DRN-5389310

The complaint

A limited company, which I will refer to as M, complains about the decline, by Aviva Insurance Limited, of its business interruption insurance claim, made as a result of the COVID-19 pandemic.

What happened

The following is intended only as a brief summary of the relevant events. Additionally, even where other parties or specific individuals have been involved, I have just referred to M and Aviva, for the sake of simplicity.

M held a property owners insurance policy underwritten by Aviva. In 2020, M claimed on the policy on the basis that its insured business of property ownership was interrupted by the COVID-19 pandemic and the related government-imposed restrictions. It should be noted that a number of claims/appeals were made. But, ultimately, Aviva declined the claim.

M brought its complaint about this decline to the Financial Ombudsman Service. However, our Investigator did not recommend it should be upheld. He thought Aviva had fairly and reasonably applied the terms of the policy. M remained unsatisfied, and so its complaint has been passed to me for a 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.

Having done so, I am not upholding this complaint. I'll explain why.

I appreciate and am sorry to hear of the impact the COVID-19 pandemic had on M and its directors. It has suffered a significant loss through no fault of its own. However, this does not mean Aviva should be automatically required to cover this loss. It is necessary to consider whether the policy M had provides cover for the circumstances.

M has raised a number of specific points, and has provided detailed submissions around these. I have not responded to each of these within this decision. Instead, I have focussed on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Ombudsman Service.

I will start by saying that M has referred to some of the numerous legal cases and court judgments that have arisen in relation to the pandemic and business interruption insurance. However, it should be noted that there are a range of business interruption insurance policies on the market covering different risks. For example, some only provide cover for basic things such as fire or flood, whilst others provide cover in more circumstances either as part of the policy or as optional add-ons.

Those that include cover for situations that might allow for a claim arising out of the pandemic, such a clauses relating to disease or closure of businesses by relevant

authorities, also differ in their content. Whilst some “disease clauses” or “prevention of access clauses” have allowed policyholders to claim for their losses, others have not. And the courts have not found that all claims should be met.

The starting point is to consider the specific policy M took out. And then to see whether the clauses contained in its policy provide cover, taking into account the various findings of the different courts.

The policy

M has indicated that the policy schedule/quotation from 2017 was the only document that was signed and so this should form the sum total of what was agreed between the parties. M seemingly does not consider the full policy wording should be used to determine cover. However, I should point out that what was agreed in 2017 was cover only for that year, rather than subsequent years. So, even if I were persuaded by M’s argument here, no claim could be made for losses sustained in 2020 under that policy.

However, I am not persuaded by M’s argument in any case. The 2019 schedule, which is relevant for the year of cover in question, states:

> “This Schedule outlines your cover… and should be read and understood in conjunction with your policy wording.”

The policy wording itself then states:

> “The policy, the information You have provided and/or the application form, the statement of fact, the declaration made by You and The Schedule should be read together and form the contract of insurance…”

So, I do not agree it would be fair or reasonable to only consider the contents of the schedule to determine how the claim ought to have been dealt with.

Similarly, whilst I note M has raised some concerns about the exact wording used when discussing the potential of a claim with an agent of Aviva, I don’t consider the content of this conversation would determine the outcome of the claim. Ultimately, M did make its claim and it’s necessary to look at the policy wording itself to determine whether this should be met.

Damage

The policy wording sets out a number of areas of cover, including business interruption. The core cover provided by the business interruption section of M’s policy, as well as a number of the extensions to this cover, is based on an interruption to the business of the insured which has been caused by Damage.

Damage is defined as:

> “Physical loss, destruction or damage”.

M has said that as the word “damage” is used within this definition, it is necessary to consider the dictionary definition of this word. A policy, and the words within it, should actually be interpreted by considering what a reasonable person, with all the relevant background knowledge, would have considered it to mean at the time the policy was entered. This might involve considering a dictionary definition.

However, in this case, I consider that the appropriate term to be defined is “physical damage”. I think a reasonable person reading this policy at the time it was entered would understand the definition of Damage to mean that each of “loss”, “destruction”, and

“damage” carry the requirement for this to be physical.

Whilst it is possible “damage” on its own might mean either physical or non-physical damage, I do not consider that a reasonable person reading this policy at the time it was entered would conclude that “damage” ought to be read without the adjective within the definition.

Ultimately, I consider that Damage, as it is required under the policy, would require either a physical change to property or specialist cleaning to remove the cause of Damage. Whilst I appreciate the pandemic has caused substantial financial loss, I don’t consider it can be said that physical changes were caused to property by COVID-19. And I also don’t consider that any specialist cleaning of such property was required.

So, I don’t think either the core business interruption cover, or the extensions that rely on there having been Damage, provide cover in the circumstances of M’s claim. And I think Aviva acted fairly and reasonably when declining M’s claim under the parts of the policy that required such Damage.

M’s policy does include potentially relevant clauses that provide cover that does not require there to have been “Damage” as defined by the policy. But I do not consider that these respond to the circumstances of M’s claim either. I shall refer to a couple of these.

Disease

The Specified Disease, Food Poisoning, Vermin Pests and Defective Sanitation, Murder or Suicide clause (Specified Disease extension) provides cover in relation to a number of events including where a disease has led to the premises being closed. But this is limited to providing cover in the event of certain diseases.

The Specified Disease extension says, in part, that it provides cover as a result of:

> “a Specified Disease occurring at The Premises or within the distance in miles from the boundary of The Premises stated in The Schedule”

However, it goes on to say:

> “For the purposes of this Clause, the following definitions apply…
>
> Specified Disease
>
> (1) Any of the following diseases contracted by any person
>
> Acute encephalitis, Acute poliomyelitis, Anthrax, Chicken pox, Cholera, Diptheria, Dysentery, Erysipeloid, Legionellosis, Legionnaires Disease, Leprosy, Leptospirosis, Lyme Disease, Malaria, Measles, Meningitis, Meningococcal septicaemia, Mumps, Ophthalmia neonatorum, Paratyphoid fever, Puerperal fever, Plague, Rabies, Relapsing fevers, Rubella, Scarlet fever, Smallpox, Tetanus, Toxoplasmosis, Tuberculosis, Typhoid fever, Typhus fever, Viral hepatitis, Whooping cough or Yellow fever.
>
> (2) Viral haemorrhagic fever caused by the following
>
> Lassa virus, Junin virus, Machupo virus, Sabia virus, Guanarito virus, Ebola virus, Marburg virus, Crimean-Congo haemorrhagic fever virus, Hanta virus, Rift Valley fever virus, Yellow fever virus or Dengue virus.”

COVID-19 isn’t one of the specified diseases listed as being covered by the policy. So, I’m not persuaded this clause would have provided M with cover.

When reaching this finding I'm mindful that COVID-19 isn't something Aviva are likely to have known about when the policy was drafted, but I don't think that changes anything. That's because I don't think Aviva intended to, or suggested they would, provide cover for all diseases – either all infectious or contagious disease or all those that might be added to a government defined, regularly updated list. Aviva deliberately chose to define "Specified Disease" by reference to a static list of certain diseases.

As I've said above, a range of policies are available. And some provide cover for all "notifiable diseases" – a list of diseases updated by the Government. These policies might, depending on the circumstances, provide cover. Such policies were also those that were considered by the courts in the FCA test case that M has referred to. But this is not the type of policy M had. The relevant cover provided by its policy was limited to the diseases listed in the policy.

I don't think the list in M's policy is indicative of the kind of diseases that are included, I think it's an exhaustive list. There is nothing in the policy which implies that it provides cover for other diseases, including any new diseases which might emerge.

I think the purpose and effect of the policy is to provide cover in the event of the diseases listed in the policy. There are many potential illnesses and diseases that the policy does not cover including, for example, SARS (another type of Coronavirus). I don't think the policy can or should fairly be read as covering any and all diseases that fall outside of the defined list. So, the policy clearly only intended to cover certain diseases. And I don't think it can fairly and reasonably be read in a different way.

M's claim resulted from a disease that was not included in the list of covered diseases. As cover was not provided under this area of the policy for losses resulting from business interruption caused by COVID-19, I am satisfied Aviva's decision to decline the claim under this clause was in line with the policy, and in all the circumstances of this case fair and reasonable.

Prevention of access

The last area of cover I will specifically refer to is the Action by Police, Government or Other Competent Authority clause. This provides cover where a relevant authority has prevented or restricted access to a policyholder's premises due to an emergency within a certain radius of their premises.

The circumstances surrounding the pandemic would likely constitute an emergency, and it is likely this existed within the relevant radius of M's premises. It isn't actually clear to me that access to M's premises would have been prevented or restricted, or the premises closed, as a result of such actions though.

But even there was such an impact, the policy wording says that the term does not cover:

> "action taken in controlling, preventing or suppressing the spread of any disease".

This exclusion uses the term "any disease", and does not restrict its application to the list of Specified Diseases in the policy.

I think it is clear that the actions taken by the Government in March 2020 were taken to control, prevent or suppress the spread of COVID-19, which is a disease. As such, I think Aviva acted fairly and reasonably when declining M's claim under this term as well.

I do appreciate M's strength of feeling in relation to this claim and complaint. And as I have said, M and its directors have my sympathies for the position they find themselves in.

However, whilst the courts – and indeed the Ombudsman Service – has found that a number of different policies and clauses do respond to the circumstances of the COVID-19 pandemic, unfortunately the policy M had does not.

It follows that I consider Aviva acted appropriately when declining M's claim, and I am unable to fairly and reasonably ask it to do more in the circumstances of this complaint.

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 M to accept or reject my decision before 17 April 2025.

Sam Thomas
Ombudsman