

The complaint

Mrs B, trading as N, complains about the decline of her business interruption claim, made as a result of the COVID-19 pandemic, by The New India Assurance Company Limited.

What happened

The following is intended only as a summary of the events. Additionally, even where other parties have been involved, for the sake of simplicity, I've just referred to N and New India.

N operates as, what I will refer to as, a provider of respite care. N held a commercial insurance policy underwritten by New India. N claimed on the policy, saying that it had been impacted by the COVID-19 pandemic. New India considered the claim, but said that the policy didn't respond to the circumstances. N complained about this decision.

The focus of the complaint has been on whether the following clause applies in the circumstances. The clause provides cover where there is loss as a result of:

"The closure of the whole or part of the Premises by order of a competent public authority as a direct result of:

...

(iii) any occurrence of a Notifiable Disease within a radius of 25 miles of the Premises..."

N said that it had been closed by a body run by the NHS and local council. I'll refer to this body as F. N said this requirement to close had been announced on the radio at the time. And that later letters issued by the Scottish Government and other official bodies had referred to support being provided to re-establish respite care and day services, as many of these had remained closed. N said these later letters showed that there had been a need to close. N also referred to regulations that had been introduced in response to the pandemic, and said that these required it to close.

New India did not consider that N had shown that any of these had actually directed N to close. And, instead, N had referred to a call in which it was told F would not be placing further clients with N. New India considered this to be different to what the policy required.

N brought its complaint to the Financial Ombudsman Service. However, our Investigator was not persuaded that N had shown it had been made to close by an order of a competent public authority. So, he did not recommend the complaint be upheld.

N 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 am not upholding this complaint. I've explained why below.

Firstly though, I will reiterate that the above is merely a summary of the events. N has provided detailed submissions covering a range of points. However, I have not commented on each of these within this decision. 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.

Secondly, I would like to express my sympathy for the position Mrs B found herself in. It is clear that the COVID-19 pandemic had a significant impact on N's business. However, this does not mean that the policy with New India should automatically respond to cover this loss. N's policy – like all insurance – will only provide cover in certain circumstances.

I have considered the rest of the policy, but have focused this decision on whether New India correctly concluded the clause above didn't respond to the circumstances of the claim. For completeness though, I will add that I do not think any of the other clauses respond either.

In terms of the clause above, it is not disputed that COVID-19 is a Notifiable Disease for the purposes of the term. It is also quite likely that there was an occurrence of this within 25 miles of the premises. The key issue is whether N was made to close by a relevant order.

For the purposes of this decision, I have assumed that F is a competent public authority. Certainly, other bodies such as the local council or Scottish Government would be. The question is whether any of these bodies directed N to close.

N has referred to an announcement made on local radio in March 2020. It isn't clear what the content of this broadcast was exactly. However, the radio station has since provided evidence of information it received from F. This said that all in-house support and day services would close, and planned respite and short break provision would cease. N has also seemingly referred to a call from its local council where it was told F would not be making any referrals due to the pandemic.

My understanding is that N is not "in-house". It provides respite and short break services by way of, in part, referrals from F. The likelihood is that almost all – and quite possibly every one – of N's referrals will come from F. As a result, F's decision to stop making referrals will have removed (almost) all N's business.

However, to my knowledge, there is nothing preventing self-funded respite care also being obtained by those who need it. And the removal of demand is not a direction to close as such. So, I am not persuaded that N has demonstrated it was directed to close by F. What F did was to remove the majority of the demand for N's services. Whilst I appreciate the impact on N was effectively that it was unable to provide its services, so suffered a loss, this doesn't appear to be due to F actually saying N could not provide these services to anyone. It is this, seemingly non-existent, direction that N should not provide any services, and instead should close, that the policy requires.

N has referred to the introduction of regulations in 2020 that ordered it to close. However, the relevant regulations closed other types of businesses – pubs, restaurants, etc. Medical or health services were allowed to continue to operate. There were requirements that they had to meet in order to operate, though there were exceptions to many of these for carers. But, significantly, these regulations did not direct businesses such as N's to close.

It is clear that many businesses such as N's will have closed. Concerns about limiting the spread of COVID-19 and the removal of referrals from F will have influenced this. So, whilst later letters from the Scottish Government and other bodies refer to the re-establishment of respite care, this was seemingly in response to this situation where relevant businesses had made the choice to close, and to ensuring bodies such as F began to make referrals again.

I do appreciate that N was unlikely to have been faced with much of a choice. Having had the majority of its business demand removed when F stopped making referrals, N may not have been able to profitably remain open. But the policy only responds where N is actually ordered to close. And N has not provided evidence to demonstrate that such an order was made.

I appreciate this is not the outcome Mrs B was hoping for. As I say, I sympathise with N's position and with the impact the situation will have had on Mrs B through no fault of her own. However, I consider New India applied the terms of the policy appropriately to the circumstances of the claim. It follows that I cannot fairly and reasonably require New India 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 Mrs B to accept or reject my decision before 16 October 2025.

Sam Thomas
Ombudsman