

The complaint

A limited company, that I will refer to as N, complains about the settlement, by QIC Europe Ltd of its business interruption insurance claim, made as a result of the COVID-19 pandemic.

What happened

The following is intended as a brief summary of the key events relating to this complaint. Additionally, whilst other parties have been involved, I will just refer to N and QIC for the sake of simplicity.

N operates as a pub and has several business premises. Each had a separate commercial insurance policy underwritten by QIC. This complaint relates to the business premises I will refer to as O.

A separate complaint relating to another premises is being considered by the Financial Ombudsman Service, and as the circumstances relating to both are similar, the content of this decision will be similar to that case. But each premises has a separate policy, and so these are separate cases. N also raised a complaint about the handling of its claim more generally and the customer service it received from QIC. That complaint has already been resolved. As such, this case relates solely to the claim made under N's policy for O.

N's policy provided cover for a number of areas of risk, including business interruption. As a result of the COVID-19 pandemic, N made a claim on its policy for O. Its claim was based on having been closed by the government-imposed restrictions during the national lockdown periods. QIC declined the claim though, saying that there was no evidence of COVID-19 on O's premises.

N provided further evidence and, ultimately, QIC reconsidered the claim and agreed it was covered under the following clause in N's policy:

"The Insurers will also pay for interruption to the business as a result of...

(d) the occurrence at the Premises of murder, suicide, food or drink poisoning, vermin, pests, defective sanitation or 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"

However, it only offered to cover N's losses for a period of seven days. The rationale for this appears to be that this is the period a member of N's staff was absent due to illness, which has been assumed as being COVID-19.

N pursued its complaint about the claim outcome with the Financial Ombudsman, and our Investigator recommended it be upheld. He said that as QIC had accepted that there was an occurrence of a relevant human infection or contagious disease at O's premises, it should cover the losses caused by this. And that, as this occurrence was a concurrent proximate cause of the government's decision to introduce the first lockdown, the losses that N

suffered as a result of that lockdown should be covered – subject to the remaining policy terms. And that appropriate interest be added to this.

QIC did not agree, it said the seven-day offer was based on the period of time the employee was off work, and that this ended prior to the national lockdown. And that the Government's instructions to close was a new intervening cause, which was not a direct result of COVID-19 being present at the premises.

The complaint has been passed to me for a decision.

I have since confirmed that there are financial limits that apply to an award that I can make, which were not referred to by the Investigator but that may be relevant. Neither party had any additional material comments on this point.

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.

As QIC has accepted that there was apparently a case of COVID-19 that occurred at O's premises, and that this is a relevant disease for the clause above, the issue in relation to this complaint is largely limited to questions of causation. The fundamental question is, did the case of COVID-19 at O's premise cause the national lockdown?

The Financial Ombudsman Service has previously set out in other final decisions how a case of COVID-19 at the premises of an insured can be seen to have caused the national lockdown that followed soon after. Further information can be found on our website¹. This approach has recently been supported by the Courts in *London International Exhibition Centre Plc v Royal & Sun Alliance Insurance Plc & Ors* [2023] EWHC 1481 (Comm).

Essentially, the Government's decision to introduce the lockdown measures in March 2020 was based on there having been numerous occurrences of COVID-19. Each of these was therefore a concurrent proximate cause of the Government's decision. As a pub, the relevant decision in terms of N was that on 20 March 2020 when it was decided that all pubs should close that evening and not reopen. This was made a legal requirement by the regulations that immediately followed, including the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. And this requirement remained in place until July 2020.

So, I consider, an occurrence at O's premises in mid-March 2020 would have been one of those the Government took into account when it came to its decision to impose the lockdown measures a week or so later. And hence would have been a concurrent cause of N's losses from the evening of 20 March 2020 to 4 July 2020.

N has said that it closed on 18 March 2020, but it is not clear this was necessary. The Government's decision and announcement relating to the closure of pubs was not made until 20 March. It is possible that O's premises were closed for cleaning due to the occurrence of COVID-19. However, such closure was not a legal requirement on businesses at this time.

N has also referred to periods after the first national lockdown. However, claims for later periods would need to be based on there having been an occurrence at O's premises that led to that claim. An occurrence in March 2020 would not have been the proximate cause of any loss that occurred after the conclusion of the first national lockdown. It is also notable

¹ <https://sme.financial-ombudsman.org.uk/complain/complaints-can-help/insurance/business-interruption-insurance/business-interruption-insurance-premises-complaints>

that N's policy renewed in mid-July 2020 and it does not appear that the new contract of insurance would have covered a COVID-19 related claim in the same way – albeit consideration of this renewed policy does not form part of this complaint and so I make no formal finding on this point.

QIC's objection is seemingly based on the belief that O's premises were closed for a period of seven days from 13 to 19 March 2020. And that there was then a gap between this closure and the national lockdown.

I should firstly say that it does not appear N has indicated O's premises were closed for this period. So it may be that there is no argument here to even consider. However, even if O's premises were closed for this period and then reopened, before closing again, this does not mean the second period would not be covered.

The question is, fundamentally, what was the impact of any occurrence of COVID-19 at the insured premises? Applying the causation argument referred to above, the occurrence would have been one of those that the Government took into account when deciding to introduce the lockdown measures. The Government did not discount occurrences that had taken place in relation to premises that had since been cleaned. And just because the occurrence may have had two impacts – an initial period of closure for cleaning and then the government-imposed restrictions – does not mean it is possible to discount the second.

QIC has asked that I delay this decision until any appeal on the above court case is heard. However, I am not persuaded that this is appropriate in the circumstances. The Financial Ombudsman has, as mentioned above, reached its own conclusions on cases of this nature. And the above case merely supports the conclusions I have come to. N has chosen to pursue its complaint with us rather than through the courts. And is entitled to a final decision, rather than waiting for the resolution of court cases that do not involve either party.

Ultimately, I do not consider the offer of settlement made by QIC to be fair and reasonable in the circumstances.

Putting things right

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £375,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £375,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as follows. QIC Europe Ltd should reconsider N's claim on the basis that an occurrence of COVID-19 in mid-March 2020 at O's premises was a concurrent proximate cause of the first national lockdown, and so cover the period of loss from the evening of 20 March 2020 to 4 July 2020.

My decision is that QIC should pay N the amount produced by that calculation – up to a maximum of £375,000.

QIC initially declined N's potential claim as early as March 2020. Had the claim been appropriately considered at that time, I consider interim payments would have been made on 20 May, 20 June, 20 July and 20 August 2020 covering the periods of loss 20 March to 19 April, 20 April to 19 May, 20 May to 19 June, and 20 June to 4 July 2020 respectively. As such, QIC should add interest to the amounts of these interim settlements from the date they were payable until the date of settlement. Interest should be calculated at a rate of 8% simple per annum.

Recommendation: If the amount produced by the calculation of fair compensation is more than £375,000, I recommend that QIC pays N the balance.

This recommendation is not part of my determination or award. QIC doesn't have to do what I recommend. It's unlikely that N can accept my decision and go to court to ask for the balance. N may want to get independent legal advice before deciding whether to accept this decision.

My final decision

My final decision is that I uphold this complaint. QIC Europe Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 2 October 2023.

Sam Thomas
Ombudsman