

The complaint

Mrs H is complaining on behalf of A – a limited company – that Whitefield Insurance Services Limited ('Whitefield') failed to give accurate information to the insurance company that provided A's commercial property insurance policy.

What happened

Around September 2015 A took out a commercial property insurance policy through Whitefield – a broker. Around September 2021 Whitefield contacted Mrs H to say it might be able to place the insurance policy with a different insurer on more favourable terms. Mrs H agreed to this and Whitefield sent her a statement of facts for her to check the details were correct. Whitefield later spoke with Mrs H on the phone and it says Mrs H confirmed the details were correct.

Unfortunately a significant fire occurred on A's premises, so Mrs H looked to claim for the damage on A's insurance policy. However, the insurer avoided the insurance policy because it said Whitefield hadn't told it that Mrs H had previously been a director of a company that had been liquidated and that A had had an insurance policy avoided in 2014.

Mrs H complained to Whitefield as she said it had told her she didn't need to disclose the previous liquidation as it had happened more than five years ago. She also said that it should have done a full fact find when the policy changed insurers.

Our investigator didn't uphold this complaint as he was satisfied that Whitefield had sent the statement of fact to Mrs H to check the details and she'd said the information was correct.

Mrs H didn't agree with the investigator, so the complaint's been passed to me to decide.

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 should first set out that I acknowledge I've summarised A's complaint in a lot less detail than Mrs H has presented it. Mrs H has raised a number of reasons about why she's unhappy with the way Whitefield has handled this matter. I've not commented on each and every point she's raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but this simply reflects the informal nature of this service. I assure Mrs H, however, that I have read and considered everything she's provided.

The relevant law in this case is the Insurance Act 2015. This required the policy applicant to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms.

And if the applicant fails to do this, the insurer has certain remedies provided the failure is – what the Insurance Act describes – as a qualifying breach. For it to be a qualifying breach

the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the breach.

The insurer has avoided the insurance policy because it says there was a qualifying breach and it wouldn't have insured A had it been given the true facts. The insurer is not a party to this complaint so I won't comment on whether anything the insurer has done is fair or not. My role in this decision is to consider whether Whitefield has acted fairly in fulfilling its responsibility towards A as its broker.

As A's broker, Whitefield was required to make this presentation on A's behalf. So it needed to ensure it had all the relevant information the insurer required to give a fair presentation of the risk.

I note Mrs H is unhappy that all parties haven't been able to show what information was disclosed by Whitefield. But this information is contained within the statement of fact. However, I also don't need to make a finding on this because there is no dispute Whitefield didn't tell the insurer that Mrs H had previously been a director of a company that had been liquidated, nor that A had previously had a policy avoided. So the issue for me to decide is whether Whitefield failed in its duty to A in not telling the insurer this and, if so, whether A has lost out as a result.

I'm conscious that Mrs H has provided a lot of testimony and commentary about the liquidation. But I can also see that the insurer has separately told this Service that the primary issue is that A had previously had a policy avoided. The insurer has said that it would not have insured A had the avoidance been disclosed even if Whitefield had told the insurer about the liquidation in question. So, while I note all of Mrs H's comments about the liquidation concern, I don't think it was relevant to the insurer's decision to avoid the policy. Given this, I'm not going to comment on this further.

As I said, there is no dispute Whitefield didn't tell the insurer about the previous avoidance. Mrs H says Whitefield should have done a full fact find to gather all the correct information when the policy started, given it was a new policy. I agree that it needed to take reasonable steps to ensure the information it presented to the insurer was correct. But I also don't think it was unreasonable for it to take into consideration the information it had been provided before. So, I don't think it had to contact Mrs H to do a full fact find and it was entitled to use the information it had been given before to present the risk to the new insurer. With this in mind, I've thought about what's happened previously and whether it should have reasonably been aware from previous communication with Mrs H and her late husband during the time Whitefield has been arranging insurance for A that it had had a policy avoided.

Whitefield has provided previous statement of facts. I can see in the first policy it arranged for A in 2015 and in subsequent policies, it has set out on the statement of fact that A had not had any insurance policies cancelled before. So it seems that it wasn't aware before about any policy cancellations. I can't know the precise content of any conversations Whitefield may have had with either Mr or Mrs H in 2015 because it was eight years ago. But Whitefield has sent out statement of facts every year since 2015 at each renewal and I haven't seen anything to show that they were told the information about previous cancellations was incorrect.

Ultimately, I haven't seen anything to show that Whitefield was aware that A had had an insurance policy cancelled before. In addition to this, as A's director, it was also Mrs H's responsibility to ensure that the information Whitefield had presented was accurate. Whitefield sent a copy of the statement of fact to Mrs H and I'm satisfied it's likely it did speak with her and she confirmed the information on the form was correct.

I naturally sympathise with the situation Mrs H has found herself in. I can only imagine how distressing this matter has been for her. But I haven't seen anything to show that Whitefield has acted unfairly in exercising its duty as A's broker.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H – on behalf of A – to accept or reject my decision before 2 January 2024.

Guy Mitchell

Ombudsman