

The complaint

A company which I'll refer to as T, complains that Covea Insurance plc (Covea) unfairly declined a claim for loss of registration and crisis containment under its Nursery Care insurance policy.

What happened

The background to this complaint is known to both parties and so I won't repeat it at length here.

Briefly, T took out a Nursery Care insurance policy with Covea. Following a number of suspicious incidents at the nursery which concerned the safety of the children that attended the setting, internal and external investigations were undertaken however it was not determined who was responsible for the incidents. T worked with the local authority and Ofsted, who is responsible for regulating the quality of childcare provisions and its registration, to put measures in place to safeguard the children, however the incidents continued. T was informed it would need to put measures in place to ensure the setting was safe, which would then be reviewed by Ofsted. T felt there was no suitable action plan it could put in place to ensure the children's safety and strongly believed that its registration would be cancelled, therefore, it made the decision to close its business while it worked on putting measures in place to safely reopen.

Following the closure of its business, T made a claim to Covea for loss of revenue under the 'loss of registration' clause and reputational damage under the 'crisis containment' clause of its policy.

Covea declined T's claim on the basis that T's registration wasn't cancelled, but T voluntarily made the decision to close its business and therefore the relevant indemnity clause wasn't triggered. It also reviewed the crisis containment clause and declined this part of the claim too. In doing so Covea said there was no cover under this section of the policy because an 'insured event' hadn't arisen and therefore the insuring clause was not triggered.

T said that this was a really difficult situation, and it didn't take the decision to close lightly. However, it was in the best interest of everyone concerned that T closed its business because it couldn't guarantee the safety of the children attending its nursery and that was paramount. T felt it had no choice because it couldn't guarantee that further incidents wouldn't lead to serious injury or death. T said it strongly believed that had it not closed, Ofsted would have cancelled its registration, which would have also impacted other nurseries belonging to T. It therefore maintained that the loss of licence clause was triggered and Covea should meet its claim.

Covea also complained about the lack of communication from Covea while it looked into T's claim and the length of time it took Covea to provide an answer.

Our investigator didn't recommend that this complaint be upheld. He said that the policy provided cover for loss of registration and crisis containment and while he was sympathetic to the situation T found itself in, he concluded that T made a decision to close its business

and it didn't lose its registration therefore Covea fairly declined its claim. He also considered T's claim for crisis containment, but he said that the term specifically referred to using the services of a public relations consultant or to help mitigate the risk of damage to a business's reputation. As that didn't happen in T's case, he concluded that Covea fairly declined this part of the claim too.

He also considered T's complaint about the delays, but he didn't find that there were any unreasonable delays. He said that due to the nature of the claim, it's expected that it would take some time to review and respond, and in the circumstances this was reasonable.

T didn't agree with our investigator's findings. It said that due to the seriousness of the events that occurred at the nursery, it had no choice but to close, as remaining open could have resulted in serious injury or death. It maintained that Ofsted would have cancelled its registration.

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've read and carefully considered everything T and Covea have said. However, my findings focus on what I consider to be the central issues, and not all the points raised. The purpose of my decision isn't to address every single point that the parties have raised. My role is to consider the evidence presented by T, and Covea, to reach what I think is a fair and reasonable decision based on the facts of the case.

The crux of this complaint centres on Covea's decision to decline T's claim for loss of registration and crisis containment. The relevant rules and industry guidance say that Covea have a responsibility to handle the claims promptly and fairly and they shouldn't reject a claim unreasonably. I have to decide if I think Covea have applied the terms of the policy in a fair and reasonable manner when declining T's claim. Having reviewed everything available to me, I think they did, I'll explain why

When considering whether or not it was reasonable for Covea to decline T's claim, I have looked closely at the relevant policy terms and conditions.

Loss of registration

The relevant section states:

“Cover

*In the event of the **registration certificate** being cancelled during the **period of insurance** by the appropriate authority under the provisions of the regulations relating to such **registration certificates** we will pay **you** in respect of:*

- 1. any consequent reduction is **gross revenue** and increase in cost of working
or*
- 2. the amount of depreciation in the value of **your** interest in the **premises** or the **childcare business** if **you** are unable to obtain the grant of a new **registration certificate** for a period of 12 months following cancellation of the **registration certificate** and **you** dispose of the **premises**.”*

Covea has said that T's certificate of registration wasn't cancelled by the appropriate

authority under the provisions of the regulations and instead it was T that made the decision to close its business, the cover for loss of registration therefore wouldn't respond.

T said Covea unfairly declined its claim, on the grounds that if it had made the decision to continue with its business it would have lost its registration and it would be compromising the safety of those that attended its setting and therefore this wasn't an option.

T strongly believes that if it had remained open, Ofsted would have cancelled its registration. I haven't seen any evidence to persuade me that this would have happened other than T's own comments. From the evidence I've seen, I'm satisfied that Ofsted advised T that it must take all reasonable steps to safeguard the children under its care which would then be reviewed by Ofsted. Ofsted didn't identify what steps would be acceptable to them. I appreciate that this put T in a very difficult position because if they started trading without knowing what would be acceptable, they risked losing their registration.

As our investigator pointed out, the policy contains an exclusion clause which says that Covea will not be liable for any loss under this section arising from any cause wholly or partly within or under the policy holder's control. From what I've seen, Ofsted left it open for T to decide which measures it would put in place, which could be considered as being within T's control. But I'm not required to make a finding on this because Covea isn't relying on the policy exclusion to decline T's claim.

So, while there was always a risk that T may have lost its registration, I haven't seen enough to persuade me that this was most likely to have happened. It's difficult to know now what would have actually happened if T had remained open, and I do appreciate the risks associated with doing so and understand why T made the difficult decision to close its business. I have a lot of sympathy for T in this situation and I know this decision couldn't have been easy. T also told us that it had other businesses too and so if its registration had been cancelled, it would have impacted those business too.

While I understand why T felt it had no choice but to close its business, as per the policy terms, I'm satisfied that for a claim under the loss of registration section of the policy to be considered T's registration had to have been withdrawn by the regulator, which in this case is Ofsted. But that didn't happen in this situation, so Covea wasn't required to consider T's claim any further.

Having carefully considered what's happened, I'm satisfied that T's registration wasn't cancelled and the action to temporarily close its business was voluntary and therefore the loss of registration cover isn't triggered.

Crisis containment costs

The relevant section states:

“Cover

*We will pay **crisis containment costs** as a direct result of a **crisis** following an **insured event** occurring within the territorial limits during the **period of insurance**.”*

The following definitions are provided in this section of the policy:

“crisis

*a time of severe difficulty in **your** activities or danger to your activities as a result of an **insured event** that could, if left unmanaged, cause adverse or negative publicity*

*of or media attention to **you** or **your childcare business** or activities*

crisis containment costs

*The reasonable and necessary costs incurred with **our** prior written consent in utilising the services of a marketing and/or public relations consultant or advisor to help mitigate the risk of damage to **your** reputation*

insured event

*injury to any person or **damage** to material property, alleged abuse by any of **your employees** or a child leaving the **childcare business** unaccompanied occurring in connection with **your childcare business**"*

I agree with our investigator that in line with the terms of the policy, the costs covered under this section of indemnity are those associated with utilising the services of a marketing and/or public relations consultant or advisor to help mitigate the risk of damage to the business. I'm not aware of any such costs and so I haven't considered this any further.

Delays

T told us that Covea's handling of the claim, which in its opinion has been very unfair and delayed, had serious financial and health implications. It said despite numerous phone calls and emails, it was not kept updated as to why things were taking so long.

I understand the difficult position T found itself in and I do sympathise with the struggles it has been through but when an insurer is dealing with a claim, I think some time lag is expected, as we've seen here, and I think that's reasonable.

I understand that the uncertainty of not knowing what's happening with the claim would have been very difficult for T's directors and they've said it's impacted their health. I am very sorry to hear that. But, as our investigator explained in his view, we can only consider the impact of Covea's action on T, as the eligible complainant to our service, and not its directors personally.

In summary, for the reasons explained above, I don't consider that Covea acted unfairly or unreasonably when declining T's claim for loss of registration and crisis containment. I therefore won't be requiring Covea to do anything differently.

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 T to accept or reject my decision before 28 July 2023.

Ankita Patel
Ombudsman