

The complaint

Mr H, on behalf of C, complains that Fairmead Insurance Ltd unfairly declined a claim C's business protection insurance policy.

All references to Fairmead include their claims handlers.

What happened

C has the benefit of a business protection insurance policy. Mr H made a claim on that policy to cover C's losses arising out of a loss of rents claim from a commercial property it owned. This was because the tenant stopped paying rent from March 2020. C told Fairmead this was as a result of the tenant having to close its business due to the national government-imposed lockdown intended to control the spread of Covid-19.

Fairmead declined the claim because it said C didn't have cover for the losses it was claiming for.

Mr H feels cover should be provided for this. He said the tenant also stopped paying rent because the property had suffered internal damage which would have stopped it from trading. Fairmead agreed to consider the damage claim separately and later declined that too. The damage claim as well as C's dissatisfaction with continued delays in dealing with this claim beyond February 2021 and the claims process are the subject of a different complaint to this Service and are being considered separately. The subject of this complaint is the loss of rents claim as well as delays by Fairmead in dealing with the accidental damage claim up to February 2021 and the fact that C felt Fairmead were relying on policy terms they'd never seen.

Our investigator considered C's complaint and concluded that it should be upheld in part. He said there was no cover for the loss of rents claim C was making, but Fairmead didn't deal with its accidental damage claim promptly which caused C inconvenience. As such he said Fairmead should compensate C for this by paying £300. He also said C would need to take up their complaint about not being provided with policy wording with its broker because the policy was sold to it through one.

Mr H doesn't agree so the matter has been put to me to decide

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 and for the same reasons the investigator set out, I won't be upholding this complaint. I'll explain why.

Loss of Rents claim

The type of cover C is looking to claim on 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 C took out. As such I've considered every aspect of the policy C holds with Fairmead to determine whether there are any sections that would require Fairmead to meet the loss of rents claim. I haven't however considered the accidental damage claim because that is the subject of another complaint to this Service which is being dealt with separately.

When C made its claim to Fairmead it said it wasn't receiving rents from its tenant and referenced the government imposed closure due to Covid-19 as the reason for this. So Fairmead considered the claim under the *Disease, Infestation and Defective Sanitation* section of the policy. I know that C feels the closure was also due to the damage it said the property sustained but as I said above I won't be dealing with this claim in this decision because it's the subject of a separate complaint to this Service. For that reason, I've looked at the most appropriate section of the policy that would apply which states:

"We will indemnify You in respect of loss of Gross Rentals as insured under this Section resulting from the occurrence of

(2) a Notifiable Disease sustained by any person at The Premises."

"Notifiable disease" is defined in the policy as

"The occurrence of any of the following diseases sustained by any person Diseases notifiable under the Public Health (Control of Disease) Act 1984 or the Public Health (Infectious Diseases) Regulations 1988, namely: Acute encephalitis, Acute poliomyelitis, Anthrax, Cholera, Diphtheria, Dysentery, Food poisoning, Leprosy, Leptospirosis, Malaria, Measles, Meningitis, Meningococcal septicaemia (without meningitis), Mumps, Ophthalmia neonatorum, Paratyphoid fever, Plague, Rabies, Relapsing fever, Rubella, Scarlet fever, Smallpox, Tetanus, Tuberculosis, Typhoid fever, Typhus fever, Viral haemorrhagic fever, Viral hepatitis, Hepatitis A, Hepatitis B, Hepatitis C, Whooping cough and Yellow fever."

Having considered the list of illnesses set out, I'm not persuaded this section of the policy provides C with cover in the current circumstances as Covid 19 isn't one of the specified illnesses.

When reaching this finding I'm mindful that Covid 19 wasn't something Fairmead might have known about when the policy was drafted, but I don't think that changes anything. That's because there are other policies that do provide cover for the present pandemic. These tend to be where they cover all notifiable diseases, which are set out and updated on a Government defined list. C's policy sets out a list of the illnesses which are covered by the policy and there is nothing in the policy which implies that it provides cover for other illnesses, including any new illnesses which might emerge. I think the purpose and effect of the policy is to provide cover in the event of these particular illnesses. There are many potential illnesses that the policy does not cover. And although I've considered that the policy doesn't specifically exclude Covid-19, I don't think it can or should fairly be read as covering any and all illnesses that fall outside of the defined list set out above.

I've also considered that policyholders might feel business interruption policies should provide cover in uncertain circumstances such as this. And I agree that there are policies that would have provided cover for things like a pandemic but this isn't one of them. Generally, it wouldn't be fair or reasonable for us to require a business to fund a claim for

risks it hasn't envisaged- whether or not those risks are unpredictable. And whilst I appreciate that C couldn't have predicted that it might need pandemic cover, Fairmead can't be held responsible for not covering a claim where the policy doesn't provide for it.

Delays

Like the investigator, I agree that until the point where Fairmead provided us with its final reply on C's complaint in February 2021, it hadn't dealt with C's claim for damage promptly. C had pointed out the damage claim in July 2020 but by February 2021 nothing significant had happened on Fairmead's part save to say they wouldn't appoint a loss adjuster until they could determine whether this was appropriate or not with the benefit of evidence. During the intervening period I can see that Mr H did seem to provide responses to any questions Fairmead had asked and there were long periods where Fairmead didn't respond to Mr H's emails at all. Mr H had to chase for a reply on more than one occasion. He also sought the assistance of this Service in respect of that.

Because C isn't an individual, I can't make any awards in respect of distress, but I can award it compensation for the inconvenience it was put to as a result of these delays. I agree that £300 is the right amount to properly compensate it for this. I haven't awarded anything else for this because I can't say C would necessarily have benefitted had Fairmead dealt with its claim more promptly. As matters stand, the claim has been declined. Whilst I don't know how our Service would view Fairmead's approach to this (because it is being considered separately) I haven't seen any clear evidence to suggest that there was a significant detriment to C in Fairmead declining this claim sooner other than the inconvenience of Mr H having to chase them.

Lack of policy documents

Mr H feels that Fairmead weren't entitled to rely on the policy terms they quoted when turning down C's claim for loss of rents because he hadn't seen a copy of those terms.

The insurance C purchased was through a broker. So any documents C did or didn't receive would be a matter between C and its broker. I can't however say that C is entitled to disregard the terms of cover just because the broker didn't supply them with a copy of the policy terms. I know Mr H thinks C's broker is not at fault here- and that might be right- but that doesn't mean that Fairmead isn't entitled to rely on the contract of insurance C purchased from its broker which was underwritten by Fairmead.

If Mr H remains unhappy with this he should refer the matter to his broker to consider, failing which he can refer any complaints C might have about this to this Service.

Putting things right

Fairmead should pay C £300 for the inconvenience it caused C as a result of the delays in dealing with C's damage to property claim up to February 2021.

My final decision

I uphold C's complaint against Fairmead Insurance Limited and direct it to comply with my award of fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 9 September 2022.

Lale Hussein-Venn
Ombudsman