

The complaint

Miss A has complained that Liberty Mutual Insurance Europe SE unfairly turned down a claim on her business interruption insurance policy after her business was forced to close.

What happened

Miss A held a business interruption insurance policy with Liberty Mutual. She claimed on her policy as her business had been forced to close by the Government's response to the national pandemic. Miss A also said that both she and an employee had been unwell with symptoms of Covid-19 in March 2020.

Liberty Mutual turned down Miss A's claim. They said, while the policy covered compulsory closure as a result of the discovery of a notifiable infectious or contagious disease at her business premises, Miss A's business had closed due to the Government's response to the Covid-19 pandemic and not because someone at the premises had Covid-19.

Miss A was unhappy with Liberty Mutual's response. She said she'd told them that she'd needed to close her business at around 7.30pm instead of 11.30pm, on the day she'd been forced to close, due to an employee being unwell with symptoms of Covid-19. As a result of this Liberty Mutual agreed to pay for business interruption between those hours but didn't agree to pay for any further losses caused by the lockdown.

Miss A brought her complaint to us. She said she had been forced to close by the Government on 20 March 2020 however both her and an employee already had symptoms of Covid-19. Miss A provided a typed letter from her employee dated 24 March which apologised for having to leave work early on the previous day and explained that they thought they might have Covid-19 due to their symptoms of a dry cough, loss of taste and trouble breathing. Miss A also provided a handwritten rota for the week commencing 23 March showing that the employee had gone home unwell. Miss A said she was unable to provide anything further from the time, such as phone messages, as both she and her employee had new phones.

Our investigator looked into Miss A's complaint but didn't recommend it be upheld. He didn't think the evidence Miss A had provided was sufficient for him to conclude that there had been a case of Covid-19 discovered at her business premises before she had been required to close. He said there wasn't a date stamp showing the date the letter had been produced and noted that Miss A's business had been required to close on 20 March whereas the rota and letter indicated that the employee was unwell on 23 March. Instead, he thought Miss A's business had most likely closed due to Government's actions in response to the national pandemic.

Miss A said she was aware of the date she was required to close and she felt the rota showed that Covid-19 had been at her business premises before this. She felt that she was being punished for not using technology and asked for an ombudsman's decision.

Before reaching a decision Liberty Mutual confirmed that they hadn't accepted there was a case of Covid-19 at Miss A's business premises before she was required to close. Liberty

Mutual said that although they had paid for a few hours of business interruption Miss A's business should have already been closed by 23 March. So even if the employee did have Covid-19 on 23 March the case wouldn't have contributed to the Government's decision to require the closure of Miss A's business.

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 Miss A's business. However, I'm not going to uphold her 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 Liberty Mutual has acted fairly, reasonably and in line with the terms and conditions of the policy when declining Miss A's claim.

The terms and conditions of Miss A's policy provide cover for:

*"Interruption of or interference with the **Business** in consequence of compulsory closure by a public body authorised to prevent or restrict access to the **Premises** arising from*

*a) discovery of a notifiable human infectious or contagious disease at the **Premises**..."*

For this extension to provide cover, the policy requires the closure of the Miss A's business premises to have been the result of a case of the notifiable human infectious or contagious disease being discovered at the premises. Covid-19 is a notifiable disease, 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 Miss A'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 was discovered 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.

Miss A has provided a typed letter from an employee and a handwritten rota indicating that the employee had to go home from work on 23 March. While these documents indicate that the employee had Covid-19 on 23 March, I haven't seen anything other than Miss A's comments to support that these were produced at the time. I also find the evidence conflicting as these documents indicate that the employee went home on 23 March. Miss A's business should have closed on 20 March and in her initial complaint Miss A also said she'd closed early on 20 March. In correspondence with Liberty Mutual Miss A said she closed early on the date of closure due to an employee having symptoms of Covid-19.

I appreciate Miss A's concerns about her lack of use of technology and the impact that has on her ability to provide more persuasive evidence. However, it's for Miss A to demonstrate that there was most likely a discovery of Covid-19 at her business premises. Given that the date the employee said they went home was after Miss A's business was required to close and I haven't seen a date stamp for the letter which looks to have been produced electronically, I haven't seen enough to persuade me that the employee had Covid-19 at the premises before it was required to close. As such, I also think it's fair and reasonable for Liberty Mutual to say they haven't accepted that there was a case at Miss A's business premises prior to the date of closure, even though they agreed to cover a short period of business interruption on the date of closure.

I understand Miss A's employee was also at the premises prior to 20 March and if they did have Covid-19 they might have been incubating the disease in the days before showing symptoms. However, the policy requires there to have been a 'discovery' of Covid-19 at the premises. So I think someone would have needed to have displayed symptoms or been diagnosed with Covid-19 in order for me to find that there had been a case discovered at the premises.

Miss A said she also had symptoms of Covid-19 earlier in the month. However, I haven't seen anything apart from her testimony to support that and I also have to bear in mind that many people who were unwell at that time didn't actually have the disease. So in this particular case I haven't seen enough to persuade me there was most likely a case of Covid-19 at Miss A's business premises.

I appreciate my decision will be disappointing for Miss A, but having considered the matter very carefully, I don't think I can fairly require Liberty Mutual to pay her 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 Miss A to accept or reject my decision before 14 September 2021.

Sarann Taylor
Ombudsman