

The complaint

C, a club, has complained about the settlement offered by Hiscox Insurance Company Limited for its business interruption insurance claim after its business was affected by the Covid-19 pandemic. It is also unhappy about the way the claim was handled.

What happened

C runs a sports club. It had a business interruption insurance policy with Hiscox. The policy ran from 13 November 2019 to 12 November 2020.

In March 2020, C made a claim to Hiscox after it was impacted by Covid-19 and the Government's response to the pandemic. A few days later Hiscox declined the claim.

The Financial Conduct Authority pursued a business interruption insurance 'test case' in which it asked the courts to consider a sample of policy wordings, including different types of Hiscox policies, and how they should respond to the pandemic. The Supreme Court handed down its judgment in January 2021 (*The Financial Conduct Authority & Ors v Arch Insurance (UK) Ltd & Ors* [2021] UKSC1).

Following the outcome of the test case Hiscox contacted C and asked for information about the claim. It accepted C's claims for the two lockdown periods (from 24 March 2020 to 4 July 2020 and from 5 November 2020 to 2 December 2020) when the club had been closed. It said the third lockdown fell within a later policy which excluded cover for Covid-19.

C thought it should be covered under the policy for its losses over the maximum indemnity period of 24 months.

In May 2021 Hiscox made an interim payment of £2,500. In July 2021 it offered £3,508 to settle the claim less what it had already paid.

C refused to accept Hiscox's offer as it didn't think Hiscox had fairly assessed the claim. It didn't accept that the indemnity period should be limited to the first two lockdowns. It also estimated that it had lost a number of new members as a result of the lockdowns stopping initiatives intended to attract new members. It thought Hiscox should pay at least another £3,176.

C complained to Hiscox. Hiscox maintained its decision regarding the settlement. It said that C was only covered for the lockdown periods. It also said its calculation of C's loss took account of the trend increases for membership as well as the new membership initiatives. But Hiscox agreed that its service should have been better. It paid C £300 compensation for that.

After the complaint was brought to this service, Hiscox told us that it would pay C simple interest on the settlement amount at a rate of 8% from 60 days after the insured event occurred.

I issued a provisional decision explaining why I thought Hiscox's offer was fair. An extract

from my provisional findings is set out below:

“I’m sorry to hear that the pandemic and the Government’s related actions had an impact on C’s business.

Business interruption insurance offers protection from risks common to a business, but different policies can 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 whether Hiscox has acted fairly, reasonably and in line with the terms and conditions of the policy when settling the claim.

Hiscox accepted C’s claim under the public authority clause. This covered business interruption losses caused by:

*“**your inability to use the business premises** due to restrictions imposed by a public authority during the **period of insurance** following:*

...

an occurrence of any human infectious or human contagious disease, an outbreak of which must be notified to the local authority”.

It doesn’t appear to be disputed that Covid-19 is a notifiable human infectious or contagious disease. There were restrictions imposed by a public authority following an occurrence of Covid-19. I don’t consider that this occurrence needed to have been either at or in the vicinity of the premises. And I don’t consider that the restrictions needed to have specifically targeted the claimant business alone. As such, this section of the policy would provide cover to a business that had been unable to use their insured premises due to such restrictions.

The policy defines indemnity period as:

*“The period beginning at the date of the **insured damage**, the date on which the **loss of licence** takes effect or the date the restriction is imposed, and lasting for the period during which **your income** is affected as a result of such **insured damage, loss of licence** or restriction, but for no longer than the number of months shown in the schedule.”*

The policy schedule says that the indemnity period is 24 months. I interpret this to be the maximum indemnity period.

It seems to be accepted that the indemnity period started on 24 March 2020. The relevant question is how long it should last.

The term “insured damage” is defined as physical loss or physical damage to property. Whilst I appreciate the pandemic has caused substantial financial loss, I haven’t seen any evidence that Covid-19 caused physical damage to property which led to an interruption of C’s business. Also C’s income wasn’t affected due to loss of a licence. So, I think the indemnity period should last for so long as C’s income was affected by restrictions preventing it from using its premises following an occurrence of a notifiable human disease.

I have started by considering the restrictions in place in March 2020 and when those ended. I don’t think that the restrictions imposed always have to have the force of law. But I do consider that there must be a mandatory instruction that is given by a public authority. In March 2020 the UK Government introduced regulations that required businesses such as C were required to close. On 3 July 2020 those regulations were revoked, although outdoor sports clubs such as C’s had been allowed to reopen in May 2020 provided they adhered to strict guidelines.

I believe that when the regulations were revoked in July 2020, this ended the first indemnity period under C's policy for this claim period. I say that because the Government restrictions were reviewed and changed over time. Before sports clubs in England was allowed to reopen, the Government issued guidance setting out a range of measures for them to make their premises safer from a Covid-19 perspective such as spacing out equipment to maintain social distancing, queue management or one-way systems, enhanced cleaning and providing hand sanitiser etc. Also continuing concerns about Covid-19 meant many people were slow to resume their normal leisure activities even though restrictions had been lifted. I think this shows that things had moved on from the original event causing the loss under the policy (restrictions imposed by a public authority following an occurrence of Covid-19) and by 4 July 2020 that same event could no longer be said to be the main cause of C's losses.

When C was again unable to use its premises due to the restrictions implemented on 5 November 2020, those would be new restrictions as a result of new cases of the disease. Therefore, this would need to be a new claim but it was still covered by the same policy because the indemnity period had started before the policy expired. By the same reasoning as above, this second indemnity period ended on 2 December 2020 when these restrictions were lifted.

However, by the time of the third lockdown a new policy was in place when this new period of loss started. The claim for this loss would need to be considered under the new policy. This complaint is about the decisions of Hiscox under the 2019-2020 policy. As the claim was after the end of this policy, I think it is fair and reasonable it wasn't considered under the 2019-2020 policy. I also understand the new policy had an exclusion, which Hiscox has said means the claim isn't covered.

I think that Hiscox has interpreted the indemnity period correctly and in line with the policy definition.

When it comes to calculating C's losses for the indemnity periods, the policy says:

"The amount we pay for loss of income will be amended to reflect any special circumstances...affecting your business...in order that the amount paid reflects as near as possible the result that would have been achieved if the insured damage had not occurred."

Most of C's income is derived from membership fees. C has referred to special events which it thinks would have increased its membership. I have no reason to doubt that this would have been the case. But I can see that Hiscox did take into account an anticipated increase in membership from recruitment drives. I've seen no evidence to suggest that Hiscox based its calculations on inaccurate projections of an increase in membership.

What C mainly seems to be objecting to is the fact that projected lost revenue from new members has been adjusted on a pro-rata basis and only paid for the periods of the two lockdowns covered by the policy. As explained above, the indemnity periods ended when the restrictions were lifted. So I think Hiscox was entitled to adjust this potential lost income on a pro-rata basis rather than pay it over a maximum period of 24 months.

Lastly, I've looked at how Hiscox handled the claim. I do think Hiscox took longer than it should have done to pay C's claim. The initial decision to decline the claim was shown by the outcome of the test case to be incorrect. If Hiscox had not already offered to pay interest, I would have awarded it in order to put C back in the position it would have been in if Hiscox had accepted the claim originally.

It is also reasonable that an insurer will need some time to assess a claim and make a settlement. I consider a reasonable time to do this for a claim of this nature would be around two months from when C first made its claim in March 2020 in order to wait for losses to accrue and to give Hiscox a reasonable amount of time to assess the claim. I think the offer by Hiscox is in line with what I would have directed it to do.

Hiscox's incorrect rejection of C's claim initially caused it some inconvenience. In addition Hiscox appointed two loss adjusters who provided conflicting information resulting in unnecessary correspondence and misunderstandings. But overall, having looked at the service C received from Hiscox, I'm satisfied that the sum of £300 paid by Hiscox is fair to compensate it for the inconvenience caused."

In summary C made the following points in response:

1. The policy doesn't say that the indemnity period should end on the date that restrictions were lifted.
2. The policy says that, subject to the 24 month limit, the indemnity period should last until the date when the income ceases to be affected by such restrictions.
3. The club's Easter and Summer activities would have boosted membership and the club was affected by that loss of income after the lockdowns ended.

Hiscox said it had paid the interest on the settlement amount and offered C an additional £200 in respect of any distress and inconvenience it might have been caused.

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.

Regarding the loss of income from new members who might have been expected to join after the Easter and Summer activities, I think it's necessary to look at the indemnity period in conjunction with the insured peril. The policy covers C's losses resulting "*solely and directly*" from an interruption to its business caused by an insured peril (in this case, restrictions imposed by a public authority following an occurrence of a notifiable disease). Once C's club was able to reopen, a range of other factors such as social distancing, concern about infection and the economic situation might have deterred those potential new members from joining. So I don't think at that stage the loss of potential new members can be said to be "*solely and directly*" caused by the lockdown restrictions. I think the indemnity period should end when the restrictions were lifted because after that point C's loss was no longer "*solely and directly*" caused by the insured peril.

As Hiscox has now paid the interest, I don't need to require it to do any more regarding that.

If C wishes to accept the offer of additional compensation, it should contact Hiscox directly.

Putting things right

As explained above, I'm not going to require Hiscox to do anything further to put things right.

My final decision

Hiscox Insurance Company Limited has added simple interest to the settlement at a rate of 8% a year from 60 days after the insured event occurred to the date of settlement and I think this was fair in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or

reject my decision before 24 April 2023.

Elizabeth Grant
Ombudsman