

## **The complaint**

A charity I'll refer to as E has complained that Royal & Sun Alliance Insurance Plc (RSA) unfairly turned down its business interruption insurance claim after it was forced to close due to Covid-19.

## **What happened**

E held a business interruption insurance policy with RSA. It claimed on its policy after closing on 20 March 2020 due to two employees having symptoms of Covid-19. E said the employees called 111 and their GP and were told they had symptoms of Covid-19 but testing wasn't available. E said, as the advice from Public Health England (PHE) at that time was to quarantine, it made the decision to close. E was then required to remain closed following the Government's response to the national pandemic. E said it had closed on the advice of a government authority due to an occurrence of an infectious or contagious disease at its premises.

RSA turned down E's claim. It said while someone at E's premises might have had Covid-19, there wasn't an enforced closure due to that person. RSA said if E had been told to close after contacting PHE, it would accept that this was evidence of someone at its premises having Covid-19.

Unhappy with RSA's response, E brought its complaint to our service. It said it was unreasonable for RSA to expect it to have contacted PHE when PHE had already issued guidance that applied to its circumstances.

E provided an email from an employee (who I'll refer to as R). This email said another employee, who I'll refer to as M, became ill on 17 March 2020 and R became ill the next day. R said they called 111 and their GP who indicated it was likely they had Covid-19. R said they were sent an antibody test which produced a negative result. E also sent a copy of its staff sickness record for March 2020 and a copy of the rota to show the employees had been at the premises around the time they became unwell.

RSA said E hadn't shown it was most likely that someone at its premises had Covid-19, so they still didn't think E's claim was covered.

Our investigator looked into E's complaint but didn't recommend it be upheld. He didn't think E should be penalised for not having contacted PHE. However, he thought RSA had fairly turned down E's claim, as he didn't think E had demonstrated that it was most likely someone at its premises had Covid-19.

E didn't agree with our investigator's findings and asked for an ombudsman's decision. It thought its decision to close should be taken in the context of the knowledge available to its trustees at the time, which included two medically trained doctors, as well as the guidance from PHE.

## **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 have had an impact on E's business. However, I won't be upholding 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 RSA has acted fairly, reasonably and in line with the terms and conditions of the policy when declining E's claim.

E's policy has an extension for infectious diseases. The relevant part of this 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..."*

I don't intend to make a finding on whether the PHE guidance for households on Covid-19 meant E needed to close. I say that because, the policy requires the closure of the premises to have been as a result of an outbreak or occurrence at the premises of a notifiable human infectious or contagious disease.

So, in order to uphold this complaint, I'd need to decide that E has demonstrated that there was most likely a case of Covid-19, or other notifiable disease, at its business premises. I don't think E has shown this is most likely and I'll explain why.

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. 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 policyholder to demonstrate that it's suffered a loss its policy covers.

E clearly acted on the belief that its employees had Covid-19, as it took the decision to close its premises. However, I only have the testimony from E and an email from R dated October 2020 to indicate that the employees' illnesses were Covid-19. R said they were sent an antibody test, which I think supports their position that medical experts thought R's illness could be Covid-19. However, R confirmed that in May 2020 the antibody test produced a negative result for Covid-19.

I have to bear in mind that many people who were unwell at this time didn't have Covid-19. And given that I only have E and R's testimony to support that R and M had Covid-19 and R's antibody test produced a negative result, I don't have enough evidence to conclude that there was most likely a case of Covid-19 at E's premises. That means I don't think this extension provides cover for E's claim. I understand E took a decision at that time, based on

the knowledge and evidence it had available, but the policy doesn't cover it for those circumstances.

I appreciate this isn't the outcome E was hoping for, but having considered the matter very carefully, I don't think I can fairly require RSA to pay E'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 E to accept or reject my decision before 24 November 2021.

Sarann Taylor  
**Ombudsman**