DRN-5318674

The complaint

A microenterprise which I will refer to as B complains about the handling and settlement of its commercial insurance claim by Covea Insurance plc.

What happened

The following is intended only as a brief summary of events. Additionally, whilst a number of parties have been involved in the circumstances, I have largely just referred to B and Covea for the sake of simplicity.

B operates as an amateur football club. It had a commercial insurance policy underwritten by Covea. The policy provided a number of areas of cover, including for property damage and business interruption.

In December 2022, an escape of water caused damage to B's changing room facility. A claim for this was made to Covea and it arranged for a loss adjuster to inspect the property in January 2023. There is some dispute over exactly what the loss adjuster said at the time of the site visit, but it seems there was some discussion about B stripping out the damage to the property.

Covea took some time to actually confirm liability for the claim, and it was not until 31 May 2023 that this happened. Following this, a further inspection took place by Covea's surveyor. However, he said it was not possible to fully assess the damage caused by the escape of water because the strip-out works B had carried out were too extensive and unnecessary.

At the end of July 2023, Covea made an offer to settle the claim for £37,500. B considers the settlement ought to be in the region of £58,500, as this is the quote its builder provided.

B was also conscious that it needed changing rooms to be in place for the start of the new season. When it became clear this was not going to happen, B asked Covea whether the cost of hiring temporary facilities would be covered. Covea responded saying that the policy included cover for increased costs of working, and that quotes for these facilities were being obtained. However, it does not appear such facilities were ever provided.

Instead, B incurred costs hiring alternate pitches to train and play on. B asked Covea to cover the cost of this, but it declined this claim. Covea said that, as B did not create matchday revenue, there was no loss of income and hence a claim for increased cost of working was not covered.

Covea did offer B £150 compensation for delays and issues with the claim handling that were experienced. However, B was not satisfied with this and brought its complaint to the Financial Ombudsman Service.

Our Investigator thought the compensation should be increased to £350, but did not recommend that Covea ought to do more in relation to the other complaint points. As B remained unsatisfied with this outcome, its complaint was passed to me for a decision.

I wrote to Covea, explaining that I was minded to come to a different outcome to our Investigator.

My provisional reasoning

I said the complaint is effectively made up of three elements. The first is the level of settlement for the property damage element of the claim. The second is the time taken to deal with the claim. And the third is the settlement of the business interruption element of the claim.

Property Damage

There is some dispute over the level of settlement for this part of the claim. Partly, this may stem from the actions taken when the premises were stripped out by B's builder. And partly it seems to relate to the cost of certain elements of works.

In terms of the level of strip-out, there is some difficulty with Covea demonstrating its position on what was discussed at the time of the loss adjuster's visit in January 2023. The notes of the meeting from 20 January 2023 do not include any detail of what was discussed around strip-out/cleaning. All that is recorded in the “Action Plan” is for a review of the policy wording and, seemingly, to get B's broker involved. Similarly, the preliminary report does not make any reference to strip-out, and just mentions the turning off of utilities.

However, the loss adjuster has later said that there was a discussion around the strip-out and that he did give some instruction regarding this. In notes of a conversation with B’s broker on 13 July 2023, he said this was, "to remove plaster board, make safe, not strip all the changing room including all electrics, showers etc." And later, on 28 July 2023, "it was agreed a level of strip outs could be undertaken to mitigate the loss".

On 13 September 2023, the loss adjuster provided more detail, saying, "At the time of my attendance in January, the insured and his builder asked could they complete some clear up work. I explained the loss would be out of delegated authority but a general clear up of plaster which was hanging from the ceiling and on the wall could be undertaken and it would not prejudice the claim. " His interim report of 5 October 2023 says, “We agreed on-site with the insured and builder, that a clean could commence immediately as part of loss mitigation."

It is unclear what the loss adjuster has relied upon when making these later statements. Presumably, he attends multiple sites. And reporting what he said at a particular site, more than six months after the conversation, carries an element of risk. It is also notable that whilst it is agreed that the loss adjuster did provide verbal instruction for some works to be done, this was never formalised in writing. As a result, it is difficult for Covea to establish exactly what was said at the time.

I did agree that it is unlikely the loss adjuster specifically said that all electrics and pipes should be stripped. But it is also quite possible that he was not as clear as he ought to have been regarding the level of work that should be undertaken. Policyholders are justifiably able to rely on their insurers (and their agents) as being the experts in insurance claims. And by providing some instruction, if this was not clear, the consequences of the loss adjuster's lack of clarity would be something Covea would ultimately be responsible for.

The second part of this element relates to the costs being quoted by B's builder for certain works. Whilst some of this may not be covered as a result of the claim (potentially, the

improvements to drainage for example), much of the work has seemingly been agreed as being required. B's builder has provided something of a breakdown of the costs.

However, the quotes obtained by Covea do not contain any form of breakdown - other than per room, and an element for "Provisional Sums". Similarly, the actual scope of works, with associated pricing, that was created to lead to this quote has not been provided. It is difficult for me to make any assessment of whether this quote is fair and reasonable without this detail.

The initial quote Covea obtained was reduced by around £5,000. Potentially, this was because the level of finish was initially higher than was actually required - though this is not clear. The surveyor then recommended £40,000 was a realistic price for the works. The loss adjuster indicated, on 3 October 2023, that this was reduced to £37,500 as the strip-out works had been separately invoiced. However, I note that the 28 July 2023 offer of £37,500 was for the "strip out and reinstatement" costs.

I explained that my initial thoughts were that a settlement for the property damage element of the claim ought to be somewhere between the two parties' positions.

It is likely that a proportion of the works ultimately required related to what was likely to be unnecessary work (i.e. the removal of electrics, etc.). But that Covea is in a difficult position in terms of excluding this given the potential lack of clarity over the initial instructions given to the policyholder.

Similarly, it isn't clear how Covea reached the settlement figure of £37,500 - which was lower than quotes it had obtained, and it isn't clear what these quotes included. If there was a lack of clarify over the level of strip-out, and the actions then taken meant it was difficult for the surveyor to assess the level of claim damage (as stated by Covea), this does not appear to be something that can be held against B. On the other hand, there is a likelihood that some of the works included in B's builder's quote amount to betterment, etc.

I suggested meeting in the middle of the two - £48,000.

Time taken/claim handling

The claim was reported on 21 December 2022. Whilst I appreciate there was the holiday period shortly afterwards, it took a month for a loss adjuster to attend. The loss adjuster was seemingly then in the process of instructing a surveyor, but I understand this was put on hold following instructions from Covea. It wasn't until mid-June 2023 that the process with the surveyor recommenced.

The hold and intervening period seems to be partly due to Covea establishing liability for the claim. I appreciate it is necessary for claims to be verified, and I note that on occasion there was a delay in the loss adjuster receiving responses from B, it isn't clear why it took until 31 May 2023 for liability to be confirmed. It is also notable that a number of the questions Covea was seeking answers to were not relevant to the circumstances of the claim. Nor, as per the underwriter's email of 15 May 2023, would the answers have led to the risk not being insured at all.

Having taken the circumstances into account, I explained I was minded to conclude that liability for the claim ought to have been confirmed, and the process with the surveyor progressed, by mid-February 2023 at the latest. B's builder was able to provide a quote soon after this visit.

I also note that Covea has raised concern that B only provided one quote for the repairs.

Covea has said, in its 4 October 2023 final response letter, "the club was asked at the outset for three quotes/estimates for repairs." However, I am unable to identify any such request.

The email to B of 28 December 2022 merely requests "Estimates/Invoice for repair works on company headed letter" and makes no mention of more than one being required. I appreciate that it is common practice in insurance claims for multiple estimates to be provided. But common industry practice is not something a policyholder can be expected to be aware of.

Had a request been made for three quotes, there is no identifiable reason these would not have been provided. This would then have made assessing the property damage element of the claim more straightforward, and would have avoided much of the issues above.

Similarly, if there was a lack of clarity in terms of the strip-out instructions, the time taken for the loss adjuster to deal with this aspect of the quote could have been avoided. It also isn't clear why it took over a week for the offer to be provided to the policyholder in July 2023, after this had been discussed between the loss adjuster and surveyor.

There were also a number of periods where there does not appear to be any progression of the claim without any identifiable reason.

Taking things in the round, I consider the settlement offer ought reasonably to have been provided to B about five months earlier than it was.

Post-offer, there were also a number of other issues. I note that, on 22 August 2023, B's broker asked the loss adjuster if an interim payment could be made whilst the complaint issues were dealt with. The broker made it clear that B had commitments that needed to be met soon. However, it does not seem that any settlement was paid until 9 November 2023. There appears to be no reason an interim payment could not have been made.

There is then the issue of the costs of B hiring alternative changing rooms, etc. I will comment on whether these would be covered under the policy below. But the request for confirmation of whether this would be covered was made on 11 July 2023. A response was given on 1 September 2023 that increased cost of working cover was in place, and that quotes for the changing rooms were being obtained.

It does not appear that it was explicitly confirmed that increased cost of working cover would meet this expenditure. But given the circumstances of the correspondence, I consider it was reasonable that B inferred this from the loss adjuster's emails.

It then wasn't until 18 February 2024 that it was confirmed that Covea's position was that this expenditure would not be covered. Regardless of whether this position is correct or not, it was clearly not reasonable to provide a formal response to a query seven months later - particularly where this goes against the indications previously given and where a policyholder has incurred financial costs as a result.

Business interruption

I did note that the majority of the revenue generated by the football club is not directly match related. However, I also considered that it is unreasonable to say that just because there is no, for example, spectator fees the revenue is unconnected to the club's ability to host matches. Clearly a "charitable" football club will only receive donations if they are actually operating to play matches. So, I thought a more holistic approach ought to have been taken to considering the income of this policyholder.

I also pointed out that it is likely some of the donations they receive are specifically match related. B has, for example, referred to advertising banners of donors being displayed at matches, and that this was not possible where matches were not being played. The indication would be that if there are no matches, and hence no advertisements, there will be no donations. Because of the points both above and below, I have not investigated this potential loss too far though.

The key issue for me was in relation to the costs the football club incurred to keep operating.

Covea has declined these on the basis that they do not meet the requirements of "increased cost of working" (ICOW). Due to the points above, I am not sure I would necessarily agree with this. But regardless of that, the policy also includes "additional increased cost of working" (AICOW) cover.

If the costs incurred could not be said to mitigate the loss of income resulting from the claim event, or that the majority of them do not meet the economic limit test, then they would be costs that fall under this area of cover. It does not seem Covea has considered this element of cover and it is not clear to me that it would not apply to the circumstances.

I explained that my initial thinking was that any reduction in the level of donations B received as a result of not being able to host football matches ought to be covered by the loss of revenue section, and that any costs incurred to allow the club to then play matches ought to be covered by a combination of the ICOW and AICOW cover.

My understanding is that, to allow the club to compete in the 2023/2024 season it had to hire alternative pitches for training and playing. I do note that the indemnity period is only 12 months.

But, from a policy point of view, any costs the policyholder was committed to paying (for example if they had to agree to hire a pitch for the entire season) would be covered if agreed within this 12-month period.

Additionally, given the delays highlighted above, had the claim been dealt with appropriately, it is likely the settlement would have been made with enough time for the policyholder to have the property repaired prior to the start of the 2023/2024 season. So, even if it could be argued that the policy terms do not cover this loss, it is likely that I would conclude it should be considered a consequential loss caused by the claim handling issues.

Summary

I suggested the property damage part of the claim be settled at £48,000. And I explained that I consider this settlement ought to have been made at the end of February 2023.

So, it would also be reasonable for Covea to pay 8% simple interest on this sum from the end of February to 9 November 2023. And then on the difference between this and the £37,500 from 9 November 2023 to the date of settlement.

I also explained that I considered Covea ought to meet the costs B incurred in hiring alternative pitches, either under the terms of the policy or as a consequential loss resulting from Covea's claim handling. Additionally, Covea should consider any loss of revenue B has claimed for that results from the loss of use of its own pitch.

Lastly, I noted that Covea has offered £150 compensation for the delays caused. However, given the extent of these delays, along with the other issues around the claim handling, I consider that an award of £600 (including the £150) is more appropriate.

I asked Covea for any comments or additional evidence it had in response to this.

Covea responded in relation to the business interruption part of my provisional findings. It said that the accepted definition of revenue is "the total income a business earns from its sales of goods or services", and that B had not suffered such a loss as its income comes via other means. Covea said that B had not provided any detail of having received donations tied to advertising at matches.

Covea also said that Increased Costs of Working is purely there to cover the costs a business may incur to prevent a loss of revenue. And that trying to assess what donations would have been received had there been no interruption has no ability to be evidenced and is very subjective. Ultimately, Covea considered that B's broker ought to have highlighted the terms of the policy around business interruption, and that the policy was clear that the losses in this area would not be covered by the circumstances.

I have also since sent details of the suggested outcome to B for its comments. B did not have any significant comments to make and agreed with the proposed settlement.

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 have come to the same conclusions as I have outlined about, largely for the same reasons.

Covea's response focussed on the policy wording and how it considers this should be applied to the circumstances.

It should firstly be made clear that the policy definition of "Revenue" does not carry the wording Covea has used above. The policy merely refers to revenue being the sum listed on the policy schedule, rather than seeking to define the source of this money. As a result, I do not consider that it is fair and reasonable to conclude that the income of a commercial policyholder needs to come purely from its sales of goods or services. I consider that, without a definition, revenue would be better understood as being the income generated by the operation of the enterprise. And this might not involve the sale of goods or services.

I do acknowledge that, to date, B has not provided significant evidence of a loss of income. It is reasonably likely that the losses B suffered in this regard were reasonably minimal. And I appreciate that it is possible that they are difficult to quantify. However, a difficulty in quantifying a loss exactly does not mean that such a loss did not occur nor that it would not be covered by B's policy.

Additionally, Covea's response focussed on how the Increased Cost of Working cover might apply to the costs of hiring alternate pitches, but did not address the cover provided by the Additional Increased Cost or Working (AICOW) section of the policy.

The AICOW cover is for:

> "… the additional expenditure incurred during the Damage to maintain the Business during the Indemnity Period which exceeds the amount recoverable under the Increase in Cost of Working."

This would not be limited to costs a business may incur to prevent a loss of revenue. And would cover those uneconomical costs incurred to maintain the business – subject to the policy limits. Being able to play matches – and the associated membership of the league and having signed players – would be the maintenance of the business, and the additional costs associated with this would fall under the AICOW cover.

Covea also did not address the issue over the costs B incurred being a consequential loss resulting from Covea's claim handling. As I previously explained, even if the policy did not cover the costs incurred here – which I consider it does, I would likely conclude that Covea ought to cover these as part of compensating B for the handling of the claim. Had Covea not caused the avoidable delays that it did, I consider the claim would have been settled five months earlier than it was. This would have allowed for the required repairs to be completed in time for B to avoid the need to hire alternate facilities. So, the additional costs incurred are a foreseeable consequence of the delays caused by Covea.

Ultimately, having considered all of the circumstances of this case, I am not persuaded to alter my initial conclusions.

Putting things right

To put things right, Covea Insurance plc should:

- Settle the property damage claim for £48,000.
- Pay interest on this settlement. The interest should be calculated at 8% simple per annum. And should be calculated on the full £48,000 sum from the end of February to 9 November 2023. And then on the difference between this and the £37,500 from 9 November 2023 to the date of settlement.
- Pay B the costs B incurred in hiring alternative pitches as a result of the damage to its facilities.
- Consider any loss of revenue B has claimed for that resulted from the loss of use of its own pitch.
- Pay B £600 in compensation. Covea can deduct the £150 compensation already paid from this amount.

My final decision

My final decision is that I uphold this complaint. Covea Insurance plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 11 March 2025.

Sam Thomas
Ombudsman