

The complaint

A partnership, which I will refer to as F, complains about the handling and settlement of its business interruption insurance claims, made as a result of the COVID-19 pandemic, by Hiscox Insurance Company Limited.

What happened

The following is intended only as a brief summary of events. Additionally, although various individuals and third parties have been involved in the process, I have largely just referred to F and Hiscox.

F operates a golf course, which also provides on-site “bar facilities”. It held industry specific commercial insurance underwritten by Hiscox. The events relevant to this complaint actually span two periods of insurance, and a number of claims. However, given the stage of this complaint, I consider it is appropriate to consider this as one matter. Additionally, the policy wording for the two years, as well as the general circumstances, are materially similar.

In March 2020, F was impacted by the government-imposed restrictions introduced as a result of the COVID-19 pandemic (lockdown one). A claim was made and ultimately accepted by Hiscox. Further claims were made for the periods of lockdown two and three.

The terms of F’s policy are known to both parties, so I have not set this out in full. Essentially the policy provided cover where the occurrence of COVID-19 had caused an “inability to use the business premises due to restrictions imposed by a public authority during the period of insurance”. It is not disputed that the periods of the lockdowns caused an inability of F to use its premises. Though it is noted that the exact timings of these restrictions in relation to golf courses is slightly different to restrictions impacting other types of business.

The indemnity period provided by the policy is defined as:

“The period beginning at... the date the restriction is imposed, and lasting for the period during which your income is affected as a result of such... restriction, but for no longer than [24 months].”

Where a claim was met, the policy would cover:

“the difference between your actual income during the indemnity period and the income it is estimated you would have earned during that period... less any savings resulting from the reduced costs and expenses you pay out of your income during the indemnity period. We will also pay for increased costs of working.”

Income was defined as, “The money paid or payable to you in respect of your activities.”

Hiscox made a number of offers of settlement. Whilst I have noted this, I have focussed on considering the final position reached. Hiscox concluded that there was an overall loss for the lockdown one claim, but that the savings achieved by F during lockdowns two and three meant no settlement was due for these periods.

F was unhappy with this, as well as the overall handling of the claims. Though it raised a number of issues, F's main concerns were around the treatment of the 25% discount on subscription fees given to members of the golf course. When it could not resolve this with Hiscox, F brought its complaint to the Financial Ombudsman Service.

Our Investigator did not recommend that it be upheld though. He didn't think F had shown that it was unfair or unreasonable for Hiscox to pro-rata the discount on the subscription fees and only include the periods of lockdown in determining F's losses. And he thought Hiscox's offer to pay F £500 compensation for the claim handling issues was appropriate.

F remained unsatisfied, 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'll explain my final decision.

Firstly though, I will just re-emphasise that the above is merely a brief summary. Both F and Hiscox have provided detailed submissions covering a number of different issues. I would like to reassure both parties that I have considered all of the evidence provided but I am not going to address each point. Instead, I am going to consider matters more holistically and 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.

F has raised a number of points around the settlement calculation and Hiscox's methodology. It should be noted that there is no singular way to calculate business interruption losses. Essentially though, an insurer should apply the terms of the policy to the circumstances of the claim to calculate a settlement. The aim is to put the policyholder back in the position they would've been in had the insured event not happened. This should usually only address the impact of the insured event, rather than any other circumstances.

As a result, this will not cover all of the losses a business might have suffered as a result of the wider circumstances that existed at the time. In F's case, its policy provides cover where a loss is caused by an inability to use the premises only. It would not cover, for example, any losses suffered as a result of the pandemic more generally. The impact on income caused by, for example, guidance on social distancing, would not be something that was caused by an inability to use the premises. There is a difference between an inability and a hindrance of use, and it is only the impact of the former that is covered by the relevant policy term.

Hiscox has essentially considered F's losses in three parts; the bar facilities, the subscription discount given to existing members, and the other overall golf activities. The core issue in this complaint is the treatment of the subscription fees. However, it would not be appropriate to consider this to be a discrete activity of F. I consider that it is reasonable to consider there to be a split between the activities of the business for the bar facilities and the golf facilities. These are discrete activities. However, I do not consider the provision of golf facilities to subscribed members to be a discrete/separate activity from the provision of golf facilities to non-subscribed members. So, when calculating F's losses, it would be necessary to think about the whole of this golfing part of the business as one.

I don't believe there is any real disagreement on how the losses from the bar facilities have been considered. So, I will focus this decision on the golf facilities.

The policy covers losses for the indemnity period. And this is, effectively, the period the

results of F were affected as a result of the inability to use the premises. This can arguably be considered to be either the entire financial year following the start of the first lockdown, or to be largely contained to the lockdown periods (when F was unable to use the premises). I'll consider the position under both approaches.

Full-year indemnity period

Prior to the introduction of lockdown one, F contacted its members to say that if such a restriction were introduced, it would extend the members' membership by the length of the lockdown. However, following the introduction of this lockdown, F revised its offer. It gave all members a 25% subscription discount for the year April 2020 to March 2021.

Technically, if F wanted to claim for losses relating to these circumstances, F ought to have discussed such action with Hiscox prior to taking it. This did not happen. However, even if F had approached Hiscox at this time, given Hiscox's (and most insurers') stance at that point on COVID-19 related claims, it is likely Hiscox would not have dealt with this specific issue (more likely it would just have said the policy would not cover the entire claim). So, I don't consider this is something that can really be held against F. It is also possible that offering such a discount was not necessary, and there is a question of whether this decision actually mitigated F's losses. Hiscox appears to have accepted that the action was reasonable however, so I have not considered this point in too much detail.

F's decision to offer this discount on the subscription was due to the fact it was unable to use the premises. And the discount affected the subscription payments for the entire year of the subscription period. This discount was offered to those who renewed immediately, as well as those paying the fees at later points in the year. So, on this basis, F's income was affected by the restriction for the entire period the reduced discount applied – i.e. the entire financial year. And F's claim ought to include all of the lost subscription fees.

The issue here for F is that the overall income from the golf activities provided by F included both the subscriptions and the green fees (paid by non-members on a "pay-as-you-play" basis).

Whilst I note F's comments that these two parts of its income are completely different matters, I do think that it is reasonable to consider all of F's income from golf activities as one. The subscription fees and pay-as-you-play fee are slightly different income streams, but both relate to the provision of golf activities. And, as previously mentioned, I don't think these could reasonably be considered as discrete activities of F's business. This can be contrasted with the bar activities, which are separate and discrete.

Hiscox has said that the increase in green fees F received, during this longer indemnity period, was greater than the loss relating to subscriptions. So, Hiscox considers that if the full longer indemnity period were to be used, there would be no loss for F to claim for in relation to the provision of golf activities. Based on the financial information provided, this seems to be accurate. And F's dispute is more over the application of the evidence, rather than the quantum.

As a result, if the indemnity period used to calculate F's losses is considered to be the entire year, it would likely have received less than Hiscox has offered – potentially nothing.

Lockdown-only indemnity period

The ability of F to use the premises for golf facilities was only directly impacted by the lockdowns. (The timings for golf differ slightly from other sectors, but I use this terminology as short-hand given both parties are aware of the relevant dates.) So, income from pay-as-

you-play golfers was only affected by an insured event during the lockdowns.

In terms of the subscription fees, F's argument here is seemingly that the decision to offer reduced subscriptions was taken during the period of lockdown, and also that many members actually renewed during this period. So, the reduction in the fees these members paid was lost entirely and that the timing of this loss – or at least the decision that led to it – took place during the indemnity period(s). As a result, F considers the whole sum to be lost due to the insured event at this point in time.

However, the subscriptions were payments to allow the members to play throughout the year, not just during the lockdown period(s). The policy terms refer to income being paid for the business' activities. These activities, as far as they relate to the subscriptions, are providing the use of the golf course throughout the year. Effectively, the subscriptions were advance payments for activities that would be provided (in the main) at other times.

I appreciate that the decision was made as a result of the lockdown being imposed. But, at the time the discount was offered, it was not known how long restrictions would be in place. Lockdown one, as it related to use of the golf course, did not last three months (25% of the year). And combined with the other lockdowns, the period there was an inability to use the premises for golf was longer than a quarter of the year. Whilst F's initial decision was around offering a 'roll over' of membership, the discount ultimately offered does not appear to correlate with the actual length of time there was an inability to use the premises.

Ultimately, I don't consider it would be fair or reasonable to conclude that the entire discount ought to be considered a loss specifically contained to the lockdown period(s), where the service being paid for by these subscriptions was to be provided mainly at times outside of these lockdown periods. It follows that I consider it was fair and reasonable for Hiscox to calculate the loss relating to this discount on a pro-rata basis, based on the periods F was unable to use its premises for the provision of the golfing activities these subscriptions paid for.

This, in effect, limits the indemnity period to the lockdown period(s). Hiscox has offered F a settlement based on the losses it sustained during these periods only – whether directly from loss of green-fees or a pro-rata of the subscription discount. Hiscox has not taken into account the losses from the discounted subscription outside of these periods, but also not offset this with the increased income from green fees outside these periods.

As I say, arguably, F's income was affected for the entire year as a result of (a decision taken within) the lockdown period. So, it may be that the 'correct' way to consider F's claim would be to apply the longer, full-year, indemnity period. But, even if this is the case, I don't think Hiscox's treatment of the claim here has caused F a detriment.

Ultimately, if the longer, year-long indemnity period is used, this would have to factor in the whole annual discount provided to subscribers, but also the increase in green fees F experienced over the entire year. If the shorter, lockdown-only period(s) is used, this would only include the green fees (not) received in these periods but also only the proportion of the subscriptions that related to this lockdown period. Hiscox has done the latter and this is to F's benefit.

Leavers and new joiners

F has referred to two specific categories of subscribers and has raised concerns over how losses relating to them have been treated. These are members who didn't rejoin at all, so their entire fee was lost, and new members who paid a lower discounted subscription.

It is difficult to conclude that the members who did not renew at all took that decision primarily due to a temporary inability to use the course, rather than other circumstances of the pandemic - or indeed completely unrelated reasons. It isn't clear why some members did not renew. But I don't think it has been shown that this was directly as a result of F's inability to use the course during the lockdown periods. It also isn't clear that these former members did not form part of the increased 'pay-as-you-play' golfers. So, I don't consider Hiscox would need to cover the total loss of subscription fees from these members.

However, those individuals who did join the club, and paid a subscription fee to do so, were given a discounted rate. The 25% discount seemingly applied both existing members who renewed, and new joiners. I think that both of these groups ought to be treated in the same way. Currently, it does not appear that Hiscox has included the loss F incurred by offering the new joiners the discount. I think it would be fair and reasonable for Hiscox to include this loss in the settlement, on the same pro-rata basis as the loss relating to renewing members. In order for Hiscox to calculate this, F may need to provide further evidence relating to these new joiners.

I should say that I do not think this part of the settlement should extend to Hiscox covering any further reduction in the subscription fees these new members paid as a result of only joining later in the year though. If a joiner was only required to, for example, pay for half of the reduced subscription fee on the basis that they joined half way through the year, I do not consider this is a loss that can be fairly and reasonably attributed to an inability to use the golf course during the lockdown periods. So, this would not be an insured loss. It is only the 25% discount that was offered to all subscribers that would be included here.

Other issues

F has said that comparison with the 2019 to 2020 year is inappropriate as bad weather had impacted its income during this period. But F hasn't really provided any evidence to support this.

Additionally, its argument is that subscription fees were reduced during this period. However, whilst bad weather might impact green-fees from pay-as-you-play customers, it is unclear how weather later in the year would have prevented customers from renewing annual subscriptions. It may be that there is a reasonable explanation for this. And I note F's comments about the change to its systems which may prevent some data being provided

Ultimately though, my role is to consider whether Hiscox's actions have been fair and reasonable based on the evidence provided to it. And without F providing persuasive evidence on this point to Hiscox, I don't consider Hiscox actions have been inappropriate here.

I note that F has referred to the additional work the partners took on in maintaining the golf course. I appreciate this work was necessary and was work these individuals would not normally do. However, it does not appear that this was work they received any remuneration for. Hiscox's role is to settle the financial impact of the insured event. Where additional unpaid work was undertaken, there is no financial impact that needs to be addressed.

F is also unhappy with the general handling of claim by Hiscox, including inconsistencies in approach, a lack of direct engagement, and changing of the parties F was dealing with. However, whilst I appreciate F would have found this experience difficult, I note Hiscox has provided F with £500 to address this. Taking the situation in the round, I consider this to be fair and reasonable. So, I am not directing Hiscox to do anything more here.

Putting things right

Hiscox Insurance Company Limited should put things right by calculating the relevant pro-rated subscription losses of new joiners, in relation to the 25% discount these joiners enjoyed. And if this leads to any further settlement being due to F across the three claims, paying this.

My final decision

My final decision is that Hiscox Insurance Company Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 24 July 2025.

Sam Thomas
Ombudsman