

The complaint

A limited company, which I will refer to as N, complains that Ecclesiastical Insurance Office Plc declined its business interruption insurance claim, made for losses relating to the COVID-19 pandemic.

What happened

The following is intended merely as a summary of the circumstances. Additionally, even though other parties have been involved in the correspondence, I have just referred to N and Ecclesiastical for the sake of simplicity.

N operates as a nursery and held a policy underwritten by Ecclesiastical. The policy provided a number of areas of cover, including for business interruption.

In March 2020, N was forced to close its premises. N contacted Ecclesiastical to claim for its losses. Ecclesiastical declined the claim in July 2020. It said the cover provided by the Prevention of access - Non-damage (POA) extension to the business interruption section of the policy contained an exclusion relating to claims caused by an infectious disease, where the closure was on the order or advice of the competent local authority. And that this included action taken by central government. Ecclesiastical also said the Specified Disease cover was limited to a specific list of diseases that did not include COVID-19. So, this did not cover the claim either.

In October 2024, N complained about Ecclesiastical's decision relating to the POA extension. And ultimately brought its complaint to the Financial Ombudsman Service. However, our Investigator didn't think the complaint should be upheld. He agreed with Ecclesiastical's reasoning and said it had acted fairly and reasonably when declining the claim.

N remained unsatisfied and so this 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've explained why below.

I have considered all of the submissions made by both parties, as well as the various clauses in the policy which might be argued to respond to the circumstances of N's claim. However, I will not be commenting on each of these or all of the arguments that have been made. Instead, I will be focussing 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.

N has strongly argued that the POA extension in its policy does provide cover in the circumstances. This extension provides cover for, in part:

“Access to or use of the premises being prevented or hindered by

(a) any action of government, police or a local authority due to an emergency which could endanger human life or neighbouring property...”

This would seem to fit the circumstances around the UK and Scottish Government’s actions in relation to the pandemic, so it might initially seem this provides relevant cover.

However, these actions were taken to control the spread of COVID-19, an infectious disease. And the policy goes on to say the extension does not cover:

“Closure or restriction in the use of the premises due to the order or advice of the competent local authority as a result of an occurrence of an infectious disease...”

This wording refers to the actions of a competent local authority, and I note the relevant actions were those of the Government. N has said that this means the actions of the UK and Scottish Government that led to its interruption are not excluded.

However, in coming to my decision, I am required to take into account, amongst other things, the relevant law. The wording used in this policy was considered by the High Court in the FCA Test Case (*The Financial Conduct Authority (FCA) v Arch Insurance (UK) Ltd & Ors* [2020] EWHC 2448 (Comm)). The parts of this judgment that were not appealed currently constitute case law that I consider relevant.

N is aware of the relevant wording of this judgment, so I have not set this out in detail. But N has said the Government and the competent local authority should not be deemed the same.

This is due to the context given by the rest of the policy. It is necessary to consider the meaning of a term in relation to the rest of the contract it appears in. And the court in the FCA Test Case set out its reasoning for how the interaction between the POA and the Specified Disease extensions meant that, in the context of this policy wording:

“...the phrase “competent local authority” means whichever authority is competent to impose the relevant restrictions in the locality on the use of the premises, including central government.”

The court set out a number of reasons for coming to this conclusion. One of the key ones being that interpreting the term to be limited to local authority action, would mean the policy offered unlimited central governmental cover in respect of all infectious disease, but local authority cover confined to certain specified diseases. And that this would not have made commercial sense, nor been the interpretation of a reasonable person, with all the relevant background knowledge, at the time the policy was entered.

It is this context, rather than the words in isolation, that are key to the interpretation of a policy.

N has referred to other legal sources, including the comments of Lord Mance in an Arbitration Award relating to a China Taiping Insurance Co (UK) policy and the judgment in *Corbin & King Ltd and Others v AXA Insurance UK plc* [2022] EWHC 409 (Comm). And has said that these alter how the POA clause ought to be interpreted. However, these sources considered differently worded policies. And, as I say, it is the context provided by the Ecclesiastical policy wording that I consider determinative in this case. So, I am not persuaded that these other sources do alter how the POA clause should be interpreted.

Taking this into account, and considering all the circumstances of this complaint, I think Ecclesiastical were entitled to say that this extension did not cover the circumstances of N’s claim.

Having considered the rest of the policy carefully, I do not consider there to be any area of cover that means Ecclesiastical should have met N's claim. It follows that I cannot fairly and reasonably require Ecclesiastical 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 N to accept or reject my decision before 21 August 2025.

Sam Thomas
Ombudsman