



## **The complaint**

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

## **What happened**

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

H 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 of these 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.

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

The policy covers H for a loss of gross income in certain circumstances, and Arch ultimately met the claim. However, Arch's position is that the money received from DenPlan fell under the following policy definition of income:

"The gross fees and other income received or receivable by You in the course of The Practice at The Premises."

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

H 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 income – or at least not as revenue received during this period. And instead, should be considered as a loss.

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

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

H has made a number of arguments around this, including whether these payments are "fees". This overlooks the fact that the rest of the definition above refers to "other income".

Either way, this was still money that H was receiving. And this money was being received by H 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 H in the course of the business carried out at its premises.

I do appreciate that H 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 H 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 H's gross income over the course of the indemnity period. And as H continued to receive these payments, they do not form part of H's lost income.

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 H has referred to a decision of my colleague on a separate case, but the circumstances of that complaint are quite different to H's. I also note the hypothetical examples posited by H, but I need to consider the circumstances of this complaint.

It is possible that the fact H had been unable to offer these treatments for the period it was not able to open meant that there would be a later impact on the amount of non-DenPlan private care that could be offered. H 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 could lead to an additional loss.

However, Arch requested details of the number of DenPlan appointments H provided before and after the indemnity period, in order to see whether there was an additional loss that needed to be met under the policy. H did not provide this information, so Arch has not been able to consider this further. So, based on the information available, 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 H to refund any DenPlan payments as a

result of not providing the required number of treatments.

H suffered a loss of gross income from private patients, and Arch has indemnified it for this. H continued to receive DenPlan payments. I consider this was a continued receipt of gross income, so does not form part of H's losses. It follows that I consider Arch acted appropriately in the circumstances of this complaint. And I cannot fairly and reasonably require Arch 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 H to accept or reject my decision before 1 August 2025.

Sam Thomas  
**Ombudsman**