DRN-5971982

The complaint

Mrs T and Mrs K, trading as an enterprise I will refer to as B, complain about the settlement of their business interruption insurance claim by Hiscox Insurance Company Limited. The claim was made in relation to losses caused by the COVID-19 pandemic.

What happened

The following is intended only as a summary of events. Additionally, even though both parties have been represented during the claim process, I have just referred to B and Hiscox for the sake of simplicity.

B operates as a beauty salon, and held a commercial insurance policy underwritten by Hiscox. The complaint relates to losses experienced over two periods of insurance, and Hiscox has settled the losses on the basis that there are three periods of indemnity. I have thought about whether this means the complaint needs to be split. However, the terms of cover are materially the same. And, given the stage of the complaint process as well as part of the complaint concerning how many separate claims apply, I consider it appropriate to deal with this matter as a single complaint.

In March 2020, B's business was interrupted by the government-imposed restrictions introduced in relation to the COVID-19 pandemic. B claimed for its losses under the policy. Other restrictions were imposed at later dates. Part of this complaint is over whether these created new interruptions – as Hiscox has treated the circumstances, or whether there was a continuing interruption – as B has argued.

Hiscox ultimately agreed to settle the claim(s), and added interest and an award of compensation for claim handling issues to the settlement. B is unhappy with the way the claim has been settled, including whether periods between the national lockdowns should also be covered, and over the deduction of payments B received from government schemes (including the Coronavirus Job Retention Scheme (furlough), and the Self-Employment Income Support Scheme (SEISS)).

B brought its complaint to the Financial Ombudsman Service. Our Investigator was not persuaded by B's arguments that it had suffered an inability to use a discrete part of its premises outside the periods of national lockdown. And he said that the current legal position on furlough payments was that these could be deducted from claim settlements; so, he wasn't persuaded it was fair and reasonable to come to a different conclusion on B's complaint.

Initially, our Investigator said that it was fair and reasonable for Hiscox to deduct SEISS payments B had received from the claim settlement. But that this should be done before applying the rate of gross profit to the claim settlement overall. This was in line with the approach to these situations that the Financial Ombudsman had at the time of the Investigator's initial view. However, this approach has since changed, and the Investigator issued a second view explaining that it was fair and reasonable for Hiscox to take into account the fact that receiving this SEISS payment was a circumstance that changed the appropriate rate of gross profit relating to this element.

So, ultimately, our Investigator was persuaded that Hiscox had settled the claim(s) fairly and reasonably. And he did not recommend the complaint be upheld.

B disagreed. It maintained that there were delineated parts of its premises which could not be accessed, so there was an inability to use these discrete areas for the purposes of its business. It also said that the current deduction of furlough was not an issue that it was seeking to complain about. But that SEISS payments should not be deducted at all from the claim settlement.

As our Investigator was unable to resolve the 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 have explained why below.

Firstly, I will reiterate that the above is only a summary. Additionally, whilst I have taken into account all of the submissions from each party, I have not referred to all of the evidence or arguments within this decision. Nor have I addressed each individual point. 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 with the position Mrs T and Mrs K found themselves in with B's business. B suffered significant losses as a result of the pandemic, and this was a situation largely outside of B's control. However, it does not automatically follow that it is fair or reasonable for Hiscox to be required to meet these losses in full. Hiscox has met a large proportion of the losses. The question is whether the terms of the policies B had require Hiscox to meet anything more.

Indemnity periods

B's main argument concerns the period(s) of indemnity Hiscox has considered the policies applied to. In basic terms, Hiscox considers that – in the circumstances of B's claim(s) – cover only applies during the periods of national lockdown, when B was required to close entirely. B's position is that outside of these periods, it was unable to use the entirety of its premises. So, there should be cover for the losses that arose out of this restriction.

It is not in dispute that where it is established that there was an inability to use a discrete part of the premises due to restrictions imposed by a public authority as a result of the pandemic, the policy should provide cover. B has said that government-imposed rules and guidance, including the "rule of six" and social distancing, as well as guidance from an industry body meant that it was unable to use certain areas of its premises.

Restrictions limiting the number of individuals within the premises at any one time, the need to install and use PPE, and to clean between appointments, etc. would only be a hindrance of use of the premises. The premises could still be used for the business, just not as effectively. Losses from a hindrance of use would not be something the policy would cover.

The focus appears to be on whether there was an inability to use specific salon stations, etc. And, if so, whether this amounted to an inability to use a discrete part of the premises.

Whilst I note B'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. B compares this with the example, in the Financial Conduct Authority Test Case on COVID-19 claims, 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 do not consider it would be fair and reasonable to direct Hiscox to do anything more here.

Furlough

B has clarified that it is not seeking to complain about Hiscox's decision to deduct furlough payments from the claim settlement. It acknowledged the current legal position – that furlough payments can be deducted in cases such as B's. But has said that if the courts reach a different outcome in later appeals (on other individuals' cases), that Hiscox should be compelled to reconsider its stance.

It is not the role of the Financial Ombudsman to require an insurer to take action in the future depending on the outcome of a court case that neither party is involved in. The Financial Ombudsman is not the regulator of the industry, and it would seem likely that it would be for the FCA to put in place any such requirement if it deems this is appropriate. Of course, even without such a requirement from the FCA, it would be open to Hiscox to consider its position following any such court case. But it is not my role to direct that it be required to.

The Ombudsman's role is to assess whether or not, in this case, Hiscox has acted fairly and reasonably when settling B's claim. Given Hiscox has applied what is the current legal position to B's claim, and I do not consider there to be any particular circumstances which mean this is not fair and reasonable, I consider Hiscox has acted appropriately. And I do not uphold this part of the complaint.

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 current position of the courts in relation to furlough is a useful starting point.

SEISS payments did not have to be used for a specific purpose – whereas furlough payments did. 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 Mrs T/Mrs K which reduced B's overall losses. So, I think it is fair and reasonable, in terms of the claim settlement, to consider this as income.

I do note B's comments that some other grants paid to individuals are not treated in this way by insurers. This includes, for example, the Small Business Grant. However, whilst HM Treasury has previously made reference to these other grants, and said how it expected them to be treated, no such comments were made over SEISS payments. And furlough payments were a form of grant that is deducted from settlements. So, there is variation in how grants are treated, and just because some are not deducted does not mean it is not fair or reasonable for SEISS payments to be deducted.

Ultimately, I consider it is fair and reasonable that Hiscox takes these payments into account when considering the claim settlement. And I consider that the fair and reasonable way to do

this is to consider these payments as forming income B received.

B's policy insured it against a loss of gross profit. In order to calculate this loss, the policy says this is:

> "The sum produced by applying the rate of gross profit to any reduction in income during the indemnity period..."

It also says that:

> "The amount we pay for loss of gross profit will be amended to reflect any special circumstances or business trends affecting your business, either before or after the loss, in order that the amount paid reflects as near as possible the result that would have been achieved if the … restriction had not occurred."

Receiving a SEISS payment is a special circumstance. This is not something that Mrs T or Mrs K would normally receive. What would normally be received was income generated by B that had associated costs – so had a historic rate of gross profit. SEISS payments did not have these associated costs.

So, it is appropriate that this "special circumstance" be taken into account to adjust the rate of gross profit that is applied to this income. I.e. that the income from SEISS be considered to have a 100% rate of gross profit.

This is what Hiscox approach effectively does. 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 should be noted that this position on SEISS is different to that the Financial Ombudsman has applied to other complaints in the past. But our understanding developed due to exposure to more complaints involving the issue and as new case law emerged. So, the position of the Financial Ombudsman on SEISS has evolved somewhat over time. And I consider the outcome set out above to be fair and reasonable in all the circumstance of this complaint.

Ultimately, I do not consider it would be fair or reasonable to 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 B to accept or reject my decision before 6 February 2026.

Sam Thomas
Ombudsman