

## The complaint

T, a limited company, complains about the way Arch Insurance (UK) Limited trading as Arch Insurance International ('Arch') settled a business interruption claim it made.

Mrs J, a director of T, brings the complaint on T's behalf. T is also professionally represented, but for ease of reading, I have just referred to T and Arch in this decision.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them again in detail here. Instead, I'll give an overview of the complaint before moving on to giving the reasons for my decision.

T held a commercial insurance policy underwritten by Arch that included, among other things, cover for business interruption. In March 2020, following the introduction of government restrictions in response to the Covid-19 pandemic, T was required to close its premises. T made a claim in March 2022 for loss of income during the period of closure. Arch initially declined cover but later accepted the claim in July 2024. Arch outlined that the claim had a maximum indemnity limit of £25,000, and calculated cover under the policy at £19,400. Arch also added 8% simple interest to that sum.

T did not agree with the settlement Arch put forward and raised a complaint. T felt that Arch hadn't calculated its expected income during the indemnity period correctly as they had not applied a positive trend, and it also said Arch had incorrectly deducted savings for advertising costs from the claim. Ultimately, T said the claim value should exceed the indemnity limit of £25,000. Arch considered the complaint but maintained their position – so, T brought the complaint to this Service.

An Investigator looked at what had happened and recommended that the complaint should be upheld in part. The Investigator said he was satisfied Arch was not required to apply a positive trend to the loss calculation and felt it was reasonable for them to treat advertising and marketing costs as savings during the period the premises was closed. The Investigator also did not think Arch needed to reimburse T's legal costs. But the Investigator did feel that Arch's handling of the claim had caused some inconvenience and recommended they pay £500 compensation.

Arch agreed with Investigator's findings and said they would raise £500 compensation. But T did not agree. It provided a response via its representatives, the main points of which were:

- A positive trend should have been applied and it felt this was supported by the financial figures previously provided.
- T's advertising costs were discretionary and driven by wider commercial considerations rather than the closure of its premises.
- In any event, T suggested that during the lockdown periods when the premises were forced to close, it would have likely pivoted to promote online sales, therefore needing enhanced advertising and marketing investment.
- T said this was evidence that it had reduced its advertising costs due to business

- decisions rather than as a response to Covid-19 enforced closure.
- T purchased another company operating in the same business space. This business generated a lot of new customers which reduced the need for advertising costs.

T asked for an Ombudsman to consider the complaint – so, it's been passed to me to decide.

### **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 have reached the same conclusions as the Investigator and I uphold this complaint in part. I've set out my reasons below.

I should explain from the start that I won't be repeating the entirety of the complaint history here in my decision or commenting on every point raised. Instead, I've focussed on what I consider to be the key points that I need to think about in order to reach a fair and reasonable conclusion. This reflects the informal nature of this Service and our key function; to resolve disputes quickly, and with minimum formality. However, I want to assure both parties I've read and considered everything provided.

As the complaint currently stands, the outstanding issues in the complaint are trends, savings, claim handling, and legal fees. I've addressed each of these in turn below for ease of reference.

#### *Should Arch apply a trend?*

T says Arch didn't calculate its expected income fairly because they didn't apply a positive trend to the claim calculation. T has outlined that it feels its accounts show significant growth prior to the pandemic and as such, Arch should have reflected this when assessing its losses. The first point for me to consider is the policy's terms, which says cover is calculated by:

*“...the amount by which the Gross Income during the Indemnity Period as a result of Damage falls short of the Gross Income which would have been received during the Indemnity Period had no damage occurred”*

So, the relevant terms do not require Arch to apply a trend when calculating loss of income. Instead, the policy requires a comparison between the income actually earned during the indemnity period and the income that would have been earned had the insured event not occurred. As the Investigator has already set out, not all policies make express provision for trends. In this case, Arch compared an equivalent period immediately before the insured loss with the same period in the previous year, excluding the month affected by the closure. I find that this was a reasonable and proportionate approach by Arch.

It is not disputed that T experienced a period of significant growth between earlier accounting years, but I don't think the available evidence demonstrates that this growth had become an established trend by the time of the insured loss. As the Investigator set out previously, in the absence of T's 2017/18 accounting figures, Arch compared periods from the 2018/19 and 2019/20 accounts which produced very similar total figures (within 2% of each other). In my view, the more recent figures being closely aligned demonstrate that performance broadly stabilised rather than continuing to increase at the same rate as T said happened previously.

So, taking everything into account, I'm satisfied Arch acted fairly in deciding to adopt a flat trend when calculating the claim, which was reasonably based on the available evidence they had. And this means I don't find they needed to apply a positive trend adjustment to the settlement of the claim.

### Savings under the policy

The relevant term says Arch will settle a loss a gross income claim:

*“less any sum saved during the Indemnity Period in respect of charges or Business expenses payable out of Gross Income which cease or are reduced as a result of the Damage”.*

Broadly, the policy terms allow Arch to deduct any sum saved during the indemnity period in respect of expenses that stop or are reduced as a result of the insured event. Here, the insured event was the forced closure of T's premises following government restrictions. Arch treated reductions in advertising and marketing costs as savings during the period the premises were closed. But T says these reductions were due to wider business decisions rather than the closure itself and says they shouldn't have been deducted. T also says that Arch's own appointed accountants previously recorded that these items were not savings as they were due to business choices.

I understand Arch says these comments were included in error, and T's professional representatives have placed significant emphasis on these comments as evidence of Arch agreeing with T's position. In this case, where there is a dispute over such a finding, I think the fair and reasonable conclusion is for me to consider the available evidence to decide whether it supports what those comments recorded or not. Having considered the available financial records, I can see there was a clear reduction in spending on advertising coinciding with the closure of T's premises. There are then lower levels of advertising spend continuing during the indemnity period until they reached zero around five months later. I think that pattern is consistent with reduced trading activity caused by the closure of T's premises due to the government restrictions on the premises. And this means I'm persuaded Arch has demonstrated why their conclusion to treat them as savings was fair.

I appreciate T has explained that it might have done things differently during the lockdown, for example, increasing online advertising or pivoting its business model. However, as the Investigator already set out in their view, I haven't seen any contemporaneous evidence, such as documented decisions or committed expenditure, showing T's advertising costs were reduced for reasons unrelated to the closure of the premises. I've also considered T's further submissions about the later acquisition of another business; however, this information doesn't persuade me the reduction in advertising costs during the indemnity period was unrelated to the insured event. This information was provided after the Investigator's outcome and amounts to, in my view, an alternative explanation, rather than contemporaneous evidence of what caused the reduction in advertising costs at the time.

Taking everything into account, I'm ultimately satisfied the available evidence demonstrates that Arch acted reasonably in treating the reduced advertising costs as savings arising from the insured event and deducting them from the claim calculation.

### Reimbursement of legal fees

T has asked for a direction to award it the full legal costs it has incurred using its professional representatives to manage its claim. As the Investigator has previously set out, this Service can award costs where it considers that it would be fair to do so under DISP 3.7.9.

But while I can understand that T may have wanted to obtain professional representation via a solicitor, I'm satisfied this was ultimately a commercial decision it made. And I haven't seen anything to suggest that legal representation was necessary for T to pursue its complaint or that any exceptional circumstances apply here. As such, I do not consider it fair or reasonable for me to direct Arch to reimburse T's legal fees.

### Claim handling

Although I do not find that Arch acted unfairly and how they calculated the claim settlement; having considered the claim history, I've reached the same overall conclusions as the Investigator, and I do think the overall handling of the claim caused T avoidable inconvenience.

Having considered the claim history, I do think this was protracted, and I think it would have been reasonable for Arch to reach their claim position sooner. While Arch added interest to the settlement, interest alone doesn't fully reflect the inconvenience caused by the delays and uncertainty T would have experienced. I've considered T's submissions carefully, but I don't think an award of £1,000 compensation would be proportionate in the circumstances. However, taking into account the overall history of the claim and awards made in similar cases, I think that an award of £500 is fair and reasonable in the circumstances, which I understand Arch has now agreed to raise.

I appreciate this may not be the level of compensation T had hoped for, and it may not ultimately change matters for it. But I consider the compensation I have outlined to be in line with the level of compensation appropriate to these issues, and I'm satisfied this produces a fair and reasonable outcome to this particular complaint.

### **My final decision**

For the reasons I have given above, my final decision is that I uphold this complaint in part. I direct Arch Insurance (UK) Limited trading as Arch Insurance International to pay T £500 compensation if they have not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 24 February 2026.

Stephen Howard  
**Ombudsman**