

The complaint

A business, that I'll refer to as 'L', complains that Aviva Insurance Limited declined its claim for business interruption. Mr C has brought the complaint to us on L's behalf.

What happened

In March 2020, the Government announced restrictions to combat the spread of Covid-19. These restrictions impacted the types of business L could carry out. So, having previously been advised to take business interruption insurance, it made a claim under this cover, which was underwritten by Aviva.

In April 2020, Aviva declined L's claim. It said that the policy L had purchased covered it primarily for business interruption arising from damage to its premises or property. And it didn't consider that Covid-19 could be considered 'damage' by the policy definition.

It said there's cover for certain situations which lead to a prevention or restriction of access to, or closure of, the premises, but not where such action was taken to control, prevent or suppress the spread of disease. And whilst there's business interruption cover for certain kinds of disease occurring at, or within five miles of, the premises, Covid-19 wasn't one of the specified diseases included in the list of diseases the policy covers.

L complained to Aviva, but it didn't change its mind. It then complained to our service, but our investigator felt Aviva had applied the terms fairly. L disagreed. It said it had been led to believe any business interruption would be covered. It felt that the terms were unfair, and that the outcome of the test case brought by the Financial Conduct Authority (FCA) should be interpreted in its favour. It added that there was a risk it could go out of business if the claim wasn't paid.

I therefore need to make a final decision.

This decision will only address the outcome of L's claim to Aviva. I understand L has also raised concerns about the sale of the policy. As the policy was sold by a third party, this will be considered separately.

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 the government restrictions imposed on L had a considerable financial impact, and I'm very sorry to hear about that. I've carried out a careful review of the terms of its policy to decide whether there are any sections that would require Aviva to meet its claim. I've kept in mind the FCA litigation, and the consequences my decision could have on L.

Damage

The core business interruption cover in L's policy is for:

'Loss of Income or increased... Expenses... resulting from Damage to property used by you at Your Premises... Such damage must occur during the Period of Insurance, and be caused by an Insured Event(s) which is not excluded by the Property Damage Section of this policy'

I can see damage is defined in the policy as 'physical loss, destruction or damage'. I haven't seen anything to indicate Covid-19 has caused damage (by this definition) to L's property. So, I'm satisfied this section of the policy doesn't cover L's claim.

Prevention of access – damage

This section of the policy covers L for business interruption caused by:

'Damage by any cause included under the Property Damage section to property within one mile of the boundary of Your Premises which physically prevents or restricts access to, or use of, Your Premises.'

I've already set out that I don't find the presence of Covid-19 to be consistent with the policy definition of 'damage'. So, I'm satisfied L's claim wouldn't be covered under this term either.

Specified illnesses

This section of the policy covers L for business interruption caused by:

'A Specified Disease occurring at Your Premises or within five miles of the boundary of Your Premises...

It goes on to say:

...For the purposes of this cover, Specified Disease means any of the following diseases contracted by any person

Acute encephalitis, Acute poliomyelitis, Anthrax, Chicken pox, Cholera, Diphtheria, Dysentery, Erysipeloid, Legionellosis, Legionnaires, Disease Leprosy, Leptospirosis, Lyme Disease, Malaria, Measles, Meningitis, Meningococcal septicaemia, Mumps, Ophthalmia neonatorum, Paratyphoid fever, Puerperal fever, Plague, Rabies, Relapsing fevers, Rubella, Scarlet fever, Smallpox, Tetanus, Toxoplasmosis, Tuberculosis, Typhoid fever, Typhus fever, Viral hepatitis, Whooping cough, Yellow fever

Viral haemorrhagic fever caused by the following viruses: Lassa virus, Junin virus, Machupo virus, Sabia virus, Guanarito virus, Ebola virus, Marburg virus, Crimean-Congo, haemorrhagic fever virus, Hanta virus, Rift Valley fever virus, Yellow fever virus, Dengue virus.'

As Covid-19 isn't one of the specified diseases included in this list, I'm satisfied this section of the policy wouldn't cover the business interruption caused as a result of the restrictions introduced by the Government to combat the spread of Covid-19.

I recognise Covid-19 wasn't something Aviva might have known about when the policy was drafted, and have considered this point carefully. But there are policies that provide cover for all notifiable diseases, which is a defined list of diseases, updated by the Government, and which does now include Covid-19. In contrast, L's policy sets out a specified list of diseases which are covered and there's nothing in the policy which implies that it provides cover for diseases not on the list, including any new diseases which emerge.

So, on balance, I'm persuaded that the purpose and effect of the list is to provide cover in the event of these particular diseases. And I don't think the policy can or should fairly be read as covering any and all diseases.

Prevention of access – emergency events

This section of the policy covers L for business interruption caused by:

'The prevention or restriction of access to, or closure of, Your Premises, by any Police, Government or other competent Authority, due to an emergency event within one mile of the boundary of Your Premises that causes or threatens a danger or disturbance.'

It goes on to say:

'We will not provide cover for action taken in controlling, preventing or suppressing the spread of any disease.'

This means cover is provided for situations where, due to an emergency event that causes or threatens danger or disturbance, the Police, Government or another competent Authority prevent or restrict access to, or close, L's premises. But this cover is limited by exclusions. The exclusion I've referred to above means that any prevention or restriction of access to, or closure of, L's premises that were taken to control, prevent or suppress the spread of a disease, won't be covered under this section.

Covid-19 is a disease, and the restrictions imposed from March 2020 were intended to control, prevent and suppress the spread of Covid-19. So, I'm satisfied the exclusion would apply here, even if I were to conclude the terms of this section of the policy had been met.

FCA litigation

The FCA's test case only affected claims made under "*a relevant non-damage business interruption policy*" (my emphasis). Furthermore, it didn't seek to resolve "*coverage issues relating to clauses that have an exhaustive list of diseases which does not include Covid-19.*" So, I don't think it's relevant to my findings under the first three sub-headings above.

Whilst it did consider non-damage prevention of access clauses, Aviva's policy wording wasn't one of the sample wordings considered. I'm satisfied Aviva's policy wording contains an exclusion it could rely on to decline L's claim.

Whilst I appreciate this is likely to come as a disappointment to L, I haven't found that any sections of its policy require Aviva to cover its claim. I don't consider the different sections of the policy that I've addressed in this decision to be inherently unfair. And whilst I appreciate L says it was led to believe any business interruption would be covered, Aviva wasn't responsible for selling the policy. So, I won't be asking Aviva to do anything further.

My final decision

For the reasons given above, I don't uphold L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 9 June 2021.

Mike Walker
Ombudsman