

The complaint

A limited company which I will refer to as Z in this decision, has complained about the settlement of a claim under its commercial insurance policy with AXA Insurance UK Plc.

Mrs C has brought the complaint on Z's behalf.

What happened

Z is a supplier of cosmetic goods. In 2020, Mrs C contacted AXA to make a claim for business interruption losses, which she said had resulted from the Government restrictions imposed in response to the Covid-19 pandemic.

AXA initially declined the claim. However, in June 2022 it contacted Z (following the outcome of a court case which dealt with policy wording the same as in Z's policy with AXA) to say there might be cover under the extension of cover for "*denial of access*" under the business interruption section of Z's policy.

AXA invited Z to submit further evidence. Having reviewed it, AXA said the wholesale business was able to continue but it accepted that Z had to close its business for instore sales. AXA therefore said it would cover the claim for lost instore sales for the two periods that Z had been required to close its premises: 23 March to 15 June 2020 and 5 November to 2 December 2020 (lockdown periods one and two). AXA calculated the claim and made payment for those two periods.

AXA said that the policy renewed on 11 November 2020, and the new policy had a term that excluded claims in relation to notifiable diseases, so there was no cover for the later period of lockdown starting in January 2021 (lockdown three).

Mrs C is unhappy with the settlement and complained. As AXA did not change its position, Z referred the complaint to us.

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 Z by any Government restrictions outside of the two lockdown periods, or for the wholesale business.

Mrs C does not accept the Investigator's assessment. Z has made a number of points in support of its initial complaint and in response to the Investigator. I have considered everything Z has said and have summarised its main points below:

- The impact on the business lasted a lot longer than the lockdown periods AXA has determined. The claim was ongoing from March 2020 and it should be paid for the full indemnity period of 24 months from then.
- It was not lawful for it to allow customers or suppliers into the premises due to Government restrictions throughout the whole Covid-19 period, due to restrictions on movement of people, isolation rules and national and local lockdowns.
- Customers and suppliers were also subject to restrictions which prevented them from attending the premises.

- It has been affirmed by the courts that if an insured events occurs in the policy period then indemnity can extend beyond the end of the policy.
- Cover for Covid-19 was a material element of the original policy. Its removal significantly reduced its protection and meant AXA excluded lockdown 3 from cover.
- It was not given a choice to maintain or negotiate coverage, and at that time no alternative providers offered Covid-19 cover, so accepting the policy was effectively compulsory.
- Removing material cover from a continuing policy without providing a choice is considered unfair.
- Outside of the lockdown periods the business was practically unable to function with the staff all having Covid several times, severe illness caused by the vaccine, and restrictions on movement.

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 Mrs C's submissions that the Covid-19 pandemic had a significant financial impact on Z. I am sorry to disappoint her but I do not intend to uphold Z's 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.

Z's policy provided cover for loss of gross profit arising from interruption to its business. That interruption had to be the result of one of the events specified in the policy. In this case the part of the policy that both parties agree is relevant is the "*denial of access (non-damage) cover*" section. This says there will be cover for loss as a result of business interruption caused by:

"We will cover you for any loss insured by this section resulting from interruption of or interference with the business where access to your premises is restricted or hindered for more than 24 hours arising directly from

1. the actions taken by the police or any other statutory body in response to a danger or disturbance at your premises or within a 1 mile radius of your premises".

If cover is triggered under the above term, then cover will be provided for the "*indemnity period*" and the policy defines the indemnity period as being:

"The period during which the business is affected, starting on the date the incident occurred and ending not later than the maximum indemnity period."

The policy schedule shows the maximum indemnity period is 24 months.

As Z has stated, if the indemnity period starts within a period of cover, it would continue beyond the expiry of the policy, However, any insured event has to occur within the period of cover and so in this case that would mean that any action taken by the police or any other statutory body that resulted in restricted or hindered access to Z's premises would have to be within the period of cover. And once any restrictions or hindrance are lifted, cover under the above term would end.

AXA accepted that Z was one of the types of business required to close to customers during the lockdown periods referred to above and as a result it could not have customers attend the premises. AXA therefore accepted that this triggered cover under the above section of the policy and has settled the claims for the lost instore business during the two lockdown periods.

However, AXA said that Z could still work out of the premises and could have goods delivered and ordered over the phone.

The question for me to consider now, is whether there were restrictions imposed on Z, over and above those that required it to close, that meant Z suffered a denial of access to its business premises outside of the two lockdown periods set out above.

An interruption to normal business activities is not enough on its own to trigger cover. The interruption would need to be as a result of access to the premises being restricted or hindered.

I have carefully considered everything Mrs C has said. Having done so I am not persuaded that the changes that Z experienced in relation to how the business operated in the periods it was able to open to customers, and how it operated its wholesale business, would trigger cover under the policy.

The restrictions imposed in March 2020 and November 2020, which required non-essential retail stores such as Z to close would amount to a hindrance or restriction with access. However, outside of these lockdown periods, Z was allowed to open for retail customers attending in person. In addition, its staff were permitted to attend the premises throughout and therefore could still operate its wholesale business online or over the phone. While demand may have fallen, which impacted Z's revenue, this was not the result of hindrance or restriction of access.

I note that Mrs C has said staff were unwell but this does not mean there was a hindrance or restriction with access to the premises. There were restrictions imposed on the movement of people but this and social distancing rules, which I accept would have had an impact on Z, would not amount to a hindrance or restriction with access to the premises. The social distancing rules and guidelines allowed people to travel for work. So even if some wholesale customers needed to attend the premises, they would have been permitted to do so, albeit perhaps with adjustments once there, as they would have been travelling for work.

As soon as the actions taken by the police or any other statutory body that restricted or hindered access to the premises had been removed, the indemnity period would end. So even though other factors caused by the Covid-19 pandemic may still have impacted Z, once the statutory requirement to close to in person customers had been lifted, I think AXA was correct to say that was the end of the indemnity period.

That means that there was cover for the lockdown periods set out above (*i.e.* 23 March to 15 June 2020, and 5 November to 2 December 2020) but not between or after these periods.

Z's policy was renewed on 11 November 2020. AXA had changed the policy cover and the new policy contained an exclusion for any loss "*of whatsoever nature, directly or indirectly caused by or in any way contributed to by, resulting from, arising out of, or in connection with ... any excluded pathogens or diseases.*"

And it states that excluded pathogens or diseases would include "*any coronavirus*".

Z says this is unfair. However, insurers are generally entitled to decide what cover they want to provide for the premium charged. I do not consider it unfair that AXA decided it no longer wanted to cover claims relating to Covid-19, with effect from renewal of the policy in November 2020.

I agree with Z that an indemnity period may extend beyond the end of a policy period. That is why Z was covered for the total lockdown period two, even though it continued beyond the end of that policy period (11 November 2019 to 11 November 2020). But indemnity is only triggered if there is an insured event in the relevant period of cover.

The restrictions imposed in November 2020 were lifted on 2 December 2020, and Z was allowed to open to in-person customers again. The indemnity period for that claim therefore ended on 2 December 2020. The next set of regulations that restricted access to Z's premises took effect in January 2021. As this was within the new policy term, I am satisfied that AXA was entitled to rely on the exclusion for claims relating to coronavirus and refuse cover for that period.

Given the above, I am not persuaded that the indemnity period should run from March 2020 to May 2021 and am satisfied that Hiscox has applied the correct indemnity periods. I am also satisfied that it has correctly addressed the losses as in-store business only.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Z to accept or reject my decision before 16 March 2026.

Harriet McCarthy
Ombudsman