

The complaint

Mr and Mrs W are a partnership who trade as F. They have complained about the indemnity period start date QIC Europe Ltd (QEL) applied to their business interruption insurance claim and also about the amount of time QEL took to settle their claim.

What happened

Mr and Mrs W held business interruption insurance with QEL. They claimed on their policy after their business was impacted by Covid-19 and the Government's response to the pandemic.

QEL initially turned down Mr and Mrs W's claim as it didn't think the policy provided cover for the circumstances of their claim. However, following the Supreme Court judgment in the Financial Conduct Authority's (FCA) Business Interruption Insurance 'test case' it accepted that the policy provided cover and asked for further details to validate Mr and Mrs W's claim.

QEL let Mr and Mrs W know that, on the basis of the information provided, they thought the start date for the three month indemnity period under the policy was 2 March 2020.

Unhappy with this, Mr and Mrs W complained to our service. They said their business was seasonal and was not due to start trading until 3 April 2020. They didn't think it was fair for the indemnity period to start before that date as they hadn't incurred any losses between 2 March and 3 April. Mr and Mrs W also complained that QEL hadn't settled their claim earlier. They asked for interest to compensate them for being without the money they should have had.

Our investigator looked into Mr and Mrs W's complaint and recommended it be upheld. He thought the indemnity period should start on 12 March 2020 and recommended that QEL add interest to the claim settlement.

QEL disagreed and asked for an ombudsman's decision. It didn't think 12 March was the correct start date and said that the investigator's recommendation for the interest payable was presumed to be based on an assumption that QEL had breached Section 13A of the Insurance Act 2015. QEL said it was entitled to wait for the Supreme Court judgment in the FCA test case before deciding on the outcome of the claim and didn't think Mr and Mrs W were entitled to damages for any late payment.

I contacted Mr and Mrs W and QEL through our investigator to set out my thoughts before I reached a final decision. With regard to the start date, I liaised with both parties and ultimately recommended that the indemnity period start on 5 March 2020. QEL amended its position to accept that it would pay Mr and Mrs W's claim from 5 March 2020. Mr and Mrs W accepted this indemnity start date in an effort to resolve their complaint.

Turning to Mr and Mrs W's complaint about the time it took for QEL to accept their claim, in an email dated 25 July 2022 I said:

"When deciding whether it's fair and reasonable to award interest, I've thought about what QEL should have done in relation to Mr and Mrs W's claim. While it's difficult to know exactly how long it would have taken QEL to deal with Mr and Mrs W's claim, I think it's fair and reasonable to conclude that when dealing with the claim in 2020 they should have found that Mr and Mrs W's policy provided cover from [5] March 2020.

I've noted QEL's point that it needed to wait until [the] outcome [of] the test case and ultimately it was the Supreme Court that found that Mr and Mrs W's policy provided cover. However, I think it was always open for QEL to make that decision and ultimately the Supreme Court found that QEL's decision not to provide cover was incorrect.

QEL have referred to the Insurance Act 2015 but while I consider the law, I'm also required to make a decision based on what I think is fair and reasonable in all of the circumstances. I acknowledge that this might mean I make a decision which is different to one the courts reach but in this case I think it's fair and reasonable to do so. In reaching a decision on what is fair and reasonable I've taken account of the fact that QEL has had the benefit of money it should have paid to Mr and Mrs W and Mr and Mrs W have been without that money.

I think it's fair and reasonable to say that QEL should have made interim payments on a monthly basis. Therefore [I] think that the start date for the interest on the settlement amount for the first month from one month after the claim was made, the second month's amount from two months after the claim was made and so on to October 2020. I say this because Mr and Mrs W took out a Bounce Back loan [BBL] in October 2020, which is 0% for the first year and 2.5% interest thereafter. As part of this loan formed the money they should have received from QEL I don't think they were without the money for this period. So I don't think there would be any interest payable during this time.

QEL said they offered a settlement to Mr and Mrs W in their letters of 2 March and 18 March. However, I don't agree that these letters were clear to Mr and Mrs W that they could accept an interim payment. Having said that, our investigator let Mr and Mrs W know that they could request an interim payment on 15 June 2021 whilst continuing to complain about the outstanding areas in dispute. Mr and Mrs W refused this so I'm not persuaded they would have accepted QEL's offer in March 2021 if it had been clearer.

I recognise that Mr and Mrs W said they might have accepted if this offer had come from QEL rather than our investigator, but I haven't seen anything to persuade me of that.

Therefore, I don't think QEL needs to pay interest on the original amount it offered from October 2020 as they could have accepted this amount from QEL and settled this portion of the loan by the time it needed repaying.

I do think that QEL should pay interest on the additional amount as they have never had the option to accept that payment. This should be calculated for the first month from one month after the claim was made, the second month's amount from two months after the claim was made and so on to October 2020 and so on at 8% simple per year. Due to the BBL no interest needs to be added between October 2020 and October 2021. From October 2021 interest on the additional amount should be paid at 2.5% until the date QEL makes payment.

I have also considered, that if Mr and Mrs W didn't accept an interim payment in June 2021 then they might not have accepted an interim payment in April 2020. However, it's impossible to know now what Mr and W would have done at that time if QEL had offered a fair settlement and even if they hadn't accepted, they could then have complained to us about the indemnity period at that point, rather than in July 2021 and they might have resolved things more quickly.

So I still think it's fair and reasonable to award interest for that period."

In summary, I said that I intended to require QEL to:

- Add interest to the whole settlement amount for the first month from one month after the claim was made, the second month's amount from two months after the claim was made and so on to October 2020 at 8% simple per annum.
- Add interest on the additional amount (i.e. the amount Mr and Mrs W are due as a result of the indemnity period changing to 5 March) from October 2021 until the date QEL makes payment, at a rate of 2.5% per annum.

In response, QEL didn't think it should be required to make any interest payment prior to the Supreme Court judgment given that it said the FCA had given insurers permission to await the outcome of the test case before deciding liability and settling any claims. QEL said it moved swiftly to settle the claim following the Supreme Court judgment.

QEL said that it had offered Mr and Mrs W an interim payment but hadn't been able to make a payment due to their lack of cooperation in providing the required information. It said it would have provided a settlement on the agreed amount before any interest on the BBL was payable if Mr and Mrs W had cooperated.

Mr and Mrs W said QEL had rejected their claim outright in 2020 and hadn't given any indication that the outcome of their claim was being put on hold pending the outcome of the test case. They said QEL had never offered them an interim payment and they thought QEL should be required to compensate them for the time they'd been without the money.

Mr and Mrs W also let us know that they had received the funds for their BBL on 18 September 2020.

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.

As all parties have accepted that the indemnity period start date is 5 March 2020, I'm not going to comment on that any further in this decision. Therefore, the remaining issue is whether QEL should pay interest on the settlement amount to compensate them for being without money. I think it would produce a fair and reasonable outcome for QEL to pay interest on the settlement it pays Mr and Mrs W. I'll explain why, and how much, below.

I've considered QEL's point that it shouldn't pay interest because it was entitled to wait until the Supreme Court judgment. However, I am not persuaded by this argument.

I can see from a letter issued by Mr and Mrs W's broker in June 2020 that QEL declined their claim because it didn't think the policy provided cover.

Whilst I appreciate the difficulties insurers faced with claims of this nature, the clarity provided by the courts in the test case does not alter the fact that Mr and Mrs W had a valid claim and that QEL's decision to decline this in June 2020 and was incorrect. When QEL then agreed to pay Mr and Mrs W's claim, it did so using the incorrect indemnity start date.

QEL has referred to Section 13A of the Insurance Act 2015 which provides a remedy when an insurer doesn't pay any sums due within a reasonable time. I understand that, under this provision, QEL doesn't think it should pay any damages to Mr and Mrs W.

However, as set out in my email to both parties, while I take account of the law, my role is to make a decision based on what I think is fair and reasonable in all the circumstances. My role is to consider what a business might or might not have done wrong and to decide on fair compensation if things didn't happen as they should have.

In this case, while I've considered what QEL has said about Section 13 A of the Insurance Act 2015, the DISP Rules allow me to make, amongst other things, a money and interest award for what I consider to be fair compensation if a complaint is determined in the favour of the complainant. In this case, my decision is based on what I think is fair compensation to put Mr and Mrs W back in the position they would have been in if QEL hadn't made an error in turning down their claim and in using the incorrect indemnity start date. I acknowledge that my decision might be different to one which a court might make. But in this case I think it's fair and reasonable to do so.

As an incorrect decision was made on the claim, I think it is reasonable to say that this should not have happened, and that Mr and Mrs W's claim should instead have been met at the time it was made using an indemnity start date of 5 March 2020. Because this did not happen, Mr and Mrs W have been left without funds that they otherwise would have had, and as they have been without this money, I believe that it is fair and reasonable to add interest to the settlement to compensate them for this loss.

I've noted QEL's point regarding the FCA guidance, but I am unaware of any guidance from the FCA that indicates that interest should not be added to the settlement of a valid claim in circumstances such as this.

The period of interest

In relation to an ongoing claim of this nature, it is reasonable that an insurer waits for losses to accrue before making settlement. However, it is not necessarily reasonable that an insurer wait for the end of an indemnity period before making settlement. Generally speaking, I would expect regular monthly payments to be made.

It is also reasonable that an insurer will need some time to assess any claim and make a settlement. I consider a reasonable time to do this on a claim of this nature would be around a month from when Mr and Mrs W made their claim on 15 April 2020. I don't consider the existence of the FCA test case alters this in the circumstances of this complaint.

I remain satisfied that it's fair and reasonable for QEL to add 8% simple interest per annum to the whole settlement, including the additional three days' indemnity, for the first month's loss from one month after the claim was made, the second month's loss from two months after the claim was made, and so on, until the date Mr and Mrs W received the funds for their BBL. They have now confirmed this was on 18 September 2020 which is why this date is different to the date within my provisional findings.

I don't think QEL need pay interest on the whole amount beyond 18 September 2020 as Mr and Mrs W took out a BBL for more than the total of their claim, at 0% interest for the first year. So for one year from the point when these funds were received, they weren't experiencing a loss due to QEL's error.

I understand that interest became payable on the BBL at 2.5% from 18 September 2021. However, I don't think it would produce a fair and reasonable outcome for QEL to pay interest on the whole settlement from that date as it was clearly available to Mr and Mrs W to accept an interim payment prior to 18 September 2021 that would have allowed them to pay off the balance of the loan before interest was due.

I've noted Mr and Mrs W's point that they don't believe they were offered an interim payment by QEL. While I can see that QEL did offer to start to progress their claim in March 2021, I don't think it was clear to Mr and Mrs W that they could accept an interim settlement at this stage. However, as I set out in my email to both parties, I don't think QEL's lack of clarity around this makes a difference because I'm not persuaded that Mr and Mrs W would most likely have accepted an interim settlement if it had been offered. This is because our investigator let Mr and Mrs W know this could be arranged but Mr and Mrs W still refused as they wanted to wait until their complaint had been resolved.

However, given QEL has only recently confirmed its acceptance of an indemnity start date of 5 March, I don't think Mr and Mrs W have at any point had the option of an interim settlement for the additional amount they are due as a result of this later start to the indemnity period. I think it would produce a fair and reasonable outcome for QEL to pay interest at 2.5% on the additional three days indemnity from the date they started to accrue interest on their BBL which would be 18 September 2021 to the date QEL makes payment. I think this rate is fair and reasonable as that's the amount of interest Mr and Mrs W will be paying on their BBL.

My final decision

For the reasons set out above, and in my email dated 25 July 2022, my final decision is that I uphold this complaint and require QIC Europe Ltd to:

- Pay Mr and Mrs W's claim on the basis that the indemnity start date is 5 March 2020.
- Add interest at a rate of 8% simple per annum on the whole settlement amount for the first month's amount from one month after the claim was made, the second month's amount from two months after the claim was made and so on until the date Mr and Mrs W received their funds through a BBL on 18 September 2020.
- Add interest at a rate of 2.5% per annum on the additional settlement amount (i.e. any difference in amount due to the start date changing to 5 March 2020) from the date interest became payable on their BBL on 18 September 2021 until the date QEL makes payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 11 November 2022.

Sarann Taylor
Ombudsman