

The complaint

A limited company, that I'll refer to as B, has complained about Hiscox Insurance Company Limited's refusal of a claim for business interruption cover under its business insurance policy.

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

What happened

B provides hydrotherapy for dogs. B contacted Hiscox in April 2021, to make a claim for business interruption, as a result of the Covid-19 pandemic. B says it was directed to close by its professional body following the Government restrictions imposed in March 2020 in response to the pandemic, which resulted in a loss of revenue.

B has said the business premises are also Miss R's home, and when she was able to reopen she only carried out urgent treatment and had to employ someone to assist her, as she could not have owners in the premises due to social distancing, which was an additional cost that should also be covered.

Hiscox rejected B's claim. It asked B to provide details of its financial loss and for evidence of an occurrence of Covid-19 within a mile of B's premises. However, it then rejected the claim. Hiscox says the policy provides cover for losses arising as a result of B not being able to use its premises following closure by a public authority. Hiscox said that B was not one of the types of business that was required to close as part of the Government's March 2020 restrictions and had been permitted to continue to operate. Hiscox didn't think that B's professional body would amount to a public authority, so any direction it made to its members would not trigger cover under this section of cover.

Hiscox however offered £250 to B as compensation for asking it to provide evidence to support the claim, which was not necessary and which caused delay in its response to the claim.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied Hiscox was entitled to refuse the claim. The Investigator said that whilst B may have suffered some disruption to the normal service it was able to provide, and a loss of income, it was not a type of business that had been required to close by the Government.

The Investigator also said that B's membership of the professional body is optional, there is no obligation of canine hydrotherapists to join in order to be able to provide such services. She therefore didn't think the professional body had any authority to require B to cease operating. The Investigator therefore didn't think B had not been caused an inability to use its premises, as required by the policy. The Investigator also agreed with Hiscox that there was no cover under the denial of access section of cover.

The Investigator did, however, recommend that Hiscox pay £100 compensation for the delay in dealing with the claim, which was not answered until September 2020.

Hiscox accepted the Investigator's assessment and has paid the £100.

B does not accept the Investigator's assessment. B has made a number of submissions in the initial complaint and in response to the Investigator. I've considered everything B has said but have summarised the main points below:

- B's professional body directed that it should close, having taken advice from the British Veterinary Association who in turn would have taken advice to make sure this was in line with Government guidelines and regulations.
- B provided a letter from a consultant veterinary surgeon that says rehabilitation services, such as B provides, were not expected to stay open during the period of Government restrictions. The Royal College of Veterinary Surgeons ("RCVS") instructed its members to only provide essential, emergency services and hydrotherapy would not fit within that. Rehabilitation services would have to be by referral from a vet and as they could only carry out urgent treatment, no referrals for rehabilitation would have been made during the period of restrictions.
- B also provided two emails from the RCVS, which said its advice to members was to carry out only emergency care only between end March and end April 2020. From May 2020 its members were free to decide on a case by case basis what care to provide. RCVS said that its advice about activities that could be carried out was for its veterinary surgeon members only and it could not provide advice for anyone else but if one of its members asked if hydrotherapy was an emergency or urgent treatment, it would likely have said it was not.
- Miss R also provided a letter from her MP, confirming that according to the Government restrictions, she could not remain open and that the list of businesses that could stay open was not an exhaustive list and only listed shops that sell goods. The MP said that his view was going to B's premises to use its services would have been illegal and so it could not reasonably stay open.
- In March 2020, the Government ordered the closure of non-essential businesses. Not all businesses required to close were listed by the Government in the regulations and no evidence has been provided to show that it was allowed to stay open.

B wants an apology from Hiscox for taking so long to deal with the claim and full settlement of its claim.

Hiscox considered the letter from the veterinary consultant and said this did not mean that B was unable to use its premises following a legally enforceable order to close by a public authority. The Investigator also didn't think the further evidence changed the outcome of the complaint.

As the Investigator was unable to resolve the complaint, it has been passed 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've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. It's evident from B's submissions that the Covid-19 pandemic has had a significant financial impact. However, I won't be upholding its complaint. I'll explain why.

Business insurance policies provide protection for some of the common things which might happen to a business. No policy will cover every eventuality however and each policy may provide different cover.

I have considered B's entire policy carefully. The business interruption section of the policy provides cover for a number of events, most of which clearly do not apply to the circumstances of this claim. I have considered the most relevant parts of that section of cover below:

Public Authority

This provides cover for losses caused by:

*“your inability to use the business premises due to restrictions imposed by a public authority during the period of insurance following ...
b. an occurrence of a notifiable human disease within one mile of the business premises ...”*

The term “inability to use” in relation to policies with the same wording as B's was considered as part of the Financial Conduct Authority's business interruption test case. Paragraph 129 of the Supreme Court's judgment said:

“The public authority clauses in Hiscox 1-4 (set out at para 111 above) do not cover all business interruption due to “restrictions imposed” by a public authority following an occurrence of a notifiable disease. They apply only where the interruption is caused by the policyholder's “inability to use” the business premises due to such restrictions.”

The court went on to say, at paragraph 136:

“... an inability of use has to be established; not an impairment or hindrance in use.”

The court also made it clear that it may be possible for a business to claim for losses that arose out an inability to use its premises for a discrete part of its business activities. As such, this extension would provide cover to a business that had been caused an inability to use their insured premises, for all or for a discrete part of its business.

There were restrictions imposed by a public authority following an occurrence of Covid-19 and Covid-19 is an infectious disease, the occurrence of which must be notified to the local authority. So the questions for me to resolve are: 1) was there an occurrence of Covid-19 within one mile of B's premises; 2) did this occurrence lead to the imposition of restrictions by a public authority; and 3) did those restrictions, if any, cause B to suffer an inability to use all or part of its premises for all or part of its normal business operation.

Was there an occurrence of Covid-19 within one mile radius of the insured premises?

B says it asked the local GP surgery if there had been any Covid-19 cases in the area in early March 2020 but it said it couldn't provide this information as there was limited testing available at the time.

There is a Covid-19 calculator on file, which states that as at 23 March 2020 there were no reported cases within one mile of B's premises but there would have been an estimated three cases within a mile radius of B's premises.

I think this is enough to find that it is likely there was an occurrence of Covid-19 within a mile of the premises that would have been part of the decision by the Government to impose the restrictions it did.

Were any restrictions imposed on B by a public authority and was B unable to use its premises as a result of any restrictions imposed?

The Government, which is clearly a public authority, imposed restrictions by way of The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 ("the March Regulations"). These regulations were important in setting out which businesses were required to close.

B's business doesn't fall clearly into any of the types of business specifically mentioned in the March Regulations, either as being a business that was required to close or as a business that was permitted to stay open. I've therefore considered all the evidence to determine whether it is reasonable to conclude that B was required to close all or part of its business under the March Regulations.

Non-essential shops and some other service industries (such as hair salons and leisure centres) were listed specifically as being required to close, as were theatres, cinemas, museums. These categories of business would all seem to be places that members of the public could gather or attend for recreational, non-essential retail purposes and sometimes for services that could not be undertaken at a distance (such as hair dressing services). I do not think B falls into this category of business.

I also note that Schedule 2, Part 3 of the 26 March 2020 Regulations stated specifically that veterinary surgeries, pet shops and human medical and health services could remain open. It seems to me that B falls more within this category of business.

The March Regulations also allowed people to leave home to attend work, if they were unable to work from home. I consider that Miss R and any other of B's employees would have been seen to be travelling for the purposes of work when attending the premises. B might have had to adjust how its premises were used, to comply with social distancing regulations and guidance, but having considered the types of businesses required to close and those that were permitted to stay open, I think it is reasonable to conclude that B was not required to close its premises as a result of the March Regulations.

B says that it was not allowed to open its business as a result of guidance from its professional body. The policy requires the imposition of restrictions to be by a public authority. This term is not defined in the policy, so it needs to be interpreted as a reasonable person with B's background knowledge would have understood it at the time the policy was taken out, taking into account the context provided by the rest of the policy.

I think a public authority would generally be considered a governmental organisation, or organisations carrying out public functions. This does not necessarily only mean the central Government; there might be other public authorities with the power to close a premises. I do not think that B's professional body would be considered to be a public authority. In addition, the policy term requires the restrictions to be "*imposed*" on B. I think this implies that the authority imposing the restrictions has some power to also impose some consequence or sanction if the restrictions were not adhered to.

It appears that B's membership of its professional body is voluntary. B is not required to be registered with this organisation in order to practice. Given this, it seems to me it would not have any authority to impose restrictions on B. Instead it gave guidance to its members. I appreciate that guidance reflected what other professional bodies, which do have governance of their membership, were imposing on their members, but that does not mean that B was subject to the imposition of restrictions, which meant it was unable to use its premises.

I don't think that B's professional body had the power to direct a relevant business to close; and there's no evidence that any public authority imposed restrictions that meant B was unable to use its premises.

The circumstances at the time would have meant that the demand for B's services might have fallen. So, whilst I do not doubt B suffered a disruption to the normal operation of its business, the policy requires that there be an inability to use its premises and I do not consider this has been established. As such, I do not consider Hiscox acted inappropriately in declining B's claim under this section of the policy.

I have also considered the rest of the policy and do not think there is cover for this claim under any other section either.

Other matters

B has asked for an apology from Hiscox for taking so long to deal with the claim. Hiscox has already apologised and offered £250 compensation for this in its final response letter. I agree that there were unnecessary delays and it should not have taken as long as it did for Hiscox to give its decision on the outcome of B's claim and it should not have asked B to provide evidence that was not needed.

I can only consider and make an award that recognises the impact of any wrongdoing by a financial business on an eligible complainant. In this instance, the eligible complainant is a limited company, rather than any individual. A limited company cannot suffer distress or frustration. So, I cannot consider the impact on Miss R personally of any delay. I can however, consider any inconvenience caused to B in having to obtain evidence that wasn't required and the delay. Having considered everything, I think the additional £100 compensation recommended by the Investigator, taken together with the £250 already offered, is reasonable compensation for this.

My final decision

For the reasons given above, I uphold this complaint in part and consider the sum of £100 should be paid (in addition to the £250 Hiscox already offered and paid before the complaint came to this service) as compensation for the inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 21 February 2023.

Harriet McCarthy
Ombudsman