

The complaint

A company I'll refer to as N has complained that Ageas Insurance Limited unfairly turned down its business interruption insurance claim after it was forced to close due to the Covid-19 pandemic.

Mr O, a director of N, has brought the complaint on N's behalf.

What happened

N held a business interruption insurance policy with Ageas. It claimed on its policy after closing due to the Government's actions in response to the Covid-19 pandemic and to protect its staff. N said it had been contacted by a customer on 20 March 2020 who said they were extremely unwell with Covid-19. As this customer had been on its premises on 6 March 2020, N arranged for a deep clean of the premises.

In August 2020, Ageas asked if N's customers had symptoms of Covid-19 at its premises. N said it wasn't aware of any symptoms at the time and that the customer's symptoms developed after attending their appointment.

Ageas said that, while the policy covered business interruption as a result of a notifiable disease at the premises, N had closed as a result of the Government Act in response to the national pandemic. They said that, while N's customer might have had Covid-19, they had been at the premises two weeks before notifying N that they were unwell and they hadn't had any symptoms at the time. As Ageas thought N had closed in response to the national lockdown, rather than because someone at their premises had Covid-19, Ageas turned down its claim.

N was unhappy with Ageas's response and brought its complaint to our service. It provided evidence of its customer's booking on 6 March. N said the customer had originally had mild symptoms on 3 or 4 of March but didn't realise it was Covid-19. The customer then attended their appointment on 6 March. The customer became extremely unwell for 7-10 days before being admitted to hospital with Covid-19 on 23 March and was later moved to intensive care.

N said other customers had also exhibited symptoms of Covid-19 while at its premises, as had members of staff. It said a couple of employees had called in sick and provided a text message from 29 February 2020 from an employee who was unwell.

Our investigator looked into N's complaint but didn't recommend it be upheld. He thought the policy would only cover closure due to Covid-19 if there had been a case at N's premises. And, while he accepted N's customer who attended their appointment on 6 March did subsequently have Covid-19, he didn't think he was able to conclude that there had most likely been a case of Covid-19 at N's premises. He also didn't think that there was sufficient evidence relating to the other customers and staff of N to conclude that they'd had Covid-19.

N asked for an ombudsman's decision. It said it was impossible to prove whether its employees had Covid-19 due to a lack of testing. However, it thought its customer who

attended its premises on 6 March did most likely have Covid-19 at the time. N thought it had provided enough evidence to show there was most likely a case of Covid-19 at its premises.

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.

I'm sorry to hear that the pandemic and the Government's related actions had an impact on N's business. However, I'm not going to uphold its complaint. I'll explain why.

Business interruption insurance offers protection from risks common to a business, but different policies can provide different types of cover. What is and isn't covered is set out in the policy terms and conditions. I've therefore looked carefully at this particular policy to see if Ageas have acted fairly, reasonably and in line with the terms and conditions of the policy when declining N's claim.

The most relevant part of N's policy covers loss as a result of:

- "i any occurrence of a Notifiable Disease (as defined below) at the **Premises** or attributable to food or drink supplied from the **Premises***
- ii any discovery of an organism at the **Premises** likely to result in the occurrence of a Notifiable Disease (as defined below)*

The policy defines Notifiable Disease as:

"... illness sustained by any person caused by any person resulting from:

- i) food or drink poisoning*
- ii) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) an outbreak of which the competent Local Authority has stipulated shall be notified to them"*

For this extension to provide cover, the policy requires the loss to have been the result of a case of the notifiable disease occurring at the premises. Covid-19 is a notifiable disease, as defined in the policy, so I've then considered the information I have to decide if I think it's more likely than not that there was a case of Covid-19 at N's premises.

Widespread testing wasn't available towards the start of the pandemic, and the Government advised people to avoid using health services if they were displaying symptoms of Covid-19, save for emergencies. It's therefore rare that a business will be able to produce a positive test result, from that period. To treat that as a minimum requirement would, in my view, be unfair.

Therefore, it's necessary to take a more pragmatic approach, and to consider whether other evidence can be provided that supports, on balance, that Covid-19 occurred at the insured premises. As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that it's suffered a loss which its policy covers.

One of N's customers clearly had Covid-19 at the end of March and there is strong evidence they were on N's premises on 6 March. Despite N initially saying its customer's symptoms started after their appointment, the customer provided a statement to say their symptoms started around 3 or 4 March but as they didn't have a high temperature or a cough at that time, they didn't think it was Covid-19. They said their condition worsened as the month progressed before being admitted to hospital on 23 March.

While it's possible N's customer had Covid-19 on 6 March, I haven't seen anything apart from the customer's testimony to support this. It is possible that they were carrying Covid-19 at this time and only developed the recognised symptoms of Covid-19 later, but it is also possible that they contracted Covid-19 after 6 March, becoming increasingly unwell through the rest of March. In this particular case, the testimony of the customer to feeling unwell on 3 or 4 March is not enough to persuade me that, on the balance of probabilities, there was a case of Covid-19 at N's premises prior to the shop's closure.

I understand that N also had other customers who had symptoms of Covid-19 but I haven't seen any evidence from any of these customers to support this. N has provided a copy of a message from one of its employees dated February 2020 which says they're unwell. But the message doesn't list any symptoms of the employee's illness and I also have to bear in mind that many people who were unwell at that time didn't have Covid-19.

For these reasons, I don't think I can fairly conclude that there was most likely a case of Covid-19 at N's premises. So, I don't think this extension provides cover for the circumstances of its claim.

I appreciate this isn't the outcome N was hoping for but, having considered the matter very carefully, I don't think I can fairly require Ageas to pay N's claim.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 10 September 2021.

Sarann Taylor
Ombudsman