



The complaint

A limited company, which I will call C, has complained about Royal & Sun Alliance Insurance Limited's ("RSA") refusal of her claim under her business insurance policy.

Mrs H, one of the directors of C, has brought the complaint on its behalf. Mrs H is represented by Mr H. I will refer to C and Mr H throughout for ease.

What happened

C contacted RSA to make a claim for business interruption losses as a result of the Covid-19 pandemic.

RSA initially refused the claim. After the Supreme Court made its judgment in the Financial Conduct Authority's ("FCA") Business Interruption test case in January 2021, C got back in touch with RSA and it agreed to review the claim in light of the Court's findings.

RSA subsequently agreed to meet the claim. It determined that the claim was worth just under £93,000 for the three month indemnity period from March 2020. RSA paid the amount it considered settled the claim in mid 2021.

C is very unhappy about this. It disputes that the claim is limited to a three month indemnity period. C said the policy provides £1.5 million cover over 24 months and while there is a three month indemnity limit for some parts of the business interruption section of the policy, this limit does not apply to claims relating to notifiable diseases. C is also unhappy with the time taken by RSA to deal with the matter.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied the policy provided cover for business interruption as a result of notifiable diseases for a maximum three month period. He did not therefore think RSA had acted unfairly in the settlement of the claim.

C did not accept the Investigator's assessment. C said that most of the policy documentation confirms that business interruption cover is for 24 months and there is only one reference in the policy to a different period. The documentation is therefore unclear and misleading. It expected the indemnity period to be 24 months, and this was part of its reason for taking the policy.

As C did not accept the Investigator's assessment, the matter has been passed to me. In the meantime, the Investigator asked RSA to pay interest on the settlement amount it paid C, due to the delays in the payment of the claim. RSA agreed to pay interest on the final settlement figure from 19 May 2020 to 5 July 2021, which is when the claim was settled.

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.

The section of the policy which has provided cover for C's claim says as follows:

"vii. Infectious Diseases

We shall indemnify you in respect of interruption of or interference with the Business during the Indemnity Period following:

a) any:

- i. occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the premises...*
- ii. occurrence of a Notifiable Disease within a radius of 25 miles of the Premises...*

b) the discovery of vermin...

c) any accident causing defects in the drains or other sanitary arrangements...

d) any occurrence of murder or suicide at the Premises...

Additional Definition in respect of Notifiable Diseases...

2. For the purposes of this clause:

Indemnity Period shall mean the Period during which the results of the Business shall be affected in consequence of the occurrence discovery or accident beginning:

- i. In the case of a) and d) above with the date of the occurrence or discovery; or*
- ii. In the case of b) and c) above the date from which the restrictions on the Premises applied; and ending not later than the Maximum Indemnity Period thereafter shown below...*

4. We shall only be liable for the loss arising at those Premises which are directly affected by the occurrence discovery or accident Maximum Indemnity Period shall mean 3 months".

C says that 2.i. and 2.ii. are two separate sentences and the reference to maximum indemnity period is included only in the second sentence. C therefore says the above clause means that the three month indemnity limit only applies to b) and c) of the infectious diseases section of cover; and therefore that the maximum indemnity period of 24 month limit (as set out in the schedule) applies to its claim under section vii) a).

I do not agree that this is a reasonable interpretation of the wording.

Sections 2.i. and ii. above consist of one sentence. The sentence is comprised of three clauses, punctuated by semi-colons but it is one sentence. If the third clause of the sentence (which refers to the end of the period of indemnity) was not meant to apply to part 2. i. as well as 2. ii, then it seems to me there would have to be a full stop at the end of part 2. i. And, as it is one sentence, I do not agree 2.ii. stands alone.

I also note that paragraph 4 above refers to the three month maximum indemnity period applying to losses at premises affected by "*the occurrence discovery or accident*". The inclusion of the word '*occurrence*' here supports that section 4 also applies to the cover under sections vii. a) and d) (occurrence of notifiable disease and occurrence of murder) as they are the only two parts of the notifiable diseases cover that require an '*occurrence*'. If section 4 only applied to sections b) and c) it would only need to refer to "*discovery or accident*".

I do not consider the term to be unclear or misleading such that it should be disregarded and the 24 month maximum indemnity limit that applies to other business interruption claims should apply. I do not therefore think RSA is unreasonable in not covering any loss beyond the three month period it has already paid.

I am pleased to note that RSA has agreed to pay interest on the settlement amount, to reflect the delay in making that payment. The settlement could have been made a lot sooner than it was.

My final decision

I uphold this complaint in part and require Royal & Sun Alliance Insurance Limited to pay interest at 8% simple per annum on the settlement amount from 19 May 2020 to 5 July 2021.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 14 April 2023.

Harriet McCarthy
Ombudsman