DRN-4537063

The complaint

A limited company, which I will call R, has complained about the refusal of a claim under its Pubs and Wine Bars Insurance policy with Covea Insurance Plc.

Mr B, as director of R, has brought the complaint on its behalf.

What happened

R consists of a pub. In January 2021, Mr B made a claim under the pub policy with Covea after he was forced to close the pub in March 2020, as a result of the Government's response to the Covid-19 pandemic. Covea refused that claim. Covea said there was no cover under the policy, as there was no evidence the pub had closed as a direct result of an occurrence of Covid-19 at the premises, which is what it says the policy requires.

Mr B provided evidence of two customers who had been at the premises while likely to have been infected with Covid-19 before the Government requirement that pubs close in March 2020. Covea still did not accept the claim and, in January 2023, I issued a final decision on R's complaint about that claim upholding it and requiring Covea to meet that claim for the period March to July 2020, together with interest.

R also made a claim for closure period starting on 17 October 2020, as part of the tiered system that was introduced in its area on 14 October 2020, and then the second national lockdown was imposed with effect from 5 November 2020 (announced on 31 October 2020), so R remained closed from 17 October 2020 to April 2021, when it was able to open for outside service only.

Mr B has provided evidence that he says confirms that there was an occurrence of Covid-19 at R's premises on 10 October 2020 and also on 17 October 2020, and so it should be covered for the losses it suffered as a result of those occurrences.

Mr B says that the closure of the premises before the second national lockdown on 5 November 2020 was a direct result of the Government's decision to implement the three-tiered system and was based on local infection rates, including the occurrences at his premises.

Covea said that there was no reference to R having to close in October 2020 on its social media accounts, whereas previous closures had been mentioned. In May 2023 Covea did confirm it accepted there had been an occurrence of Covid-19 at R's premises on 17 October 2020 but said the loss suffered was limited to the cost of a deep clean of the premises on 17 October 2020. Covea said it would cover this cost in principle but there was no loss of income, as the clean would have been done while the premises were shut and R would have been able to resume normal trading the next day.

Covea also said that the Government instructed closure of the insured premises as part of a wider action on 5 November 2020 (the date of the second national lockdown) was 26 days after the alleged date of occurrence on 10 October 2020. It therefore says there was no causal link between the occurrence of Covid-19 at the premises in October 2020 and the

imposition of the lockdown in November 2020. Covea therefore said there was no valid claim for this period.

One of our Investigators looked into the matter. He recommended the complaint be upheld as he was satisfied that R had been required to close from 17 October 2020 until April 2021. He explained that the courts had established in various cases, including Various Eateries v Allianz 2022, that we would consider cases within the relevant run up period to be potential factors in the Government's decision to impose a lockdown. The Investigator also considered that there had not been any lifting of the restrictions on R between 17 October 2020 and 13 April 2021. The Investigator therefore concluded that Covea should meet R's claim for business interruption losses during that period.

The Investigator also recommended that Covea pay R the sum of £250 compensation for the delays and trouble caused by its handling of the claim.

Mr B is very unhappy with the compensation recommended. He said Covea has continuously delayed the settlement of this and his other claim without good reason, causing a hugely detrimental impact on him and the business. Mr B also said that after 13 April 2021 R was only allowed to provide outdoor services and takeaways until May 2021 and then from May until June 2021, there were restrictions which limited the capacity within the premises. R therefore says it suffered losses beyond the April 2021 date, which should be covered.

As the Investigator was not able to resolve the complaint, it was passed to me.

I issued a provisional decision on the matter in December 2023. I have copied the main findings of my provisional decision below:

> "R's policy covered business interruption losses due to certain specified events. The part within the business interruption section of cover, which is relevant to this claim, is the extension for notifiable diseases. This says cover is provided for:
>
> > "*Notifiable Diseases*
> > *Loss as Insured by this Section resulting from any of the following occurring during the Period of Insurance*
> > *a) any occurrence of a Notifiable Disease (as defined below) at the Premises or attributable to food or drink supplied from the Premises …*
> >
> > *Notifiable Disease shall mean Illness sustained by any person resulting from food or drink poisoning or any human Infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS)or an AIDS related condition) an outbreak of which the competent local authority has stipulated shall be notified to them."*
>
> It has not been disputed that Covid-19 is a Notifiable Disease. So for this extension to provide cover for R's claim, the interruption to the business would need to be as a result of an occurrence of Covid-19 at the premises.
>
> R is located in an area that was subject to tier 3 "*local covid alert level – very high",* which meant that with effect from 17 October 2020 it (and other pubs in that location) "*must close unless they serve alcohol only as part of a main meal (at least equivalent to the main course of a main midday or evening meal). The meal must be eaten while seated at a table (not at a serving counter). This rule applies equally to areas*

adjacent to the premises used by customers".[1] These regulations "*tier regulations*" were laid before Parliament on 12 October 2020.

The tier regulations were revoked on 5 November 2020 and replaced by The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020, which required all pubs to close, not just those in specific areas, and a "*second national lockdown*". Then with effect from 2 December 2020, the second lockdown ended and The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (SI 2020/1374) replaced the previous regulations and introduced different restrictions for each tier. From 6 January 2021, further amendments to the regulations meant all areas of England were moved to the highest tier (tier 4) and "*the third national lockdown*" started.

Essentially, none of the changes made any difference to R, as it was required to remain closed under each of the regulations and amendments.

It is for R, as the claimant, to demonstrate that … [it] has a valid claim. So, in this case [Mr B] … needs to show it was more likely than not that there was an occurrence of Covid-19 at its premises which led to its losses.

R's policy does not require the premises to be closed or that there be any Government restriction, such as a national or regional lockdown. R's policy does not specifically require there to have been restrictions imposed, and certainly not on R. But the relevant occurrence must have had some identifiable impact on R's business activities. I therefore consider that any occurrences must have been before the different regulations were imposed.

Mr B says the restrictions did not ease for R from 17 October 2020 to April 2021, so there was one continuous period of loss and in effect one possible claim. He also says while he was able to reopen in April 2021, there were still restrictions in place which impacted the business.

I can see the force in Mr B's argument, as R was not able to reopen until April 2021 and in effect, the restrictions already in place on R were extended to other locations.

However, I have to consider all the evidence available, to determine whether this was one period of loss, or separate consecutive claims.

This issue has been considered by the courts. I note the comments made in the judgment in Greggs Plc v Zurich Insurance Plc [2022] EWHC 2545 (Comm). Paragraph 86 of that judgement says:

> "*I do not consider that an informed observer would have regarded announcements or measures which simply continued existing restrictions or made trivial changes as being separate "single occurrences" … I do not believe it conforms to the parties' intentions to have aggregation by reference to such matters, which effectively continued a status quo rather than marking any significant change to it".*

The Judge in this case was considering the regulations imposed in March 2020, which were reviewed and renewed periodically until June 2020. Essentially the same restrictions were renewed each time, save for minor adjustments.

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[1] The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (SI 2020/1105)

However, when restrictions were eased on the rest of the country in June 2020, the Government announced that the restrictions continue in force in Leicester only. The Judge in the Greggs case said that this '*Leicester lockdown'* would constitute a new *'claim event'*. Although the actual restrictions for those businesses affected continued unchanged, it was a new set of regulations due to a '*new event'*, which was the number of occurrences of Covid- 19 in Leicester.

The various announcements and restrictions (imposed in October, November and December 2020 and January 2021) were triggered as a result of numbers of cases of Covid-19 in different areas. I can see the argument that numbers continued to be high in the area that R is located and this is why it had to remain closed throughout. However, they were separate, albeit similar, restrictions each time.

Having considered the comments made by the Judge in the Greggs case, I consider that each restriction would constitute a new claim event. So potentially there are four claim periods for R between October 2020 and April 2021.

Was there an occurrence at the premises?

Covea seems to accept that there was an occurrence of Covid-19 at R's premises on 17 October 2020 but hasn't commented on the evidence of an occurrence on 10 October 2020. I will set out my reasoning as to why I accept that there was an occurrence of Covid-19 at the premises on 10 October 2020.

The declarations made as part of the Supreme Court judgment in the Financial Conduct Authority ("FCA") Covid-19 business interruption test case stated:

> "*there was COVID-19, and COVID-19 was "sustained" or "occurred" … wherever a person or persons contracted COVID-19 so that it could be diagnosed".*

This declaration was made about policies requiring that any occurrence of disease be within a certain radius of the insured business, but as Covea is aware, the Financial Ombudsman Service has taken the view that the same declaration of what would amount to an occurrence of Covid-19 would also reasonably apply to policies requiring that occurrence to be at the premises, such as R's.

So I am satisfied that an occurrence of Covid-19 is reasonably considered to have happened when an individual becomes diagnosable with the disease. An actual diagnosis is not necessary; the individual merely needs to be capable of having this diagnosis.

The FCA's Final guidance: Business interruption insurance test case - proving the presence of coronavirus (Covid-19) published in March 2021 refers to the World Health Organisation ("WHO") findings that most people start developing symptoms 5-6 days after infection and that some people can become diagnosable 1-3 days before experiencing symptoms.

Symptoms are not necessary for the disease to have occurred (as many people were asymptomatic) and later variants of Covid have different pathology. However, I think it is reasonable to consider that it is likely the disease has occurred a few days before symptoms develop. That is, when a person would first likely be diagnosable with the disease.

R says there were four customers that attended the premises in October 2020 and shortly afterwards tested positive for Covid-19 but that two customers would have been diagnosable while at the premises before the relevant regulations were announced, as required by the policy.

I've therefore considered the information Mr B has provided about these customers.

Mr B says the first customer, who I will call "*Customer 1*", was at the premises on 10 October 2020 and was shortly afterwards diagnosed with Covid-19.

Mr B has provided a copy of Customer 1's photo driving licence and a short video clip of CCTV footage of what appears to be Customer 1 in a group of people outside the premises around closing time. This clip is time and date stamped as being recorded at 23:43 on 10 October 2020 and Mr B says she had been at the premises all evening. There is also a copy of a social media post that Customer 1 made on 18 October 2020 referencing being at R's premises the week before for the first time since January 2020 and that she "*came back from the pub with Covid".*

I find this persuasive and therefore am satisfied Customer 1 was at the premises at that time and date.

Mr B says that if Customer 1 thought she had caught Covid-19 at its premises, it suggests she showed symptoms on 11 October 2020. Mr B has also provided a screenshot of a message from the NHS to Customer 1 confirming that following a test taken on 14 October 2020, she had tested positive for Covid-19.

To have decided that she needed to be tested, I consider it likely Customer 1 developed some symptoms and it also seems likely to me that they probably developed at least a day before the test was taken, so on 13 October 2020 or before. I also agree that there is some weight in the argument that Customer 1's symptoms likely started nearer to 10 October 2020, as she said she thinks she caught Covid-19 while at R's premises.

Having considered all the evidence, I do think this is persuasive evidence that Customer 1 did have Covid-19, with symptoms starting on or before 13 October 2020. And, given the likely 1-3 day timeframe for Covid-19 to have occurred prior to symptoms presenting, that she would therefore likely have been diagnosable – *i.e.* that Covid-19 had occurred – when she was at the insured premises on 10 October 2020.

Mr B has also provided evidence of a customer who I'll call "*Customer 2*" who provided a typed statement that he was at R's the premises on 15 October and 17 October 2020.

Customer 2 says he started to feel unwell on 18 October 2020 and went to have a test the following day, which was positive for Covid-19. Covea's final response to R in this matter said it accepted the evidence from Customer 2 was evidence that there was likely an occurrence at the premises on 17 October 2020.

For the same reasons as given above in relation to Customer 1. I think it is likely that if Customer 2 developed symptoms of Covid-19 on 18 October 2020 and tested positive for Covid-19 on 19 October 2020, he would have been diagnosable – *i.e*. that Covid-19 had occurred - when he was at the insured premises on 17 October 2020.

So I consider that there were, most like, occurrences of Covid-19 at R's premises on 10 and 17 October 2020.

Did these occurrences lead to the interruption?

Covea says these occurrences are not enough to trigger cover, as the closing of the pub was a result of the Government restrictions imposed in November 2020, rather than Customer 1 and 2's presence in the pub.

I have looked at the announcement of the tier regulations made by the Government on 12 October 2020 and The Health Protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 that followed. I am satisfied that these required pubs like R to close with effect from 17 October 2020, unless they could operate as a restaurant (*i.e*. serving alcohol only with a full meal). R says it could not do so and so had to close. I am satisfied that R's business was interrupted as a result of the tier regulations announced on 12 October 2020.

With effect from 5 November 2020 there was then a second national lockdown. Covea seems to accept that R would have been required to close from that date but says this could not have been related to any occurrence of Covid-19 at R's premises in October 2020.

The Financial Ombudsman Service has previously set out in other final decisions how a case of Covid-19 at the premises of an insured can be seen to have caused the national lockdown that followed soon after. Further information can be found on our website.[2] This approach has recently been supported by the Courts in London International Exhibition Centre Plc v Royal & Sun Alliance Insurance Plc & Ors [2023] EWHC 1481 (Comm).

Essentially, the Government's decision to introduce each set of measures was based on there having been numerous occurrences of Covid-19 in the periods leading up to each decision. Each of these occurrences was therefore a concurrent proximate cause of the Government's decisions.

When the Prime Minister announced the tier regulations on 12 October 2020, his statement included the explanation that: "*the number of cases has quadrupled in the last three weeks … there are now more people in hospital with Covid than when we went into lockdown on March 23 … and deaths are already rising".*

It appears therefore that it was cases occurring in the three weeks prior to the announcement that were taken into account in the Government's decision. Given this, I consider the occurrence at R's premises on 10 October 2020 would have been one of those the Government took into account when it came to its decision to impose the tier regulations that took effect a week later. And hence would have been a concurrent cause of R's losses from 17 October 2020.

So overall, I am satisfied that an illness caused by Covid-19 occurred at R's premises

[2] https://sme.financial-ombudsman.org.uk/complain/complaints-can-help/insurance/business-interruption-insurance/business-interruption-insurance-premises-complaints

and this occurrence was a proximate and concurrent cause of the Government's decision to introduce the October tier regulations, which caused an interruption to Mr B's business that likely caused a loss.

The policy says that the cover under the Notifiable Disease section of the policy is for the *"period during which the results of the Business shall be affected in consequence of the Damage beginning … with the occurrence or discovery of the incident whichever is later".*

As stated, I consider that one period of indemnity started from when the pub was required to close following the Government announcement of the October tier regulations, *i.e*. 17 October 2020 and this ended on 5 November 2020.

There were further regulations announced on 31 October 2020, which took effect on 5 November 2020.

I have to therefore consider whether the occurrences at R's premises on 10 October 2020 and 17 October 2020 were also a proximate and concurrent cause of the second national lockdown announced on 31 October 2020.

Covea says that these occurrences were too far from the date that the Government made this decision to be counted as a proximate cause of the second national lockdown.

I think there is some argument that the occurrence on 10 October 2020 might have been too far in time from the 31 October 2020 announcement. I do not however consider I need to make any specific finding about that. I say this because there was a later occurrence at the premises on 17 October 2020 and the policy only requires there to be one occurrence at the premises.

The occurrence on 17 October 2020, with Customer 2 was 14 days before the Government's announcement of the second national lockdown.

The Government's decision-making was in response to the number of cases in the time before each announcement and the anticipated cases if measures were not imposed.

There has been some legal consideration of the timing of occurrences of Covid-19 in the vicinity of insured premises and whether they would be proximate cause of the various Government responses.

In the case of Various Eateries v Allianz Insurance Plc [2022], the Judge said at paragraph 54 – 58 that:

> *"the proximate causes of those responses were the cases of the disease which had occurred in the immediate run-up to the measure, together with the anticipation of further cases in the future.*
>
> *That this was the case is supported by the fact that, for measures to be introduced under the Public Health (Control of Disease) Act 1984, they had to be in response to a serious and imminent threat to public health posed by the disease. Thus the statutory underpinning of Governmental measures required that there should be an imminent threat to public health, which would depend principally on the current and projected incidence of the disease, not on past cases of the disease. Furthermore, under the 26 March 2020 Regulations,*

> *any restrictions or requirements imposed by those Regulations had to be reviewed every 21 days, emphasising that what was in issue was the current position and the current threat…*
>
> *the Government was responding and would respond, to evidence as it emerged of the current rate and progression of the disease …*
>
> *Similarly, when introducing the second national lockdown on 2 November 2020, the Prime Minister told the House of Commons that, 'faced with these latest figures, there is no alternative but to take further action at a national level'; that 'no-one wants to impose measures unless absolutely essential'; but that 'when the data changes course, we must change course too.'".*

The Judge also said that cases predating the *"immediate period*" before each announcement would be taken into account as part of the monitoring process and for comparison purposes but:

> "*that is a different matter from saying that past cases are of equal efficacy with current and expected cases in determining whether any and if any what measures should be imposed… however I accept that cases of the disease did not immediately lose their potential to cause Government response" and that this was in part "because of the period for which people infected with the disease remain infectious, which the parties agree to be 14 days".*

So to be considered as a proximate cause of the Government's response, any occurrences at R's premises would have to be within the *"immediate period*" leading up to the announcement on 31 October 2020. There has been no judicial finding as to exactly what this period would be.

The occurrence on 17 October 2020 at R's premises was five days after the announcement of the tier regulations and 14 days before the announcement of the second national lockdown. Bearing in mind that the Judge in the Various Eateries case also found that anticipated cases, based on the continuing infectiousness of those with Covid-19 for 14 days, was a relevant factor in the decision-making, it seems to me that this occurrence would reasonably be considered to be a proximate cause of the decision to announce the second lockdown.

I do therefore consider that R has a valid claim for the period of the second national lockdown from 5 November 2020 to 2 December 2020.

However, I do not consider that I can reasonably conclude that the occurrence at R's premises on 17 October 2020 was an equally effective cause of the introduction of the "*All Tiers*" restrictions on 2 December 2020, or the third national lockdown on 6 January 2021. By the time of these announcements, it was cases occurring since the decision made to impose the second lockdown on 5 November 2020 that were more effective.

I do not therefore consider that R has established a claim for the period beyond 2 December 2020.

Summary

As the elements of R's disease clause have been met in the circumstances for part of its claim, I consider Covea's decision to decline R's total claim for the losses

sustained as a result of the Government's restrictions was not made correctly and this complaint should be upheld.

In order to put things right, Covea should reconsider R's claims on the basis that there was an occurrence on its premises that caused an interruption to its business from when the pub closed after the announcement on 12 October 2020 to 5 November, and for 5 November to 2 December 2020.

Compensation

There has been considerable delay in dealing with this claim. R first made this claim in 2021 but it was not properly investigated by Covea until April/May 2023.

Mr B has said he has had to undertake considerable investigation to getting the evidence needed and spending considerable time over the last two/three years trying to get Covea to deal with his claim and provide the cover R is entitled to. He said this has included having to wrangle with complex legal issues all the while keeping the business going and suffering financial hardship. The constant stress and has had a significant toll on him medically and on his family.

Mr B also says this has been compounded by having to go through this with Covea twice. I can see this has been a very long saga for Mr B and have no doubt about the impact this has had on him personally as well as to his business. However, I can only consider and make an award that recognises the impact of any wrongdoing by a financial business on an eligible complainant. In this instance, the eligible complainant is a limited company, rather than any individual. A limited company cannot suffer distress or frustration. I also do not have the power to penalise or fine Covea, as we are not the regulator.

I can however, consider any inconvenience caused to R by anything Covea has done wrong. Having considered the additional administrative burden the incorrect refusal of this claim has had on R and disruption to R's business this has caused (including having to resubmit evidence unnecessarily, chasing Covea for responses) I do agree that the compensation should be increased, as it has caused disruption to the business. I think the sum of £600 to be appropriate in the circumstances.

My provisional decision

I intend to uphold this complaint against Covea Insurance plc and require it to:

1. reconsider R's claim (in line with the remaining terms of the policy) on the basis that there was an occurrence of Covid-19 on its premises that caused an interruption to its business from when the pub closed on 17 October 2020 to 2 December 2020.

2. Pay R £600 compensation for the inconvenience caused by its handling of the claim."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

Covea has confirmed it accepts my provisional decision and has nothing further to add.

Mr B agrees with much of what I said in my provisional decision but does not accept that cover should be restricted to the period I provisionally determined. Mr B has made a number of further submissions. I have considered everything he has said and have summarised his main points below:

- Restricting his claim to a period of six weeks only is unfair. The policy should be interpreted as a reasonable person would interpret it. When he took out the policy, he expected to be covered for the full period of any business interruption. This would be the perspective of any reasonably policyholder. The business interruption lasted 6 months, and R should be entitled to be paid out for this whole period.
- He does not agree with my interpretation of the case law.
- I based my decision that each restriction would constitute a new claim event on the comments made by the judge in the *Greggs* case about the Leicester lockdown. However, there was no intention to limit the time period a business could claim for under its policy. The Judge was actually allowing further claims to be made, rather than cutting short existing claims.
- While there could be several claim events, in the sense that businesses may have the opportunity to claim for further losses, it does not change the fact that R's policy cover had already been triggered by a customer at his premises on 10 October 2020 and it seems bizarre to argue that further Government action, that had no effect on his already closed business, cut short its claim for business interruption.
- The case law regarding what would amount to a "*covered event*" was not intended to prevent small pubs such as R from being paid out what they are entitled to under their polices. In finding that there could be separate occurrences based on different Government actions, the Judge at no time said that any claim already triggered must end or be reduced, and to find that the claim period here should be massively reduced would be extremely unfair.
- In both the *Stonegate Stonegate Pub Company Ltd v MS Amlin Corporate Member Ltd and ors* [2022] and the *Greggs* cases, it was established that if there is an enforced closure, as there was with R, without the business closing and reopening, this would be deemed to be one "*Covered Event".*
- Mr B provided a number of quotes from these judgements in support of his arguments, including this from paragraph 73 of the judgment in Stonegate: "…*I consider that the number of Covered Events would be the number of occasions on which there were materially different restrictions imposed… which prevented… access to 'Insured Locations'… advice given by Government…which merely repeated or renewed an existing prevention or hindrance of access would, in any view, form part of one set of 'actions or advice', and thus constitute one Covered Event*."
- In R's case, from closing in October, there was only one set of advice which was that R must stay closed.
- Mr B also refers to paragraph 101 of the judgement in *Various Eateries v Allianz* [2022]: *"I do however accept that there was a single occurrence… on 16 March 2020… I would also accept that there was an occurrence on 20 March 2020, when restaurants were instructed to close. Equally, I would accept there to be an occurrence constituted by the announcement and implementation from 24 September 2020 of early closing and other restrictions on restaurants. Further… I would consider the bringing into force or the three-tiered system on 14 October 2020, and the imposition off the second lockdown from 5 November 2020, were capable of being relevant single occurrences. I do not accept that there were separate occurrences when measures were renewed, immaterially changed, or relaxed*."

- The Judge specified exactly which restrictions he felt constituted new occurrences. Had he felt that the restrictions on 2 December 2021 or the lockdown on 6 January 2021 were separate occurrences, he would have specified them here along with the rest. So it appears likely they were merely measures being renewed and as such would not have constituted a separate occurrence.
- It would not be fair and reasonable to allow Covea to get out of paying what R is insured for on the basis of case law involving three national companies in totally different situations than R.
- R is a small business with a policy that continued until February 2021, with a 24 month indemnity period, which was different from the businesses in the *Stonegate* case.

Mr B also sent a screenshot of a message from the NHS to Customer 2 confirming that following a test taken on 20 October 2020, he had tested positive for Covid-19.

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 considered everything again, including Mr B's response to my provisional decision I am not persuaded to change my provisional findings.

Most of the judicial comments regarding what would amount to a covered event (or claim event) that Mr B has relied on were in relation to policies that required closure of the insured premises or prevention of access to them. And the case law supported that in the main where a business was required to close its premise (and it was that closure that triggered cover) and they remained closed as a result of reiteration of essentially the same restrictions, that would be deemed to be one continuous claim.

However, R's policy covered business interruption losses as a result of an occurrence of a notifiable disease at the premises. Unlike some policies, it did not require the premises to be closed as a result of any local authority or Government action and did not require access to the premises to be prevented or hindered. So R is not insured against business interruption as a result of Government closure of its premises following an occurrence of a notifiable disease; R is insured for business interruption as a result of an occurrence of a notifiable disease. There would not have been any business interruption losses, if it were not for the fact the occurrences of the disease at R's premises caused (in part) the Government's decision to impose restrictions on pubs like R, but the insured/covered event is the occurrence of notifiable disease, not the restrictions or lockdown themselves.

The judge said, in paragraph 63 of his judgement on the *Stonegate* case, that in relation to policies with "*the so-called 'Disease Peril'. I consider that, given the terms of the Covered Event in clause 2.3(viii) there would have been as many Covered Events, or 'triggers' in the sense I am using the word, as there were cases of Covid-19 which were either (a) discovered at an Insured Location or (b) occurred within the Vicinity (giving the term 'Vicinity' a wide meaning in accordance with the definition in the Policy and the determination in the FCA Test Case) of one or more Insured Locations, during the Period of Insurance".*

The judge confirmed this when he also decided the *Greggs* case. I am therefore satisfied that the judge considered it would be the occurrences at the premises that would trigger cover under policies with wording similar to R's policy. Mr B says the judge in these cases was not intending to restrict claims for small business such as R but, while the findings may lead to different outcomes for different businesses, I think they are relevant to R's case and I am required to take them into account.

As set out in my provisional decision, I am satisfied that there were occurrences of a notifiable disease at R's premises on 10 and 17 October 2020. It is those occurrences which were the "*covered events*" for R's policy. And R sustained business interruption losses as a result of these covered events because they led to the Government's decision to impose restrictions which meant it had to close on 17 October 2020 until 5 November 2020 and from 5 November to 2 December 2020.

In order to determine that R also suffered an insured loss after 2 December 2020, it would have to be established that the occurrences of disease in October 2020 were also the proximate cause of the restrictions imposed or kept in place after that date. However, for the reasons set out in my provisional decision, I do not think these occurrences were taken into account when the Government reviewed the restrictions again in December 2020 and January 2021 and decided to maintain closure of businesses like R.

As I do not think the occurrences at R's premises were relevant to the decision-making process that resulted in businesses staying closed from December 2020 to April 2021, it follows that I do not think the business interruption R suffered after 2 December 2020 was due to an occurrence of disease at its premises and therefore is not covered under the policy. Put simply, while R was still restricted and could not reopen until April 2021, after 2 December 2020 the proximate cause of those restrictions was not an insured event at R's premises.

I do not think this is interpreting the policy terms in a way which would not have been as the parties understood it when it was taken out.

Overall, while I have a great deal of sympathy for Mr B's position, I remain of the opinion that Covea should reconsider R's claims on the basis that there was an occurrence on its premises that caused an interruption to its business from when the pub closed after the announcement on 12 October 2020 to 5 November, and for 5 November to 2 December 2020.

I also remain of the opinion that Covea should pay R the sum of £600 compensation for the trouble caused by its handling of the claim.

My final decision

I uphold this complaint against Covea Insurance plc and require it to:

1. reconsider R's claims (in line with the remaining terms of the policy) on the basis that there were occurrences of Covid-19 on its premises that caused an interruption to its business from when the pub closed on 17 October 2020 to 5 November 2020 and 5 November to 2 December 2020.

2. Pay R £600 compensation for the inconvenience caused by its handling of the claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 7 February 2024.
Harriet McCarthy
Ombudsman