

The complaint

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

What happened

The following is intended only as a summary. Additionally, even where other parties have been involved in the process, for the sake of simplicity, I have just referred to W and Aviva.

W operates a dental practice. It receives its income largely from two sources; from DenPlan and from private customers. My understanding of DenPlan is that patients pay a monthly fee to cover the cost of treatment that their dentist considers they will need over the annual term. The fee is paid to DenPlan, which then passes on the amount due from all customers to the dental practice each month. There are a number of standard plans available, as well as bespoke options. The basic plan covers the cost of an agreed number of dental examinations and hygiene appointments, as well as other basic care. More expensive plans cover more treatment.

W held an industry specific commercial insurance policy underwritten, as far as is relevant, by Aviva. Due to the government-imposed restrictions introduced as a result of the COVID-19 pandemic, W was forced to temporarily stop providing treatment. It then had to provide that treatment in a restricted manner for a period. W claimed under the policy for the losses caused by this interruption to its business.

Aviva ultimately met the claim. However, Aviva's position is that the money received from DenPlan fell under the following policy definition of gross revenue:

“...the money paid or payable to you in the course of the business ... at or from the premises...”

As W continued to receive the DenPlan payments even when it was not providing treatment, Aviva did not consider there had been a loss of this gross revenue. And did not include this sum in the settlement of the claim.

W disagreed. Its position is seemingly that, as no business was being carried out at the premises, any money received from DenPlan during the indemnity period should not be considered as gross revenue – or at least not as revenue received during this period. And instead should be considered as a loss.

W brought its complaint to the Financial Ombudsman Service, but our Investigator was not persuaded that it would be fair or reasonable to recommend Aviva include these DenPlan payment in the claim settlement.

W remained unsatisfied, and 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 should firstly say that both parties have provided detailed submissions, covering a number of points. I have considered all of these, but I am not going to comment on everything. Instead, I am going to focus on what I consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman Service.

The policy covers W, as far as is relevant, for loss of gross revenue. So, in order to claim these DenPlan payments, W must presumably accept that – in the normal course of events – they are part of its gross revenue. W's position is seemingly based on the fact that, as no treatment was being provided, these payments no longer formed part of its gross revenue. Or that this should not be considered as revenue received/earned within the indemnity period.

However, this was still money that W was receiving. And this money was being received by W due to it being a dental practice that was contractually required to offer a certain number of treatments, etc. to subscribing patients. As a result, I consider this was money paid to W in the course of the business carried out at its premises.

I do appreciate that W wasn't able to offer the treatments at the time these payments were made. But the payments are to allow patients access to certain treatments over the course of the subscription period. Even if W was open, patients would make the payments on months where they were not receiving treatment. So, I do consider that these payments remained part of W's gross revenue over the course of the indemnity period. And as W continued to receive these payments, they do not form part of W's lost revenue.

Regardless of the specific policy wording, I do not consider it would generally be fair or reasonable to require an insurer, in the circumstances of this complaint, to pay a policyholder for the loss of money that was still being received by the policyholder. I note W has referred to a decision of my colleague on a separate case, but the circumstances of that complaint are quite different to W's. I also note hypothetical examples posited by W, but I need to consider the circumstances of this complaint.

On starting to consider the complaint, I did consider whether the fact that W had been unable to offer these treatments for the period it was not open meant that there would be a later impact on the amount of non-DenPlan private care that could be offered. W presumably has a limited capacity in terms of the treatments it can provide. If, following reopening, it had to provide the DenPlan treatments that otherwise would have been provided when it was closed, this would likely limit the amount of private treatment it could provide. And this would likely lead to an ongoing loss.

However, Aviva's settlement of the claim extends beyond the period of closure. The indemnity period used by Aviva includes several months that followed up until the point W's overall revenue returned to expected levels. And there is no evidence that having to catch up on the provision of DenPlan treatments caused an ongoing loss that has not been accounted for. There is also no evidence that it was necessary for W to refund any DenPlan payments as a result of not providing the required number of treatments.

W suffered a loss of gross revenue from private patients, and Aviva has indemnified it for this. W continued to receive DenPlan payments. I consider this was a continued receipt of

gross revenue, so does not form part of W's losses. It follows that I consider Aviva acted appropriately in the circumstances of this complaint. And I cannot fairly and reasonably require Aviva to do more.

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 W to accept or reject my decision before 1 August 2025.

Sam Thomas
Ombudsman