

The complaint

B complains American International Group UK Limited (AIG) excluded pollution cover from its insurance policy at renewal in 2018. And B is unhappy with the service AIG provided when it renewed the policy in 2021.

B is represented in bringing its complaint. I'll refer throughout my decision to the representative as Mr G.

What happened

B is a company involved in the production of electricity, which it supplies to a utility company.

B had insurance with AIG that included directors and officers liability and public liability. In 2018 B renewed the policy. AIG excluded pollution cover at that time.

Mr G became aware of the exclusion in 2021. He asked AIG to reconsider it, but they declined. Mr G felt the exclusion was unfair. There'd been no change in B's electricity generating activities. And AIG hadn't explained clearly why there'd been an increase in risk that meant they'd had to add the pollution exclusion to the policy. Mr G complained through B's brokers.

In response the brokers explained, broadly, that whilst the risk may not have changed, AIG's approach to the risk may have changed. Since the exclusion had applied to the policy since 2018 and the insurance market had hardened since then, it was unlikely AIG would provide the cover going forward. AIG confirmed that explanation reflected their position.

Mr G brought B's complaint to the Financial Ombudsman Service. He felt AIG had failed to address the concerns he'd raised. And he was unhappy with the service they'd provided in 2021.

Our investigator said it's for an insurer to decide what risks it will cover. AIG weren't responsible for selling the policy to B or ensuring it was suitable for B's needs. So, we could only consider whether AIG had made the broker aware of the pollution exclusion before the policy was renewed. And he was satisfied AIG had done that. So, he didn't uphold the complaint.

Mr G didn't think our investigator had addressed the complaint he was making on behalf of B. And since he didn't accept the investigator's view, B's complaint was passed to me to review afresh. I recently issued a provisional decision, an extract of which follows:

“What I’ve provisionally 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.

For the reasons I’ll explain, I’ve come to the same outcome as our investigator. I’m issuing a provisional decision to give the parties the chance to make further comments before I issue a final decision. That’s because my reasons are different in part and more detailed than our investigator’s. Even so, I may not mention here everything the parties have said. No discourtesy is intended by that – it simply reflects the informal nature of the service we provide. I’ll focus on what I consider key in coming to my decision.

I note Mr G’s strength of feeling about this complaint. As I currently understand things, Mr G says B’s complaint is about AIG’s actions relating to the underwriting of the policy, the service they provided at renewal and their response to Mr G’s concerns, rather than the sale of the policy. Mr G makes several points, which I’ll summarise:

- B’s business required pollution cover. Given B’s field of activity, that was its “primary exposure” and its main reason for buying insurance. AIG ought to have been aware of that. And if they couldn’t provide that cover, they shouldn’t have offered the policy to B at all. AIG failed to understand the risks B wanted to cover. They’ve benefited from many renewals of the policy without providing the cover B required. They should therefore pay back the premiums.
- AIG have failed to give a reasonable explanation as to why they removed pollution cover. They said the exclusion was applied as a result of a review of the business activities of B. But B’s activities in relation to electricity generation hadn’t changed since B started trading. And the risks of those activities were actually decreasing.
- AIG failed to explain how the exclusion met the requirements of the Insurance Act 2015, conduct risk and requirements to treat their customers fairly. The policy had to cover the primary purpose for buying the policy. All B needed was cover for defence costs relating to pollution claims against its directors and officers. The other risks the policy covered, such as claims by creditors and suppliers, were unlikely to arise. B had a policy they were never reasonably going to be able to claim under.
- The representative of B who was involved with the 2018 renewal was an “unsophisticated” customer; they wouldn’t have understood the implications of removing the pollution cover; Mr G, who’s an experienced insurance professional, wasn’t involved at the time.
- The renewal was carried out based solely on a statement of fact. Mr G felt this was an inappropriate process given B runs a bespoke business. Underwriters should have considered it.
- The 2021 renewal was dealt with at the last minute. B didn’t have time to negotiate cover with an alternative insurer. It would have been costly to cancel the AIG policy if B had found alternative cover once the renewal had gone through.

AIG have said, in summary:

- B arranged the renewal of its insurance through a broker. It was the broker’s responsibility to check B had the cover it required.

- The renewal would normally have been completed on-line by the broker. But during that process in 2018, B's involvement in supplying electricity to a utility company was flagged to AIG's underwriters. The exclusion should have applied all along. AIG applied the pollution exclusion in view of B being involved in electricity generation for a utility. That was in line with their standard approach for companies involved in the utilities sector.
- The broker confirmed they'd discussed the amendment to the policy with B and B was happy to go ahead with the exclusion in place. The broker accepted the terms on B's behalf.

I can't decide whether AIG were in breach of the Insurance Act – only a court can decide that. But I can decide if AIG have acted fairly and reasonably in the circumstances of B's complaint and, in deciding that, I take account of relevant law. For the reasons I'll explain, I think they have.

It's important to consider what activities AIG were carrying out. As far as I'm aware currently, AIG weren't directly involved in advising B about the insurance it was buying. B were represented by a broker in their renewal discussions with AIG. AIG's obligations were limited to ensuring the information about the cover they were offering was clear, fair and not misleading. They didn't have to check the cover was suitable for B's needs.

AIG set out clearly to the broker that the pollution exclusion would apply. They asked the broker to confirm B were happy to go ahead with the renewal on that basis. And the broker confirmed, specifically referring to the exclusion, that B was. It was reasonable for AIG to act based on what the broker had told them.

Whilst I note Mr G's point that B's representative at the time may not have understood the implications of the exclusion, AIG couldn't have known that as they weren't in direct contact with B's representative.

Even if AIG had been directly involved or it could be said the broker had been acting as their agent rather than B's, this was a policy renewal for a commercial customer. I think AIG did enough in the circumstances. They made clear the changes they were making to the policy. B had the chance to check whether those changes meant the policy continued to provide the cover its business operations needed. If B's representative at the time had been unsure about that, they could have checked with other company members before renewing or taken advice. It was reasonable for AIG to process the renewal based on B's confirmation it was happy with the policy amendments.

AIG explained to Mr G, broadly, the exclusion of the pollution cover followed a review of B's business activities and a change in AIG's approach to the risks they were prepared to cover. It's for an insurer to decide what risks it wishes to cover. I think they provided a reasonable explanation in response to Mr G's question about that. They've since explained they don't provide pollution cover to businesses involved in supplying electricity to utility companies. So, they weren't treating B any differently to other customers in a similar position. In the circumstances, I don't think they treated B unfairly.

Mr G says B didn't have time to change the insurance provider in 2021 as the renewal terms were received from AIG late in the day. The broker told Mr G they'd accepted AIG's terms because of that. They said the cancellation condition was "so draconian" they'd had no choice but to accept the terms and didn't have time to look elsewhere.

The correspondence suggests Mr G looked at whether other insurers would provide the cover B required in 2021 and that the pollution exclusion wasn't unusual. And Mr G's confirmed alternative terms he looked for at the time excluded pollution cover. I understand that in 2022 he obtained two quotes for limited pollution cover for the costs and expenses of defending claims against directors and officers arising out of pollution.

I don't think the evidence is sufficiently strong for me to conclude AIG prevented B from obtaining the insurance it required from an alternative provider in 2021. I'm not persuaded the cover Mr G thinks was appropriate was available with another provider then in any event. But even if I'm wrong about that, I don't think it changes the outcome of this complaint. If the AIG policy didn't provide the only insurance Mr G felt B needed, the renewal with AIG could have been put on hold. If, as seems to have been the case in 2022, an alternative insurer could have provided the cover B wanted in 2021, it could have gone ahead with that insurer instead.

In summary, based on what I've seen so far I don't think AIG are to blame if B has been paying for insurance that doesn't cover the primary risks B faces. They weren't involved in advising B on cover. The explanation AIG gave Mr G about why the pollution cover was excluded was reasonable. And I'm not persuaded AIG's actions caused B to renew with them in 2021 on terms B feels were unsuitable.

Bearing everything in mind, whilst I understand Mr G will be disappointed, I don't intend to uphold B's complaint."

Developments

Mr G/B haven't commented on my provisional decision and AIG have accepted it. So, I'll go on to make my final 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.

Since there are no further comments from the parties for me to consider, I see no reason to change my provisional outcome. For the reasons I set out in my provisional decision, I don't uphold B's complaint.

My final decision

My final decision is that I don't uphold B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 8 August 2023.

Julia Wilkinson
Ombudsman