

## The complaint

A limited company that I will refer to as P complains about the sale of a professional indemnity insurance policy by Konsileo (Trading) Limited.

## What happened

The following is intended only as a brief summary of events. Additionally, whilst a number of other parties have been involved, as far as is possible, I have largely just referred to P and Konsileo for the sake of simplicity.

P operates in the building industry and part of its work involves the exterior of buildings including cladding. In 2020, P held a policy underwritten by an insurer – “C”. This policy had been arranged by a third party broker – “T”. This policy was not due to renew until August 2020, but P contacted Konsileo in May 2020 to explain that it was not happy with the service provided by T and was seeking to move to a new broker. P explained that it wanted to use a broker with more experience of P’s industry.

Over the following months, Konsileo worked to identify a suitable policy for P. However, seemingly as a result of P’s involvement with cladding work, of the insurers Konsileo worked with, only C was willing to provide cover.

In July 2020, referring to the price of the insurance, P mentioned that it was concerned the cover was becoming less commercially viable and that it may need to consider if there were other options its clients might accept. P mentioned that this was even more the case as the policy was severely restricted.

Konsileo explained that other clients had opted to trade without insurance. However, Konsileo recommended P renew the policy from C as it met P’s requirements and was good value for money. In making its recommendation, Konsileo also said:

“It’s our proposal that you should insure with [C] because This insurer was the only insurer prepared to provide terms.”

The policy with C was renewed in August 2020, and Konsileo provided P with the details of the policy including the endorsements. One of the endorsements was the Cladding Combustibility Exclusion, which said:

“The Company shall not be liable to indemnify the Insured against any claim or loss arising directly or indirectly out of or in any way involving the combustibility or fire resistance/performance of any cladding, curtain walling or glazing or any claim or loss arising directly or indirectly or in any way involving any cladding, curtain walling or glazing which does not comply with the relevant UK, Irish or EU planning, building safety or fire regulations”

In June 2021, the process started for renewing cover. And P queried this endorsement, as well as the split between cladding and glazing. The renewal terms were then provided. These had a different endorsement, Combustible Cladding Exclusion II, which said:

“It is hereby noted and agreed that this policy excludes any liability arising directly or indirectly out of or in any way involving:

- the combustibility or fire resistance/performance of any cladding, curtain walling or glazing, including all fixtures, fittings and balconies, or
- any cladding, curtain walling or glazing, including all fixtures, fittings and balconies, which actually or allegedly does not comply with the UK, Irish or EU planning, building safety or fire regulations relevant at any material time”

Konsileo recommended P renew the policy with C, saying:

“from the insurers approached and taking into account the continued restricted appetite in the market we would recommend renewal with your existing insurers”

The recommendation report set out that there were four key exclusions, one of which was the Combustible Cladding Exclusion II. And said that P should take note of these. P queried the meaning of this exclusion and whether particular cladding was covered. And Konsileo said this exclusion related to products that did not comply with the relevant regulations, but that as P presumably did comply with these there would be no issues. After some further discussions on other points, the policy was renewed.

In March/April 2022, P became aware of potential claims on the policy. This followed on from an inspection of work previously carried out and the allegation that inappropriate materials and techniques had been used by P. It contacted Konsileo and C.

Ultimately, C said that the potential claims did not fall within the cover provided. And that the Combustible Cladding Exclusion II would exclude the claims. P was unhappy about this and felt the exclusion was not clear. P complained about C’s decision, bringing a complaint about this to the Financial Ombudsman Service. This has been considered separate to the current complaint. But an Investigator did not recommend this complaint be upheld, as he thought C had acted fairly and reasonably. It does not appear the claim was pursued against P.

P also complained about Konsileo. P felt the policy had been mis-sold, both in 2021 and previously in 2020. P said Konsileo did not explain the full limitations of the exclusions either because they were not able to query the exclusion, or they did not take the time to understand P’s business. And that P had since been able to obtain cover with a different insurer that was not so restrictive, so feels Konsileo ought to have done this previously.

Konsileo supported P’s view that the wording of the endorsement was ambiguous, but said that they were not legal advisers. They had sought and provided clarification of the endorsements at the time of the renewal. Konsileo also explained that the cover it had identified and recommended was the only cover it was able to obtain. And that P’s new insurer was unrated, and that the term it had offered was not one Konsileo was previously aware of – so could not ask C to provide.

P remained unhappy and brought its complaint to the Financial Ombudsman Service. However, our Investigator did not recommend the complaint be upheld. P remained unsatisfied and as our Investigator was unable to resolve this complaint, it 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.

Having done so, I am not upholding this complaint. I’ll explain why.

I would start by re-emphasising that the summary above is just that. It is not intended to capture all of the events or arguments. I have considered the submissions from both parties in full, but I am focussing on what I consider to be the key issues.

In terms of the requirements on Konsileo as a broker, as this was an advised sale, it was required to recommend a policy that was suitable for P's needs, and Konsileo also had to provide information that was clear and not misleading.

As both parties are aware, the availability of insurance in this area for businesses involved in cladding is limited. And almost always comes with limitations. This is seemingly a consequence of the tragic events at Grenfell Tower and the related implications on building materials. This has implications on what Konsileo could reasonably be expected to do. It is clear that Konsileo contacted a number of insurers, but only one would provide the relevant cover. And as Konsileo explained when recommending the 2020-2021 policy, it did so because it was the only one that it could identify that was willing to provide cover.

Whilst there were limitations on the cover provided, particularly given P's business activities, the policy did provide reasonable cover. In terms of the exclusion above, the only thing policy did not cover was claims relating to the combustibility or fire resistance of the relevant materials, or where these materials did not meet the relevant standards. So, other than in situations relating to a fire or where, effectively, sub-standard materials were used, cover would be provided. Many potential claims would fall outside of this exclusion. So, I don't think Konsileo recommended an unsuitable policy. And P was provided with details of this exclusion and the information provided by Konsileo was clear – to the extent of its remit, something I will comment on below.

Given the limits of what cover was available, and the information Konsileo provided at the time of this sale, I am unable to agree the 2020-2021 policy was mis-sold.

In terms of the 2021-2022 policy, again this was an advised sale and Konsileo recommended the renewal for similar reasons. And for similar reasons as to those above, I also do not think this policy was mis-sold.

I do note that the change in wording in the exclusion did seemingly further restrict the cover provided. As well as including some further materials in the first part of the exclusion, the inclusion of the wording "actually or allegedly" does seemingly increase situations where cover would be provided. Essentially, as well as excluding cover where there is an actual breach (which the previous wording did), this removes the cover provided for defending an alleged breach. Given the situation that then developed, I can appreciate P's frustrations with this. P has also expressed dissatisfaction that the exclusion is not limited to issues of combustibility and to cladding, which is what the title of the endorsement refers to.

However, P was clearly aware that the exclusion existed at the time and queried an aspect of this. This query was limited to whether a particular type of material would be covered or not. Arguably, Konsileo's response to this query should have included that the exclusion would relate both to products that actually *and allegedly* do not comply with the relevant regulations. But having read the wording, P would already be aware that the exclusion included this phrase and had not queried this aspect.

Konsileo do have a responsibility to understand the needs of its client, and to recommend a policy that is suitable for those needs. This does mean Konsileo will have to have some understanding of the policy itself. But, largely speaking, Konsileo – as with all brokers – is dependent on the drafting and explanations of policy wordings by the relevant underwriters.

It is not Konsileo's role to interpret the meaning of the policy wording. The wordings

themselves are drafted by the underwriter of the policy and do not involve Konsileo. As this is a complaint about the actions of the broker, I will not comment on the drafting of the term. Where questions are asked, Konsileo can check with the underwriter how a term will be interpreted. This is what it did in this case.

Ultimately, given the lack of available options, and the fact that this policy did provide an amount of cover for P's activities, I don't consider Konsileo acted unreasonably when recommending it to P.

I appreciate that P is unhappy that Konsileo did not challenge the inclusion of these exclusions as drafted. And that when a policy from a different insurer was identified for the 2022 renewal, which included an exclusion as per the Cladding Combustibility Exclusion, it was possible for this to be challenged and a differently worded exclusion added.

However, I am not persuaded that this means Konsileo failed to act appropriately when selling the earlier policies. Essentially, a broker is responsible for identifying the most suitable policy available for the client from the panel of insurers it works with. And that is what it did in 2020 and 2021.

A broker is not expected to challenge the inclusion of any particular term, although it may do so if requested or if it chooses to. Additionally, the third party who provided the alternative wording said, "There are more relaxed clauses starting to come out in the market..." So, it is possible this would not have been something Konsileo could have achieved earlier anyway.

I appreciate this is not the outcome P or its directors were hoping for. But, taking all of the circumstances into account, I consider Konsileo acted fairly and reasonably when recommending the 2020-2021 and 2021-2022 policies to P.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 12 January 2024.

Sam Thomas  
**Ombudsman**