

The complaint

Mr H has complained that Royal & Sun Alliance Insurance Plc (RSA) unfairly turned down his business interruption insurance claim after his business, that I'll refer to as C, was forced to close due to the Covid-19 pandemic.

What happened

Mr H held a business interruption insurance policy with RSA. He claimed on his policy after closing C as a result of the Government's actions in response to the Covid-19 pandemic.

RSA said that, while the policy covered business interruption as a result of an outbreak or occurrence of any human contagious or infectious disease at the premises, C had closed as a result of the Government Act in response to the national pandemic. As RSA thought C had closed in response to the national lockdown, rather than because someone at its premises had Covid-19, RSA turned down Mr H's claim.

Mr H complained to RSA as he thought the policy should provide cover in the event of an outbreak of a disease. He said the word 'or' meant it could be a general outbreak or an occurrence of a disease at the premises and if RSA intended both to be at the premises they should have used the word 'and' instead. Mr H said one of C's employees had been advised to self-isolate after their father became unwell with symptoms of Covid-19.

As RSA maintained they were correct in turning down Mr H's claim, he brought his complaint to us. Mr H didn't agree with RSA's interpretation of the policy and was unhappy RSA hadn't specifically explained why they disagreed with his interpretation. Mr H said the general prevalence of Covid-19 meant that it was likely to have been at C's premises and that two other employees had also needed to self-isolate after being in contact with the employee whose father had symptoms of Covid-19.

Our investigator looked into Mr H's complaint but didn't recommend it be upheld. She thought the policy would only cover closure due to Covid-19 if there had been an outbreak or occurrence at the premises. And she didn't think she was able to conclude that there had most likely been a case of Covid-19 at C's premises.

Mr H made a number of detailed points in response and asked for an ombudsman's decision. He still felt the use of the word 'or' made the extension ambiguous and gave him a reasonable expectation of being covered. Mr H said that RSA had now changed the wording of the policy to specifically exclude pandemics, indicating that the previous policy either provided cover or was unclear. Mr H also said that the High Court had ruled that Covid-19 'occurred' in England on 5 March 2020.

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.

Mr H has made a number of detailed points about why he thinks the policy should provide cover. While I have considered all the points he's made, I'm not going to address them all and will instead focus my decision on what I see as the central issues to this complaint.

I'm sorry to hear that the pandemic and the Government's related actions had an impact on Mr H and C. However, I'm not going to uphold his 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 RSA have acted fairly, reasonably and in line with the terms and conditions of the policy when declining Mr H's claim.

The relevant extension to the policy says:

"The word Damage is extended to include closure of the Premises or part thereof on the order or advice of any local or governmental authority as a result of an outbreak or occurrence at the Premises of
A) Any human contagious or infectious disease other than Acquired Immune Deficiency Syndrome (AIDS) or any AIDS related condition, an outbreak of which is required by law or stipulated by the governmental authority to be notified
B) Food or drink poisoning
C) Vermin or pests
D) Defective sanitation"

I understand that Mr H thinks that this extension is triggered by either a wider outbreak of a disease or an occurrence at C's premises. However, I don't think that the policy does mean this. I say that because when considering all of the points at A)-D) and not just A) it wouldn't make linguistic sense to say the premises were closed due to an outbreak of defective sanitation. I therefore think that the words 'outbreak or occurrence' are used because some of the events at the premises would be considered an outbreak whereas others would be considered an occurrence.

I don't think the wording of the extension is ambiguous and so I think that for the extension to provide cover there would need to be an outbreak or occurrence of a human contagious or infectious disease at C's premises. I understand that RSA included a specific exclusion in a later policy, but I don't think that means the original wording was unclear.

I've therefore considered the information and evidence I have available to decide if there was most likely a case of Covid-19 at C'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 claimant will be able to produce a positive test result from that period. And to treat that as a requirement to demonstrate a case on the premises would, in my view, be unfair. It's therefore necessary to take a more pragmatic approach, and to consider whether other evidence can be provided that supports, on the balance of probabilities, that Covid-19 occurred at the insured premises prior to closure. As with any insurance claim, the burden of proof initially rests with the claimant to demonstrate that they've suffered a loss their policy covers.

I understand three of C's employees self-isolated after one employee's father became unwell with symptoms of Covid-19. However, I haven't seen anything to indicate that any of these employees did have Covid-19 and it seems that they self-isolated as a precaution. Mr H said the employee was most likely to have been asymptomatic, but I haven't seen anything apart

from his comments to support that. So, I'm not persuaded Mr H has shown it was most likely that the employees had Covid-19.

I also don't think the general prevalence of Covid-19 means that it's most likely there was a case at C's premises. While Covid-19 might have occurred in England on 5 March 2020, I don't think it follows that it also occurred at C's premises at the same time and I also have to bear in mind that most people at that time didn't have Covid-19. I appreciate that Mr H took action to enable C's employees to self-isolate to ensure that it was less likely someone would pass on Covid-19. However, I don't think Mr H has shown it's most likely someone at C's premises had Covid-19, so I'm afraid I don't think this extension covers the circumstances of his claim.

I understand Mr H is also unhappy that RSA didn't explain why they disagreed with his interpretation of the policy. While I understand it was frustrating for RSA not to have addressed this earlier, RSA did let Mr H know why his claim wasn't covered so I'm not going to require RSA to do anything further.

I appreciate this isn't the answer Mr H was hoping for, but having considered the matter very carefully, I don't think I can fairly require RSA to pay Mr H'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 Mr H to accept or reject my decision before 15 November 2021.

Sarann Taylor
Ombudsman