

## **The complaint**

A limited company, which I will refer to as L, complains about the handling of its claim by QBE UK Limited.

## **What happened**

The following is intended only as a brief summary of events. Additionally, although other parties have been involved, I have largely just referred to L and QBE for the sake of simplicity.

L operates what I will refer to as a holiday accommodation business. It held a commercial insurance policy underwritten by QBE that provided cover up until 28 July 2020. This included cover for business interruption. As a result of the COVID-19 pandemic, L made claims under the policy. Ultimately, QBE settled L's losses for a three-month period beginning from the start of the first national lockdown in March 2020. QBE said that this was the maximum indemnity period applicable to the relevant clause in the policy. And that L was unable to make a second claim.

L complained about this, bringing its complaint to the Ombudsman Service. I issued a final decision on this complaint on 13 October 2023. Both parties are aware of the content of this decision, though some of its interpretation is disputed. In essence, I said that L was in principle able to make more than one claim under the relevant policy clause. But that it needed to demonstrate that a new claim event had taken place and that this had caused a distinct impact. And QBE should assess these claims on the basis that the policy is capable of responding to multiple claim events. L accepted the decision and so it was binding on QBE.

QBE and L then discussed whether a new claim could be evidenced. A couple of disagreements over this then arose. And QBE essentially said that it was unable to provide L with any further settlement, based on the evidence L had provided.

In short, L has interpreted my previous decision to mean that as long as it can demonstrate that there was a manifestation of COVID-19 within a radius of 25 miles from its premises – which is the requirement of the relevant policy clause – and that it did not generate as much revenue as the comparable period in the previous year, it has a valid claim. QBE has interpreted my final decision to mean that L is required to demonstrate that the relevant manifestation(s) had specific financial impact that can be separated out from any ongoing “tail” loss still being suffered due to the first lockdown.

The parties also disagree on a couple of other points, including the potential length of any claim indemnity.

L brought a further complaint about this situation to the Ombudsman Service. Our Investigator explained that we are unable to reconsider the points included in the previous complaint or to carry out any enforcement action in relation to this. In terms of what he could assess, he thought that QBE had acted fairly and reasonably in not providing any further settlement. The Investigator did not think that L had provided evidence, in line with what my

decision said would be required, to particularise and demonstrate the claim.

L remained unsatisfied and asked for a final decision on this complaint. L provided a detailed response when doing so. Some of the points raised were that:

- QBE has not complied with my decision
- QBE already has details of the distinct financial impact the interruptions caused by COVID-19 had on L's business
- the policy did not require any Government action or similar to lead to a valid claim
- the judgments in the "FCA test case" said that the appropriate way to calculate a claim was to compare the revenue the claimant did achieve with what would have been achieved had COVID-19 not been in existence, and
- L's revenue continued to be impacted by COVID-19, throughout July 2020 and beyond, compared with the previous year.

### **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 our Investigator has explained, I am unable to reconsider the issues dealt with in my previous final decision. I am though able to consider QBE's actions in dealing with L's claim following this decision. This means some of my commentary will touch on these previously determined issues.

My decision set out the parameters for QBE to take into account when considering the claim. It also indicated what L would be required to do in order for a claim to be successful. I have set these out in simple terms above.

It isn't overly disputed that there were manifestations of COVID-19 in the relevant area over the course of the period that L might be able to claim for. It is not clear why L has said that these manifestation(s) caused an interruption on 28 July 2020. It seems this date has been selected in order to maximise the potential length of claim beyond this date – potentially because L's losses increased over this period.

It also isn't clear what interruption L believes was caused by these manifestations. L is correct that its policy does not require there to have been a government restriction that caused an interruption – this is something that is set out in my previous decision, and it is also something that does not appear to be contested by QBE. However, the manifestation(s) within the relevant radius need to have caused an interruption or interference with L's business in order for a claim to be considered. Additionally, L must demonstrate the interruption led to a distinct loss.

L has referred to the comments in the FCA test case judgments. However, these comments deal with the issue of quantum, rather than causation. Prior to a claim reaching the stage where quantum needs to be considered, it is necessary to determine that there is a valid claim in the first instance.

I do not consider L has demonstrated that the manifestations in July 2020 caused a distinct interruption to its business. It is not enough for L to say that, during this period, it generated less income than the previous year. L needs to demonstrate why any individual manifestation – or group of manifestations together – caused an interruption to its business.

This interruption does not need to be the result of government action or similar. But it does need to be identifiable and be shown to have been proximately caused after the end of the first national lockdown by the manifestations L can demonstrate occurred within the relevant radius.

Put simply, due to the manifestations that had previously occurred and the resultant government action, it is likely there was already a downturn in people wanting to stay in “holiday accommodation”. Even had there been no further manifestations, it is probably this downturn would have continued for a period after the first national lockdown, as people adjusted to the circumstances. Whilst it might be challenging, L needs to demonstrate that the further manifestations caused an interruption to its business that had a distinct impact.

As I do not consider L has done this, it has not demonstrated that it has a further valid claim. It follows that I do not consider QBE has failed to deal with this claim appropriately.

Whilst it is not relevant at this point, I will briefly comment on the indemnity period that would apply to any claim L can evidence. The indemnity period will not automatically be the maximum three-month period L has referred to. Nor will it be the 14-day period QBE initially referred to. As QBE has more recently set out, this will be governed by the length of time the relevant manifestation(s) impacted L’s business. This will be circumstance specific.

Where the manifestations, for example, led to a government restriction, the indemnity period might be the length that restriction was in place – up to the maximum indemnity period. Where the manifestation led to some other impact, for example the situation used by QBE of staff being unwell, it might be the length of time the staff were unable to work.

As I say, this will need to be considered based on the specific circumstances of the claim. And prior to this being possible, L will need to demonstrate that there is a valid claim.

### **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 L to accept or reject my decision before 26 November 2024.

Sam Thomas  
**Ombudsman**