

The complaint

Mrs N and Mr V operate a business that I will refer to as R. R complains about the decision by The New India Assurance Company Limited in settling their business interruption claim, made as a result of the COVID-19 pandemic.

What happened

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved in the correspondence, for the sake of simplicity, I have just referred to R and New India.

R are located in Scotland and operate as a pub. They did not serve food, and were a “wet pub” only. R held an industry specific commercial insurance policy, underwritten by New India. The policy provided a number of areas of cover, including business interruption/loss of income. R’s business was interrupted by the government-imposed restrictions made in response to the COVID-19 pandemic. This caused a first interruption to R’s business from March 2020 (lockdown one). And then further interruption from October 2020.

R claimed for its losses. Eventually, New India agreed to pay two claims: a first relating to lockdown one and a second relating to the interruption from October 2020. R’s current complaint is that the interruption from October 2020 to April 2021 should be considered more than one claim. Each claim is subject to a limited duration of three months, so this would have a significant impact on the settlement payable.

R’s argument is essentially that it was technically allowed to reopen for Christmas Day, and so the re-imposition of the requirement to close from Boxing Day constitutes a new claim event and hence a separate claim. R said that it did not actually open on Christmas Day, as it was not economical to do so, but that this should not mean there was not a new claim event.

New India did not change its stance, and R pursued its complaint with the Ombudsman Service. Our Investigator ultimately considered that there was no relaxation to the rules that impact R’s business over this period. So, he considered that R had remained closed for the whole of this period and that there was not a new claim event after October 2020.

R were not satisfied with this outcome, and so their complaint has been passed to me for a decision.

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.

Having done so, I am not upholding this complaint. I’ll explain why.

As noted, the summary above is intentionally brief. A number of points have been omitted,

including that R needed to pursue previous complaints through the Ombudsman Service in order for New India to agree to the settlement that it has. The parties to this complaint have also made detailed submissions, referring to a number of issues. However, whilst I have considered these, I have focussed this decision on what I consider to be the key issue.

The key issue is whether R are entitled to claim more than once during the period from October 2020 to the end of their policy period in March 2021. The claim(s) are being made under the Loss of Income section of their policy, specifically a clause which provides cover for losses caused by:

“any occurrence of a Notifiable Disease within a radius of 25 miles of the Premises”

It is not disputed that COVID-19 is a Notifiable Disease under the policy definition, nor that this occurred within 25 miles of R’s premises. The question is how many separate claims are possible under this clause.

Potentially, each occurrence of COVID-19 could lead to a claim. However, this would only be the case where that occurrence had an identifiably different impact on a claimant’s business to other occurrences.

The most identifiable impact on businesses is that caused by the government-imposed restrictions resulting from the pandemic. But, in terms of for example lockdown one, occurrences of COVID-19 in April 2020 did not have a, markedly, separate impact to occurrences in March 2020. Relevant businesses were already closed, so the occurrences in April 2020 did not change this or add to the impact the businesses already felt. For this reason, there is only one claim available under R’s policy throughout lockdown one. This complaint is not about lockdown one, but the same principles apply.

In terms of the period from October 2020, R were unable to open initially as a result of the Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 that came into effect on 9 October 2020. These were initially due to expire on 26 October, but were extended until 2 November.

On 2 November 2020, the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 came into effect. These effectively continued the requirement for R to remain closed. These restrictions were intended to continue to the end of March 2021, which was after R’s policy came to an end (though the restrictions were then extended beyond this point).

These later regulations imposed different levels of restriction on businesses, depending on where they were located. However, R’s premises are located in an area that meant they had to remain closed throughout. The “level” applicable to the area changed on a number of occasions, but does not appear to have ever dropped below level 3. And under level 3 or higher, R’s premises were not able to open for business.

This means there was a single continuous period where R’s business was interrupted. And I consider this means there was a single claim event from October 2020 to the end of R’s policy.

R has referred to the relaxation of rules over the Christmas 2020 period. Initially, this period was going to be for five days, though ultimately it was only Christmas Day that experienced this relaxation.

However, importantly, this relaxation only applied to certain rules. The requirement, under the 2 November regulations, for wet pubs to be closed within the area R’s premises were in, was not relaxed over this period. As there was no break in the rules as they applied to R, it

cannot be fairly and reasonably argued that there is a new claim event.

I will also add that, even if there was a relaxation of the rules that impacted R's premises for a single day, there are two further issues that mean I don't think R would be entitled to a new claim.

The first is that relied upon by New India, and is that R did not actually reopen its premises. If the premises did not reopen, there was no break in the interruption to the business that would lead to a new claim. The second issue is that the restrictions were always intended to last beyond this period. This was not a situation where restrictions were removed, and then a new event happened that meant other, similar restrictions were introduced. The relaxation was not a result of changes in the number of occurrences of COVID-19, but rather was a policy decision to allow the public a level of freedom over this holiday period.

Taking everything into account, whilst I appreciate R has suffered losses for more than the three-month maximum claim period through no fault of its own, I consider New India has applied the terms of R's policy appropriately to the circumstances of the claim. It follows that, I cannot fairly and reasonably ask New India to do anything more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N and Mr V to accept or reject my decision before 6 September 2024.

Sam Thomas
Ombudsman