

The complaint

A limited company that I will refer to as C complains about the decision of QBE UK Limited to decline its business interruption insurance claim, made as a result of the COVID-19 pandemic.

What happened

The following is only intended as a brief summary of events. Additionally, whilst other parties have been and remain involved in the dispute, I have largely just referred to C and QBE for the sake of simplicity.

C operates as a financial advisory service and held a commercial insurance policy underwritten by QBE. The policy provided a number of areas of cover, including business interruption. And C contacted QBE to claim for losses arising as a result of the COVID-19 pandemic. C has, effectively, said that the main losses it has suffered have been related to a particular client that was unable to complete its own business plans due to the impact of the pandemic. And C claimed the loss of its fees for this contract.

The claim was considered under the following clause in C's policy:

"11.1.10 Murder, suicide or disease

We shall indemnify you in respect of interruption of or interference with the business as insured by this section caused by:

a) any human infectious or human contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or an AIDS related condition) an outbreak of which the local authority has stipulated shall be notified to them manifested by any person whilst in the premises or within a twenty five (25) mile radius of it

..."

It does not appear to be in dispute that there was a relevant manifestation of disease within the required geographical location. However, ultimately, QBE declined the claim for a number of other reasons. These included that:

1. it was not clear that the relevant fee for the client contract would have been paid within the period of insurance
2. the loss of fees was, in QBE's view, the result of issues between C and its client rather than interruption to C's business, and
3. the pandemic may have interrupted C's client's business, but the losses claimed were unconnected to any interruption of C's own business.

C brought its complaint about this to the Financial Ombudsman Service. But our Investigator didn't think QBE had come to an incorrect claim decision, and did not uphold the complaint.

C remained unsatisfied with this. Much of the discussion focussed on points 1 and 2 above. As the Investigator was unable to resolve the complaint, it was passed to me for a decision.

I wrote to C to set out my initial thoughts. I explained that, based on the available evidence, I was unable to agree that C's own business had been interrupted or interfered with as a result of the relevant manifestation(s) of COVID-19. And that the issues experienced were, potentially, an interruption or interference with C's client's business – which would not be covered by the policy.

C responded, saying that there was no requirement in the policy that C needed to be physically unable to carry out its usual business activities. And that C's business could be, and was, interfered with as a result of external or other factors. C referred to the wider effects of the pandemic, including on demand for services and existing deals, as being capable of leading to a successful claim. C referred to other businesses that have been able to successfully claim.

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.

Having done so, I am not upholding this complaint. I'll explain why.

Fundamentally, C's policy provides cover where there is an interruption or interference with its business as a result of – as far as is relevant here – COVID-19. I agree with C that there does not need to be a physical impediment to C carrying out its business or using its premises. But it is C's business activity that needs to be impacted.

In the circumstances of this complaint, C was able to and did continue to provide its services to its client(s). Instead, the issue here is that the services it provided, for one reason or another, did not lead to its client achieving its desired aims. And so, its client did not pay for these services.

It is quite possible that one of the reasons C's client did not achieve its aims was due to the impact on that business from COVID-19. But this did not create an interruption or interference with C actually providing financial/commercial advice. It still provided advice and carried out its activities.

I appreciate C's point that if the pandemic did impact C's client's aims, this arguably interfered with the 'deal' C was advising on. And I understand C considers this to be an interference with its business.

I agree that changes in customer behaviour could potentially be a valid reason for a claim under C's policy, for example public concern over COVID-19 would have led to a reduction in demand for certain types of business. However, I would not describe the issue C experienced with its client as being of this nature.

C's "business" as far its policy is concerned is financial advisory services. And the policy provides cover where there is interruption of or interference with this business. C's client still required financial/commercial advice – potentially its need for this increased as a result of the pandemic. So, there wasn't an interruption or interference in this need for C's business. The issue was that C's client no longer wanted to receive this service from C.

I appreciate there are a chain of interconnected events, and that the pandemic was one of the events that took place. But one of the issues that needs to be demonstrated is that the pandemic was the proximate cause of C's losses.

C has said that, were it not for the pandemic, the deal would have been completed within the indemnity period. It may be that, had there been no pandemic, the deal may have gone through prior to C's client terminating the contract with C. This is by no means clear however.

QBE considers that a breakdown in the relationship between C and its client was the main cause of C's loss. And has pointed out that the related transaction did complete after C's contract had been terminated. C has said that this breakdown and termination were as a result of the pandemic increasing strain on the relationship.

However, I also note that the letter from C's client terminating the contract states:

“...I was not happy with the advice that you gave me, indeed pushed me towards just prior to lockdown being instigated in the UK.”

This indicates the issues potentially started prior to any impact of COVID-19 on the deal.

Taking all of this into account, I do not consider that the proximate cause of the losses C is claiming for was the COVID-19 pandemic, specifically a manifestation of this disease within 25 miles of C's premises. It follows that I consider QBE acted in line with the policy when declining C's claim, and I cannot fairly and reasonably ask QBE to do anything more.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 28 December 2023.

Sam Thomas
Ombudsman