

The complaint

A limited company, which I will call L, has complained that Tower Insurance Broker Ltd mis-sold its business insurance policy, as it did not provide cover for its losses arising out of the Covid-19 pandemic.

Mr C and Mrs C, as directors of L, have brought the complaint on its behalf.

What happened

L took out an insurance policy, which included business interruption cover, through Tower in October 2019.

L was impacted by the Government's response to the Covid-19 pandemic in 2020 and wanted to claim for its business interruption losses as a result. However, the insurer told L it did not have cover for losses caused by infectious diseases. This cover was available as an optional extension to the core business interruption cover in the policy but was not taken when the policy started.

Mr C and Mrs C are very unhappy about this and say the various optional extensions to the business interruption cover were never discussed at the time Tower sold L the policy and it never agreed to exclude the disease cover from the policy. They say that if Tower had included this extension in the policy, L would have been covered for its losses, as the policy was one of the ones that the courts determined would have provided cover for Covid-19 related claims in the Financial Conduct Authority's ("FCA") business interruption test case.

Mr C and Mrs C therefore say the policy was mis-sold and want Tower to compensate L for the value of the claim it was unable to make. Mr C and Mrs C said the business (a leisure and fitness venue) was newly formed in 2019 and they relied on Tower to advise on full robust insurance coverage, which it failed to do. They have suffered financial hardship as a result of the pandemic and not being able to claim under the insurance policy. They have had to sell their home and are in rented accommodation. The situation has also severely impacted their health.

Tower says L asked it to provide business insurance cover within two days, which it did. It provided a policy consistent with L's needs in October 2019 and there was no suggestion of any need for infectious diseases cover at that time and a pandemic was not in anyone's minds at the time. The policy it recommended had the standard extension to the business interruption cover for prevention or denial of access to its premises but the disease extension was not standard. Tower says Mr C and Mrs C are considering this with the benefit of hindsight, rather than what would have actually been important at the time the policy was taken out.

One of our Investigators looked into the matter. He did not recommend it be upheld, as he was satisfied that the policy was not mis-sold.

L does not accept the Investigator's assessment.

Mr C and Mrs C says they are a leisure business with facilities for up to 250 people, with a commercial kitchen and café catering for over 160 people at a time. They say between 160,000 and 190,000 would enter the premises annually. They would therefore be considered a place where transmittable diseases would be likely and would pose a risk to the business; this would include not just Covid-19 but infections such as norovirus, Legionnaire's Disease and others. Mr C and Mrs C therefore say they had an insurance need for disease cover that should have been identified.

Mr C and Mrs C also say that the notifiable disease extension would have provided cover for not only notifiable diseases occurring in the vicinity of L's premises but also interruption caused by organisms at the premises, food or drink poisoning and vermin and pests at the premises. As they operate a large kitchen and catering side to the business, cover for food and drink poisoning would also be relevant as food borne diseases could have seriously impacted their business. And again, because to the nature of the business and its location, cover for any effects of vermin would also have been needed.

Mr C and Mrs C therefore say that all of the subsections of the notifiable disease extension were relevant to L in October 2019 and should have been discussed with them and added to the policy. Tower should have provided a policy that covered all possible eventualities. Mr C and Mrs C also say the Investigator suggested they would have known about the disease extension from the documents sent to them and could have asked for it to be added if they thought it was needed. However, they say that the policy started on 18 October 2019, the business interruption section of cover was added on 7 December 2019, when they opened, and the final documentation was only sent to L on 9 January 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 am sorry to hear that the pandemic and the Government's related actions have had such a significant impact on L and Mr C and Mrs C. There is no doubt from what they have said that this has been an extremely difficult time for them. However, I am not going to uphold its complaint. I'll explain why.

The rules about the selling of insurance are set out in the Insurance Conduct of Business Sourcebook ("ICOBS") which is contained in the FCA Handbook. ICOBS says that those selling insurance have a responsibility to provide clear, fair and not misleading information about the cover being provided, in order to put the customer in a position where they can make an informed choice about the insurance they are buying. This includes providing clear information about the main cover and any significant terms. If the seller is also making a recommendation or advising a customer to take a particular policy, then they should specify the customer's demands and needs and propose a policy that's consistent with them as far as is reasonably possible and take reasonable care to ensure the suitability of its advice.

Tower accepts that this was an advised sale, so it had an obligation to ensure the suitability of its advice.

Tower discussed L's insurance needs with Mr C and Mrs C in October 2019 and I have considered the report it produced as a result of that discussion. The report specified that L needed a competitively priced policy and recommended a policy which provided cover for various events that might befall a business such as L's, including property damage and business interruption.

I can see that Tower sent L the policy quotation documents on 30 October 2019 prior to the business starting to operate. L received further documents in December 2019 when the business interruption cover was added and the final documents were sent on 9 January 2020. Tower says the business interruption cover was only needed once L started to operate and the insurers took into account the fact it was only providing 10 months of business interruption cover when pricing the policy. However, Tower says that each of these sets of documents clearly set out the optional extensions to the business interruption cover and which ones were operational or not. Tower also says that they could have been reviewed and changes made to the policy at any of these points.

I have read these documents carefully. I can see the policy documents sent in October 2019, confirmed there was no cover for business interruption at that time but it did still set out the business interruption cover that would be available if selected. This included business interruption as a result of one of the events that might lead to physical damage to the premises and the optional extensions available to the core business interruption cover, including the infectious disease extension.

The documents sent in December 2019 also set out the cover clearly and in relation to the business interruption section lists the “*extensions to this section which are operative*” and states clearly infectious diseases was not operative but that the “*public utilities*” (which provided cover in the failure of utilities affecting L) and “*prevention of access*” (which provided cover for interference to the business as a result of loss or destruction of property within the vicinity of L’s premises that meant L could not access the premises and operate) extensions were operative.

I think the documentation is sufficiently clear and not misleading, such that L could understand the cover provided. There is no evidence that L raised any queries or asked any questions about the business interruption extensions.

However, I have to consider also whether Tower ensured the advice was suitable.

I have not seen whether there was any particular discussion around the addition of the “*public utilities*” and “*prevention of access*” extensions to cover. It seems to me these were reasonable recommendations, as I consider they were more likely risks to the business and if these events had occurred they potentially could have caused significant loss to L. Tower says these were standard extensions with this policy. It seems to me from the documents that they’d still have to be opted for but I can see they might be the options that Tower would opt for as standard, as they are ones that most businesses would likely want cover for.

Tower accepts that it did not discuss the possible extension of cover for notifiable diseases with L but says that even if it should have done so, it would not have recommended L take it. And it says it is also unlikely L would have taken it even if it had, as it was not something that most businesses would have been concerned about in October/December 2019. Tower says that, in normal circumstances, even if any of the events covered under the notifiable diseases extension had occurred no-one would have had reason to believe they’d have caused any significant business interruption losses, as any occurrence of disease, presence of vermin or food poisoning would have only meant a short term closure or restriction to operating. No-one in late 2019 would have anticipated that businesses would have been required to close for long periods as happened as a result of the Covid-19 pandemic.

Mr C and Mrs C say that the events covered under the disease extension were things it would have been concerned about having cover for. I also note that Tower has said the difference in premium, if the disease extension had been added, would have been minimal

but there would have been a difference, otherwise it would have been included as part of the standard cover.

I have thought carefully about what both parties have said.

While the presence of rats or other vermin and pests, as well as food and drink poisoning, could be a consideration for any business, especially one that has a catering side, it seems to me that this would not be something that would be anticipated to cause significant loss to a business. I agree with Tower that in late 2019 most people would have considered that any such event would likely be dealt with quickly and would not usually lead to closure of the business for any length of time or any significant business interruption losses. Given this, I am not persuaded that this would have been a particular consideration for L when the policy was taken out.

I also note that L is a busy venue with lots of people in close proximity to each other, so any notifiable diseases (not just Covid-19) would be easily transmitted by L's customers and staff. However again, I am not persuaded that this would have been a significant concern in October 2019, as at that time there would have been no reason to think that any occurrence of a notifiable disease would have led to any significant loss. It seems to me that most people would have expected any such event to be cleared up in a short time and (maybe requiring some cleaning of the premises and some cancelled bookings etc) no one would have anticipated the long-term closures that happened as a result of Covid-19.

Having considered everything provided to me, I am not persuaded that cover for any of the events in the disease extension was something which was particularly relevant to L at the time it bought the policy. I can't see that L asked for, or gave, any information that would mean that disease cover was particularly important to it in October or December 2019.

Mr C and Mrs C says that they were relying on Tower's expertise to provide them with a suitable policy to cover every eventuality but no policy of insurance will cover every eventuality. Different policies cover different risks and I haven't seen anything to persuade me that Tower sold L a policy that wasn't consistent with its demands and needs at the time.

Overall therefore, I don't believe that Tower did anything wrong in recommending the policy it did. I understand Mr C and Mrs C were frustrated to find that the policy didn't provide cover for Covid-19 losses but I think Tower proposed a policy that was consistent with L's demands and needs and provided information that was clear, fair and not misleading. I also think it took reasonable steps to ensure the suitability of its advice, so it follows that I don't think Tower mis-sold this policy.

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 2 November 2023.

Harriet McCarthy

Ombudsman