

The complaint

R's complaint is about a claim it made on its Covea Insurance plc ('Covea') childcare and business protection insurance policy, which Covea declined.

R says that Covea treated it unfairly when declining its claim and that it has suffered considerable commercial loss which should be covered by the policy.

R's complaint is brought by Mrs A, but I shall refer to all submissions as being R's own for ease of reference.

What happened

R was subject to a temporary suspension in registration by Ofsted following reasonable cause to believe that children in R's care may be exposed to a risk of harm. It made a claim on its childcare and business protection insurance policy to cover the losses it incurred during this period and as a result of the temporary suspension.

Covea considered the claim and declined it. They said the claim wasn't covered because the loss R was claiming for arose from a cause wholly or partly within or under R's control. Covea felt this was applicable because the suspension was due to staff members at R failing to follow R's policies in respect of behaviour and physical restraint, reporting serious incidents and complying with a risk assessment which should have resulted in a child's parents being called to collect them if their behaviour became challenging.

Unhappy R complained to the Financial Ombudsman Service. Our investigator considered its complaint and concluded it should not be upheld. R doesn't agree so the matter has been passed to me to determine.

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 agree with the conclusions reached by the investigator for the reasons I've set out below. Before I address those, I wish to acknowledge the detailed submissions R has made in this complaint. Whilst I've read them all, I won't be commenting on each individual one. That's not intended to be disrespectful, but rather represents the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of R's complaint, namely whether Covea treated it fairly by declining its claim.

The starting point is the policy terms. They say:

"We will not be liable for any loss under this Section following cancellation or suspension of the registration certificate:

- 1. arising from any cause wholly or partly within or under your control."*

So, the question for me to determine was whether the suspension of R's registration

certificate arose from any cause either wholly or partly within its control.

I've considered R's submissions that its staff were adequately trained despite the incident that gave rise to the Ofsted investigation and that it had put in place various measures including revising policies and practices in place prior to the suspension taking place. Because of this R has questioned what more it could have done to prevent the actions of the staff in question, who were eventually dismissed following the incident. R has also made the point that Mrs A wasn't present when the incident occurred and that matters were taken seriously once she was notified and that all of the correct practices and procedures were adhered to following this as well as all relevant notifications made.

I understand that the impact of the temporary closure was significant. It meant that R had to close its doors but that it continued paying expenses without receiving any income. And I appreciate that when the suspension was lifted, R needed to start its business from scratch, by building up a childcare base again. But having considered Ofsted's letter of suspension, I'm not satisfied that R has established the cause of the suspension arose from something out of its control. The letter set out that having reviewed CCTV footage, Ofsted were satisfied there were breaches of requirements relating to behaviour management and safeguarding and that staff did not have sufficient knowledge to manage the needs of children with special educational needs and disabilities. Reference was made to at least two staff members being involved in the incident that gave rise to the investigation and concerns about the suitability of the staff working with children at R. This caused Ofsted to conclude that there was reasonable cause to believe that children were or may be exposed to a risk of harm.

Whilst Mrs A might not have been present when the primary incident took place, R as a nursery is responsible for the welfare of the children in its care. The wording of the exclusion applies to R and not Mrs A personally, so Mrs R did not need to be present in order for R to be responsible for the actions of its staff. And given the concerns expressed by Ofsted were wider than a single isolated incident and concerned at least two members of staff, if not more, I'm satisfied that the matters investigated were in relation to systemic problems at R's businesses in relation to its practices, rather than a solitary unexpected incident which was in some way outside of R's control. Because of this, I think Covea were entitled to decline R's claim based on the exclusion they relied on and that they did nothing wrong in doing so.

R has said that the exclusion Covea are relying on is unfair and that it would lead to virtually all claims for cancellation or suspension of a registration certificate being declined. It's not for me to determine the risks an insurer wishes to cover but the exclusion Covea has relied on is common in policies of this nature and business protection policies more generally. And there's nothing about how it's worded that makes me think it's unclear. There may well be other circumstances in which a loss of registration is covered, such as a clerical error or matters that are fully outside R's control, but I'm not satisfied that was the case here. Because of this I won't be asking Covea to do anything.

My final decision

For the reasons set out above I don't uphold R's complaint against Covea Insurance plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 27 January 2025.

Lale Hussein-Venn
Ombudsman