

## The complaint

M, a limited company, is unhappy QIC Europe Ltd turned down a claim it made on its commercial combined insurance policy. M is represented by its managing director, Mr F.

## What happened

M, a hospitality business, took out insurance with QIC in December 2019. In September 2020, through its broker, it notified QIC of an incident where a doorman at its premises (supplied by a different company, P) had been injured by a customer. In January 2021 it provided a letter of claim that had been received from solicitors acting for the doorman. QIC asked for further information including a copy of the contract between M and P and more details of its relationship with the claimant.

M provided information, including a letter from P which said it was fully responsible for door staff and was providing these services under contract. In March, QIC issued a denial of liability to the doorman's solicitors and said the claim should be redirected against P. A further letter was received from the solicitors in August and QIC reaffirmed the previous liability denial. There was no further contact until December 2022 when the solicitors served court papers on QIC's solicitors.

QIC investigated further and established P's insurance cover had been cancelled in March 2020. It queried with M whether it had complied with policy conditions which required it to ensure door staff held insurance and a contract was in place with the third-party company providing those staff (P in this case). As it wasn't satisfied with the response provided by M it said it had breached a condition precedent of the policy and declined to provide cover for the claim.

Our investigator wasn't persuaded QIC could decline the claim on the basis P didn't have insurance because that was in place at the point the policy was taken out. And although it was subsequently cancelled by P he didn't think it was reasonable M should have checked again (within the same policy year) whether it had done that.

But although M had provided a letter from P which referenced a contract that wasn't itself the contract and it was dated after the incident with the doorman had taken place. And he didn't think any contracts in place with the previous owner would apply as M was a new business. He didn't think M had shown it did have a contract in place with P and so hadn't met the condition precedent the policy contained. So he thought QIC had fairly declined the claim.

M didn't agree. In summary it said:

- It did have a contractual agreement in place with P from December 2019 and that had been confirmed by it in the letter it subsequently provided. Invoices and payments confirmed the dates and services that were provided. There would have been no reason for P to provide that information if it wasn't the case. And the policy terms didn't say a written contract was required (or further define what was meant by that).

- It said QIC didn't have any legal advice in support of its position and provided a legal opinion dated January 2024 from its own solicitors which concluded an enforceable contract was in place between M and P. And its broker had supported its position in relation to compliance with the condition precedent in the policy.
- QIC initially accepted the claim and issued a denial of liability to P's solicitors. It had done so based on the evidence that was provided at that time (the February 2021 letter from P). The claim was then closed and no assistance or guidance was provided until the claim was reintroduced a year later when QIC simply said it wouldn't be providing cover for this.
- Nothing had changed between QIC's initial acceptance and its subsequent decision to decline cover (apart from the discovery P had cancelled its own insurance cover). It didn't think QIC could fairly decline the claim on the basis there wasn't a contract. And it raised concerns about how the complaint it subsequently made had been dealt with

I issued a provisional decision on the complaint in February. In summary I said:

*The relevant rules and industry guidelines say QIC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.*

*I've looked first at the terms and conditions of M's policy. This does cover it against "all sums that You shall become legally liable to pay as Damages including claimants' costs and expenses which arise in connection with the Business in respect of... accidental Injury to any person." But the certificate of insurance contains specific endorsements and conditions which apply and the one QIC has relied on in this case is the "SIA Security Staff Warranty" That says:*

*"It is a condition precedent to Our liability that all door staff and security personnel are only employed via a contract with an independent third-party provider and that You ensure that all such individuals hold a valid licence issued by the Security Industry Authority.*

*It is a condition precedent to Our liability that you ensure all door staff and security personnel hold Employers Liability and Public Liability insurance providing:*

- I. Employers Liability indemnity limit of not less than £10,000,000 any one occurrence.*
- II. Public Liability to an indemnity of not less than the Limit of indemnity shown on the Schedule*
- III. an indemnity to the insured as principal and You retain copies of relevant insurance documents."*

*I've taken into account that the Insurance Act 2015 says an insurer can't turn down a claim on the basis of non-compliance with a term (including a condition precedent) if the non-compliance couldn't have increased the risk of the loss which actually occurred, in the circumstances in which it did.*

*That doesn't apply to conditions which define the "risk as a whole" but does apply to those which relate to a particular type of loss or a loss at a particular location or time (risk mitigation clauses).*

*I think the condition precedent in this case could reasonably be regarded as a risk mitigation clause given it seeks to reduce the risk of, for example, a claim being made against the insured by someone who wasn't insured elsewhere. In any event, and in line with the requirement in the rules that an insurer shouldn't turn down a claim unreasonably, we'd normally expect an insurer to show it had been prejudiced by a breach of a condition in a policy to fairly turn down a claim.*

*I've thought first about whether M is in breach of the security staff condition. QIC has argued it didn't meet the requirement for security personnel to be employed by a contract and that it didn't ensure insurance was in place for those individuals (and retain documentation in relation to this).*

*However, I appreciate that, as M says, there's no requirement for a written contract to be in place. I can also see that, while dated after the incident with the doorman, the letter it provided from P said "I confirm that the door security staff for location at [M] are provided under contract with [P]". It went on to say "As [P] provide trained and experienced door supervisory staff, I can confirm that you have no responsibility or liability for the actions of our security staff all of whom are directly engaged by [P]". And M has now obtained an opinion from solicitors which clearly says it did have a contract in place. I think it's also correct to say that while the matter has been considered by QIC's panel solicitors there's no properly written and reasoned legal opinion setting out a contrary opinion.*

*Taking all of that into account I'm not satisfied QIC has demonstrated M is in breach of the requirement in the condition precedent for a contract to be in place with an independent third party for the employment of door staff and security personnel. So I don't think it was correct of it to rely on this when turning down the claim it made.*

*I appreciate QIC has cited other breaches of the condition precedent, in particular as it relates to the requirement for door staff and security personnel to have insurance in place. And I don't think it's in dispute that M is in breach of that condition. Although it says it did check what insurance P had in December 2019 (and was satisfied this met the policy terms) the documents it obtained went missing during a building refurbishment. Given that I think it's clear M is in breach of the requirement to retain relevant insurance documents and can't evidence whether the cover P had in place at that time met the policy terms.*

*However, I don't think QIC can fairly turn down the claim on that basis. That's because the breach of that condition can't have increased the risk of loss which actually took place. Regardless of what insurance P did or didn't have in place in December 2019 that insurance was cancelled by P in March 2020 (at the start of the first Covid-19 lockdown). It's the fact it didn't then have insurance in place at all that has had a potential impact on the loss.*

*I think the question is therefore whether M is in breach of the policy term which requires it "to ensure" that employer's liability and public liability insurance is in place for door staff and security personnel. Ensure isn't defined in the policy but I think the commonly understood meaning would be to "make certain that (something) will occur or be the case".*

*However, I don't see that an insured could reasonably be required to continually check whether third party insurance cover was in place on a daily or even weekly basis throughout the policy term. I think a fair interpretation of the term is that it requires a policyholder to take all reasonable and necessary steps to comply with it.*

*If, despite that, the third party had done something which meant they didn't have insurance in place, which the policyholder couldn't reasonably have known about, that wouldn't mean they were in breach of the term.*

*I've thought about how that applies here. As I've already said, although M didn't retain copies of that documentation, it says it did check what insurance P had in place in December 2019. And I've checked the Employer's Liability Tracing Office website (ELTO) which says P did have insurance cover in place at that point. In normal circumstances I don't think it would be reasonable to expect a policyholder to carry out further checks until the scheduled expiry date of that insurance.*

*I've thought about whether different requirements should apply in this case. I appreciate at the point P appears to have cancelled its insurance (and potentially its reason for doing so) the country had been put into lockdown as a result of the Covid-19 pandemic. That had an extremely significant impact on the whole of the hospitality sector. But I don't think that should reasonably have prompted M to recheck the insurance credentials of P when it was able to resume limited trading after lockdown restrictions were lifted. Security companies were able to continue to carry out business during lockdown as, for example, premises that were shut nevertheless needed ongoing security. So they would have had an ongoing need for insurance to cover risks they were continuing to undertake.*

*And I don't think there were any other prompts which would reasonably have made M think it needed to check whether P had retained insurance coverage. It says P made no mention of policy cancellation to it and I've haven't seen any evidence to show otherwise. I can also see the ELTO website lists P as having insurance in place from October 2019 until October 2020 and makes no reference to it having been cancelled. So, for the reasons I've explained, I don't think it would have been reasonable to expect M to check whether P had cancelled its insurance prior to reopening its business. It follows that I don't think QIC has correctly or fairly turned down the claim it made.*

### **Putting things right**

*I don't think QIC has fairly turned down this claim and can't rely on a breach of the security industry condition precedent to do so. So it will need to reconsider the claim against the remaining policy terms. If cover is available it will need to pay any reasonable and necessary legal costs that M has incurred in relation to the claim since QIC withdrew cover for this. And it will need to provide cover on an ongoing basis in line with the terms and conditions of the policy.*

*I also think M will have been caused some unnecessary inconvenience as a result of the claim being wrongly turned down. I think it's reasonable to say that Mr F will need to have spent time on pursuing this claim and complaint which might otherwise have been spent on other business activities. In recognition of that I think QIC should pay M £250.*

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

M agreed with what I'd said. QIC didn't agree. In summary:

- It accepted the conclusions I'd reached in relation to the contractual position between M and P. But in relation to the need for insurance it drew attention to the intent behind the condition which was to protect QIC against the risk of inadequate care being taken by an insured when using door and security personnel. And it didn't think there was anything inherently unfair in the inclusion of such a clause.
- It said the focus of the condition was on the need to check individuals, door staff and security personnel. It thought that meant there was a need for more than an annual check of company insurance.

- It drew attention to the particular issues created by the first Covid-19 national lockdown. And it said as this was such an unprecedented event a reasonable and prudent business should have rechecked what insurance arrangements were in place after such a long break given increased heavy drinking and potential violence were more likely after such a prolonged closure of hospitality.
- It didn't think an annual check was likely to discharge an insured duties in relation to the condition in the policy and if more regular checks of the company (and therefore individuals involved) had taken place it was likely the issues with their insurance would have come to light
- It thought M was in breach of the policy condition and that had increased the risk of loss; not doing so meant proper checks hadn't been carried out in a volatile role where the risks of altercation, assault and injury were present on a nightly basis.
- It thought all M had arguably done here was the bare minimum and not what was reasonable in all of the circumstances, taking full account of the importance of the role played by security staff.

So I need to reach a final 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.

First, in my provisional decision I didn't say a breach of the condition to ensure door staff and security personnel held relevant insurance wouldn't increase the risk of loss to QIC. I think it likely it would for reasons which include those QIC set out in its response. The conclusion I reached in my provisional decision related to whether M's failure to retain relevant insurance documentation from December 2019 (which was itself a breach of the policy condition) had increased the risk of loss.

I didn't think it had because regardless of what insurance was or wasn't in place in December 2019 that insurance was cancelled by P in March 2020 (at the start of the first Covid-19 lockdown). It's the fact it didn't then have insurance in place at all that has had a potential impact on the loss.

I understand the points QIC has made about the reason the policy contains requirements in relation to this and I haven't suggested the condition itself is unfair. The question is whether the steps M took were sufficient to comply with that condition which requires it to "*ensure*" that door staff and security personnel hold relevant insurance. And it remains my view that an insured couldn't reasonably be required to continually check whether third party insurance cover was in place on a daily or even weekly basis throughout the policy term.

QIC hasn't specifically disputed that but doesn't think an annual check is sufficient to meet the policy requirements. However, it hasn't said what it thinks would do so. And I'm not persuaded, in general terms, that an insured would necessarily be expected to carry out more than an annual check with the company it was contracting with.

It might nevertheless be reasonable for it to have other measures in place, for example, checking coverage on the Employer's Liability Tracing Office website. And if that suggested there was an issue with insurance that could be a prompt for further action. But that wasn't the case here.

In any event, regardless of what an insured might normally have been expected to do, I think the key question is whether the particular circumstances of the Covid-19 lockdown should have caused M to recheck the position when it was allowed to reopen after restrictions were eased. In support of its position QIC has suggested increased heavy drinking or violence were more likely after lockdown restrictions were lifted. However, it hasn't provided any further evidence in support of that. And I'm not sure how likely that is given the Covid-19 restrictions which remained in place in the part of the UK where M is located.

Having said that I do agree that, as QIC has said, the Covid-19 lockdown was an unprecedented event. Given that I accept there's an argument that a responsible insured should have made further checks on the insurance position prior to reopening. However, as I set out when considering this point in my provisional decision, security companies were able to continue to carry out business during lockdown as, for example, premises that were shut nevertheless needed ongoing security. So they would have had an ongoing need for insurance to cover risks they were continuing to undertake.

And I don't think there were any other prompts which would reasonably have made M think it needed to check whether P had retained insurance coverage. It says P made no mention of policy cancellation to it and I've haven't seen any evidence to show otherwise. I can also see the ELTO website lists P as having insurance in place from October 2019 until October 2020 and makes no reference to it having been cancelled.

Taking all of that into account, and on balance, I'm not persuaded there was more M should reasonably have done when reopening after lockdown. And it therefore follows that I don't think QIC has correctly or fairly turned down the claim because I don't think M was in breach of the policy condition as it relates to ensuring door staff and security personnel had insurance in place.

### **Putting things right**

QIC will need to reconsider the claim against the remaining policy terms. If cover is available it will need to pay any reasonable and necessary legal costs that M has incurred in relation to the claim since QIC withdrew cover for this. And it will need to provide cover on an ongoing basis in line with the terms and conditions of the policy. It will also need to pay M £250 in recognition of the inconvenience caused by its claim being wrongly turned down.

### **My final decision**

I've decided to uphold this complaint. QIC Europe Ltd will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 10 May 2024.

James Park  
**Ombudsman**