

The complaint

A limited company, that I will refer to in this decision as H, has complained about the handling of a claim for business interruption losses under its commercial insurance policy with Hiscox Insurance Company Limited.

Mrs H, as a director of H, has brought the complaint on its behalf. Mrs H is also represented in this complaint, but for ease I will refer to Mrs H or H throughout.

What happened

H is an electrical contractor, it also had a saleroom for selling appliances. It held this policy with Hiscox from April 2012 to April 2020.

In early 2021, solicitors acting for H contacted Hiscox with a letter of claim for business interruption losses arising from the Covid-19 pandemic, that it said should have been covered under the policy. H said that in March 2020, it had to close its sales showroom as a result of the restrictions imposed by the Government on non-essential shops, and while the repair service side of its business did continue, it did so at a reduced capacity.

Hiscox said H had not made a claim under the policy until then. Hiscox agreed to assess the claim. It said the policy provided cover in the event of business interruption as a result of an inability to use the business premises, following restrictions as a result of a notifiable illness. Hiscox said that while the repair side of the business may have been impacted by the circumstances at the time, H was permitted to continue to provide repair services and people were allowed to travel for work under the regulations. So, while the amount of repair work H carried out reduced, Hiscox said this was not due to an inability to use its premises and so there was no cover for the impact on the repair side of the business.

However, Hiscox accepted that H had to close the showroom part of its business, as a result of the restrictions imposed by the Government in March 2020 in relation to non-essential businesses. Hiscox therefore confirmed that there was cover in principle for H's losses relating to the closure of the sales showroom from 24 March 2020 to 22 June 2020, when it was allowed to reopen. Hiscox said it would need financial information to substantiate the claim but that it would be willing to make an interim payment.

In January 2022, Hiscox paid H £3,390, which it calculated was the loss from the closure of the showroom for the relevant period. Hiscox also paid interest of £400.28 and £500 as a goodwill gesture.

H was unhappy with this and complained. H says that its policy provided cover for business interruption losses for a period of up to 24 months and it suffered losses beyond the period when it could reopen the showroom, and losses to the repair side of the business, which Hiscox should cover.

Hiscox did not change its position and as H remained unhappy, it referred its complaint to us. H asked us to consider the losses incurred during the period outside lockdown when restrictions still remained at its premises; consider the losses to the repair side of the

business and that Hiscox should be required to reconsider the position on the deduction of furlough payments from the claim settlement (if the judicial position on this issue changes).

H has made a number of points in support of its complaint. I have considered everything it has said and have summarised its main points below:

- In interpreting any contract, it is the reasonable objective intentions of the contracting parties at the time that matter. It was fair and reasonable for H to expect the policy to cover these losses.
- The possibility that an interruption to business may be partial is inherent in the policy wording; the policy contains a number of heads of cover for perils causing “*interruption to your activities*” which are plainly intended to apply in circumstances where there is only limited interruption and not a complete cessation of activities
- The relevant policy clause relied on in this case was specifically referenced during the Financial Conduct Authority (“FCA”) test case and the Supreme Court interpreted the word “*interruption*” more widely than just being the complete closure of the premises.
- The Supreme Court also held that an “*inability to use*” would be established under the Hiscox policy wording if the insured “*is unable to use the premises for a discrete part of its business activities or is unable to use a discrete part of its premises for its business activities.*”
- The Supreme Court set out examples to illustrate its judgment on this point:
 - a department store which had to close all parts of the store except its pharmacy;
 - a golf course that was allowed to remain open but which had to close its clubhouse so that there is an “*inability to use*” a discrete part of the golf club for a discrete part of its business; and
 - a bookshop which was required to close for walk-in customers, but could continue to use the premises for telephone orders.
- These examples were not intended to be exhaustive.
- The Supreme Court’s analysis should apply to H’s business, as it suffered an “*inability to use*” a discrete part of its business or was unable to use a discrete part of its premises due to the restrictions imposed by the Government at the time.
- H had to buy Perspex screens and could only allow two people in the premises at any one time and only two members of staff could be in the store at once, in order to comply with the “*two metre rule*”. This impacted turnover and the running of the business.
- While the repair service did continue, this was at reduced capacity. In addition, this sometimes involved using a workshop at the premises to repair appliances. Given that fewer people were able to work in the shop at the same time, this meant there was an inability to use areas of the workshop, which is enough to trigger cover under the policy.
- H’s circumstances are analogous to the examples given above because there were discrete areas of the premises that customers were not permitted to access.
- The impact of such restrictions on the conduct of the business, and the service it offered, were so significant that they must be considered more than a “*mere hindrance*”.
- Hiscox deducted from the settlement the amounts that H received as furlough grants, which is unfair. While Hiscox has acted in line with the current legal position regarding the treatment of furlough payments, it asked that this point is considered further and a declaration be provided that Hiscox be compelled to reconsider this, if a higher court determines that they should not be deducted.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was not persuaded that there was cover for the impact on H by any restrictions after it was allowed to reopen its sales showroom in June 2020; and it did not consider that the impact on the repair side of the business was due to an inability to use its premises. The Investigator also said that Hiscox was entitled to take account of the furlough payments in the way it had.

H does not accept the Investigator's assessment. H's solicitors said in response that it accepts the current legal position is in in with Hiscox's treatment of the furlough payments but says it did not ask us to consider this point.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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.

It's evident from H's submissions that the Covid-19 pandemic has had a significant financial impact. However, I don't intend to uphold its complaint. I'll explain why.

Business insurance policies provide protection for some of the common things which might happen to a business. No policy will cover every eventuality however and each policy may provide different cover.

H's policy provided cover for losses arising from interruption to its business. That interruption has to be the result of one of the events specified in the policy. In this case the section of the policy that both parties agree is relevant is the "*public authority*" section.

This section of the policy says there will be cover for loss as a result of business interruption caused by:

"Public Authority

Your inability to use the business premises due to restrictions imposed by a public authority during the period of insurance following...

b) an occurrence of a notifiable human disease..."

It is accepted that there were restrictions imposed on H by a public authority following an occurrence of a notifiable human disease. The dispute is whether this led to an inability to use the business premises and if so, for what activities and for how long.

Hiscox has accepted that H was mandated to close its sales showroom with effect from March 2020 to June 2020 and so there was cover for the losses arising from that. It has settled that part of the claim.

H's initial submission to us did ask us to consider the fact that Hiscox had taken account of the furlough payments when assessing the claim. H has since said it didn't ask us to consider this point but it was part of its initial submission. In any case, I cannot make the direction it asked for. H seems to accept that Hiscox has acted in line with the current legal position. I cannot make any direction about what Hiscox should do, if at any point the courts determine that furlough payments should not be taken into account in the way that Hiscox has done. I can only determine complaints about things that have happened and make awards, if appropriate, to put right things that have gone wrong. I cannot make a conditional

award in the way H asked. And, for the avoidance of doubt, as Hiscox has deducted furlough payments, in line with the current law, I do not think it has done anything wrong.

The question for me to consider now, is whether there were restrictions imposed on H, over and above those that required the sales showroom to shut, that meant H suffered an inability to use its business premises.

I accept that the policy might cover partial closure or a partial interruption to business activities. But in this instance the relevant section of cover requires an inability to use the premises. So, an interruption to normal business activities is not enough on its own to trigger cover.

As H has stated, the above policy term was considered by the Supreme Court as part of the FCA test case. The Supreme Court's judgment said, at paragraph 129:

"The public authority clauses in Hiscox 1-4 (set out at para 111 above) do not cover all business interruption due to "restrictions imposed" by a public authority following an occurrence of a notifiable disease. They apply only where the interruption is caused by the policyholder's "inability to use" the business premises due to such restrictions."

The court went on to say, at paragraph 136: *"... an inability of use has to be established; not an impairment or hindrance in use."*

The court also made it clear that it may be possible for a business to claim for losses that arose because it was *"unable to use the premises for a discrete part of its business activities or is unable to use a discrete part of its premises for its business activities"*.

As such, I agree that this policy term would provide cover to a business that had been caused an inability to use their insured premises, for all, or for a discrete part, of its business.

The Supreme Court judgement included examples of situations it considered would mean that a business was unable to use the premises for a discrete part of its business activities or unable to use a discrete part of its premises. I agree that the examples given are not exhaustive. There could be many possible scenarios and each case would be considered on its own particular facts. But the examples given provide important guidance. They all involved a complete closure of a part of the business premises or complete cessation of a discrete part of the insured's business activities. None of the examples given involved a situation similar to H's, where there was a reduced capacity within the premises.

The Government regulations at the time did impose restrictions on people that would likely have had an impact on businesses that were able to open, such as H. For example, the social distancing rules. H has said this meant it could not have as many staff or customers in the sales showroom at once, which affected its revenue and it had to install Perspex screens.

However, H's staff were able to use the premises and after June 2020 and it was allowed to have customers attend the sales showroom in person. It was then able to operate the sales showroom, albeit with some precautions and adjustments in place, such as the Perspex screens. I do not agree that this amounts to an inability to use a discrete part of the premises after June 2020, even if the impact was significant. H has also said that it could not use its repair workshop at full capacity either. However, I have seen no reliable evidence that there was an inability to use the repair workshop at any stage; as mentioned, people were allowed to travel to work throughout. And again, I am not persuaded that limiting the number of people in the workshop at the same time, amounts to an inability to use a discrete part of the

premises.

H has also said that the repair service in peoples' homes was reduced. Again, I have seen nothing to link this to an inability to use the premises.

H says that its situation was similar to the examples given in the Supreme Court judgement. However, I have not seen any reliable evidence that there was a discrete part of H's premises that customers couldn't access. It seems that rather than there being a restriction on the use of the premises, any impact as to how H was able to carry on its business, from was due limits on the number of customers that could enter the premises at the same time.

In my opinion, this would amount to a hindrance of use of the premises and not an inability of use. To refer back the Supreme Court, it said: "... *an inability of use has to be established; not an impairment or hindrance in use.*"

Finally, as H has said an insurance contract is correctly interpreted based on the understanding a reasonable person, with the background knowledge of the parties to the contract, would have had at the time the contract was entered into. The contract should not be interpreted with hindsight. Rather the question is how the words would have been understood by the reasonable small business owner, perhaps assisted by a broker, with all the background knowledge which would have been reasonably available at the time the parties entered into the contract. The insurance contract was entered into before Covid-19 had been identified. I don't think such a person would consider, at the time H entered into its policy, that the policy would mean that reducing the number of customers it could let in, or a fall in demand for repair services, would amount to an inability to use its premises.

Having considered everything very carefully, I am not therefore persuaded that Hiscox has acted unfairly.

My final decision

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 9 February 2026.

Harriet McCarthy
Ombudsman