

The complaint

Mr A and Miss W have complained about the refusal of a business interruption claim under their business policy with The National Farmers' Union Mutual Insurance Society Limited trading as NFU Mutual ("NFUM").

Mr A has conducted most of the correspondence in this complaint, so I will mainly refer to him.

What happened

Mr A and Miss W own holiday let properties. They made a claim under the policy after bookings were cancelled following the national response to the Covid-19 pandemic.

NFUM says the main business interruption cover requires damage to the property but that was not the case here. NFUM also considered the claim under the "*Public emergency*" extension to the business interruption cover. However, it said this excluded any claims arising from contagious disease. As the public emergency was Covid-19, NFUM therefore rejected the claim for business interruption losses.

NFUM also reviewed the claim following the Supreme Court's judgement in the Financial Conduct Authority's business interruption test case. It did not consider that this impacted Mr A's claim.

Mr A is very unhappy about this. He obtained advice from a solicitor who has written in support of the claim and complaint. The solicitor said:

- the exclusion of contagious disease would only apply if the disease was the direct cause of the losses. But Mr A did not have to close due to a Covid-19 outbreak on or around his premises; instead the losses were the result of the actions and advice of the Government in response to the pandemic, which led to clients cancelling their bookings.
- The clause is clearly intended to relate to losses directly resulting from disease. If the clause was intended to have a wider meaning, the words "*directly or indirectly*" would have been added.
- Covid-19 would not have been in the underwriter's mind when the policy was drafted and so it is "*clear it cannot have been intended to exclude cover for this entirely unforeseen situation*".
- If the term is interpreted as alleged by NFUM then it is an unfair term as it is so wide that it would render the public emergency clause ineffective.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he thought NFUM was entitled to reject the claim for the reasons it had.

Mr A does not accept the Investigator's assessment, so the matter has been passed to me. In the meantime, Mr A has also recently said that he disagrees that Covid-19 is a disease and that he is aware other insurers have been meeting claims.

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 had an impact on Mr A and Miss W's business. But I don't intend to uphold their 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 whether NFUM has acted fairly, reasonably and in line with the terms and conditions of the policy when declining Mr A and Miss W's claim.

The business interruption section of cover says it will pay for loss of income arising from damage to property at the premises. There is no dispute that there is no damage to property.

This section also includes some extensions to that cover. The extension to the cover which both parties thought might be relevant to this claim is as follows:

“Public emergency

We will pay for loss of INCOME arising from the actions or advice of a competent Public Authority, due to an emergency likely to endanger life or property occurring in the vicinity of the premises, which prevents or hinders the use of or access to the PREMISES for a period greater than four consecutive hours.”

However, it also says:

“We will not pay for any loss resulting from infectious or contagious disease or the suspected or actual presence of an incendiary or explosive device.”

Mr A has also recently said that he disagrees that Covid-19 is a disease. Covid-19 is on the list of diseases notifiable to local authority proper officers under the Health Protection (Notification) Regulations 2010. I am satisfied it is therefore an “*infectious or contagious disease*” for the purposes of the above term.

The cover set out above requires there to be a public emergency in the vicinity of the insured premises, which in turn triggers a public authority response that hinders the use of the premises.

Any emergency that may have been found to have occurred in the vicinity of the insured premises (and I make no finding on that here) would be the Covid-19 pandemic; and the resultant restrictions imposed by the Government, and which affected Mr A's business, were in response to the Covid-19 pandemic. I am therefore of the opinion that the exclusion set out above would apply to the claim under this section of cover, as the losses Mr A suffered were as a result of Covid-19, an infectious and contagious disease.

Mr A has also said that this amounts to an unfair term, if interpreted in its widest sense. I do not agree. In my opinion the exclusion is clear and unambiguous and I do not consider it to be inherently unfair. Insurers are entitled to decide what cover they want to provide in exchange for the premium charged. I do not think that the exclusion is so wide as to mean it renders this clause ineffective and does not provide any cover at all. There are a number of public emergencies that I consider might fall within this cover, even if it excludes this claim.

Mr A has also said he has become aware of other insurers who have met business interruption claims and thinks the “*spirit of the offering under [business interruption cover] ... should be universal*”. Whether a claim will be met or not depends on the policy terms and unfortunately there is no part of Mr A’s policy that I think would cover his claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A and Miss W to accept or reject my decision before 28 December 2022.

Harriet McCarthy
Ombudsman