept or reject my decision before 28 January 2022.

Sam Thomas
Ombudsman