Financial Ombudsman Service
for small businesses

The complaint

A limited company I'll call V has complained that QBE UK Limited trading as QBE unfairly turned down its business interruption insurance claim after it incurred increased costs of working during the Covid-19 pandemic.

Mr P has brought the complaint on V's behalf.

What happened

V held a business interruption insurance policy with QBE. It is an IT and telephony company. When lockdown restrictions were first introduced, V closed its offices and provided its staff with new equipment to enable them to work from home. It made a claim to QBE in May 2020 for the additional costs it had incurred in buying the equipment.

In January 2021 QBE told V that its claim had been accepted in principle. It asked V to provide management accounts in support of the claim.

In June 2021 it told V that the claim wasn't covered after all. It referred V to the two sections of the policy that could be relevant. The first covered business interruption losses caused by a notifiable disease but the policy definition of notifiable disease didn't include Covid-19. The other was for losses caused by the prevention of access to the premises as a result of the advice of the government or local authority due to an emergency likely to endanger life or property. QBE said this didn't apply as V hadn't been required to close its premises.

V complained about this decision and the service it had received from QBE. QBE didn't change its decision on the claim but acknowledged that aspects of the claims service should have been better.

V referred its complaint to this service. Our investigator thought QBE had acted fairly and in line with the policy terms when declining the claim. But she thought QBE should reimburse V's accountancy fees for producing the management accounts together with interest on those fees.

As V didn't agree, the matter has been referred to me.

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 V's business.

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'll consider each of the various parts within the policy which might be relevant to V's claim in turn.

V's policy covers business interruption caused by:

"*The occurrence of …*
c) Notifiable Human Infectious or Contagious Disease within a 1 mile radius"

"*Notifiable Human Infectious or Contagious Disease*" is defined as:

"*Acute Encephalitis, Acute Poliomyelitis, Anthrax, Chickenpox, Cholera, Diphtheria, Dysentery, Legionellosis, Legionnaires Disease, Leprosy, Leptospirosis, Malaria, Measles, Meningococcal Infection, Mumps, Opthalmia Neonatorum, Paratyphoid Fever, Plague, Rabies, Rubella, Scarlet Fever, Smallpox, Tetanus, Tuberculosis, Typhoid Fever, Viral Hepatitis, Whooping Cough or Yellow Fever."*

The list of diseases doesn't include Covid-19. Since Covid-19 might not have been in existence at the time the policy was drafted, I wouldn't expect it to be included in the list of diseases. But there were similar policies on the market that provided cover in the circumstances of the pandemic, for example policies which covered all notifiable diseases as set out and updated on a Government-defined list. V's policy is not like this – it sets out a defined list of the diseases which are covered. And there is nothing in the wording of the policy which implies it would provide cover for any new diseases which might emerge. So, I don't think the policy can fairly be read as covering any new diseases just because they are notifiable diseases.

Another part of the policy covers loss arising from:

"Prevention of access to The Premises due to the actions or advice of a government or local authority due to an emergency which is likely to endanger life or property."

The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 set out which businesses were required to close for the emergency period. The businesses required to close by the regulations were largely those where members of the public might attend. Significantly, businesses that operated from offices, with little in the way of public interaction, were not specifically required to close.

In a test case brought by the Financial Conduct Authority (The Financial Conduct Authority v Arch insurance (UK) Limited and others [2020] EWHC 2448) the High Court discussed whether these businesses (referred to as "Category 5" businesses) had suffered a prevention of access to their premises. Lord Justice Flaux said at paragraph 335:

"*Category 5 consists of businesses not listed in the 26 March Regulations such as manufacturing, accountants, lawyers, recruitment agencies and construction. These businesses were not ordered to close and were thus permitted to remain open. We agree … that it cannot be said that there was a prevention of access … in relation to any of those businesses. It is nothing to the point that clients or customers did not visit the offices of their accountant, lawyer or financial adviser because of the restrictions on movement imposed by Regulation 6 of the 26 March Regulations and conducted their business by Zoom or the like or by telephone. The offices were not required to close and at most there was an impediment or hindrance on the use of the premises, nothing which amounted to a prevention of access. To the extent that professional firms such as solicitors and accountants told their staff to work from home and not come into the office, that was due to the government advice to work from home where possible and due to the*

general concerns about the pandemic, not due to any actions or advice of government preventing access to the relevant premises."

When the test case went to the Supreme Court, the court said at paragraph 151:

"A prevention means stopping something from happening or making an intended act impossible and is different from mere hindrance."

At paragraph 154 the Supreme Court went on to say:

"*Whilst we accept that it is possible for regulation 6 to result in a prevention of access, we consider that such cases are likely to be rare…As the court below stressed, a prevention needs to be established; hindrance does not suffice*."

These regulations did impose other restrictions on people that would have likely had an impact on businesses that were able to remain open. For example, the restrictions on movement that required people to remain at home without a reasonable excuse. But it was a reasonable excuse for someone to travel to work where it was not reasonably practical for that person to work from home.

So, while access might well have been hindered, I don't think there was a prevention of access. I think QBE treated V fairly in declining the claim under this part of the policy.

I appreciate my decision will be disappointing to V. But, having considered the matter carefully, I don't think I can fairly require QBE to pay its claim.

I've also looked at how QBE handled V's claim. Although it said the claim had been accepted in principle, it also said that this was subject to validation. I appreciate it must have been very disappointing for V to find that the claim was later declined but QBE never gave any indication that the claim would definitely be paid.

However I do think there was a failing on the part of QBE in asking for management accounts when these weren't relevant to the claim – if the claim had been accepted, it would only have needed evidence of the additional costs incurred by V in equipping its staff to work from home. V has supplied a copy of the invoice from its account which we have forwarded to QBE. The costs were £660 in total.

It's not the role of this service to penalise financial businesses. Where we uphold a complaint, our role is to put complainants back in the position they would have been in if the issue complained about hadn't happened. In this case it is to put V back in the position it would have been in if it hadn't had to incur unnecessary accountancy fees. As a result of this V lost the use of funds that it would otherwise have had. To put this right QBE should pay interest on the amount of the fees at a rate of 8% simple a year.

Putting things right

To put things right I think QBE should reimburse V for its accountancy costs of £660 and pay V interest on such costs.

My final decision

For the reasons set out above, I uphold this complaint in part and require QBE UK Limited to:

- reimburse V for its accountancy costs of £660 if it has not already done so; and

- pay V interest on the accountancy costs of £660 from the date on which such costs were paid by V until the date of settlement. Interest is simple interest at the rate of 8% a year.

Under the rules of the Financial Ombudsman Service, I’m required to ask V to accept or reject my decision before 22 March 2023.

Elizabeth Grant
Ombudsman