DRN-4255778

The complaint

A company that I'll refer to as C has complained about the indemnity start date Covea Insurance plc used to settle its business interruption insurance claim as it does not think it has been paid enough to settle its claim.

Mrs C, a director of C, has complained on C's behalf.

What happened

C runs a day care and pre-school business for which it held business interruption insurance with Covea. C's policy was due for renewal on 22 March 2020 and C asked its broker to amend the sum insured on the new policy from £700,000 to £950,000.

C claimed on its policy after its business was impacted by Covid-19 and the Government's response to the pandemic. Covea accepted C's claim and settled it using an indemnity start date of 20 March 2020 as this was the date of the Government announcement which impacted C's business. This meant that the claim was settled on the basis that the sum insured was £700,000. However, as C's business was underinsured Covea only paid around 48.3% of the claim.

C said it had remained open for a week after the announcement and asked that the indemnity start date be moved forward so that it would be considered under the new policy.

Covea said it applied the same start date to the claims of all of its policyholders and it wouldn't be fair and reasonable to change it in this case.

Unhappy with Covea's response, C brought its complaint to our service. It said the claim being paid under the 2019-2020 policy meant it hadn't been paid enough in settlement of the claim due to being underinsured.

Our Investigator looked into C's complaint and recommended it be upheld. He thought the reasonable indemnity start date was 23 March 2020 as this was the date C's business had been impacted. He recommended that Covea settle C's claim under the policy with the higher indemnity limit and pay interest on any additional amount.

C accepted the investigator's recommendation but Covea didn't. It said the sum insured had not been increased until 29 April 2020 as this was the date the cover was added by C's broker.

I issued a provisional decision on this complaint on 14 April 2023 which indicated that I intended to uphold C's complaint.

Indemnity start date

In my provisional decision I said that the starting point was for me to consider the indemnity start date for C's claim. To do that I looked at the terms and conditions of C's policy.

The core business interruption cover in C's policy is extended through various extensions. The extensions section says:

> "Any cover for loss in respect of any item shown as insured by this Section in the schedule, resulting from interruption to or interference with the childcare business in consequence of damage to property, is extended to include such loss at or in the situations where detailed within the Extensions and will be deemed to be loss resulting from damage to property used by you at the premises for the purposes of the childcare business."

C's claim was paid under the following clause:

> "Interruption of or interference with the childcare business in consequence of access to the premises being hindered or prevented as a result of the actions or advice of a government or local authority following an emergency which is likely to endanger life or property."

So I thought this would be considered the insured 'damage' in this case.

The indemnity period is defined in the policy as:

> "the period beginning with the date of damage and lasting for the period during which your childcare business is affected as a result of the damage, but not longer than the maximum indemnity period"

I thought this meant that the indemnity period started with the date that C's business was interrupted or interfered with in consequence of access to the premises being hindered or prevented as a result of the actions or advice of the Government following an emergency likely to endanger life or property. I said that the emergency likely to endanger life or property was Covid-19 and the Government actions or advice was the restrictions placed on C's business in response to the pandemic. Therefore, I considered on which date C's business was interrupted or interfered with in consequence of this.

I said that on 18 March 2020, the UK Government announced that nurseries would be required to close their premises for most pupils "from Friday afternoon". As no children would have been due to attend the nursery either on the evening of 20 March 2020 or over the weekend I didn't think C business was interrupted at that time. As the impact of the Government restrictions did not affect C's business until Monday 23 March 2020 I thought it would be fair and reasonable to conclude that this was the date that access was prevented and also when C's losses commenced. Therefore, I thought this was the date of the insured 'damage' and as such was the indemnity start date. I did not think it produced a fair and reasonable outcome for Covea to apply its blanket approach to C's business without considering its individual circumstances.

How the claim should have been settled

As I didn't think Covea acted fairly and reasonably in how it applied the indemnity start date I thought about what should have happened if it had accepted that the indemnity start date was 23 March 2020.

I said that the claim should have been considered under the policy which commenced on 22 March 2020. The schedule shows that this policy was incepted with a loss of revenue sum insured of £700,000. This was the sum insured at the time of the claim so it should have formed the basis of the settlement amount for the claim. I understood that C asked its broker to increase the sum insured from renewal and Covea increased the sum insured when

requested by C's broker. As the broker was acting as C's agent, I said that I couldn't hold Covea responsible for the sum insured not having been increased at the time of the claim. Therefore, I didn't think Covea needed to apply the sum insured of £950,000 when calculating the settlement amount.

Despite that, I did not think that the amount Covea has paid to settle C's claim was fair and reasonable.

I said that C's policy contained an average clause and that, when considering a complaint where underinsurance is alleged, before considering the policy terms, I must first consider the Insurance Act 2015. Under the Act a commercial customer has a duty to make a fair presentation of the risk to the insurer.

Having considered the information provided to Covea by C, or its broker on its behalf, I didn't think C had made a fair presentation of the risk when renewing the policy. I said that the remedies under the Act meant that Covea should have paid 97% of the claim, which is more than it had paid when applying the average clause.

As I thought applying the average clause had disadvantaged C, I considered whether Covea had complied with Section 17 of the Act which lays out the transparency requirements for contracting out of the Act. I did not think Covea had done enough to fulfil the requirements of the Act in relation to contracting out, so I said it was not reasonable for it to rely on the average clause in the policy to settle this claim. For this reason, I said I intended to require Covea to settle the claim in line with the Act, rather than the average clause. I said this meant that Covea should pay C an additional £16,976.45 plus interest.

C accepted my decision but Covea did not. It provided a detailed response. I am not going to set out and respond to all of the points Covea made because having considered one point I let both parties know that I was minded to change my decision.

Covea believed that I was wrong to conclude that the average clause would put C in a worse position than it would have been in under the Act. Covea said that it did not agree that it was reasonable to compare the overall premium and that I should base my calculations only on the premium for the loss of revenue section. Covea said cover for £700,000 sum insured, including IPT, was £423.83. Whereas the premium at renewal for a sum insured of £1,450,048, which Covea said was the amount which should have been declared, would have been an additional £877.96 including IPT.

In an email to both parties dated 7 July 2023, I said I that I intended to accept Covea's point that, in this particular case, the calculation should be considered against the amount paid for the loss of revenue section of the policy and not the overall policy premium.

In reaching this decision I looked at how C's policy has been structured. While I believed that the different elements of cover made up one contract (the whole policy) Covea confirmed that the elements of cover are priced separately and provided evidence of the individual premiums. Covea also confirmed that if there was underinsurance in one section, such as in loss of revenue, a proportionate settlement would not be applied to any losses in another area of the policy, for example property damage. I said that even though, in this case, there had not been any other losses, as any reduction would not have been applied to other areas of the policy, I did not think it would produce a fair and reasonable outcome for me to require Covea to pay an increased percentage of the claim.

I reviewed the information provided by Covea and it showed that the premium for loss of revenue when the policy renewed in 2020 with £700,000 worth of cover was £423.83, including insurance premium tax (IPT). In my provisional decision, I said that the additional

premium for the increased sum insured was £235.46. However, Covea pointed out that the estimated sum insured for 24 months should have been £1,450,048. Therefore, I said that this was the figure that I needed to take into account when considering what C should have declared as the sum insured.

I asked Covea to provide me with evidence from its system to show that the premium would have been an additional £877.96. It later clarified that £877.96 was the total amount and not in addition to the £423.83 already paid. I said that, if I was satisfied that this was the correct additional amount, then I did not think that C had been disadvantaged by Covea applying the average clause and so I did not intend to require Covea to pay C anything further.

Covea said that due to changes within its system it was no longer able to provide a screenshot or other evidence to support that the additional premium would have been £877.96.

C was disappointed that I intended to reach a different outcome and made the following points:

- The correspondence from the broker clearly said it was in the wrong when failing to increase the loss of revenue section from 22 March 2020 but I have not referred to this letter.

- The correct premium paid in 2020 was £3,125.39 not £3,005.86 for the entire policy.

- An email from Covea's loss adjuster regarding underinsurance correlates with a summary and guide sent by the brokers. This summary and guide show that the amount payable was £950,000 and this is the amount that C should be able to claim. The premium should not be sectioned into the various portions of the Schedule and this is not stated anywhere in the policy.

- Covea should explain why and how only a portion of the premium should be considered for a particular section.

- It believes that the settlement should be based on the £950,000 requested rather than £700,000.

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 going to require Covea to do anything further. I will explain why.

C has provided a booklet from its broker and referred to a letter acknowledging the fault of the broker. However, Covea is a separate company to the broker and so I cannot hold it responsible for anything the broker might, or might not, have done wrong. I also cannot make a finding in this decision about whether the broker has done anything wrong. C's complaint about its broker will need considering separately to its complaint about Covea.

It is not in dispute that C intended to increase its sum insured to £950,000. However, this increase had not been implemented at the time the period of loss started on 22 March 2020. Therefore, Covea should have used the sum insured of £700,000 as the basis of its calculation for the claim.

I thank C for pointing out that the premium paid in March 2020 was £3,125.39, however, this

does not change the outcome of my decision. This is because I remain of the view that Covea priced each part of the policy separately. Covea has provided a table which sets out the premium for each part of the policy so I am satisfied that it prices each part of the policy separately. I have considered C's point that this is not set out in the policy terms but, given how the policy is structured, I do not think that makes a difference to the outcome of this complaint. I think that the different parts of cover, set out on the Schedule, are priced separately and Covea would only apply any deduction for underinsurance to the part of the policy that was underinsured, and not to other parts of the cover. This is consistent with other cases that I have seen.

Although C looked to increase the sum insured to £950,000 Covea has pointed out that it should have increased this to more than £1.45million as that is the amount required for the 24 month indemnity period. When bringing its complaint to our service C told us that its turnover was £750,000 per year. This is consistent with the loss adjuster's view that C should have increased the sum insured for 24 months. C said it thought that £950,000 was adequate as prior to 2020 the indemnity period had been for 12 months. However, what the change to a 24 month indemnity period means is that even if C had increased the sum insured to £950,000 it would still have been underinsured. Therefore, I need to consider the claim in line with what the sum insured should have been and not what C asked to increase the limit to. So the amounts I need to compare are what C paid for the £700,000 sum insured which was in place when the loss commenced and what C would have paid if it had correctly increased the sum insured to around £1.45million.

Covea has provided a table showing that C paid £423.83 for £700,000 loss of revenue cover. It has been unable to show a screenshot from its system but said that for the cover it required C should have paid £877.96. Therefore, C had paid 48.3% of the premium it should have paid. While Covea has not been able to provide a screenshot from its system, I have to make a decision based on what I think is most likely. Given that the premium increased by £235.46 when the cover increased from £700,000 to £950,000, I think an increase to £877.96 when the cover was increased to £1.45million is consistent. I am therefore persuaded by the information provided by Covea regarding how much C should have paid.

C's policy includes an average clause which says that where the total sum insured specified in the schedule is less than 85% of the total value of the property insured then Covea will only bear a proportion of the loss with the insured bearing the other proportion. Covea has paid C 48.3% of its claim under this clause. This is the same amount that Covea would have needed to pay if it had considered the claim in the way I set out in my provisional decision. Therefore, I do not think that, in this particular case, the average clause is disadvantageous. And, even if I did, as Covea has already paid 48.3% of the premium, I would not require it to pay anything further as this is the same amount it would have needed to pay when considering it in line with the Act.

I recognise that C will be disappointed with the outcome I have reached but, I do not believe that I could fairly require Covea to do anything further.

My final decision

My final decision is that while I uphold C's complaint regarding the start date for the indemnity period, I do not require Covea to do anything differently as it has already paid a fair and reasonable amount to settle C's claim.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 18 August 2023.

Sarann Taylor
Ombudsman