

The complaint

L, a limited company, complains that QIC Europe Ltd failed to consider its claim correctly under its commercial business protection insurance policy.

L is represented by their broker, but I've referred to their representative's submissions as L's own for ease of reference.

All references to QIC include their claims handlers.

What happened

L's claim arises out of a claim for a flood at its business premises. Amongst other things, L's stock was damaged. Some of that stock consisted of raw materials and others were manufactured items that were completed and ready for sale.

When L made its claim to QIC, a loss adjuster was appointed. L valued the manufactured items, taking into account the labour and stock costs they incurred in putting them together. The loss adjuster told L that it wouldn't consider the labour costs as part of the claim for stock and that this would be looked at as part of a separate claim for business interruption under the policy. L say they were reluctant to accept this but agreed on the basis that their claim would be properly considered and paid at a later stage.

A separate loss adjuster was appointed to consider L's business interruption claim. That loss adjuster concluded that the claim for labour couldn't be considered in its entirety. Rather it was considered as both an additional cost of working plus overtime. But because L was found to be underinsured, QIC only paid a proportion of the claim, which was less than the value they had placed on labour costs for manufactured items before the reduction for underinsurance.

L says the claim for labour to manufactured items that were damaged by the flood should always have been considered as part of the stock claim and not business interruption insurance. They brought their complaint to us accordingly.

Our investigator considered L's complaint and concluded it shouldn't be upheld. He said QIC was right to consider the claim under the business interruption section of the policy because labour costs were incurred by L's own staff. As such the cost of their labour didn't form part of the stock value. The investigator thought the claim related to an increased cost of working which was how QIC had considered the claim. L doesn't agree so the matter was passed to me to determine.

Earlier this month I issued a provisional decision along the following lines:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I intend to depart from the investigator's conclusions and uphold L's complaint. I'll explain why.

The starting point is the policy terms. For stock claims the policy covers:

*“The amount payable in respect of **Stock** and/or all other **Property Insured** (other than **Buildings** and **Contents**) shall be the value at the time of the **Damage** or at **Our** option the cost of reinstatement or replacement of such **Property Insured** or any part of it.”*

Stock is defined as: *“**Stock** and materials in trade work in progress and finished **Goods** belonging to **You** or held by **You** in trust for which **You** are legally responsible.”*

The policy doesn't define 'finished Goods' or explain how they're intended to be valued. L says the ordinary meaning of finished goods is “goods that have completed the manufacturing process but have not yet been sold”. I've thought about this, and I agree that the policy does cover finished goods. And although the words aren't defined, I think finished goods must be taken to mean items that have been put in a state that are ready to sell. In this case the components claimed for were manufactured and ready to sell.

I've also thought about the difference between say “materials in trade” and “finished goods”. The policy differentiates those items as being covered rather than providing blanket coverage in relation to stock on a standalone basis. So, it follows that the difference between them must be that finished goods have been subject to some additional process that has enabled them to have been sold. In this case that process amounts to additional labour costs by L. Because of this I think L are correct when they say their claim for labour for items that were finished and damaged should have been included in the claim for stock and not as part of the business interruption claim.

There are additional reasons why I think the policy should respond in the way that L contends. When the loss adjuster considered L's claim for labour costs under the business interruption insurance section, it did so as if it amounted to an additional cost of working. That calculation was arrived at by determining what the additional cost would be to L to rebuild those items. It arrived at this figure by looking at L's accounts from previous years and calculating it as a loss of profit. But that doesn't make much sense. The labour costs had already been incurred- not as an additional cost of working, but rather as a usual cost to the business. The value of those costs was then lost when the items were damaged. So, taking the figure as an additional cost of working for something that was already incurred doesn't follow. Nor does comparing accounts from previous years to determine the amount as a loss of gross profit.

I accept that the amount would've formed part of L's ultimate loss of profit in the pure sense, but the labour costs themselves were distinct and formed part of the finished goods as set out within the policy wording. That's not to say that every commercial business protection insurance policy would respond in this way. Each claim will turn on its own facts, and in this case, the policy wording lends itself to the labour costs for finished goods being covered under that section of the policy.

I am of course alive to the fact that L wants the claim considered under the stock section because they didn't appear to be underinsured on this part of the policy, as far as I can tell. But that doesn't inform my decision in this case- the policy wording does. I've set out why I think it does above. Because of that I think QIC needs to do more to put things right.

Putting things right

QIC should reconsider L's claim for finished goods to include labour costs associated with the fully constructed items that were damaged in the flood that were previously not considered.

When reaching a settlement figure, QIC should deduct the payments paid for this element of L's claim that was included in the business interruption claim.

QIC should also pay L interest at 8% per year simple on any additional payments it makes to L from the date they paid part of the initial claim for stock, until that additional payment is made."

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 asked both parties to provide me with anymore comments or evidence they might have in response to my provisional decision. Neither party has responded. In the absence of anything that persuades me my initial conclusions were wrong, I remain of the view that L's complaint should be upheld in the way I set out within my provisional decision.

Putting things right

QIC should reconsider L's claim for finished goods to include labour costs associated with the fully constructed items that were damaged in the flood that were previously not considered.

When reaching a settlement figure, QIC should deduct the payments paid for this element of L's claim that was included in the business interruption claim.

QIC should also pay L interest at 8% per year simple on any additional payments it makes to L from the date they paid part of the initial claim for stock, until that additional payment is made.

My final decision

I uphold L's complaint against QIC Europe Ltd and direct it to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 27 March 2023.

Lale Hussein-Venn
Ombudsman