DRN-3875616

The complaint

A limited company, which I will call R, has complained about the refusal of a claim under its Pubs and Wine Bars Insurance policy with Covea Insurance Plc.

Mr B, as director of R, has brought the complaint on its behalf.

What happened

I issued a provisional decision on this matter in November 2022. I have copied below the main parts of my provisional decision.

"R consists of a pub. In January 2021, Mr B made a claim under the pub policy with Covea after he was forced to close the pub in March 2020, as a result of the Government's response to the Covid-19 pandemic.

There were some delays in Covea dealing with the claim and considering the evidence provided by Mr B. After Mr B complained, Covea offered Mr B £200 compensation for not handling the claim properly. Covea did then review the claim and said there was no cover under the policy, as there was no evidence the pub had closed as a direct result of an occurrence of Covid-19 at the premises, which is what it says the policy requires.

Mr B provided evidence of two customers ["Customer 1" and "Customer 2"] who had been at the premises while likely to have been infected with Covid-19 before the Government requirement that pubs close in March 2020.

Covea considered this evidence but did not change its position on the claim. It said that even if the customers were infected with Covid-19 at the premises, this was not the cause of the interruption to Mr B's business; it says the reason the pub closed was due to the Government lockdown and this is not covered by the policy.

One of our Investigators looked into the matter. The Investigator said the evidence wasn't sufficient to conclude Customer 1 had Covid-19 (rather than any other illness). And, even if he did have Covid-19, his symptoms started a week or more after he was at the premises, which means it is unlikely there was an occurrence of Covid-19 when he was last at the premises. In relation to Customer 2, the evidence suggests her symptoms started around two weeks after she was last at the premises and that she caught Covid-19 on 23 March 2020 (after the pub had already been required to close), so again the Investigator said it is unlikely she had Covid-19 when at the premises. The Investigator did not therefore think the complaint should be upheld, as he didn't think there was sufficient evidence of an occurrence of Covid-19 at the premises before the Government decision to require pubs to close, which was announced on 20 March 2020.

Mr B does not accept the Investigator's assessment. He has made several submissions in support of his initial complaint and in response to the Investigator. I have considered them all but have summarised the main ones below:

- The incubation period of Covid-19 is five to six days up to 14 days, which means

Customer 1 could have been infected as early as 8 March 2020. There is evidence he was at the premises in 19 and 20 March 2020 and his symptoms started on 22 March, not 27 March 2020. This is well within the time frames required.

- Covea and the Investigator have relied on incorrect dates for when Customer 1 was at the premises and when his symptoms started, ignoring evidence he was at the premises on 20 March 2020 and referring to 19 March 2020 instead.
- The Investigator has misinterpreted the law governing this issue provided by the Supreme Court's judgment in the Financial Conduct Authority ("FCA") test case.
- The Investigator said the Government announced the lockdown on 20 March 2020, so any case at the premises had to be before this date but Covea has not disputed that 23 March 2020 is the relevant date.

Mr B also provided evidence that Customer 1 was prescribed steroids on 25 March 2020 and doxycycline on 31 March 2020, which were used to treat Covid-19.

The Investigator went back to Covea with this new evidence. Covea said it did not change its position. Covea did say its agents had asked for contact details for Customer 1 to discuss his evidence but no response was provided and [it] wanted to speak with Mr B again but had not been able to.

As the Investigator has been unable to resolve the complaint, it has been passed 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.

I'm sorry to hear that the pandemic and the Government's related actions have had an impact on Mr B's business. It has clearly been an incredibly stressful time for Mr B.

This policy covers business interruption losses due to certain specified events. The part within the business interruption section of cover, which is relevant to this claim, is the extension for notifiable diseases. This says cover is provided for:

> *"Notifiable Diseases*
> *Loss as Insured by this Section resulting from any of the following occurring during the Period of Insurance*
> *a) any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises … Notifiable Disease shall mean Illness sustained by any person resulting from food or drink poisoning or any human Infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)or an AIDS related condition) an outbreak of which the competent local authority has stipulated shall be notified to them."*

It has not been disputed that Covid-19 is a Notifiable Disease. So for this extension to provide cover for Mr B's claim, the interruption to Mr B's business would need to be as a result of an occurrence of Covid-19 at the premises. I consider this would need to be an occurrence prior to the Government's decision that pubs should close, which was made on 20 March 2020. I know Mr B and Covea have suggested 23 March 2020 as the relevant date but it would have to be prior to the Government's decision to require pubs to close for any occurrence at the premises to have counted towards that decision.

It is for Mr B, as the claimant, to demonstrate that he has a valid claim. So, in this case, he needs to show it was more likely than not that there was an occurrence of Covid-19 prior to

this decision.

Was there an occurrence at the premises?

Widespread self-testing wasn't available towards the start of the pandemic, and the Government advised people to avoid using health services if they were displaying symptoms of Covid-19, save for emergencies. It's therefore rare that a claimant will be able to produce a positive test result from that period. And to treat that as a requirement to demonstrate a case on the premises would, in my view, be unfair. It's therefore necessary to take a more pragmatic approach, and to consider whether other evidence can be provided that supports, on the balance of probabilities, that there was an occurrence of Covid-19 at the insured premises prior to closure. As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that it's suffered a loss its policy covers.

Covea says that people generally will be contagious for around two days before developing symptoms of Covid-19 and as Customer 1 said he became unwell around 23 March 2020 and was last at the premises on 20 March 2020, it is unlikely he had Covid-19 when at the premises on 20 March 2020.

It also says that the Supreme Court judgment in the Financial Conduct Authority Business Interruption Insurance 'test case' said that an occurrence of a notifiable disease means "*an occurrence of illness sustained by a particular person at a particular time and place"* and this means that the "*occurrence*" is the initial infection of a person with the disease, as that is what happens at a particular time and place, not the ongoing illness over time.

I do not agree that the Supreme Court's judgment in the test case provided that an "*occurrence*" of Covid-19 would be at the point that a person is infected with the disease.

The declarations made as part of the Supreme Court judgement state:

> *"5. Subject to paragraph 7A below, there was COVID-19, and COVID-19 was "sustained" or "occurred" within a given radius of the premises in Argenta1, Hiscox4 (hybrid), QBE2-3 and RSA3, wherever a person or persons contracted COVID-19 so that it could be diagnosed, whether or not it was verified by medical testing or a medical professional and/or formally confirmed or reported to the PHE and whether or not it was symptomatic, and was/were within that radius of the premises at a time when they could still be diagnosed as having COVID-19".*

I see no reason why the same declaration of what would amount to an occurrence of Covid-19 would not apply to policies requiring that occurrence to be at the premises, rather than within a certain radius of them. So I am satisfied that an occurrence of Covid-19 is reasonably considered to have happened when an individual becomes diagnosable with the disease. An actual diagnosis is not necessary; the individual merely needs to be capable of having this diagnosis.

The guidance from, amongst others, the World Health Organisation ("WHO") suggests that most people start developing symptoms 5-6 days after infection and that some people can become diagnosable 1-3 days before experiencing symptoms. So whilst symptoms are not necessary for the disease to have occurred – many people were asymptomatic – where symptoms do develop it seems likely that the disease has occurred 1-3 days prior to this.

Mr B says the information from WHO is not proper guidance. However, I have not seen any evidence that the information provided by WHO is incorrect. While everyone's experience might be slightly different, it provides guidance on the normal course of infection with Covid-19. Mr B has also not provided any evidence to persuade me that a different timeframe

should apply.

Bearing this in mind, I've considered the information Mr B has provided about Customer 1.

Mr B has provided a short video clip of Customer 1 at the premises and a screen shot of that clip which shows it was taken at 21.17 on 19 March 2020. I find this persuasive and therefore am satisfied Customer 1 was at the premises at that time and date.

Mr B has also provided evidence that Customer 1 went on to develop symptoms that were most likely the result of Covid-19 infection. Some of this evidence was provided after the Investigator's initial assessment.

I've seen two handwritten statements, which I have no reason to doubt were written by Customer 1, given he has provided a copy of his passport and medical records.

The first statement, which is dated 16 March 2021, says he was at the premises on 19 and 20 March 2020 and started to feel unwell with "*flu-like symptoms, loss of taste, smell and was overall incapable of getting out of bed from the 27th March – 7 April 2020*". This was interpreted at the time this statement was provided as meaning he started to feel unwell from 27 March 2020. But Customer 1 provided a second statement in March 2022, which says he had a severe headache starting on 21/22 March 2020. His symptoms escalated and he was bedridden by 27 March 2020.

The assertion that Customer 1 started to develop symptoms from 21/22 March 2020 is supported by some further, contemporaneous, evidence. There are social media posts dated 30 March 2020 in which he says he had been unwell for "*a little over a week*", which would mean symptoms started before 23 March 2020 and he refers to "*not breathing great*".

All the symptoms referred to by Customer 1 are now known to be symptoms of Covid-19. They can also be symptoms of other illnesses but taken together (breathing problems, loss of sense of taste and smell and a severe headache) and considering the way the symptoms developed from 21/22 March 2020, seem to me to indicate it is more likely than not they were the result of Covid-19 rather than any other illness.

I have also seen screenshots of Customer 1's medical records, provided to us in May 2022, which show he was prescribed steroids on 25 March 2020 and antibiotics on 31 March 2020 (both which are known as treatments for Covid-19 at that time). On 30 September 2020, Customer 1 commented on a social media post, stating he had been suffering with long Covid.

Having considered all the evidence, I do think this is persuasive evidence that Customer 1 did have Covid-19, with symptoms starting on or before 22 March 2020. And, given the 1-3 day timeframe for Covid-19 to have occurred prior to symptoms presenting, that he would therefore likely have been diagnosable – *i.e.* that Covid-19 had occurred – when he was at the insured premises on 19 March 2020.

I also note that Customer 1 was potentially at the premises on 20 March 2020 as well, though I have not considered this in depth here as I am satisfied there was most likely an occurrence at the premises on 19 March 2020. All that is necessary is for Covid-19 to have occurred in one individual at the premises prior to the Government's decision. As I am persuaded this was most likely the case in regard to Customer 1, I have also not considered the evidence about Customer 2.

Covea says that its agents had asked Mr B for the Customer 1's contact details in order to investigate his evidence further and it didn't receive a reply. However, I find the evidence

persuasive and Covea has not raised any issues about the evidence, other than that it does not think it supports the claim.

Did this occurrence lead to the interruption?

Covea also says this is still not enough to trigger cover, as the closing of the pub was a result of the Government restrictions, rather than Customer 1's presence in the pub. Covea says:

> 1. The Supreme Court agreed that insuring clauses which cover occurrence of diseases "at the premises" are limited to covering the interruption to the business suffered as a specific result of the disease being at the premises, rather than a wider outbreak of the disease.
> 2. The policyholder must also show that the person with Covid-19 at the premises was a proximate cause of the loss. Comments made in the Supreme Court's judgment in relation to prevention of access clauses are relevant to disease clauses such as the one in Mr B's policy. Even if Customer 1 had Covid-19 while at the premises on 20 March 2020, that was not the reason that Mr B closed the pub, it was in fact the Government restrictions.
> 3. The policy only provides cover for as long as the business is interrupted and the Government's decision to continue the national restrictions beyond the first review date in April 2020 could not have been in any part due to Customer 1's presence at the premises, as no customers had been at the premises at the time the Government made that decision.

Largely speaking, the question of whether the placing of restrictions on Mr B's premises by the announcement, and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the March Regulations") that followed, was as a result of the occurrence of Covid-19 at Mr B's premises, is one of causation. The appropriate test of causation here is to consider, objectively and in the context of the policy as a whole, what the intended effect of the policy term was as it applies to the circumstances of the claim. So, the first question to determine is whether the reasoning of the Supreme Court in the FCA test case, on radius clauses, applies to "*at the premises*" clauses.

As indicated by the Investigator, this is an issue that has already been considered by this service and a copy of a relevant final decision has been shared with Covea. However, it disagrees with the approach of this service. But whilst different policies have different wordings, there is no significant difference between the contractual construction of the radius clauses to the at the premises clauses.

The only difference between these clauses is the geographical area that they cover. The Supreme Court had not been asked to determine the correct interpretation of at the premises clauses. But it did make some comments, at paragraph 71 of its judgment, in relation to a specific policy, that some insurers have suggested means the reasoning behind the court's approach to causation does not apply. But the policy being considered by the court at this point included both "*in the radius*" and "*at the premises*" subclauses, and this was likely to be context the court bore in mind when considering the potential meaning of the term. This is not the case with Mr B's policy.

The Supreme Court was also, at this point in its judgment, considering the scope of the insured peril, rather than matters of causation. And, whilst the Supreme Court said that the scope of the insured peril for an at the premises clause was not the entire outbreak even if there was an occurrence on the premises, this was also the conclusion it reached in relation to the radius clauses. The Supreme Court found that the insured peril for radius clauses was also not the entire outbreak provided it came within the radius. There was no distinction

between radius and premises clauses drawn by the Supreme Court here. And I consider both types of clause provide cover for cases within their geographical limits and not cover for cases elsewhere.

The Supreme Court's reasoning – that the insured peril is each case of Covid-19 that falls within the geographical limit of the clause – applies equally to at the premises clauses as it does to radius clauses. Additionally, the Supreme Court did not make any distinction between radius clauses and premises clauses when these were combined in the same policy. A single case – even at the premises – was considered sufficient for the cover to respond and to cover the losses sustained by the insured party as a result of that occurrence.

The Supreme Court confirmed that a single case can be enough for causation to be established under a radius clause, and there would be cover under a clause containing both a premises and radius subclauses if the only case of Covid-19, within the geographical limits of the clause, was at the premises.

The only significant difference in the construction of the at the premises clauses with the radius clauses is the geographical area they specify. This can be undefined, the whole country, a 25-mile radius, a 250-metre radius, or the policyholder's premises. A clause that sets out a smaller area only acts to limit the possibility of a case occurring, and so limit the chances of a claim being made. This is a reasonable and understandable commercial intent by an underwriter. I should also point out here that the premises of some policyholder's will be greater than a 250-metre radius. And it would be illogical to consider that a policy requiring a case of Covid-19 within a radius smaller than a policyholder's premises would provide cover for the consequences of the March Regulations, but that this would not be the case if the policy specified a larger area – that of the entire premises.

Ultimately, the court found that the approach that applied to the interpretation of the insured peril was the same for both radius clauses and at the premises clauses. And that this was that clause only covers the cases of Covid-19 which happen within that radius. The cover is for the cases of disease within the radius (or at the premises, depending on the wording of the policy), not for the disease itself nor for the consequences of diseases outside the radius/premises.

The impact on the cover of requiring the disease to occur on the premises is the same as is provided by a policy limiting the relevant radius to one mile, rather than 25 miles. It does not change the form of cover provided, it merely lowers the chance of the policy term being activated. There is less chance of occurrence at the premises than within one mile of the premises, and there is less chance of an occurrence within one mile of the premises than within 25 miles. Each individual case of Covid-19, regardless of where it occurred, was an equal cause of the restrictions being imposed. But for the impact of that occurrence to be covered, the occurrence must be within the geographical limit set by the policy. Taken at face value, radius clauses offer the same type of cover as at the premises clauses – the only difference being a smaller geographical area where the occurrence needs to take place before resulting business interruption is covered.

I also consider the type of disease covered by the policy is also a relevant consideration. Mr B's policy, as with many similar policies – both those with radius clauses and at the premises clauses - provides cover for notifiable diseases. Many of these diseases are unlikely to have originated at the premises, so an occurrence there is likely to be part of a larger outbreak. If Covea had wanted to restrict cover in Mr B's policy to disease originating at the premises, it could have done so. But it did not.

The same risk of a widespread and unpredictable outbreak of disease applies to both radius

clauses and at the premises clauses. If these wide-spreading diseases are on the policyholder's premises, they are also likely to be found outside of these premises. So, whether or not the disease is on the premises, it seems that the actions of the relevant authority will in fact largely be the same. It is likely restrictions would be introduced covering a broad geographical area in relation to many of the diseases covered by Mr B's policy. And this would have been something that both Covea and Mr B might reasonably have been aware of at the time the insurance contract was entered into.

I note the Supreme Court's comments at paragraph 194 of its judgment in respect of this point:

> *"It is obvious that an outbreak of an infectious disease may not be confined to a specific locality or to a circular area delineated by a radius of 25 miles around a policyholder's premises. Hence no reasonable person would suppose that, if an outbreak of an infectious disease occurred which included cases within such a radius and was sufficiently serious to interrupt the policyholder's business, all the cases of disease would necessarily occur within the radius. It is highly likely that such an outbreak would comprise cases both inside and outside the radius and that measures taken by a public authority which affected the business would be taken in response to the outbreak as a whole and not just to those cases of disease which happened to fall within the circumference of the circle described by the radius provision".*

I consider this reasoning also applies in relation to a policy which provides cover only where there is an occurrence of such a disease at the premises of the insured. Whilst some notifiable diseases covered by the policy would in some cases be limited to a very localised outbreak – potentially contained to the premises – many of the diseases covered by the policy would inherently be those that would be found beyond the premises if they ever occurred at the premises. As with radius clauses, it would be contrary to the commercial purpose of the policies for cases of disease occurring outside the premises to deprive the policyholder of cover for cases at the premises. I consider it likely that if there were occurrences of many of the diseases covered by Mr B's policy, the actions taken would likely have been similar. The actions taken by other governments in relation to outbreaks of SARS and Ebola which led to broad geographical areas or multiple types of business having restrictions imposed on them would provide examples of this. It seems that the more likely the disease is to be wide-spreading, the more wide-spread the restrictions will be that are imposed to control that disease. By including cover for a number of diseases where the likely actions to be taken would be those that would impact more than a single premises, I consider Covea has seemingly agreed to provide cover where actions are taken (in relevant situations) that impact more than just the insured's premises. The Supreme Court found that each and every occurrence of Covid-19 was an approximately equal and proximate cause of the Government's decision-making process.

The Supreme Court set out some general principles or standards to be applied when considering the proximate cause of loss. These included determining whether a peril that is covered by the policy had any causal involvement and, if so, whether a peril that was excluded from the cover provided by the policy had any such involvement. And then determining whether the occurrence of one of these made the loss inevitable in the ordinary course of events. The court went on to say that whilst the Government's decisions to introduce the restrictions in March 2020 could not reasonably be attributed to any individual occurrence of Covid-19, this decision was taken in response to all the cases in the country as a whole. And the Supreme Court agreed with the High Court here that, "*all the cases were equal causes of the imposition of national measures".*

The Supreme Court found that there was no reason why one insured event, acting in

combination within a number of uninsured events, should not be regarded as a proximate cause of loss even if that insured event was not necessary or sufficient to bring about the loss on its own. And that; "*Whether that causal connection is sufficient to trigger the insurer's obligation to indemnify the policyholder depends on what has been agreed between them."*

As such, a key issue was what risks Covea agreed to cover. This is a question of contractual interpretation of Mr B's policy, answered by applying the intended effect of the policy to the circumstances of the claim. Covea has said that the intention of the clause could only have been reasonably understood as providing cover for losses caused by an extremely localised occurrence, and would not reasonably have been understood as providing cover for a wider pandemic.

Covea also said that even if there were an occurrence on Mr B's premises, the Government decision was made due not only to that occurrence but the occurrences outside the premises as well.

In making its findings in the test case, the Supreme Court relied on the presumption that an infectious and contagious disease – like many of those Covea chose to cover in Mr B's policy – can spread rapidly, widely and unpredictably, so that an outbreak which is sufficiently serious to lead to a policyholder suffering an interruption to their business was highly likely to include cases inside and outside the radius relevant to the policy. The court found it would not be feasible, and would be contrary to the commercial intent of the policy, for cases outside of the radius to deprive the policyholder of cover in relation to cases within the radius.

I note the comments of paragraph 206 of the Supreme Court judgment which support this. Radius clauses did not limit cover to situations where the interruption of the business was caused only by cases of disease occurring within the area, as distinct from other cases outside the area. And, in such circumstances, other concurrent effects on an insured business of the underlying cause of the business interruption, *i.e.* the pandemic generally, do not reduce the indemnity under the relevant clause.

I see no persuasive reason why the considerations that the Supreme Court applied generally to radius clauses do not equally apply to at the premises clauses. And feel the same applies here to Mr B's complaint. As the Supreme Court said, all that is necessary for a radius clause which also requires the closure to be as a result of, for example, government action, is for the closure or restrictions to be in response to cases of Covid-19 which included at least one case existing within the geographical area set out in the relevant clause. In Mr B's case, this geographical area is its premises and I consider there was at least one occurrence of Covid-19 within this area. And I consider the Government's actions and advice were in response to cases of Covid-19, which included the case(s) that occurred at Mr B's premises. It might be that the case(s) of Covid-19 at Mr B's premises would not have been reported to the Government at the time it made its decision. But I do not consider this point to be crucial in terms of the discussion of causation. It is clear that as well as the reported cases that the Government was specifically aware of, the decision it took was also made due to the estimated number of unreported cases.

It was the number of these unreported cases, as well as the reported ones, that would have led to the Government making its decision. Each one of these reported and unreported cases will have arguably been a proximate cause of the Government's decision-making process. But it would not be possible for an "*estimated occurrence*" to lead to an insurance claim where an actual occurrence was required by the policy.

It is also clear that in thinking about both the reported and unreported cases the Government was making its decision based on historic data. The models being considered were

predictions of future hospitalisations taking into account, amongst other things, the reproduction ratio of the infection (the R-number), which is affected by numerous factors that govern pathogen transmission and is, as I understand it, therefore usually estimated using different complex mathematical models. And the data referenced in the Government's briefings was based on the events that took place over the preceding weeks.

By the time the decision to introduce the March Regulations was taken, a number of individuals included in the figures of who had sustained Covid-19 may already have recovered. But I consider these cases would still be those that, together with the other cases around that time, were the concurrent causes of the Government's decision. The Government and its advisors were not looking at individual cases in isolation, they were considering the accumulation of these which would have formed the framework of the rate of infection and allowed for a prediction as to the future R-number and resultant hospitalisations.

I note that the courts indicated that a person passing through an area, involving no contact with anyone and therefore no risk of transmitting the disease, might not be enough to trigger the insured peril under a radius clause. However, I consider this is entirely different from someone who remained in the area for some time and had numerous interactions with various people. Whilst that person may then have left the area in question, their presence created a risk of the disease having been transmitted. And it is this risk, and the potential of this leading to hospitalisation and the overwhelming of the NHS, that led to the Government's decisions at this time.

Although each case of disease was individual, the effects of the disease – the Government's measures – were indivisible. And as the Supreme Court said at paragraph 212 of its judgment: "…*each of the individual cases of illness resulting from COVID-19 which had occurred by the date of any Government action was a separate and equally effective cause of that action…"*

I have also considered how the terms of Mr B's policy would likely have been interpreted by a reasonable person at the point the contract was entered into. I don't think a reasonable person would interpret a clause that provides cover in relation to various diseases, including those most likely to be wide-spread and hence requiring far reaching measures to tackle them, to be limited to consequences directed solely at the insured's premises. I think it is reasonable to read Mr B's at the premises clause, in the context of the rest of the policy and the circumstances of the claim, as providing cover for losses resulting from the occurrence(s) of COVID-19 at its premises.

Although I can't be sure, I also think this …[is] more likely than not … how a court would interpret this term. Given the findings of the Supreme Court, I also think the occurrence(s) at Mr B's premises was an equally effective concurrent cause of the decision to introduce the March Regulations, as the occurrences beyond the limits of Mr B's premises. And the cases off the premises are not an excluded cause.

Indemnity period

Covea also says that the initial lockdown effectively ended in April 2020, when the Government reviewed the restrictions and decided to keep them in place. It says any occurrence at Mr B's premises cannot have contributed to the decision to continue the restrictions.

I do not agree that it is fair or reasonable to treat each review of the restrictions as distinct events in this way. The policy says that the cover under this section is for the "*period during which the results of the Business shall be affected in consequence of the Damage beginning*

… with the occurrence or discovery of the incident whichever is later ".

The period of indemnity starts from when the pub was required to close following the Government announcement and March regulations. The March regulations were not amended (in any way that affected Mr B's business) until July 2020. So I consider that to be the point at which the insured event ended. I consider that it is fair and reasonable to treat this period of closure as one insured event.

My view on this is in line with the recent judgment in *Greggs Plc v Zurich Insurance Plc [2022] EWHC 2545 (Comm).* Paragraph 86 of that judgement says:

> *"I do not consider that an informed observer would have regarded announcements or measures which simply continued existing restrictions or made trivial changes as being separate "single occurrences" … I do not believe it conforms to the parties' intentions to have aggregation by reference to such matters, which effectively continued a status quo rather than marking any significant change to it".*

Summary

So overall, I am satisfied that an illness caused by Covid-19 occurred at Mr B's premises and this occurrence was a proximate and concurrent cause of the Government's decision to introduce the March Regulations, which caused an interruption to Mr B's business that likely caused a loss.

As the elements of Mr B's disease clause have been met in the circumstances, I consider Covea's decision to decline Mr B's claim for the losses sustained as a result of the Government's restrictions was not made correctly and his complaint should be upheld.

In order to put things right, Covea should reconsider Mr B's claim on the basis that there was an occurrence on its premises that caused an interruption to its business from when the pub closed after the announcement on 20 March 2020 to 4 July 2020.

If, taking into account the remaining terms of the policy, any settlement is due to Mr B, this should be paid, less any excess, together with interest at 8% simple per annum. As Mr B didn't make the claim until January 2021, interest should be paid with effect from a month after the claim was made. I think this would have been a reasonable amount of time for Covea to have assessed a claim of this nature and made payment. Interest should be added until the date of settlement.

My provisional decision

I intend to uphold this complaint against Covea Insurance plc and require it to:

> 1. reconsider Mr B's claim (in line with the remaining terms of the policy) on the basis that there was an occurrence on its premises that caused an interruption to its business from when the pub closed after the announcement on 20 March 2020 to 4 July 2020;
> 2. add interest on any settlement due, less any applicable excess, at 8% simple per annum from one month after the claim was made to the date of settlement. "

Responses to my provisional decision

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

Covea has responded. It reluctantly accepts my provisional findings that there was an occurrence of Covid-19 at R's premises before the Government's March regulations were imposed, which means R's claim is covered. However, Covea still disputes that cover should be for the period March 2020 to July 2020. Covea says the Government was required to review the restrictions put in place every 21 days – the first review being 16 April 2020. Covea says the Government's continuance of the national lockdown restriction beyond the first review date cannot be a result of a single occurrence of Covid-19 at the insured premises in March 2020, so it remains of the opinion that cover for the claim ends on 16 April 2020.

Mr B has also responded to my provisional decision. He has confirmed he accepts my provisional decision. However, he has also said there were occurrences of Covid-19 at the premises in October 2020 and later, which led to further business interruption losses. Mr B says he has provided this evidence to Covea but it has ignored it and so he wants me to consider these losses as well.

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 can only deal with the complaint about the rejection of the first claim, made for the period from March 2020 in this decision. The Investigator has explained this to Mr B.

As no further evidence or information has been provided regarding the occurrence of Covid-19 at R's premises, I see no reason to change my provisional findings that an illness caused by Covid-19 occurred at Mr B's premises and this occurrence was a proximate and concurrent cause of the Government's decision to introduce the March Regulations, which caused an interruption to Mr B's business that likely caused a loss; and that therefore Covea should provide cover for R's claim.

Regarding the period of indemnity, Covea maintains that cover should only be provided until the first Government review of the restrictions it imposed (*i.e*. April 2020). Covea restates its opinion that the occurrence at R's premises cannot have influenced the Government's decision to continue the restrictions after April 2020.

Covea has not provided any further evidence or information about this or as to why the findings in *Greggs Plc v Zurich Insurance Plc,* referred to in my provisional decision, would not be a relevant consideration in this case.

As no further evidence has been provided, I remain of the opinion that the continuance of existing restrictions in April 2020 did not bring the insured event to an end. It remains my opinion that the period of indemnity in this case runs from the date R closed after the Government's announcement on 20 March 2020 until 4 July 2020.

Putting things right

Neither party has made any comment on the way I proposed that this should be put right for R. I therefore also remain of the opinion that in order to put things right, Covea should reconsider R's claim on the basis that there was an occurrence on its premises that caused

an interruption to its business from when the pub closed after the announcement on 20 March 2020 to 4 July 2020.

If, taking into account the remaining terms of the policy, any settlement is due to R, this should be paid, less any excess, together with interest at 8% simple per annum. As R didn't make the claim until January 2021, interest should be paid with effect from a month after the claim was made. I think this would have been a reasonable amount of time for Covea to have assessed a claim of this nature and made payment. Interest should be added until the date of settlement.

My final decision

I uphold this complaint against Covea Insurance plc and require it to:

1. reconsider R's claim (in line with the remaining terms of the policy) on the basis that there was an occurrence on its premises that caused an interruption to its business from when the pub closed after the announcement on 20 March 2020 to 4 July 2020;

2. add interest on any settlement due, less any applicable excess, at 8% simple per annum from one month after the claim was made to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 26 January 2023.

Harriet McCarthy
Ombudsman