

The complaint

A limited company, which I will call L, has complained about the refusal of a claim for business interruption losses under its “Hospitality and Leisure” insurance policy with Covea Insurance Plc.

Mr H, as director of L has brought the complaint on its behalf. Mr H is also represented in this complaint by solicitors but I will refer to Mr H or L throughout this decision or ease.

What happened

L is a restaurant. L contacted Covea to make a claim for losses incurred after it was impacted as a result of the Government’s response to the Covid-19 pandemic. Covea turned down the claim. Covea said that while the policy provided cover for closure as a result of manifestation of human disease at the premises or within a 25 mile radius of the premises, the definition of disease in the policy was a closed list of specified diseases which did not include Covid-19.

Mr H is very unhappy about this. He says the business has been significantly affected by the periods that it was unable to open and also subject to restrictions on how it could operate when it was allowed to open. Mr H wants the claim paid, with interest and reimbursement of additional expenses L incurred due to the refusal to meet the claim.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied Covea was entitled to refuse the claim for the reasons it did.

L does not accept the Investigator’s assessment. It has made a number of submissions. I have considered everything it has said but have summarised the main points below:

- The policy covers closure of the premises on the order of the Government or local authority, as a result of the manifestation of any human infectious or contagious disease. This same wording was considered by the courts when deciding the Financial Conduct Authority (“FCA”) Covid-19 business interruption test case. The term means that any such infectious disease is covered and the wording is not consistent with a closed list of diseases.
- Although the word ‘Disease’ in the policy term is capitalised, indicating it is a defined term, it has to be given its usual meaning to be understood and does not mean that it is subject to a closed list.
- The insuring clause expressly insures any human disease and any ordinary person reading the term would interpret it as such.
- Another conflict of wording, between the insurance clause and the closed list of diseases is that some of the listed illnesses are not human infectious or contagious disease, such as food poisoning and tetanus.
- The word ‘Disease’ is capitalized in other parts of the policy but it bears its ordinary meaning.
- The insuring clause specifically excludes AIDS but it would not be necessary to exclude AIDS if the policy is providing specified disease cover. Covea said it had

stated AIDS was excluded as it can lead to some of the listed diseases but this does not make sense. It only makes business sense to believe that Covea sought to exclude AIDS because it would be covering all other non-specified human infectious/contagious diseases. If Covea was correct in what it was saying it would have no need to mention AIDS in its insuring clause.

- The Disease definition is four pages away from the insuring clause on a general definitions page containing 24 definitions.
- The ambiguity created by the policy wording should be interpreted in favour of the policyholder. In those circumstances, the closed list should be considered to be not part of the policy.
- Covid-19 was not known at the time the list was made.
- The policy wording is defective and we should inquire how Covea arrived at the wording it used and investigate any changes it has made to the wording since 2020.

As the Investigator was unable to resolve the complaint, it has been passed to me.

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 L. 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 in force at the time of these claims to see if Covea has acted fairly, reasonably and in line with the terms and conditions of the policy when declining L's claim.

The relevant part of L's policy is the extension of the core Business Interruption cover for Infectious Diseases:

"Infectious Diseases

The insurance by this Section extends to include interruption of or interference with Your Business in consequence of closure of the Premises or part thereof on the order advice or stipulation of any government or local authority as a result of

1) any human infectious or human contagious Disease (excluding Acquired Immune Deficiency Syndrome [AIDS] or an AIDS-related condition) manifested by any person whilst at the Premises or within a 25 mile radius of the Premises."

"Disease" is defined in the policy as being:

"any of the following diseases sustained by any person

acute encephalitis acute infectious hepatitis acute meningitis acute poliomyelitis anthrax botulism brucellosis cholera diphtheria enteric fever (typhoid or paratyphoid) food poisoning haemolytic uraemic syndrome (HUS) infectious bloody diarrhoea invasive group A streptococcal disease legionellosis leprosy malaria measles meningococcal septicaemia mumps plague rabies rubella SARS scarlet fever smallpox tetanus tuberculosis typhus viral haemorrhagic fever (VHP) whooping cough and yellow fever."

The policy also says:

“Business Interruption Section

Section Definitions

These definitions apply to the Section whenever these words or phrases appear with an upper case letter except where otherwise stated.”

I agree therefore the capitalisation of the word ‘Disease’ in the term above indicates that it is a defined term. The definition of disease also set out above is sufficiently clear in my opinion. It is a defined list of specified disease that are covered under the policy and Covid-19 is not one of them.

I’m mindful that Covid-19 wasn’t something Covea might have known about when the policy was drafted. However, there were policies that provided cover for all notifiable diseases. L’s policy does not say that it covers notifiable diseases and instead sets out a specified list of diseases which are covered by the policy.

An insurance contract is correctly interpreted based on the understanding a reasonable person, with the background knowledge of the parties to the contract, would have had at the time the contract was entered into. The contract should not be interpreted with hindsight. Rather the question is how the words would have been understood by the reasonable small business owner, perhaps assisted by a broker, with all the background knowledge which would have been reasonably available at the time the parties entered into the contract.

I think that it is reasonable to expect policyholders to understand that any word with a capital letter would have a specific policy definition, especially given the explanation of the use of capital letters in the policy set out above.

The insurance contract was entered into before Covid-19 had been identified and I don’t think such a person would consider, at the time L entered into its policy, that the policy would mean that all infectious human diseases would be covered and that the cover would not be limited to the diseases specified in the definition.

I also think the terms are sufficiently clear and the definition sufficiently prominent in the policy. I do not think the fact it was in a general policy definitions page and not on the same page as the insuring clause means that it was so unclear that Covea cannot rely on it.

I note that L also says Covea didn’t need to specifically exclude AIDS and AIDS-related conditions in the infectious disease clause, given AIDS is not in the list of defined diseases. However, I don’t agree that the fact it specifically excluded AIDS and AIDS-related conditions in the insuring clause means that Covea cannot reasonably rely on the definition of Disease generally and that Covid-19 is covered.

L also says that the list of diseases includes illnesses that are not human contagious or infectious diseases and so again there is a lack of clarity about the cover. Even if I agree that food poisoning and tetanus would not be considered infectious or contagious, I do not think this means that Covid-19 related claims should be covered.

Having considered everything, as I am satisfied that Covid-19 isn’t one of the diseases listed, it is my opinion that any inability to use the insured premises as a result of Covid-19 isn’t covered by the policy. I can see why this was disappointing for L but insurers are entitled to decide what cover they want to provide.

I have also considered the rest of the policy, but am not persuaded that any clause provides cover for the circumstances of L's claim. As such, I do not consider it would be fair and reasonable to require Covea to meet L's claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 15 August 2023.

Harriet McCarthy
Ombudsman