

The complaint

A limited company, which I will refer to as P, complains about the settlement of its business interruption claim, made as a result of the COVID-19 pandemic, by Hiscox Insurance Company Limited.

What happened

The following is intended only as a brief summary of events. Both parties are aware of the circumstances, and as has previously been outlined by our Investigator, the issues at the heart of the complaint are relatively well defined. Also, for the sake of simplicity, although other third parties have been involved in the claims process, I have largely just referred to P and Hiscox.

P held a commercial insurance policy underwritten by Hiscox. P's business is described in the relevant policy document as an Audio-Visual Retailers including Installation Works to Residential Project Sites & Hire/ General Electrical Retailers & Furniture, Lighting control for home automation. P is also authorised to provide consumer credit related activities, and many of its sales involve hire purchase agreements.

A separate limited company, which I will refer to as L, exists. P is linked to L, but I understand that all financial activity takes place within P. Some of this is carried out under the trading name of L. I'll refer to these activities as those of L, and these activities are focussed on the sales, design and installation of electrical equipment, such as home cinemas, etc.

In March 2020, P's business was interrupted as a result of the government-imposed restrictions introduced as a result of the COVID-19 pandemic. Whilst P's claim was initially declined, ultimately Hiscox has since accepted that there is a valid claim for the three national lockdown periods between March 2020 and early 2021.

However, there is a dispute over the settlement value of these claims – including what losses are to be included. Specifically, the dispute relates to how the hire purchase element of income has been accounted for, and whether losses relating to L's business are covered as a result of the insured event.

It seems that the dispute over the hire purchase element has effectively been largely resolved, though I have expanded on this further below.

In terms of the losses relating to L, Hiscox has accepted that income generated through L's business is insured (as this is in actuality P's income). However, the dispute is over whether the relevant policy clause applies to the circumstances of these losses.

The relevant policy term provides cover where loss results from an interruption to the insured business caused by:

“your inability to use the business premises due to restrictions imposed by a public authority following...

ii. an occurrence of any human infectious or human contagious disease an outbreak of which must be notified to the local authority...”

It is not disputed that there were restrictions imposed by a public authority following an outbreak of a relevant disease. The dispute is whether the losses relating to L were caused by an inability of P to use its premises.

Hiscox’s position here is essentially that any interruption of L’s business was the result of an inability to carry out, for example, installation work at customers’ premises, rather than an inability of P to use its own premises. P’s position is effectively that the initial sales of any product to be installed required the use of the premises, and the inability to take this first step in the process prevented any further work being carried out. It is noted that both of these summaries are simplifications of the parties’ positions.

P’s complaint was brought to the Ombudsman Service, and our Investigator set out his opinion on this. Neither party fully agreed with this though, so the complaint was passed to me for a decision.

I issued my provisional decision on 3 May 2024. The following is an extract from that decision:

“The picture of P’s operation and income is, by its own admission, complex and unusual. Some goods are bought up-front, directly from P. Other goods are bought on hire purchase. Or potentially merely hired. Additionally, other goods and services are obtained via the L branded part of P’s business. P considers income generated from L to be largely formed of actual sales, [though] it is not clear to me whether this income includes hire purchase sales or only ‘up-front’ sales. P does not consider it generates, at least significant, income from the “services” L provides.

The assessment of how this claim should be settled has further not been helped by the limitations on the information P has provided to Hiscox in relation to the income it generates. I appreciate that part of this comes down to issues over accounting software. However, it does seem that Hiscox has also suggested that P provide all relevant invoices covering a suitable period of time to allow it full understanding of the money P generates and its source. In the circumstances, whilst I appreciate the additional work this would likely generate for P, this does seem a reasonable request.

Without this information having been provided to Hiscox, all I can really do in terms of this complaint is set out the principles that I consider ought to apply to the claim settlement calculation. I’ll deal with the two main issues in turn.

Hire Purchase

As I say, largely speaking it appears the parties are actually in agreement over the hire purchase income. Our Investigator did make suggestions as to how this should be taken into account. But, as I have reached my own conclusions, I have not outlined his assessment here.

I consider the appropriate position on hire purchase income is that the entire sum payable under the agreement should be considered as income at the point the agreement is entered. In reaching this conclusion, I have borne in mind [an extract of Chapter 6.11] of Riley on Business Interruption Insurance 11th Ed...

P’s policy refers to income, rather than turnover. But the definition of this is the equivalent of that [in the paragraph referred to] above, reading:

“The money paid or payable to you in respect of your business...”

So, the closure of P’s premises meant that no further sales were being made, which

meant that no further money was payable to P in respect of new sales over this period. It is this loss that needs to be accounted for in the claim, even though the money would have, largely, been actually paid to P outside the indemnity period for the claim.

Hiscox has accepted that this means P's losses in respect of hire purchase sales needs to be included in the settlement. However, it has also said that the rate of gross profit needs to be applied to these losses – at least in respect of the value of the goods. It has said this brings the losses down to £15,183 for lockdown one and £6,794 for lockdown two. Hiscox has said that, even taking into account the hire purchase losses, the savings P made in lockdown three means that there is no insured loss for this period.

I have not checked the calculations Hiscox has made here. However, in principle this approach is fair and reasonable. And would seemingly result in an increase of £21,977 on this part of the claim.

Income from L

However, whilst Hiscox accepts that the hire purchase element should be included in the settlement, it does not consider the income from L should be.

Hiscox has said that it has not actually deducted this income from the settlement, but rather set off the hire purchase income against this. Effectively, Hiscox is saying that it should not have included this income from L in the settlement, and that this was greater than any additional hire purchase related income – so there is no further payment required to settle the claim.

Hiscox has said that, without a breakdown of the sales as it has requested, it is unable to confirm how much of P's overall income is generated via L. However, it has estimated this at different times as 10% or 12.5%.

Leaving aside for the moment whether this should be deducted from the settlement, this calculation does not appear unreasonable in the circumstances. However, it is difficult to see how this would equate to a sum greater than the hire purchase losses. The total loss for lockdown one has seemingly been calculated as £15,190 plus the £15,183 hire purchase sales. Even applying the higher rate of 12.5% across the entirety of this sum would only be £3,796. So, it is not clear to me that no further settlement is payable in respect of the hire purchase sales, even when the income from L is deducted.

As to whether this income from L should actually be deducted, Hiscox has referred to P's website and the services described there. P has said that this its website should not be considered to accurately portray the actual work it carries out. But again, I also note that Hiscox has requested details of the invoices for a comparable period of time which would accurately demonstrate what work P is paid for – both in terms of L and its own operations. Without these, I do consider it reasonable that Hiscox refers to P's own website.

The website describes a number of services P provides via its L branding. Taking these as a whole, it seems that P is involved in designing systems of integrated technology (audio-visual, lighting, etc.), providing these goods, and working with on-site professionals (builders, electricians, etc.) to ensure appropriate installation. This seemingly involves an element of project management.

P has said that it receives no income from the design and consultation work it carries out. But whilst I appreciate that such a service may drive increased sales, it does seem unlikely that there is no charge included for a significant element of additional work. The records requested by Hiscox would likely demonstrate this one way or the

other. I note P has referred to customer data being included in printout reports, but this could easily be redacted if required. So, I don't consider this a bar to the information being provided. As they have not been provided, I am minded to conclude that there is most likely a cost to the service P provides through its L branding.

That said, I can see from P's point of view that any of these projects will be dependent on an initial sale. It does not seem likely that P is engaged in designing installation of equipment customers buy from other, entirely separate retailers. It follows that entire projects will largely be dependent on the initial sale taking place.

The question then is, was there an interruption of L's business activities as a result of an inability of P to use its premises for the sale of goods.

It seems likely that the majority of customers, especially those wanting a bespoke or integrated system, would want to see a demonstration of the product prior to purchase. However, it also seems quite possible to me that some sales would take place without demonstration. Again, the evidence of transactions Hiscox has requested would confirm this.

It is noted that there are no actual products on sale via P's L website. Products can be purchased online via an affiliated business. This is a separate business, but is part of the same buying group as P. P receives commission from relevant online sales via this other business. Presumably, P was also able to make sales over the phone. Either way, some sales are evidently conducted without customers visiting the physical premises – whether this involves the L part of P's business or not.

However, with additional evidence, it seems likely that the number of online or phone sales that led to business for L could be established. And whilst these could continue, the business created through 'on premises' sales would have been interrupted.

The "service" that L provides in relation to new projects seemingly follows on from new sales. And, at least in relation to the proportion of these that relate to 'on premises' sales, the provision of this service to new projects would have been prevented as a direct consequence of the inability to make new sales. Whilst the activity of providing the service itself may not have been prevented, without the initial sale this activity would not have been required – so would in essence have been prevented from existing. Ultimately, I do consider this would be an insured loss.

This would not however be the case for any income lost as a result of projects that had already commenced, not continuing. The continuation of these would not have been interrupted by any inability to use P's premises. So, it is only income relating to new projects that would have started, as a result of 'on premises' sales, during the indemnity periods that would be covered.

As I say though, calculation of these will require P to provide Hiscox with the information it has requested.

Summary

Hiscox has said that it agrees that losses relating to the total amount due under hire purchase contracts that would otherwise have been entered within the indemnity periods fall within the cover provided. I agree with Hiscox though that a rate of gross profit should be applied to the majority of this income, but it seems that a further amount is payable in relation to this part of the claims.

I agree with our Investigator that the income from the L side of P's business is seemingly inextricably linked to on premises sales. And that as these were prevented, this also interrupted any further income that would be generated in

connection with these sales. However, without the information Hiscox has requested, I do not consider Hiscox should be required to settle a claim in relation to these losses.

Hiscox needs to be given the opportunity to consider the level of income that would have been generated, during the indemnity periods, from new 'on premises' sales. It is only this part of P's income – including any income from follow on services in relation to the installation of those sales – that is covered in the circumstances.

So, Hiscox needs to make some changes to how it assesses P's claims. But it is not fair or reasonable to expect Hiscox to do this without P providing the information requested relating to transactions covering the equivalent periods of the previous year, for each claim. If P provides this information, Hiscox will need to reassess the claim make a new settlement decision taking into account the principles above."

I invited both parties to provide any additional evidence they wanted to in response to my provisional decision.

Hiscox maintained its position that L's business was not interrupted by relevant restrictions. And said that it was an overstatement of the position to accept all subsequent income flows from an initial consultation / demonstration or sales visit. Hiscox provided some further information in relation to the income from L that was included in the initial settlement offer. It said that the percentage that would need to be calculated related to the entire expected income of P, rather than just the hire purchase element. After I raised a query relating to this aspect, Hiscox has accepted that the percentage of P's entire income would need to be adjusted to reflect any savings that were made relating to L's business, though it questions the appropriate level of these.

P also responded to the provisional decision. It disagreed that there was no hire purchase loss relating to lockdown three. P has said the calculation made by Hiscox has been based on a comparison with the same period in 2020, which included part of the period P was subject to lockdown one.

P also provided a link to numerous invoices. And said that these demonstrated there was no income stream for design, consultation or project management. Hiscox has said that it has started to consider the invoices provided, but that what has been supplied does not provide all of the information it reasonably needs.

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 have come to largely the same conclusions as in my provisional decision, largely for the same reasons.

I should stress that it is not the role of the Ombudsman Service to claims manage. Whilst we attempt to be pragmatic and progress matters in an ongoing claim where possible, ultimately, my role is to determine whether the position Hiscox reached at the point the complaint was made and responded to was appropriate. As a result, I have not considered the invoices P has provided. These will be for Hiscox to consider going forward, and it should do this and use them to reconsider the claim.

If, as Hiscox has said, the information that has been provided does not give the required detail, it may not be possible for this process to be fully completed. Or if it is completed, B may be unhappy with the figure reached. Either way, if that is the case, that would be a new

complaint. It would be about the claim outcome Hiscox will reach on consideration of the new evidence it has been provided since the original position it took at the point P's complaint was made.

I would though urge the parties to be pragmatic going forward. It may be that, having reviewed the information supplied, it is reasonable for Hiscox to require further information. Sometimes additional information leads to additional questions. And, as long as these are reasonable, it is likely to be appropriate for these to be asked. The complex nature of P's business means that it might be reasonable for more information to be required than might normally be expected. It may though be helpful if Hiscox is clear about any reasons for wanting additional information, providing this does not prejudice its position. Additionally, P has said that it has previously asked for accessible copies of spreadsheets that Hiscox has used in its calculations. The sharing of information like this, in a useable format, would seem helpful to reaching an amicable solution and would be encouraged. Hiscox ought to be mindful of its ongoing obligations under ICOBS and PRIN.

In terms of the position initially taken by Hiscox, to which this current complaint relates, it has been confirmed that hire purchase income can and should be included in the settlement calculation. However, it is only the income lost from not being able to enter contracts within the period(s) of indemnity that is relevant here.

P has questioned how this has been calculated in relation to lockdown three. I agree that it would not be appropriate to use figures from 2020, which would have been impacted by the pandemic. However, it seems Hiscox has used figures from 2019 instead. Whilst P has indicated figures in 2018 might be more favourable, it has not given any reason why these should actually be used. So, I consider use of the 2019 figures to establish the expected turnover is fair and reasonable in the circumstances.

In terms of the income from L, Hiscox has provided clarification of how the amount it has said should be offset against the hire purchase income has been calculated. In the absence of clear and complete financial information, applying a percentage to the entire income of P, to calculate the amount of this that relates to L would seem reasonable.

However, it should be noted that L's income would also be impacted by the rate of gross profit and a proportion of any savings made. It would not be, in my view, fair and reasonable to remove L's potentially uninsured income from the settlement amount, without taking into account the costs, savings and actual income relevant to this uninsured loss.

Without clear information, it isn't known how much of the savings P made during the indemnity periods related to L's costs. The income of L may also include some of the hire purchase element. It isn't clear whether L's sales are made on a hire purchase basis, but it would seem likely that some are. Hiscox has suggested that the main savings would relate to areas of the business that were closed. This is true, but it is also true that regardless of whether the losses are insured or not, L's business also largely ceased during the relevant periods. And it isn't clear that the calculation of savings has taken this into account.

Without clearer information, I consider it would be fair to apply a similar percentage to these savings elements, as is used to calculate the estimated income relating to this part of the business. This is also true in relation to the actual income P achieved during these periods though.

As to whether a 12.5% adjustment was appropriate, as opposed to another figure, in the absence of clear financial information, I consider Hiscox using this was not unreasonable to calculate all of the income from L that did not come solely from an in-shop sale. This was a reasonably arbitrary figure, but it was reached on the basis that P had not provided the

information Hiscox reasonably needed. I do note that not all of this information was requested prior to this figure being reached, but the information that had been requested had not been supplied either (though I appreciate this information might not have existed in the form requested).

As P has begun to provide further financial information, which should show the specific income from L and what this related to, use of an arbitrary percentage should hopefully no longer be necessary. Hiscox has suggested that the actual percentage may in fact be higher, but even if this is the case, it will be necessary to consider what parts of L's income it is possible to deduct from the claim settlement.

I agree with Hiscox that it would seem likely that not all income generated by L would follow on from an initial sale or demonstration at P's premises. As I have said in my provisional decision, some sales would be online or over the phone. And also some projects may not be 'sales led'. A customer may be more interested in designing a space and the sale of particular products to be used in that space might only become relevant further down the line. P might carry out the initial work in the hope that a sale will be made, but this initial work would not have been reliant on that sale (presuming the absence of a contractual requirement for the customer to make some purchase from P). Hopefully, further information from P will allow this proportion to be determined.

However, in the absence of full information, I do think that it is likely that many of projects would be dependent on such a sales activity initially taking place.

There is no dispute that on-site physical sales would have been interrupted. And that losses arising directly from these, in relation to L's income, would be an insured loss. Hiscox has said that demonstrations would not have been prevented by the restrictions. But I consider it is fair and reasonable to consider the demonstration of equipment to be part of the sales process.

The relevant restriction, in terms of lockdown one, was regulation 5 of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020. This said that businesses "offering goods for sale or for hire in a shop" must cease to do so and must close (other than in relation to distance sales, for example by phone). I consider it is reasonable to interpret the *offering* of goods for sale to include the *demonstration* of those goods. They are being demonstrated for the purpose of "offering" them. Arguably, even having wares on shelves is a form of demonstrating the product, and what forms a demonstration will likely depend on the product for sale.

I do though agree that a design consultation is not the non-essential retail of "goods for sale or hire", as Hiscox has described it. And even if it was, I agree this activity could likely take place away from P's premises. However, I also think there is a difference here between a design consultation and product demonstration. The latter is intended to directly create a sale of the goods being demonstrated. Whilst it is true that many sales of products take place without such a demonstration, if the inability to have such a demonstration has led to a reduction in sales, I consider this would be a loss insured in the circumstances.

I recognised that in practical terms, delineating between these activities might be challenging when it comes to calculating any settlement. And it is quite likely that, at times, both activities were carried out together. But this difficulty should not detract from the principle that ought to be applied to the claim(s).

Also, I note Hiscox's comments over the timing of the financial loss in relation to a 'project' that had not been entered due to an inability to demonstrate products in store. It is possible that actual payment would otherwise have been made outside the period of indemnity.

However, I do not consider this should be a bar to a claim being made for these losses. Much as with hire purchase losses, the crucial question is whether the agreement that led to the money being payable was prevented during the period of indemnity. If the agreement for a project would only have been entered following a product demonstration, and the demonstration was prevented, entry into the agreement would have been prevented.

That said, Hiscox has raised a valid point about potential “claw-back”. Where sales/demonstrations have not been possible during the periods of lockdown, but then these sales took place at a later point, provided this delayed sale occurs within the maximum indemnity period (i.e. within 24 months of each of the dates lockdown was introduced), it might be appropriate for this to be taken into account when thinking about the overall loss.

The policy says the indemnity period lasts “for the period during which your gross profit is affected” and does not limit this an adverse impact. So, where there has been an increase in normal rates of sale after the lockdown periods, that has been caused because of the lockdown periods, it would seem possible for this to be taken into account. As I have previously referred to Riley, I would invite the parties to consider Chapter 7.5.

That said, I make no actual finding on this claw-back point, as it not something Hiscox has currently included in its calculation of the claim and it is not a point that P has had the opportunity to comment on. So, my comments above are merely an attempt to move the process on as far as is possible, rather than as a final determination of this issue.

Similarly, whilst I have not considered the new financial information that is currently being considered by Hiscox, I understand that the income from L is not separated out from the income from the rest of P. That said, it should be possible to identify where income was received for ‘non-sale’ activities. Once this is done, it may then be appropriate to apply – in the absence of clear information – a percentage to this to calculate how much of this relates to income directly driven by in-shop sales. It may be necessary for this percentage to be somewhat arbitrary. But sight of invoices and evidence of how sales arose would likely provide some basis for this to be made.

Potentially, a different calculation is possible and reasonable though.

To make P aware, it is often not possible to come to a precise figure on what a business’ losses are following a period of interruption. This is true even for more straightforward business models. There are multiple factors that will have to be taken into account, and it isn’t usually possible for all of these to be quantified. There are often too many unknowns.

What an insurer is required to do is to request and assess appropriate information and reach a fair and reasonable outcome. I appreciate that P does not consider Hiscox to have done this. And there are aspects where I agree Hiscox needs to make adjustments. But it is also true that the information initially provided did not allow Hiscox to make all of these.

Putting things right

P should provide all available information that Hiscox reasonably requires to fully assess the claims.

Hiscox should then reconsider the claims on the following basis:

- Loss of income resulting from hire purchase sales that could not be entered into during the indemnity periods should be covered, even where that income would have been received outside of the indemnity period.
- The loss of income from L’s business should be covered where it relates to in-shop

sales that were prevented, and for activities that would otherwise have followed on from those sales.

- However, Hiscox would not need to cover loss of income from L's business which did not relate to initial in-shop sales.

In the absence of clear information about the separation of the loss of income from L's business, applying a percentage would be reasonable. I make no finding on what percentage this ought to be, other than to say Hiscox using 12.5% prior to receiving further information was reasonable. However, Hiscox should, in the absence of clearer information, apply the same percentage in relation to savings and other related elements as is used to calculate the loss.

I also make no specific finding in this complaint about the application of "claw-back".

My final decision

My final decision is that I uphold this complaint. Hiscox Insurance Company Limited 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 26 July 2024.

Sam Thomas
Ombudsman