

## **The complaint**

A company I'll refer to as G has complained that Allianz Insurance Plc unfairly turned down its business interruption insurance claim after it was impacted by the Covid-19 pandemic.

Mr B, a director of G, has brought the complaint on G's behalf. G has been helped in bringing its complaint by a representative. However, for ease of reading, I'll refer to all actions and comments as being those of G.

## **What happened**

G held a business interruption insurance policy with Allianz. It claimed on its policy after its business was impacted by the Government's response to the Covid-19 pandemic.

Allianz turned down the claim on the basis that G's business hadn't been impacted by material damage.

Unhappy with Allianz's response, G brought its complaint to us. It thought there should be cover under 'Any other Event' within the core business interruption section and the extension for denial of access.

G said the definition of damage includes loss and the definition should be broad enough to not just include physical damage to property. It referred to the case of *MDS Inc. v Factory Mutual Insurance Company (2020)* as well as other case law to support its view. G said its property had suffered damage as it had been forced to close.

G said businesses in its vicinity had been prevented from accessing their premises and the extension doesn't require the prevention or hinderance in accessing the property to be a physical one. G said that where there are two proximate causes of loss and neither is specifically excluded then the policy should provide cover. It referred to the Supreme Court judgment in the Financial Conduct Authority's test case to support this.

G also said that it shouldn't be penalised for any ambiguity within the policy and it had attempted to mitigate its losses and also complied with all claims conditions. G added that it had expected to be covered following a statement made by the Government towards the start of the pandemic and it had a reasonable expectation of being covered for a closure in these circumstances.

G said that it had purchased a business interruption policy but had been denied cover when it needed it most.

Our investigator looked into G's complaint but didn't recommend it be upheld as he didn't think Covid-19 had caused damage to property.

G asked for an ombudsman's 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.

I'm sorry to hear that the pandemic and the Government's related actions have had an impact on G. But I won't be upholding 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 Allianz have acted fairly, reasonably and in line with the terms and conditions of the policy when declining G's claim.

G has made a number of detailed points; however, I don't intend to address them all and will instead comment on what I consider to be the central issues to this complaint.

### *Damage*

The core business interruption section of the policy says that Allianz will cover business interruption caused by a list of specified events. The policy defines business interruption as:

*"Loss resulting from interruption of or interference with the **Business** carried on by the Insured at the Premises in consequence of an **Event** to property used by the Insured at the **Premises** for the purpose of the **Business**."*

Event is specifically defined the policy as:

*"Loss or destruction of or damage to property used by the **Insured** at the **Premises** for the purpose of the **Business**."*

For this to provide cover there would need to be loss or destruction of or damage to property used by G at its premises. In an insurance context 'loss, destruction or damage' is generally accepted to mean a physical loss. In any event, I haven't seen anything to persuade me that Covid-19 caused loss, destruction or damage to property used by G at its premises.

G has referred to *MDS Inc. v Factory Mutual Insurance Company (2020)* which I understand has been overturned by the court of appeal, as well as other case law. However, I've considered other cases which I think are more relevant to the circumstances of this complaint, including *TKC London Ltd v Allianz Insurance PLC* [2020] EWHC 2710 (Comm), *Merlin v British Nuclear Fuels Plc* [1990] 2 QB 557 and *Hunter v London Docklands Development Corporation* [1996] 2 WLR 348.

I think that, for damage to have occurred, there would need to be a physical change or altered state to G's property, which made it less valuable. Alternatively, it's possible damage could be said to have occurred if specialist cleaning was required to remove a cause of potential damage.

Even if SARS-CoV-2 (the virus that causes Covid-19) was present at G's premises, the Government's guidance on cleaning in non-healthcare settings doesn't recommend any cleaning by a specialist. There's also no evidence of an excessive amount of SARS-CoV-2 on G's property, and the presence of any particular virus isn't automatically damage. So I don't think Covid-19 has damaged G's property and therefore there isn't cover for G's claim under this section of the policy.

### *Denial of access*

The cover under the policy is extended through various extensions. The policy says:

*“Any claim resulting from interruption or interference with the **Business** in consequence of*

- A. loss, destruction or damage at any Situation or to any Property shown below, or*
- B. any of the under-noted Contingencies within the **United Kingdom**, shall be understood to be **Business Interruption** by an **Event** covered by this **Section**...”*

Denial of access is listed under ‘Property’ and says:

*“Property in the immediate vicinity of the **Premises**, which prevents or hinders the use of or access to the **Premises** whether the **Premises** or property in the **Premises** is destroyed or damaged or not, but excluding loss or destruction of or damage to the property of any supply undertaking from which the **Insured** obtains electricity, gas, water or telecommunications services which prevents or hinders the supply of such services to the **Premises**.”*

For this to provide cover there would need to be loss, destruction or damage to property in the immediate vicinity of G’s premises which prevented or hindered access to G’s premises. I’ve noted G’s point about the prevention of access not needing to be physical however, it would still need to be because of damage to property in G’s vicinity. I don’t think the closure of premises in G’s vicinity by the Government amounts to loss, destruction or damage to property for the reasons set out above. So, I don’t think this extension provides cover for G’s claim.

### *Other issues*

I understand G thinks that the wording of the policy is ambiguous; however, I don’t agree that it’s likely to be considered ambiguous. I think it’s clear that the policy requires loss or destruction of or damage to property in order to provide cover.

As there isn’t anything in the policy that provides cover, I don’t think it makes a difference if there isn’t a specific exclusion in the policy that excludes the circumstances of G’s claim. I also don’t think it’s relevant that G took steps to mitigate its losses and comply with claim conditions, as there isn’t cover under the policy.

Although G might have had an expectation that its claim would be covered, or understood the same from a Government announcement, whether that is the case would still depend on the wording within its specific policy. And in this case, I don’t think G’s policy provides cover for its claim.

I appreciate this isn’t the outcome G was hoping for but, having considered the matter very carefully, I don’t think I can fairly require Allianz to pay its 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 G to accept or reject my decision before 13 January 2022.

Sarann Taylor  
**Ombudsman**