

## **The complaint**

A limited company that I will refer to as E complains about the actions of Hiscox Insurance Company Limited in relation the sale of its commercial insurance policy.

Mr L, as director of E, brings the complaint on its behalf.

## **What happened**

The following is intended only as a brief summary of events. E operates as a business manufacturing and selling juice, and related products. The business was set up on the basis that the manufacture of the products took place at Mr L's home address, which is also the registered address of the company. As well as an online presence, the physical sales took place from a 'kiosk' in a shopping centre that was not owned by E.

In September 2019, Mr L contacted Hiscox to take out commercial insurance. Over the course of two call, E was sold a policy providing a number of areas of cover. This did not include cover for business interruption.

In January 2020, Mr L contacted Hiscox again, to check whether the policy he had included business interruption cover. As it did not, E took this cover out (along with additional cover that is not relevant to the current complaint).

Subsequently, E tried to claim under the policy for the losses it suffered as a result of the COVID-19 pandemic. Hiscox declined the claim, largely because the losses E suffered were not as a result of any restriction imposed on the insured premises – Mr L's home address. After E complained about this, an Ombudsman at the Financial Ombudsman Service issued a final decision finding that Hiscox had acted fairly and reasonably when declining the claim.

E has raised a further complaint. The main basis of this complaint is that Hiscox were aware of the set-up of its business and should have clearly explained the "detrimental effects" of how the business interruption cover was being added. Mr L considers that Hiscox created a policy that was detrimental to E, and that this is a breach of the Insurance Act 2015 (the Act).

When Hiscox did not uphold E's complaint about this, E referred the complaint the Financial Ombudsman Service. However, our Investigator did not recommend it be upheld either. As Mr L remained unsatisfied, E's complaint has been passed to me for a decision.

## **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, whilst I am sorry to hear about the considerable financial impact the COVID-19 pandemic has had on E and Mr L, I won't be upholding its complaint. My reasons are substantially the same as the Investigator's.

I have only very briefly outlined Mr L's arguments above in relation to this complaint. However, I have considered these in full. I appreciate his strength of feeling in relation to the

situation E finds itself in. But I am going to focus this decision on what I consider to be the key issues.

I also note that Mr L considers there to have been a breach of the Act. However, I don't consider the Act to be overly relevant to E's complaint. Mr L has referred specifically to sections 16 and 17 of the Act. He considers that when the business interruption cover was added to the policy, this created a "disadvantageous term" and as such Hiscox should have highlighted this to E. Mr L seemingly considers that in setting up the policy to, effectively, cover only the manufacturing location for business interruption this was to E's disadvantage. But this is not a "disadvantageous term" as set out within the Act.

This part of the Act is intended to deal with situations where an insurer might seek to include specific clauses with a policy that are more restrictive than would be found under the other parts of the Act. A common example is in relation to situations following a breach by the policyholder of the duty of good faith. The Act sets out specific remedies for such situations, whereas some insurers seek to include different remedies within their policies. On some occasions these alternatives are beneficial to policyholders. But where they are not, they could be considered a "disadvantageous term" and the relevant parts of sections 16 and 17 would apply. This is a different situation to arranging a policy that only covers one of the policyholder's locations.

There is no suggestion that E failed in its duty of fair presentation. And Hiscox did not apply any restrictive or disadvantageous term as a result of anything E disclosed. Hiscox merely arranged a policy on the basis that it provided cover for a specific insured premises. I appreciate this situation may mean that E did not have the full advantage of cover for its entire business. But this is not a disadvantageous term and is not a situation where the Act is overly relevant.

That the Act is not specifically relevant to E's complaint is not the end point though. When arranging the policy, and adding the business interruption cover, Hiscox had other requirements that it had to meet. These are set out, in part, in the Financial Conduct Authority Insurance: Conduct of Business sourcebook (ICOBS).

Hiscox was not providing an advised sale. I will move onto discuss the relevant calls below, but I note that within the first sales call, Hiscox's agent is explicit that he cannot give advice, and this is acknowledged by Mr L. I appreciate Mr L's comments about his relatively limited lack of business knowledge. However, Hiscox was not acting as an advisor to Mr L or E.

As a non-advised sale, Hiscox needed to provide information to E, and it was then for E to decide if the policy is suitable to meet its needs. The duty on the seller is to make sure the customer is given information that is clear, fair and not misleading so that they can make an informed choice about whether the policy is right for them.

The policy was initially taken out in September 2019. Mr L provided details of his business set up in the first call. But business interruption cover was not discussed. Mr L was asked whether there was anything else he needed cover, but did not mention business interruption. Ultimately, it does not appear there is much dispute about this initial set up of the policy. And, as the issue relates to business interruption cover which was added later – but prior to any claim – there does not appear to be any loss that arose from this initial set up.

So, I will move on to consider the call in January 2020. This is where business interruption cover was added. The issue is that it was only added in relation to the 'manufacturing address' not the 'retail address'.

The Hiscox agent queried whether the manufacturing address was the one that needed this

cover. Mr L explained that the sales happened at a different location, and asked what would happen if something impacted that location. After some discussion about the set-up of the business, the agent spoke to a colleague to see whether or not Hiscox would cover kiosks with business interruption.

The agent then returned to the call and told Mr L it is a “little bit confusing” with kiosks because they’re not actually E’s property. He confirmed that Hiscox would cover the manufacturing address. And that when E moved into a more permanent retail structure, as E was hoping to do, Hiscox could have this on the policy as well so both could be covered. Mr L was told he should let Hiscox know when E moved to this permanent location, so that it could be added to the policy.

I do note that Hiscox were not explicit that the ‘kiosk’ would not be covered. And did not explain that claims arising due to an interruption of business activities at this location would not lead to a successful claim.

However, I also consider Hiscox was clear that the premises being covered was the manufacturing location. And that additional permanent premises could be added once E was using them. So, I think Hiscox did enough to provide information that was clear, fair and not misleading, and that allowed E to make its own decision on whether to proceed with the purchase of the additional cover. Hiscox then provided documentation which listed the company name and insured premises.

As such, I consider Hiscox met its obligations, and it follows that I can’t fairly or reasonably ask it to do more in response to this complaint.

### **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 E to accept or reject my decision before 10 November 2023.

Sam Thomas  
**Ombudsman**