DRN-6107036

The complaint

Mr D, trading as D, has complained about Hiscox Insurance Company Limited's refusal of a claim for business interruption under its business insurance policy.

Mr D is represented in this complaint but for ease I will refer to Mr D throughout this decision.

What happened

Mr D's business was noted on the insurance schedule as being "*coaching, training and education".* In March 2020, Mr D contacted Hiscox to make a claim for business interruption, as a result of the Covid-19 pandemic. Mr D said that, as a result of the Government restrictions imposed in March 2020, he had to close his premises, which resulted in a loss of revenue.

Hiscox declined the claim in April 2020. Hiscox later agreed to reconsider the claim following the outcome of the Financial Conduct Authority's Covid-19 business interruption test case ("FCA test case). Having done so, Hiscox said that the policy covered losses arising as a result of Mr D not being able to use his premises following closure by a public authority, as a result of an occurrence of a notifiable disease. However, it said that the Government restrictions in March 2020 had not applied to Mr D's premises, as his was not one of the types of businesses required to close and he had been permitted to continue to operate.

Hiscox also considered whether there was cover under the '*non-damage denial of access'* section of the policy but did not consider this provided cover either.

Mr D and Hiscox corresponded about the matter for some time. Mr D says that the Government announcements in March 2020 were that all non-essential businesses should close, so he reasonably complied with that restriction. In any event, his premises were also an education establishment providing further education; and a place of worship; and a community centre, all of which were mandated to close. Mr D also says that the "*non-damage denial of access*" clause would apply to trigger cover.

Hiscox did not however change its mind about the claim, so Mr D brought a complaint to this service. He has made a number of points in support of his complaint. I have considered everything that Mr D has said and have summarised his main points below:

- His premises were an education establishment, a spiritual centre and place of worship run by a religious leader, and the premises also provided daily seminars, a library, and a space for group practice, which would mean it was also a community centre. All three of these were entities that were specifically required to close under the restrictions impose by the Government in March 2020.
- Even if the premises were not considered to be one of these entities, he was still required to close by virtue of the Government announcements in relation to non-essential businesses. It was apparent from the sentiment and nature of the Prime Minister's speeches at the time that the directive did not provide an exhaustive list. Rather, it was clear that people should stay at home and lockdown unless there was good reason not to.

- The policy does not require a direct Government order that a business is required to close. And the Supreme Court judgement in the FCA test case stated that restrictions did not need to have the force of law.
- If Mr D is to be considered to be a 'spiritual consultant' or a business trainer, while not named in the list of businesses expressly required to close under the regulations, they were also not expressly permitted to remain open either.
- In the further alternative, cover would be triggered under the "*non-damage denial of access*" section of the policy. The Court of Appeal judgment in International Entertainment Holdings Limited & Ors - v- Allianz Insurance PLC3 declined to review the High Court's decision in the Covid-19 test case on the operation of "*non-damage denial of access*" clauses but notably refused to endorse the High Court's findings on them either.
- Given that the Court of Appeal determined that cases of Covid-19 could be considered as an "*incident*" for the purposes of the clause in question in International Entertainment Holdings Limited, it is clear that the Supreme Court would have reached an alternative view from the High Court in the test case, as to the coverage position regarding of the *"non-damage denial of access"* clause, if it had been asked to do so.

One of our Investigators looked into the matter. He didn't recommend the complaint be upheld, as he was satisfied that Hiscox was entitled to reject the claim for the reasons it had.

Mr D does not accept the Investigator's assessment. He says the Investigator failed to consider the point that the policy does not require that the business be mandated to close.

In addition, he provides a form of education listed in the Coronavirus Act 2020 particularly as "*coaching, training and education".* Mr D also provided a copy of his business plan, which he says supports that it was an educational establishment.

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

Harriet McCarthy
Ombudsman