

## **The complaint**

A limited company, which I will call H, has complained about QBE UK Limited's settlement of a claim for business interruption under its business insurance policy.

Mr C, as a director of H, has brought the complaint on its behalf.

## **What happened**

I issued a provisional decision on this matter in November 2022, the main parts of which are copied below:

"In January 2021, H made claim under the policy for losses incurred as a result of restrictions imposed by the Government in response to the Covid-19 pandemic in March 2020.

QBE accepted the claim and paid H what it calculated it had lost in gross revenue between 23 March to 22 June in 2020. It calculated this based on revenue during the same period in 2019, having applied an uplift to reflect an upward trend in the business and then deducting an amount that it considered H had saved in costs while it was closed. QBE also said H was underinsured and reduced the settlement by a percentage to reflect the percentage by which it said H was underinsured.

However, H thinks that it should have paid more in settlement of the claim. H complained about a number of issues, including that:

- QBE had said that H was underinsured, as incorrect figures had been provided by the broker that arranged the policy. It is not fair to reduce the settlement when it would have paid the additional premium for full cover if it had known.
- The indemnity period is three months when it continued to be impacted by the pandemic beyond this time period.
- It has lost future revenue as a result of cancellations made in the period 23 March – June 2020.
- The policy says it covers loss of gross revenue, so it is not fair to deduct supposed costs savings and in any case, some of the costs QBE deducted were incorrect.
- It says the policy covers loss of revenue but it had to give credit notes to customers whose bookings couldn't be fulfilled to use after restrictions were lifted, rather than providing refunds. The value of these credits was approximately £40,000. QBE has not allowed for these as loss of revenue, even though they are being redeemed and therefore affecting current revenue.

QBE responded to H's complaint. Since then, H has accepted that the policy terms allow a deduction for savings in costs when calculating the business losses, and that cover under the relevant part of the policy is limited to a three-month indemnity period. And QBE adjusted some of the costs it deducted.

The issues that remained when the complaint was brought to us ... [were] that QBE had deducted for the underinsurance and about the credits that H provided to customers that could not use H's services during the three-month indemnity period and cancellations made

during that period for future bookings for which H also provided credits against the deposits paid.

Since the complaint was brought to us, QBE has reversed the deduction for underinsurance. So the only outstanding issue to be determined is regarding the credits and cancellations during the indemnity period.

QBE says the policy only covers lost revenue for services that cannot be rendered during the three-month indemnity period. As H had received the payment, if it paid H the value of the credits it would mean H would have been paid twice for those bookings. And any bookings due to take place after the period of indemnity but cancelled during the period of indemnity would not count towards loss of income, as income from them would not have been due within the indemnity period.

H doesn't think this is fair. H says if it had refunded customers, it would have been covered for the same amount.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she thought QBE's settlement was fair.

H does not accept the Investigator's assessment, so the matter has been referred to me.

### **What I've provisionally 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.

H's claim was met under the section of cover for business interruption as a result of a manifestation of disease at the premises, or within 25 miles of it. The issue that I have to decide is whether the settlement made is fair and reasonable and in line with the terms of the policy.

The policy says that claims for business interruption will be settled on the following basis:

*"We shall indemnify you against either:*

*a) loss of gross revenue in accordance with the following provisions:*

*i) by paying for the indemnity period the amount by which the gross revenue during the indemnity period falls short of the gross revenue during the equivalent period immediately before the damage;*

*ii) by paying any reasonable additional expenses incurred in maintaining the gross revenue during the indemnity period but not more than the loss avoided under a) less any amount saved during the indemnity period in respect of reduced expenses due to the damage; or*

*b) increased cost of working in accordance with the following provisions:*

*i) by paying any reasonable additional expenses incurred in maintaining the gross revenue during the indemnity period but not more than the loss avoided under a) less any amount saved during the indemnity period in respect of reduced expenses due to the damage; as specified in the schedule."*

Gross Revenue is defined as: “*Gross revenue means the money paid or payable to you for work done and for services rendered in course of the business at the premises.*”

QBE paid the difference between the income (with the adjustments mentioned for costs and upwards trend in business) for March–June 2020 compared to the same period in 2019. It says the credit notes don’t amount to loss of revenue but are effectively deferred income and if it were to cover the value of the credits, H would effectively receive double indemnity.

H did receive income (to the value of around £40,000) during the period of indemnity but the definition of gross revenue in the policy says that it means money paid or payable to H for “*work done and services rendered*”.

The term “*services rendered*” is not defined in the policy but is generally considered to mean that the services have already been provided. So any payments received by H for services which could not be rendered, or for work that could not be done, during the indemnity period March to June 2020, would not in my opinion constitute gross revenue under the policy. They are instead payments on account (credits) for future services which H would have taken at a later date if it wasn’t for the pandemic. As such, I don’t agree that by reimbursing the value of the credit notes H would be doubly indemnified.

For the same reasons, I do not consider that any bookings due to take place after the period of indemnity but cancelled during the period of indemnity would count towards loss of revenue, as the services and work done in relation to them wouldn’t have been supplied during the indemnity period.

Having considered everything, I therefore agree that the credits H provided to customers for bookings that were meant to take place between 23 March and 22 June 2020, should reasonably be considered lost gross revenue. I also think interest should be paid on the additional settlement due. I think it would be reasonable for this to be paid from the date the first interim settlement payment was made, which I believe was June 2021.

### **My provisional decision**

For the reasons set out above, I intend to require QBE UK Limited to recalculate the loss of gross revenue, after deducting ... the value of credits H provided to its customers for bookings which were meant to take place during the period of indemnity, and pay H the difference between this and the amount it has already paid. QBE UK Limited should also add interest to this amount from the date it made the first payment in settlement of the claim to the date this amount is paid, at 8% simple per annum.”

### **Responses to my provisional decision**

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

H has confirmed it accepts my provisional decision.

QBE has not responded.

### **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 no further information has been provided, I see no reason to change my provisional findings.

### **My final decision**

For the reasons set out in my provisional decision, I require QBE UK Limited to:

1. recalculate the loss of gross revenue, after deducting the value of credits H provided to its customers for bookings which were meant to take place during the period of indemnity, and pay H the difference between this and the amount it has already paid.
2. QBE UK Limited should also add interest to this amount from the date it made the first payment in settlement of the claim to the date this amount is paid, at 8% simple per annum.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 30 December 2022.

Harriet McCarthy  
**Ombudsman**