

## **The complaint**

A company I'll refer to as F has complained that QBE UK Limited unfairly turned down its business interruption insurance claim after its business was impacted by Covid-19. F has also complained about QBE's handling of the claim.

Mr R, a director of F, has brought the complaint on behalf of F.

QBE is the underwriter of this policy; that is, the insurer. Part of this complaint concerns the actions of the loss adjuster that QBE appointed to handle the claim. As QBE accepts that it is accountable for the actions of the loss adjuster, any reference to QBE in this decision includes the actions of the loss adjuster.

## **What happened**

F arranges and runs events. F held a business interruption insurance policy with QBE. F claimed on its policy after its business was impacted by Covid-19. F said that several events in Europe had been cancelled due to the restrictions imposed by the Government in response to Covid-19.

QBE initially declined F's claim but then told F that the Financial Conduct Authority (FCA) test case might impact its decision. Following the Supreme Court's judgment in the test case in January 2021, QBE told F that it accepted policy liability in principle. F gave QBE the financial information it had requested.

In March 2021 F asked QBE for updates. As it didn't receive a response F complained to this service in April 2021. The following month QBE contacted F to explain it had been in correspondence with F's insurance broker to assess whether F might have been underinsured, and asked F for more financial information which F provided. QBE sent F a final response letter upholding its complaint and apologising for its failure to keep F updated about the claim. It gave F some information about the enquiries it had been making and said it would give F its decision as soon as possible.

There were then various exchanges between QBE and F's insurance broker. QBE expressed concerns to F's broker about the suitability of its office policy given the nature of F's events business and also about whether F had been under insured for business interruption in the light of its previous turnover.

QBE then told F's broker that it did not accept liability for the claim and asked the broker to explain the position to F. QBE said the policy responded to Covid-19 within a 25 mile radius of F's premises. But QBE did not consider that the policy responded to the impact of Covid-19 outside the UK territory for two reasons:

- The response of various European governments (which would be different in each territory) could not be said to be a direct response to Covid-19 within a 25 mile radius of F's premises; and

- There is no “customer extension” to the policy and no disease cover relating to anything other than the premises and the radius around the premises. The policy did not provide global pandemic cover.

In June 2022 F told QBE that it also wished to pursue a claim for denial of access and denial of access (non-damage), following the outcome of a legal case *Corbin & King Ltd and others v Axa Insurance UK plc* [2022] EWHC 409 (Comm) (‘Corbin & King’).

QBE replied to say that there was no cover under the denial of access section of the policy, because this required damage to property in the vicinity of the premises. It said the denial of access (non-damage) section of the policy did not cover F’s claim and was not impacted by the Corbin & King case. F’s policy responded only to “*actions of a Police Authority*”, where the clause in Corbin & King referred to “*actions taken by the police or any other statutory body*” and provided only narrow, localised cover. QBE remained of the view that F’s financial losses flowed from cancellation of overseas events.

Unhappy with QBE’s response, F brought its complaint to our service. Our Investigator looked into F’s complaint but didn’t recommend it be upheld. He set out the background to the complaint including QBE’s initial concerns about under insurance. Our Investigator concluded that QBE had fairly found that the denial of access and denial of access (non-damage) clauses of the policy didn’t cover F’s claim.

Our Investigator said that there had been no evidence to suggest there had been a case of Covid-19 at F’s premises, and he found the interruption was due to the Covid-19 restrictions generally. He noted that F had not stopped trading but had been unable to run any events, which had been cancelled. He said the Supreme Court’s judgment did not impact the claim.

F did not accept the Investigator’s findings and asked for an Ombudsman’s decision. In summary, F made the following points:

- The policy provided cover if a notifiable disease was manifested by any person whilst in the premises or within a 25 mile radius of it. So, the Investigator was wrong to say the policy was triggered only by Covid-19 at the premises. Given F’s location and local populations, Covid-19 had been manifested within a 25 mile radius and due to this F’s business had been interrupted, causing loss. F noted the wording had been removed from subsequent policy documents.
- The cancellation of the events was a direct result of Government enforced lockdowns and travel restrictions. F furloughed its staff, who were not then allowed to work, with Directors being able to perform only company related statutory obligations.
- F did not cancel events. Rather F and its clients mutually agreed to cancel events with little choice due only to Covid-19, which caused F’s losses.
- QBE had asked F for additional information about its business and turnover but didn’t give F an answer to its claim. F complained both to QBE and to this service. QBE accepted there had been a delay and apologised.
- QBE had moved the goalposts in deciding there was no cover after the event, ignoring clear policy wording and it was disconcerting that the Investigator had agreed with QBE. The turnover issue had nothing to do with the interruption of the business by Covid-19 and if anything favoured the insurer.
- The policy is a simple “office” policy. F has separate “events” insurance for the events with other brokers.
- It was wrong for QBE (and our Investigator) to refer to issues not mentioned in the policy to avoid paying the claim. Covid-19 interrupted its business, through the restrictions imposed by governments, and the loss F suffered is due to that interruption.

I reviewed the complaint and asked F for some additional information about cases of Covid-19 and whether it had made a claim under the separate “events” insurance that it said it had arranged through other brokers.

In response, F sent evidence to support that there had been cases of Covid-19 within a 25 mile radius of its premises.

F also said that it had public liability insurance for the events and medical insurance for the self-employed subcontractors performing at its events. F had not made claims under these policies, which did not include business interruption insurance.

I issued a provisional decision explaining why I did not intend to uphold the complaint. I said:

*“I’m sorry to hear that the pandemic and the Government’s related actions have had an impact on F’s business. However, I am not going to uphold its complaint. I’ll explain why and in doing so I will focus on the issues I consider to be central to this complaint. Business interruption insurance offers protection from risks common to a business, but different policies provide different types of cover. What is and isn’t covered is set out in the policy terms and conditions. I’ve therefore looked carefully at this particular policy to see if QBE has acted fairly, reasonably and in line with the terms and conditions of the policy when declining F’s claim.*

*Denial of access*

*The policy covers business interruption loss as set out in the policy caused by:*

*“Damage by any cause not excluded by this policy to property in the vicinity of the premises which shall prevent or hinder the use of the premises or access thereto whether the premises or your property therein shall be damaged or not (but excluding damage to property of any supply undertaking from which you obtain electricity, gas or water or telecommunications services which prevents or hinders the supply of such services).”*

*The policy defines “damage” as:*

- a) “loss of destruction of or damage to tangible property caused by any cause not otherwise excluded by Property -Contents section and Property – Buildings section;*
- b) glass breakage;”*

*For this extension to provide cover the interruption to F’s business would need to be due to damage, as defined in the policy, to property in the vicinity of the premises that prevented or hindered the use of or access to the premises. I have not seen any evidence of loss, destruction or damage to tangible property. So this extension does not cover F’s claim.*

*F has referred to the judgment in Corbin & King, but I don’t think the judgment impacts F’s claim. That’s because the clause in F’s policy is different from that which was considered by the court, and, under “denial of access” there was a requirement for there to have been damage to property in order for the policy to provide cover.*

*Denial of access (non-damage)*

*This extension provided business interruption or interference loss caused by:*

*“action by the Police Authority following danger or disturbance within two hundred and fifty (250) metres of the premises which shall prevent or hinder use of the premises or access thereto”*

*The extension above provides cover only where danger or disturbance has led the Police Authority to take action. So, it is necessary for me to consider whether the interruption to F's business was as a result of something the Police did.*

*The term “Police Authority” is not defined in the policy. As such, it is necessary for me to consider what this term is likely to mean in the context of this policy.*

*I think “Police Authority” can be interpreted in line with the normal everyday use of this term and I think this would be commonly understood. The closure of F's premises was a requirement following the instructions of the government-imposed restrictions, rather than any action of the Police.*

*I appreciate that, had F remained open, or reopened, during the lockdown period its premises might have been closed by the Police. But, that is not what did happen. The closure of the premises was a requirement following the government-imposed restrictions. F obeyed these instructions and closed F's premises, putting its staff on furlough. So it cannot be said F's premises were closed in by action by the Police.*

*F has referred again to the judgment in Corbin & King, but I don't think the judgment impacts F's claim. The clause in F's policy referred only to action by the “Police Authority” and not also to any action by a ‘competent local authority’ as was the case in Corbin & King.*

*The disease extension*

*The relevant section of the Office policy covers “interruption of or interference with the business as insured by this section caused by:*

- 1. any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) an outbreak of which the local authority has stipulated shall be notified to them manifested by any person whilst in the premises or within a twenty five (25) mile radius of it;*
- 2. murder, suicide or sexual assault in the premises;*
- 3. bodily injury or illness arising from foreign bodies [etc] in food and drink provided on the premises;*
- 4. vermin or pests in the premises;*
- 5. the closing of the whole or part of the premises by order of a competent public authority consequence upon defect in the drain or other sanitary arrangements at the premises”.*

*“The insurance by this clause shall only apply for the period beginning with the occurrence of the loss and ending not later than three (3) months thereafter during which the results of the business shall be affected in consequence of the damage”.*

*Business is defined as:*

*“The business stated in the schedule including:*

- the provision and management of canteen sports social or welfare organisations for the benefit of employees and fire security first aid medical and ambulance services; or senior officials;*
- the ownership maintenance and repair of the premises*

- repair, maintenance and servicing of you mechanically propelled vehicles, sale or disposal of your property and goods, including mechanically propelled vehicles;
- organisation of and participation in exhibitions, trade fairs, conferences, and the like, charitable events or similar fund-raising services”

*Covid-19 is a human infectious or human contagious disease. So, for this extension to provide cover for F’s claim the interruption of or interference with the business would need to be as a result of a case of Covid-19 manifesting at the premises or within a 25 mile radius of the premises.*

*F has pointed out that its policy did not require it to show that Covid-19 had been manifested by any person at its premises. Rather, F says that it would need to show it is more likely than not that Covid-19 had been manifested by any person within a 25 mile radius of F’s premises. F has now provided evidence that I accept shows that it is more likely than not that a case of Covid-19 had manifested in the geographical location stipulated in the policy.*

*Indeed, QBE has not disputed that the policy responded to cases of Covid-19 manifesting within a 25 mile radius of F’s premises. But QBE has made the point that the loss F has claimed is not because a case of Covid-19 manifested within a 25 mile radius of F’s premises. Rather, QBE argues that F’s claim for losses flows from the decision taken to cancel the European events due to the restrictions introduced by the European clients’ Governments. It appears from F’s most recent submissions that F does not have separate events insurance for the cancellation of those events.*

*So, the issue I need to decide is whether the business interruption losses claimed by F flow from the restrictions introduced by the UK Government in response to the cases of Covid-19 manifesting within 25 miles of F’s premises.*

*From the contractual information provided by F, I can see that the events were cancelled by mutual agreement between F and its European clients for reasons described as:*

- “Both parties have agreed, taken [sic] into account the current situation caused by the Corona crisis, by mutual and express consent, to definitively end the [contract].
- At a request by [the European client] and the prevailing circumstances surrounding the pandemic Covid-19, this summer’s [contract] is cancelled.
- Because of the situation with Covid-19 and the consequence of Covid-19 [the European client] hereby cancel the agreement.
- By agreement and due to the prevailing circumstances and uncertainty surrounding the pandemic Covid-19, the contract between both parties ...is cancelled.”

*I have considered the reasons given by F and its European clients for cancelling events. The wording included the prevailing circumstances of the pandemic and the uncertainty surrounding the pandemic.*

*From this it seems to me that the restrictions and uncertainty of the Covid-19 pandemic in Europe led to F’s European clients deciding – albeit by mutual agreement with F - not to stage the events and to cancel the contracts with F. F’s loss is described in the claim as arising directly from the cancellation of the European events.*

*I have thought about whether F’s loss can fairly be said to flow from restrictions, including travel restrictions, introduced by the UK Government in response to Covid-19 manifesting within a 25 mile radius of F’s premises where each case of Covid-19 within that radius was an equal and concurrent cause of the introduction of those restrictions.*

*But the loss that F has claimed under the office policy flows directly from the cancellation of the European events. I've not seen any evidence from F to persuade me that the cancellation of the events, leading to the loss claimed by F was as a result of Covid-19 manifesting within a 25 mile radius of F's premises as is required for the policy to respond. This is not to say that F's business was not interrupted, but rather that the loss for which it claimed did not flow directly from that interruption.*

*It follows that I am minded to find that QBE reached a fair decision in the claim and that the loss that F has claimed under its policy flows from the cancellation of the European events rather than being due to interruption of its business due to cases of Covid-19 manifesting within 25 miles of F's premises.*

*As such, I consider that QBE fairly turned down F's claim.*

#### *Claim handling*

*QBE accepted that it had failed to keep F updated in the early stages of its claim assessment. It apologised to F for the delay. I think this was reasonable. In the background, QBE was gathering information and liaising with F's broker but it properly acknowledged that it should have kept F updated.*

*F considers the issues about under insurance and the suitability of the policy were not relevant to whether the claim was covered under the policy. I see its point but I think QBE was entitled to consider these issues in assessing the claim. Our Investigator included this information only for background. Ultimately, QBE did not turn down F's claim due to underinsurance or policy suitability but because the policy did not cover the loss for which F had claimed.*

*I have seen that in July 2021 QBE did ask F's broker to explain to F its decision not to pay the claim. This is not unusual in commercial insurance cases.*

*F says that QBE has removed the disease wording from subsequent policies. But it is entitled to review policy wording on renewal and this does not mean that the policy covered F's claim.*

*I appreciate that my decision will come as a considerable disappointment to F, but I do not intend to uphold its complaint."*

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

QBE responded to say that it had nothing further to add.

F responded to say that it did not agree with the findings I had reached in my provisional decision. In summary, it said:

- It strongly believed that the policy wording in section 11.1.10 (*the disease extension as set out above*) was clear and unambiguous, that it had fulfilled the criteria and so its claim should be paid. F considered that I had ignored this despite the clear policy wording and had taken a narrow view of the policy. F's main claim falls under this part of the policy, with other aspects such as denial of access having been added later.
- It does not consider that my "passive" wording including that *'it is more likely than not'* that a case of Covid-19 had manifested should appear in the published decision. It was clear there were cases of Covid-19 within the 25 mile radius of its premises and my decision should reflect that.

- I had tried to confuse the situation with disingenuous wording and implying that the cancellation was by agreement with F's clients, and only then going on to give the actual pandemic based reasons for the cancellation of the events.
- It "*beggars belief*" that I have not upheld the complaint given that I have found that Covid-19 was a disease as stated in the policy, that there were cases in the vicinity and that the business was interrupted.

### **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 have carefully considered F's comments and I am sorry that it considers the wording of my provisional decision is not sufficiently clear. But the comments it has made do not change my mind about the fair outcome to this complaint and I do not consider I can fairly uphold it.

I will focus on the disease extension of the policy (section 11.1.10) given that F says that its claim should succeed under this policy wording.

The reason that I have used the words "*more likely than not*" is because that is the test that we are required to consider for establishing that something has happened based on the balance of probabilities. It was not intended to be ambiguous or unclear. For the avoidance of doubt, F has provided information to show that cases of Covid-19 manifested in the 25 mile radius of its premises. I accept this and QBE has not disputed this point.

As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that they have suffered a loss which their policy covers.

I've noted F's comments about the cancellation reasons. The evidence is that F's contracts with its European clients were cancelled by mutual agreement because of the pandemic based reasons set out in my provisional decision. The loss F has claimed flows from the cancellation of the European events.

But I've not received anything more from F to persuade me that the cancellation of the events, leading to the loss claimed by F was as a result of Covid-19 manifesting within a 25 mile radius of F's premises as is required for the policy to respond.

It follows that I find that QBE reached a fair decision in the claim and that the loss that F has claimed under its policy flows from the cancellation of the European events rather than being due to interruption of its business due to cases of Covid-19 manifesting within 25 miles of F's premises.

### **My final decision**

For the reasons I've given in my provisional decision and here, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 11 April 2023.

Amanda Maycock  
**Ombudsman**