DRN-5805444

The complaint

Miss P, trading as a business which I'll refer to as L, complains about the settlement of her business interruption insurance claim, 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 the events. Additionally, although other parties have been involved in the communications from both sides, I've just referred to L/Miss P and Hiscox for the sake of simplicity.

L operates a hair salon and held a commercial insurance policy underwritten by Hiscox. In March 2020, L's operations were interrupted by the government-imposed restrictions introduced in response to the COVID-19 pandemic. Miss P claimed for her losses on the policy.

Hiscox ultimately offered a settlement of her losses. Essentially, it said that only the losses sustained within the periods of the first and second national lockdown were covered. Miss P's policy had renewed after this, and there was no cover for COVID-19 related claims on the renewed policy. Having taken various savings into account, Hiscox offered Miss P around £3,400. Hiscox had already paid £2,500 as an interim settlement, but added interest to the remaining sum. Hiscox also offered £500 in compensation for claim handling issues.

Miss P was unhappy with the settlement offer. She made a number of arguments. These included that the renewal didn't highlight the change in terms, so claims under the renewed policy should be met. She also said that L's business was also interrupted outside of the lockdown periods. And that various savings – particularly those related to government grants – should not be deducted.

Hiscox offered Miss P £150 further compensation, but did not alter its position on the claim. Miss P then referred her complaint to the Financial Ombudsman Service. Ultimately, our Investigator did not uphold the complaint.

Our Investigator thought it was fair for Hiscox not to have to meet claims under the renewed policy. That the impact of the pandemic on L outside of the lockdown periods did not meet the policy requirements for a claim to be covered.

He also explained that, whilst a specific saving had not been identified in respect of payments received under the Self-Employment Income Support Scheme (SEISS), it was fair and reasonable for Hiscox to consider the sum was income Miss P had received. And he confirmed that the case law position on the Coronavirus Job Retention Scheme (furlough) payments was that these could be deducted from settlements as a saving – and he saw no reason to depart from this.

Miss P said that not all of these points had been referred to the Financial Ombudsman for consideration. She accepted the position in relation to the renewed policy. But not in relation to the other aspects.

As our Investigator has been unable to resolve this complaint, it 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.

Firstly, I would like to confirm that whilst both parties have provided detailed submissions, and that I have considered these in full, I've not commented on each issue or argument. Instead, I have focused 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.

Secondly, I note Miss P (more specifically, her representative) has raised concerns about the fact our Investigator dealt with a number of issues that Miss P does not consider were referred to the Financial Ombudsman Service. However, Miss P has complained about the settlement of her insurance claim. And these were all issues that were previously raised with Hiscox. It is appropriate, in the circumstances of this case, that consideration is given to the settlement as a whole – rather than considering issues in a piecemeal fashion. Miss P has been given the appropriate opportunity to provide evidence in relation to the other points.

Lastly – before I discuss the merits of this complaint – I would like to express my sympathy for the position Miss P found herself in. I have no doubt that the events of the pandemic had a significant impact on L's business. And that Miss P likely suffered a large loss of income. However, it does not automatically follow that Hiscox should be required to cover all of this. It is necessary to consider the events and what the policy actually covers.

I note that Miss P is no longer disputing that the renewed policy does not respond to her claims for losses arising from the pandemic during the period it covered. So, I have not discussed this issue further.

Indemnity periods

Miss P does continue to dispute the indemnity periods relating to the 2020 losses though. Effectively, she has said that L was unable to use discrete parts of its premises due to restrictions on social distancing etc.

The relevant cover provided by Miss P's policy is based on there being an inability to use the premises due to restrictions imposed by a public authority in certain circumstances. That the circumstances exist in this case is not in dispute, so I have not expanded on that part of the clause here. The question is how long was there an inability to use the premises.

It should be noted that the wording in this clause was considered by the Supreme Court as part of the FCA Test Case. And a number of points were established. These include that an inability of use has to be established; not an impairment or hindrance in use. And that this can be established if either the premises can't be used for a discrete part of the business' activities, or if the business can't use a discrete part of the premises.

Miss P has argued that, after the end of the lockdown periods, L suffered an inability to use discrete parts of its premises due to government-imposed restrictions.

The first point I would make is that it is not entirely clear whether the measures that existed during the periods outside of the lockdowns would meet the requirement for there to be a

restriction imposed. Social distancing measures, for example, were never imposed by the UK Government, and instead formed guidance. Secondly, other measures – such as the "rule of six" – would have hindered the use of the premises, but would not necessarily have created an inability of use. Using the premises for a limited number of people, is not a prevention of use.

Regardless, assuming that there were restrictions that potentially could be relevant, I am not persuaded that these caused an inability to use (a discrete part of) Miss P's premises. Or for a discrete part of Miss P's business activities.

Miss P's argument is essentially that the restrictions meant that only chairs/stations in the salon could be used at any one time. Indeed, Miss P has said that in order to comply, some chairs were removed. So, Miss P considers that this created discrete areas of the business premises that it was unable to use.

Whilst I note Miss P's arguments around this, I am not persuaded by them. I do not consider that chairs/stations could reasonably be described as discrete areas of the business. Miss P compares this with the example in the Test Case of a department store that was only able to use the pharmacy part of its premises. But a pharmacy is clearly a discrete part of such a business, and is distinct from the rest of the business. I do not consider an individual chair/station in a salon to be the same.

Being able to only use a limited number of the chairs (originally) within the area, is a hindrance of the use of this area – not an inability to use it.

It follows that I consider Hiscox treated this part of the claim appropriately. And that I cannot fairly and reasonably direct Hiscox to do anything more here.

Furlough

Furlough payments were introduced by the UK Government at the time it initially responded to the COVID-19 pandemic. Effectively, employers were able to claim for payment/reimbursement of 80% of the expenditure incurred on costs of employment. Various requirements and limitations existed, but it isn't necessary to set these out.

The question is whether these payments can be deducted from B's settlement on the basis that receipt of them created a reduction in a business expense. I.e. were they a saving?

The court judgments which have addressed this issue – and which the parties are familiar with – agree that the provision of furlough payments to policyholders meant that they did not have to bear the expense of this part of their wage bill. And that the employment costs were reduced pro tanto. The judgments have also concluded that the furlough payments were made in consequence of the insured peril – and this has included consideration of clauses similar to that in Miss P's policy. And that there was nothing within the construction of this scheme, or within the later documents provided by HM Treasury etc. that stated these payments were for the benefit of the recipients alone, to the exclusion of insurers.

Ultimately, the courts have held that furlough payments can be deducted from claim settlements as a saving on expenses the policyholder would otherwise have had to pay.

Whilst I am required to take into account the law, I am not necessarily bound by it. However, I am not persuaded that there is anything in Miss P's complaint that means reaching a different outcome to the courts would be fair or reasonable. It follows that I consider Hiscox has acted fairly and reasonably by deducting the furlough payments received by Miss P from the claim settlement.

SEISS

SEISS and furlough do have some similarities. They were both schemes introduced by the UK Government to assist businesses impacted by the pandemic. So, the findings of the courts in relation to furlough are a useful starting point.

However, SEISS payments did not have to be used for a specific purpose. And where a specific use has not been identified, I don't consider these SEISS payments can be considered a saving of a business expense that otherwise would've existed. But these payments were money received by Miss P which reduced her overall losses. So, I do consider it is fair and reasonable that Hiscox takes these payments into account when considering the claim settlement. I consider that the fair and reasonable way to do this is to consider these payments as forming income L received.

Miss P's policy insured her against a loss of income. In order to calculate this loss, the policy says this is:

> "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…"

So, in order to calculate the overall loses, 100% of the income received through the SEISS – proportionate to the indemnity period – can be deducted from the settlement. This was income that was received, and so the entirety of it reduces the difference between the actual and estimated income.

I note Miss P has referred to a letter sent by HM Treasury in relation to insurers using money provided through grant schemes. This referred to some specific grants and said that money from these should not be deducted from claim settlements by insurers. However, the letter did not refer to SEISS specifically. And given the courts have held that furlough payments – which were also not mentioned – can be deducted, I am not persuaded that a court would find that SEISS payments should not be deducted either. So, taking things in the round, I consider Hiscox is entitled to deduct the SEISS payments it has from Miss P's claim settlement.

I note that Hiscox has done this by saying that these payments acted as a saving. Whilst I don't agree with this, I don't consider that referring to them as a saving – rather than as income – has caused any material detriment in the circumstances of this case.

It follows that I cannot fairly or reasonably require Hiscox 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 Miss P to accept or reject my decision before 13 November 2025.

Sam Thomas
Ombudsman