DRN-3389466

The complaint

P complain about the decision of West Bay Insurance Plc to decline its business interruption claim for losses arising out of the COVID-19 pandemic.

What happened

P operates as a sauna and spa business. It held a commercial insurance policy underwritten in part by West Bay. In March 2020, several staff members displayed symptoms of COVID-19 and P closed its business from 17 March. On 20 March 2020, the UK Prime Minister announced that certain types of business should close to help limit the spread of COVID-19. This included gyms and leisure centres. And, on 21 March 2020, the Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 ("the March Regulations") were made requiring spas, and indoor gyms, swimming pools and other leisure centres to remain closed. Further regulations were also made on 26 March 2020. P remained closed as a result until July 2020.

P contacted West Bay to claim for its losses. Much of the correspondence involved a third party, but for the sake of simplicity, I have just referred P and West Bay as they are the parties to this complaint. West Bay declined the claim. Initially it was not satisfied that P had demonstrated that there had been an insured event; effectively that it had not been shown there had been a manifestation of COVID-19 at P's premises. West Bay also said that even if there had been such an event, this did not mean there was any cover for the interruption resulting from the impact of the March Regulations.

West Bay did not initially change its stance when P complained. However, since P has brought its complaint to this service, West Bay has accepted that there was more likely than not a manifestation of COVID-19 at P's premises on or around 17 March 2020. West Bay has therefore offered to pay P's losses for the couple of days it was closed prior to the Prime Minister's announcement. However, it has maintained that this does not lead to any cover for the period P was closed as a result of the announcement or March Regulations.

Our Investigator shared a copy of a previous decision of this service which found that there was cover for the impact of the government-imposed restrictions, following a similar insured event as in this case. Her opinion was that the same conclusion should be reached in P's case.

Effectively, the Investigator's opinion was that whilst the courts in *The Financial Conduct Authority & Ors v Arch Insurance (UK) Ltd & Ors* [2021] UKSC 1 and the related judgment in the court at first instance ("the FCA test case") were not asked to consider terms, as in P's policy, where the relevant event of disease happened at the premises ("at the premises clauses"), the findings of the Supreme Court in relation to policies requiring that event happen with a particular radius of the premises ("radius clauses") were useful in considering at the premises clause related complaints.

The Investigator said that the Supreme Court had essentially found that each case of COVID-19 was a separate but broadly equal cause of the Government's response to the pandemic and the business interruption that resulted from this. That they were each

concurrent proximate causes of the Government's decisions. And that these decisions had taken into account reported and unreported cases. As such, the Investigator considered that the case of COVID-19 that West Bay had accepted had manifested on P's premises was a concurrent cause of the March Regulations.

The Investigator also said that the March Regulations were made by the Government following the advice of the Chief Medical Officer for England. And that it was reasonable to consider that this was the advice of the "Medical Officer of Health of the Public Authority", which is what the policy required.

So, the Investigator considered the impact of the restrictions on P was something that was covered by the policy. She thought P's claim should be met, subject to any remaining terms of the policy, on the basis that the closure of its premises from 20 March 2020 was caused by an insured event. She also thought interest should be added to the settlement of the claim.

However, West Bay were not persuaded by the Investigator's opinion. It has made a number of arguments. These have included that the FCA test case was not seeking to resolve issues relating to at the premises clauses, and that the findings on radius clauses were based on the contemplated risk being that a notifiable disease could affect a wide area. West Bay considers the geographic scope of the insuring clause to be relevant to the issue of causation and say that this was the reasoning of the Supreme Court in the FCA test case.

West Bay also referred to the recommendations of an Investigator in a separate case considered by this service, which related to a claim for losses relating to a manifestation of disease after the March Regulations, and said that these findings in this case meant there should be no cover for P either. Effectively, West Bay has said that P could have cleaned its premises and reopened prior to the Government's decision, and so the case of COVID-19 at its premises would no longer be an issue and hence could not be considered a concurrent cause of the March Regulations.

As West Bay has not agreed with the Investigator's opinion, this 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.

P's claim, and this complaint, requires me to consider amongst other things the entire contract of insurance between P and West Bay. I have done so and both parties are aware of the terms of this agreement. But it useful to set out the most relevant clause here.

The business interruption section of P's policy provides cover for a number of events. Many of these relate to damage and it isn't argued that damage as required by the policy is what led to P's business being interrupted. But the business interruption section also provides cover for insured loss in consequence of:

> "*closure or restrictions placed on the Premises on the advice or with the approval of the Medical Officer of Health of the Public Authority as a result of a notifiable human disease manifesting itself at the Premises*."

West Bay has accepted P's argument that there was most likely a manifestation of COVID-19 at the insured premises in the week commencing 16 March 2020. It isn't disputed that COVID-19 is a relevant disease in terms of the policy term relevant to P's claim. So,

what remains for me to determine is whether this means P's claim should be met and, if so, to what extent. As part of this, I will need to consider the meaning of "*the Medical Officer of Health of the Public Authority*" as this term is not defined within the policy.

The clause above, as it appears in P's policy, has a number of elements. In their correct causal sequence, these are:

1. a manifestation of a notifiable human disease at P's premises, which causes
2. closure or restrictions placed on the premises on the advice or with the approval of the Medical Officer of Health for the Public Authority, which cause
3. an interruption or interference with P's business that is the cause of financial loss.

The main issue in determining whether P's complaint should be upheld beyond the existing offer of West Bay to cover the initial couple of days P was closed, is to consider whether the approach taken by the Supreme Court to radius clauses should also be applied to the above clause, given the content of that clause and the context of the rest of policy and circumstances.

Some of the terms considered by the Supreme Court referred to the occurrence of a disease, whereas others – like P's policy – required there to have been a manifestation. I don't consider there to be any significant difference here in terms of the application of the reasoning around causation. The only difference is in relation to the circumstances covered and the proof required to evidence that. An occurrence of a disease can take place without the individual who has sustained the disease displaying symptoms. But for a disease to have manifested, it is likely the individual will need to have displayed symptoms or given some other positive sign – potentially a positive test result – at the time they were at the premises. Once this evidential burden is overcome, the application of the court's reasoning on causation is, in my view, unlikely to be different.

Largely speaking, the question of whether the placing of restrictions on P's premises by the announcement and March Regulations was as a result of the manifestation of COVID-19 at P's premises, is one of causation. The appropriate test of causation here is to consider, objectively and in the context of the policy as a whole, what the intended effect of the policy term was as it applies to the circumstances of the claim.

So, the first question to determine is whether the reasoning of the Supreme Court, in the FCA test case, on radius clauses applies to at the premises clauses. As indicated by the Investigator, this is an issue that has already been considered by this service and a copy of a relevant final decision has been shared with West Bay. However, they disagree with the approach of this service.

But whilst different policies have different wordings, there is no significant difference between the contractual construction of the radius clauses to the at the premises clauses. The only difference between these clauses is the geographical area that they cover.

West Bay says that it is this difference in geographical area that is relevant to the current case. West Bay, as with the insurer in the previous decision of this service, has referred to paragraph 71 of the Supreme Court judgment. But West Bay has also referred to the comments made in paragraphs 72-74.

The Supreme Court had not been asked to determine the correct interpretation of at the premises clauses. But its comments, at paragraph 71 of its judgment, were made in relation to a specific policy. The policy being considered by the court included both “in the radius” and “at the premises” subclauses, and this was likely to be context the court bore in mind when considering the potential meaning of the term. This is not the case with P’s policy.

The Supreme Court was, at this point in its judgment, considering the scope of the insured peril, rather than matters of causation. And, whilst the Supreme Court said that the scope of the insured peril for an at the premises clause was not the entire outbreak even if there was an occurrence on the premises, this was also the conclusion it reached in relation to the radius clauses. The Supreme Court found that the insured peril for radius clauses was also not the entire outbreak provided it came within the radius. There was no distinction between radius and premises clauses drawn by the Supreme Court here. And I consider both types of clause provide cover for cases within their geographical limits and not cover for cases elsewhere.

It is to this point that the geographical limit is relevant. But the Supreme Court’s reasoning – that the insured peril is each case of COVID-19 that falls within the geographical limit of the clause – applies equally to at the premises clauses as it does to radius clauses.

Additionally, the Supreme Court did not make any distinction between radius clauses and premises clauses when these were combined in the same policy. A single case – even at the premises – was considered sufficient for the cover to respond and to cover the losses sustained by the insured party as a result of that occurrence. The Supreme Court confirmed that a single case can be enough for causation to be established under a radius clause, and there would be cover under a clause containing both a premises and radius subclauses if the only case of COVID-19, within the geographical limits of the clause, was at the premises.

As has been said, the only significant difference in the construction of the at the premises clauses with the radius clauses is the geographical area they specify. This can be undefined, the whole country, a 25-mile radius, a 250-metre radius, or the policyholder’s premises. A clause that sets out a smaller area only acts to limit the possibility of a case occurring, and so limit the chances of a claim being made. This is a reasonable and understandable commercial intent by an underwriter.

I should also point out here that the premises of some policyholder’s will be greater than a 250-metre radius. And it would be illogical to consider that a policy requiring a case of COVID-19 within a radius smaller than a policyholder’s premises would provide cover for the consequences of the March Regulations, but that this would not be the case if the policy specified a larger area – that of the entire premises.

Paragraphs 72-74 merely confirm that the cover provided relates to the cases of disease within the relevant radius; not that cover is for an interruption that relates only to cases within that radius, but that cases outside of the radius do not form part of the insured peril. The fact these paragraphs refer to a radius of “25-miles” and comments that the issues discussed are important in terms of causation is not, in my view, saying that the particular radius of 25-miles is significant. It is only significant in the consideration of the clause the court was considering because that clause had a relevant geographical limit of 25-miles.

I am not persuaded that, had the policy being considered by the court at that time referred only to a radius of 5-miles, 1-mile, 250 metres, or been limited to the extent of the premises, a different conclusion would have been reached. The key issue the court was referring to here in terms of causation was, to my mind, the point that it is not just the impact of cases of disease within the relevant radius, whatever that may be, that are relevant to causation. The size of that radius was not, in my view, a key consideration here.

West Bay has placed particular emphasis on paragraph 73 of the Supreme Court judgment, specifically that which reads:

> "…*we think the court below was right to attach significance in interpreting the policy wording to the potential for a notifiable disease to affect a wide area and for an occurrence of such a disease within 25 miles of the insured premises to form part of a wider outbreak. But again, the significance of those matters, in our view, is in relation to questions of causation.*"

But I don't this means the particular radius that appears in the policy being discussed by the court at this point is significant. More significant to my mind is the type of diseases being covered and the fact that these will often have an impact both within and without the radius relevant to any policy whether that be 25-miles, 250-metres or the limits of the insured's premises. I will return to this point below.

Ultimately, the court found that the approach that applied to the interpretation of the insured peril was the same for both radius clauses and at the premises clauses. And that this was that clause only covers the cases of COVID-19 which happen within that radius. The cover is for the cases of disease within the radius (or at the premises, depending on the wording of the policy), not for the disease itself nor for the consequences of diseases outside the radius/premises.

The impact on the cover of requiring the disease to manifest on the premises is the same as is provided by a policy limiting the relevant radius to one mile, rather than 25 miles. It does not change the form of cover provided, it merely lowers the chance of the policy term being activated. There is less chance of manifestation at the premises than within one mile of the premises, and there is less chance of a manifestation within one mile of the premises than within 25 miles. Each individual manifestation, regardless of where it manifested, was an equal cause of the restrictions being imposed. But for the impact of that manifestation to be covered, the manifestation must be within the geographical limit set by the policy.

Taken at face value, radius clauses offer the same type of cover as at the premises clauses – the only difference being a smaller geographical area where the manifestation needs to take place before resulting business interruption is covered.

As mentioned above, I consider the type of disease covered by the policy is also a relevant consideration. P's policy, as with many similar policies – both those with radius clauses and at the premises clauses - provides cover for notifiable human diseases. Effectively, this is any of the diseases on the list of notifiable disease in Schedule 1 of The Health Protection (Notification) Regulations 2010, including any new disease added to this list. COVID-19 was added to the list in early March 2020, which is why P's policy provides any cover at all in the circumstances.

Many of the diseases are unlikely to have originated at the premises, so a manifestation there is likely to be part of a larger outbreak. If West Bay had wanted to restrict cover in P's policy to disease originating at the premises, it could have done so. But it did not.

The same risk of a widespread and unpredictable outbreak of disease applies to both radius clauses and at the premises clauses. If these wide-spreading diseases are on the policyholder's premises, they are also likely to be found outside of these premises. So, whether or not the disease is on the premises, it seems that the actions of the relevant authority will in fact largely be the same.

It is likely restrictions would be introduced covering a broad geographical area in relation to

many of the diseases covered by P's policy. And this would have been something that both West Bay and P might reasonably have been aware of at the time the insurance contract was entered. I note the Supreme Court's comments at paragraph 194 of its judgment in respect of this point:

> "…*we consider that the matters of background knowledge to which the court below attached weight in interpreting the policy wordings are important. The parties to the insurance contracts may be presumed to have known that some infectious diseases - including, potentially, a new disease (like SARS) - can spread rapidly, widely and unpredictably. It is obvious that an outbreak of an infectious disease may not be confined to a specific locality or to a circular area delineated by a radius of 25 miles around a policyholder's premises. Hence no reasonable person would suppose that, if an outbreak of an infectious disease occurred which included cases within such a radius and was sufficiently serious to interrupt the policyholder's business, all the cases of disease would necessarily occur within the radius. It is highly likely that such an outbreak would comprise cases both inside and outside the radius and that measures taken by a public authority which affected the business would be taken in response to the outbreak as a whole and not just to those cases of disease which happened to fall within the circumference of the circle described by the radius provision*".

I consider this reasoning also applies in relation to a policy which provides cover only where there is a manifestation of such a disease at the premises of the insured. Whilst some of the notifiable diseases covered by the policy would in some cases be limited to a very localised outbreak – potentially contained to the premises – many of the diseases covered by the policy would inherently be those that would be found beyond the premises if they ever manifested at the premises. As with radius clauses, it would be contrary to the commercial purpose of the policies for cases of disease manifesting outside the premises to deprive the policyholder of cover for cases at the premises.

I consider it likely that if there were manifestations of many of the diseases covered by P's policy, the actions taken would likely have been similar. The actions taken by other governments in relation to outbreaks of SARS and Ebola which led to broad geographical areas or multiple types of business having restrictions imposed on them would provide examples of this. It seems that the more likely the disease is to be wide-spreading, the more wide-spread the restrictions will be that are imposed to control that disease.

By including cover for a number of diseases where the likely actions to be taken would be those that would impact more than a single premises, I considered West Bay has seemingly agreed to provide cover where actions are taken (in relevant situations) that impact more than just the insured's premises.

Additionally, P's policy has a potential £1 million limit, although P itself is only insured up to around £600,000, and 24-month indemnity period for its at the premises cover. I consider this undermines the suggestion that the clause is only intended to provide short-term cover for an incident which is only on the premises and not elsewhere. It is highly unlikely, in my opinion, that such a limited event would lead to such a lengthy and expensive claim.

The Supreme Court found that each and every occurrence of COVID-19 was an approximately equal and proximate cause of the Government's decision-making process. The Supreme Court set out some general principles or standards to be applied when considering the proximate cause of loss. These included determining whether a peril that is covered by the policy had any causal involvement and, if so, whether a peril that was excluded from the cover provided by the policy had any such involvement. And then determining whether the occurrence of one of these made the loss inevitable in the ordinary course of events.

The court went onto say that whilst the Government's decisions to introduce the restrictions in March 2020 could not reasonably be attributed to any individual occurrence of COVID-19, this decision was taken in response to all the cases in the country as a whole. And the Supreme Court agreed with the High Court here that, "*all the cases were equal causes of the imposition of national measures*". The Supreme Court found that here was no reason why one insured event, acting in combination within a number of uninsured events, should not be regarded as a proximate cause of loss even if that insured event was not necessary or sufficient to bring about the loss on its own. And that; "*Whether that causal connection is sufficient to trigger the insurer's obligation to indemnify the policyholder depends on what has been agreed between them*."

As such, a key issue was what risks West Bay agreed to cover. This is a question of contractual interpretation of P's policy, answered by applying the intended effect of the policy to the circumstances of P's claim.

In making its findings in the test case, the Supreme Court relied on the presumption that an infectious and contagious disease – like many of those West Bay chose to cover in P's policy – can spread rapidly, widely and unpredictably, so that an outbreak which is sufficiently serious to lead to a policyholder suffering an interruption to their business was highly likely to include cases inside and outside the radius relevant to the policy. The court found it would not be feasible, and would be contrary to the commercial intent of the policy, for cases outside of the radius to deprive the policyholder of cover in relation to cases within the radius. I note the comments of paragraph 206 of the Supreme Court judgment which support this.

Radius clauses did not limit cover to situations where the interruption of the business was caused only by cases of disease manifesting within the area, as distinct from other cases outside the area. And, in such circumstances, other concurrent effects on an insured business of the underlying cause of the business interruption, i.e. the pandemic generally, do not reduce the indemnity under the relevant clause.

I see no persuasive reason why the considerations that the Supreme Court applied generally to radius clauses do not equally apply to at the premises clauses. And feel the same applies here to P's complaint. As the Supreme Court said, all that is necessary for a radius clause which also requires the closure to be as a result of, for example, government action, is for the closure or restrictions to be in response to cases of COVID-19 which included at least one case existing within the geographical area set out in the relevant clause. In P's case, this geographical area is its premises and West Bay agree there was at least one manifestation of COVID-19 within this area. And I consider the Government's actions and advice were in response to cases of COVID-19, which included the case(s) that manifested at P's premises.

It might be that the case(s) of COVID-19 at P's premises would not have been reported to the Government at the time it made its decision, though it does seem that at least one of P's employees had contacted NHS 111 to report his symptoms. But I do not consider this point to be crucial in terms of the discussion of causation. It is clear that as well as the reported

cases that the Government was specifically aware of, the decision it took was also made due to the estimated number of unreported cases.

It was the number of these unreported cases, as well as the reported ones, that would have led to the Government making its decision. Each one of these reported and unreported cases will have arguably been a proximate cause of the Government's decision-making process. But it would not be possible for an "estimated manifestation" to lead to an insurance claim where an actual manifestation was required by the policy.

I note West Bay's argument that by the time the Government made its initial announcement on 20 March 2020, there may no longer have been a manifestation at P's premises. Whilst I appreciate the points made, it is also clear that in thinking about both the reported and unreported cases the Government was making its decision based on historic data. The models being considered were predictions of future hospitalisations taking into account, amongst other things, the reproduction ratio of the infection (the R-number), which is affected by numerous factors that govern pathogen transmission and is, as I understand it, therefore usually estimated using different complex mathematical models. And the data referenced in the Government's briefings was based on the events that took place over the preceding weeks.

By the time the decision to introduce the March Regulations was taken, a number of individuals included in the figures of who had sustained COVID-19 may already have recovered. But I consider these cases would still be those that, together with the other cases around that time, were the concurrent causes of the Government's decision. The Government and its advisors were not looking at individual cases in isolation, they were considering the accumulation of these which would have formed the framework of the rate of infection and allowed for a prediction as to the future R-number and resultant hospitalisations.

I note that the courts indicated that a person passing through an area, involving no contact with anyone and therefore no risk of transmitting the disease, might not be enough to trigger the insured peril under a radius clause. However, I consider this is entirely different from someone who remained in the area for some time and had numerous interactions with various people. Whilst that person may then have left the area in question, their presence created a risk of the disease having been transmitted. And it is this risk, and the potential of this leading to hospitalisation and the overwhelming of the NHS, that led to the Government's decisions at this time.

Although each case of disease was individual, the effects of the disease – the Government's measures – were indivisible. And as the Supreme Court said at paragraph 212 of its judgment:

> "…*each of the individual cases of illness resulting from COVID-19 which had occurred by the date of any Government action was a separate and equally effective cause of that action*…"

I appreciate that part of the cause of P's continued closure in the present case is the same as its initial closure (i.e. the manifestation of COVID-19 at the premises). But, the term in the policy is a composite one. The term requires both the manifestation and the action of the relevant authority. It is the action of this authority that is also an integral element of the continued closure and this action had not taken place at the time of the initial closure. Prior to the Prime Minister's announcement, there were no specific restrictions that had been placed on the premises that caused any interruption to its business.

The same can be said of West Bay's reference to another complaint considered by this service. I also note that this complaint was resolved by the opinion of an Investigator and so no Ombudsman's decision was reached and published. Additionally, it must be stressed that whilst this service does try to apply its approaches consistently, each case is determined on its own individual merits. And it is clear the circumstances involved between this previous case and P's are entirely different. Whilst I note West Bay's comments that the facts of the claim do not change the correct approach to causation, the issue is that in the other complaint the manifestation at the insured premises did not seemingly lead to any action by a relevant authority. But I have not been asked to determine the outcome of this other complaint. My role here is to determine what is fair and reasonable in the circumstances of P's complaint.

So, similarly, whilst I also note the comments made about a hypothetical example of a business that initially closed and then reopened prior to any government-restriction, those are not the circumstances of P's claim and I am not required to consider such a hypothetical situation in determining P's complaint.

P's policy does require that the actions taken by the Government were based on "*the advice of or with the approval of the Medical Officer of Health for the Public Authority*". The term Medical Officer of Health is not defined within the policy. As such, it needs to be interpreted as it would be understood by a reasonable person at the time of entering the contract.

"Medical officer of health" is largely a historical term. It was used in the Public Health Act 1961, but it is not in more recent public health legislation. Section 37 of this Act relates to the sale of verminous articles and appears to be the only legislative term relating to the medical officer of health. The role itself is also historic and no longer exists. I note that when the role was in existence, it did have a focus on local authority matters rather than anything national. But I consider this to be a reflection of the make-up of healthcare services generally at the time medical officers of health were introduced, rather than the current situation which is more of a mix between national and localised healthcare.

I consider the current set-up of the healthcare system is also significant when considering the potential actions taken in the face of many of the diseases covered by P's policy. As set out above, the responses to many of these diseases would be wide-spread and would require more nationally-orientated action. To say that the policy provides cover for a disease that would likely only be acted upon by national government, but then to limit cover to the actions of a local authority would, to my mind, provide an irrational result.

The clause refers to a term that is dated and it would not be reasonable to expect a customer taking out an insurance policy of this nature to understand the historical positioning of a redundant role, and then apply that to how the clause in question should be interpreted in relation to cover for a wide-spreading disease. An alternative question is whether a reasonable customer would consider that a clause referring to the advice of the Medical Officer of Health would include the advice of the Chief Medical Officer for England. I consider that this is how a reasonable person would have interpreted this clause at the time the policy was taken out.

As such, taking all the circumstances of the complaint into account, I consider that P's policy should cover it for the losses it sustained when it was interrupted by the Prime Minister's announcement and the subsequent regulations made on 21 March and 26 March 2020. This means I consider West Bay is liable for the full extent of the period P was closed by the Governments restrictions, subject to the relevant policy limits. My understanding is that P would not have been able to reopen prior to 4 July 2020. But if I am wrong on this date, P should be indemnified for the period it was subject to the Government's requirement that it remain closed.

I am satisfied that P's policy with West Bay is a contract with its own terms. I have considered how these terms would likely have been interpreted by a reasonable person at the point the contract was entered into, bearing in mind that it is a policy sold to SMEs.

I don't think a reasonable person would interpret a clause that provides up to a maximum of £1 million and 24 months of cover in relation to various diseases, including those most likely to be wide-spread and hence requiring far-reaching measures to tackle them, to be limited to consequences directed solely at the insured's premises.

I think it is reasonable to read P's at the premises cause, in the context of the rest of the policy and the circumstances of the claim, as providing cover for losses resulting from the manifestation(s) of COVID-19 at its premises. Although I can't be sure, I also this this was more likely than not that this is how a court would interpret this term.

Given the findings of the Supreme Court, I also think the manifestation(s) at P's premises was an equally effective concurrent cause of the decision to introduce the March Regulations, as the manifestations beyond the limits of P's premises. And the cases off the premises are not an excluded cause.

Referring back to the elements of the insured peril I set out earlier in my decision, in their correct causal sequence, and taking the points above into account, I am satisfied that:

- An illness caused by COVID-19 was manifested by a person at P's premises.
- This manifestation was a proximate and concurrent cause of the Government's decision to introduce the March Regulations.
- These March Regulations were introduced on the advice or with the approval of a person or persons who would be considered the Medical Officer of Health for the Public Authority.
- These Regulations placed restrictions on P's premises. And,
- These restrictions caused an interruption or interference with P's business that likely caused a loss.

As the elements of P's disease clause have been met in the circumstances, I consider West Bay's decision to decline P's claim for the losses sustained as a result of the Government's restrictions was not made correctly. And I so don't consider West Bay dealt with P's complaint fairly or reasonably.

Putting things right

I consider P's complaint should be upheld.

In order to put things right, West Bay Insurance Plc should:

- Reconsider P's claim on the basis that there was an occurrence on its premises that caused an interruption to its business from 20 March 2020 to 4 July 2020.
- If, taking into account the remaining terms of the policy, any settlement is due to P West Bay should pay this. Any excess that is payable should deducted from the total claim amount, before any policy limit is applied.
- West Bay should pay P interest on this settlement.

The interest payable on the settlement should be based on P having been deprived of four monthly interim payments that should have been made during the course of the claim.

The first of these payments should have been paid on 20 May 2020 and should have covered P's indemnified losses for the period 20 March 2020 to 19 April 2020 inclusive. Subsequent monthly payments should have been based on losses for the periods; 20 April 2020 to 19 May 2020, 20 May 2020 to 19 June 2020, and 20 June 2020 to 4 July 2020. These payments should have been made on 20 June 2020, 20 July 2020, and 4 August 2020 respectively.

West Bay should pay P interest on the amount of each of these interim payments, for the period from the date of each of these interim payments should have been made to the date of settlement. This interest should be paid at a rate of 8% simple per annum.

My final decision

My final decision is that I uphold this complaint. West Bay Insurance Plc should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 28 April 2022.

Sam Thomas
Ombudsman