

The complaint

Mr H has complained that QIC Europe Ltd unfairly turned down his business interruption insurance claim.

QIC are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As QIC has accepted it is accountable for the actions of the agents, in my decision, any reference to QIC includes the actions of the agents.

Mr H is also represented by his broker but for ease, I will refer to Mr H throughout.

What happened

Mr H runs a pub and held a business insurance policy with QIC. In October 2020, Mr H claimed under the business interruption section of the policy after his business was impacted by Covid-19.

QIC said the policy didn't cover Mr H's claim. QIC said the policy covered business interruption as a result of damage or an occurrence of notifiable human disease at the premises. But QIC thought that Mr H's business had been impacted by the Government's imposed restrictions rather than because there was any damage to the business premises (or any other premises nearby) or because of an occurrence of Covid-19 at the premises, which is what it said the policy requires. QIC therefore turned down the claim.

QIC also said that the Financial Conduct Authority (FCA) business interruption insurance test case did not impact the outcome of the claim under Mr H's policy wording. QIC said it would review the claim again if Mr H provided evidence of an occurrence of Covid-19 at the premises.

In response, Mr H did provide some evidence that he considered showed there was an occurrence of Covid-19 at the premises. He said one of his customers, who was at the premises on 20 and 22 March 2020, was ill with Covid-19; lots to other people in the area, and in other local pubs, were also infected with Covid-19; and another customer that worked at the local GP surgery was also ill. As they worked for the NHS this customer was tested and the test was positive but otherwise testing was not available at that time. Mr H also said that the Supreme Court found in favour of small businesses and said their insurance claims should be met.

QIC said the positive test Mr H provided was dated after the lockdown had already been imposed but it takes five days for symptoms to show and they would have had to have waited for the test, so it does not prove there was an occurrence at the premises which led to the closure of the premises. QIC therefore maintained its refusal of the claim. However, QIC did agree it had taken too long to provide an answer to Mr H's claim and paid him £100 compensation for this.

Unhappy with QIC's response, Mr H brought its complaint to our service. Mr H referred the complaint to us outside the usual time limits but QIC has consented to us considering the complaint. I am therefore satisfied that I am able to consider it.

One of our investigators looked into Mr H's complaint. The Investigator considered everything provided by Mr H but didn't recommend the complaint be upheld. He didn't think Mr H had shown it was most likely that there was an occurrence of Covid-19 at the business premises before it was required to close. He asked Mr H for any other evidence he might have to support that there was an occurrence of Covid-19 at his premises before the premises were required to close. Mr H provided some further evidence, including emails from customers and others saying they'd been infected with Covid-19 in the time immediately before the Government forced pubs to close.

The Investigator provided the new evidence to QIC. It has said this has not changed its position on the claim, as it does not think the evidence is enough to show an occurrence of Covid-19 at the premises before it was required to close.

The Investigator didn't think the new evidence was sufficient to conclude that QIC's decision to refuse the claim was unreasonable.

Mr H does not accept the Investigator's assessment, so the matter has been passed to me. Mr H has made a number of submissions. I have considered everything he has said but have summarised the main points below:

- Covid-19 cases were underreported at the time, as testing capacity was low. He has provided a quote from FCA guidance to support this.
- The evidence from the GP surgery was accepted by another insurer and it is unfair that QIC has not accepted it in his claim. He thinks this is because the claim has taken so long.
- A customer tested positive on 30 March 2020. Symptoms can take up to 10 days to show and they were a regular customer at the pub, so it's likely they'd have been at the premises at some point in the 10 days leading up to the test.
- The Investigator said the statements and other evidence he has provided are long after the event and this means they are not as credible but he was unable to proceed with the claim sooner as QIC caused such delays.
- QIC didn't award him £100 compensation but in any case this shows QIC took accountability for the delay, which has disadvantaged him.
- The Government's forced closure of pubs was based on the high probability that pubs were a likely source of infection and transmission, so it is highly likely there was Covid-19 at the premises.
- He was caused considerable financial difficulty and stress but QIC has not honoured the insurance he paid for.

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 Mr H's business. However, I won't be upholding Mr H's complaint. I'll explain why.

Business interruption insurance offers protection from risks common to a business, but different policies 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 QIC has acted fairly, reasonably and in line with the terms and conditions of the policy when declining Mr H's claim.

I have considered the whole policy but the parties are agreed that the relevant part of Mr H's policy says it covers:

"interruption to the business as a result of ...

the occurrence at the premises of ...any human infections or contagious disease (excluding Acquired Immune Deficiency Syndrome (AIDS) or any AIDS related condition), an outbreak of which the Local or Government Authority has stipulated shall be notified to them".

It is not in dispute that Covid-19 is a contagious disease that the Government has stipulated should be notified to them. So, for this extension to provide cover for Mr H's claim, the interruption to the business would need to be as a result of an occurrence of Covid-19 at the premises.

The Supreme Court in the 'test case' said that an occurrence of Covid-19 happens when an individual becomes diagnosable with the disease. I also consider that each occurrence of Covid-19 prior to the Government making a relevant decision, was a concurrent cause of that decision. In this case, there would have to have been someone diagnosable with Covid-19 at the premises before the Government made the decision that required the pub to close.

As Mr H has said, widespread testing wasn't available towards the start of the pandemic and the Government advised that, except for emergencies, people should avoid using health services if they were displaying symptoms of Covid-19. It's therefore not unusual that a claimant will not be able to produce a positive test result from that period. And we would consider it unfair to require a positive test to demonstrate a case on the premises.

We therefore consider whether other evidence can be provided that supports, on balance, that Covid-19 occurred at the insured premises. As with any insurance claim, the burden of proof initially rests with the policyholder to demonstrate that they have suffered a loss which their policy covers.

I've summarised below the evidence provided by Mr H to support the claim that there was an occurrence of Covid-19 at his premises:

Person 1

A letter from his broker stating that a customer of Mr H's who had been at the premises had tested positive for Covid-19 on 30 March 2020. The broker provided a copy of a letter from the local GP surgery (which was produced by the GP in support of a claim for a different claimant) confirming one of the surgery staff had tested positive for Covid-19. I understand the broker provided a copy of the positive test to QIC but I have not seen this. The broker said the insurer of the other customer accepted this as proof and met their claim.

Person 2

An email from a customer dated 26 March 2023 who says they attended Mr H's premises three/four days a week and approximately in mid-March 2020 started to suffer from a sore throat, headache and fatigue. He continued to attend Mr H's premises until his symptoms worsened and he had to stop work on 26 March 2020 and isolated for seven days. A second email from the same customer, dated 13 May 2023, says he *"experienced a continuous cough, high temperature and loss of taste and smell"*. He says while he did not mention these symptoms in his earlier email, these symptoms were noted on his work sick record. He provided contact details for his employers.

Person 3

An email from another customer dated 14 May 2023, which says he played pool for the pub team and around the second week of March 2020 he caught Covid-19 and was ill with a severe cough, temperature and loss of taste and smell.

Person 4

Emails from Mr H's mother, dated 26 March and 12 May 2023, who works at the pub regularly. She said that on 15 March 2020 while working at the pub she became unwell with a fever, continuous cough and breathlessness. She called a pharmacist, as she could not get through to her GP, who said her symptoms indicated she had Covid-19 and she should self-isolate. She left work early and isolated for three weeks as she as a very unwell.

Person 5 and 6

A statement from Mr H's partner, saying that she and Mr H (who both lived at the premises) were both very unwell with Covid-19 symptoms. She provided screenshots of messages discussing the symptoms.

Mr H also says he was unwell with Covid-19 symptoms and since then has had eye problems which were diagnosed after some time as being retinal pigment epitheliopathy due to a virus. He says this was the result of the Covid-19 virus. He has provided a copy of a letter from his ophthalmology consultant to support this.

Mr H also said there was a large outbreak in the area of the premises and it was recognised that cases of Covid-19 were underreported, as there was limited testing in March 2020. Also it was recognised that pubs were a site of transmission of Covid-19 and so it is likely there was Covid-19 at the premises.

It is possible that Covid-19 was in the vicinity of the premises. There were policies which would cover the closure of a business due to a notifiable disease in the vicinity of the business premises but the terms in this policy specifically require there to be an occurrence of the disease at the premises.

I have considered all the evidence Mr H has provided. As with any assessment of evidence, several aspects mean that more weight can be placed on certain evidence as opposed to others. For example, a document produced contemporaneously for a purpose unconnected to the matter in hand is likely to be more persuasive than testimony produced some time after the events for the express purpose of the claim. That is not to say testimony is not useful. But it is recognised that memories can and do change over the course of time.

Person 1

With regard to Person 1, the letter from the GP confirms that an employee of the surgery tested positive for Covid-19 on 30 March 2020.

To trigger cover under the above policy term, it would have to be established that this person was diagnosable with Covid-19 while at the insured premises some time before the Government announced that pubs would have to close, which was on 20 March 2020. The guidance from the World Health Organisation, amongst others, is that some people can become diagnosable one to three days before experiencing symptoms of Covid-19. I think it is reasonable to assume that this person would have had symptoms for a few days before being tested and I note Mr H says there would have been a wait for the test. The test was carried out on 30 March 2020, even allowing for time for the symptoms to appear and for the

test to be carried out, I do not think it is most likely that this person would have been diagnosable before 20 March 2020.

Mr H has talked about the incubation period of Covid-19 being longer and that they might have been infected for several days before symptoms started. This might be correct but I don't think it means the person would have been diagnosable any sooner. A person might be diagnosable before they develop symptoms (and some people are asymptomatic), but this would be several days after infection. It is the date they are diagnosable that is relevant for when Covid-19 has occurred. And I don't think it is most likely this would have been prior to the Government making its decision on 20 March 2020.

In addition, even if I were satisfied that this person was diagnosable before 20 March 2020, there is no convincing evidence that they were at Mr H's premises while diagnosable with Covid-19 and before the Government decision was made. Mr H says this person was a regular at the pub but no dates of attendance at the pub have been given and no proof of any attendance, such as receipts, photos or messages. Also, critically there is no evidence as far as I am aware from this person directly to corroborate what Mr H has said.

Mr H has questioned why this evidence was sufficient for another insurer but not QIC. Every insurance policy is different and it might be that cover under the other insurer's policy was triggered by a different event. I note the GP's letter refers to Person 1 living within a mile of another insured premises. This would seem to indicate to me that the insurance policy covering the other premises provided cover if there was an occurrence of Covid-19 within the vicinity. But Mr H's policy is different; it requires any occurrence of Covid-19 to be at the premises.

I have to reach a decision based on what I think is most likely and, for the reasons given, I think it is more likely than not that Person 1 was not diagnosable with Covid-19 before 20 March 2020 and, even if they were, there is no convincing evidence of them being at the premises when diagnosable.

Person 2

Person 2 provided an email saying he'd been ill with a headache, sore throat and fatigue and then later added that he'd also had a continuous cough and lost his sense of taste and smell. While these symptoms can be symptoms of Covid-19, there is no contemporaneous evidence to support that this person was unwell with these symptoms at the relevant time, such as emails or text messages.

And there is no corroborative evidence that he was at the premises while suffering such symptoms in the period before 20 March 2020. He refers to being off sick from 26 March 2020, several days after the pub closed. I have not seen any evidence from his employer about this either. He has provided his employer's contact details but we would not make those enquiries ourselves. Mr H has previously been informed of this, but has not provided additional evidence.

As it stands, I do not think that this evidence reaches the threshold required for me to conclude that it is more likely than not that this was an occurrence of Covid-19 at the premises prior to 20 March 2020.

Person 3

Similarly, the only evidence in relation to this person is an email produced more than three years after the event, which refers to symptoms that could be Covid-19 but might be something else. And with no other supporting evidence that he had Covid-19 or was at the premises while suffering such symptoms. I am not persuaded that this means it is most likely there was an occurrence of Covid-19 at the premises either.

Person 4

Mr H's mother says she was at the premises on 15 March 2020 and became ill with fever, continuous cough and breathlessness. Again these could be symptoms of Covid-19 infection but they could also be symptoms of a number of other illnesses. However, again I note that there is no contemporaneous evidence to support that she was unwell with these symptoms, or that she thought it was Covid-19, as far as I am aware. Without anything more to support that she was unwell at the premises with symptoms that were more likely than not Covid-19, I do not think this is enough to trigger cover under the policy.

Person 5 and 6

With regard to Mr and Mrs H, I've seen screenshots of messages between Mrs H and her family members on 15 March 2020. Mrs H says she feels better than yesterday but *"still got a bit of a headache"*. She also says Mr H is the same but he's still working. There are also some messages from 26 March 2020, which say Mr H had *"a bit of a fever last night and been a bit achy today"* and *"he's alright just feels achy"*.

Mr H has said his fever was in fact very high and he was very ill. However, the reference to any fever was only after the premises had been required to close.

The only contemporaneous evidence of illness refers to both Mr and Mrs H having a headache. And then three days after the pub closed to Mr H having a *"bit of a fever"*.

Again, these symptoms could have been symptoms of a number of other illnesses. Without anything more to support that Mr H and his wife were unwell with symptoms that were more likely than not Covid-19, I do not think this is enough to trigger cover under the policy.

Mr H has also provided a copy of a letter from his hospital, dated May 2022, which says that they think he has *"retinal pigment epitheliopathy which is secondary to a reaction to a viral infection that can occur in the normal retinal pigment epithelium and can result in a mild to moderate episode of visual disturbance..."*.

Mr H says this supports that he'd been infected with Covid-19. I do not agree. The letter does not state the virus involved was Covid-19. And even if this were the cause of the problems Mr H had, it does not prove he had Covid-19 at the relevant time.

I note Mr H's comments that there was limited access to testing at this point in time. I am also conscious of the fact that not everyone would have actually displayed symptoms of the disease. But without any specific evidence that there was more likely than not an occurrence of Covid-19 at Mr H's premises, I am unable to conclude that he has demonstrated he has a valid claim.

Mr H also says that the Supreme Court found in favour of small businesses and so the claim should be met. Whether a claim should be met will depend on the terms of the policy in question. Mr H's policy will provide cover for Covid-19 related claims if the policy terms are met. For the reasons given above, I don't think they have been met in this case.

Mr H has also complained about the time taken to deal with his claim and says QIC's delays affected his ability to get evidence to support the claim. However, I do not think this would have had any effect on the existence of contemporaneous evidence.

Having considered everything, I have concluded that QIC's decision to decline the claim was in line with the policy, and in all the circumstances of this case is not unfair or unreasonable. I appreciate this isn't the outcome Mr H was hoping for but, having considered the matter very carefully, I don't think I can fairly require QIC to pay his claim.

QIC did offer Mr H £100 compensation, to recognise a delay in handling the claim. Mr H said he hadn't been offered any compensation but this was in QIC's final response letter dated 25 January 2022. I understand Mr H says he didn't receive that letter (which is why QIC agreed to us considering the complaint). The letter said the claim was submitted in October 2020 and it was rejected. However, in 2021 Mr H's broker asked QIC to review the claim but there was a delay of several months in it doing so. As stated above, I do not think this delay impacted on the outcome of the claim. I do, however, acknowledge that it would have caused some avoidable frustration and inconvenience. I think the compensation already offered is reasonable. I understand this has not yet been paid, so would ask QIC to do so now.

My final decision

For the reasons set out above, I do not uphold this complaint. QIC Europe Ltd has already made an offer to pay Mr H £100 to settle the complaint and I think this offer is fair and reasonable in all the circumstances. So my decision is that QIC Europe Ltd should pay Mr H the £100 offered, if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 August 2023.

Harriet McCarthy
Ombudsman