

The complaint

A limited company that I will refer to as F complains about the sale of their commercial insurance policy by Advisory Insurance Brokers Limited.

What happened

The following is intended only as a brief summary of events. Additionally, whilst other parties have been involved in correspondence etc. I have largely just referred to F and Advisory Insurance.

F held insurance underwritten by a third party, X. This insurance was arranged by the company now known as Advisory Insurance. Cover had originally been taken out in July 2016, and this policy had renewed annually. The policy was sold on an advised basis, with Advisory Insurance initially selling the policy in person in 2016 and then arranging the renewals by post.

In March 2020, F's business was interrupted by the COVID-19 pandemic. F contacted X to claim under the policy but the claim was declined. F then contacted Advisory Insurance to complain that the policy had been mis-sold. F said that when the policy was initially arranged, due to experiences with an earlier claim, it had wanted cover for business interruption due to any reason. That at no time was there any mention of any exclusions to this cover. And that in an email sent on 9 March 2016, Advisory Insurance had said, "Business Interruption is correctly calculated". So, it was unhappy that the policy Advisory Insurance had recommended did not provide cover in the event of the claim it had to make.

Advisory Insurance did not agree with the complaint though. It said that the policy documents had been provided in 2016 and were available at the time of each renewal. And that these set out the relevant restrictions on cover. Advisory Insurance said that F had been asked to check the policy to make sure it continued to meet F's needs.

F brought its complaint to the Financial Ombudsman Service. Our Investigator did not recommend the complaint be upheld though. He felt that the policy sold to F did provide business interruption cover and that this was suitable for F's needs at the time it was sold. He explained that it was very unlikely that Advisory Insurance would have been able to provide F with cover for any eventuality. And that the exclusions that had impacted F's claim were not unusual or onerous, so Advisory Insurance did not have to highlight them. The Investigator also said that there was nothing in 2019 to suggest that different cover to that provided was required by F.

F remained unhappy and said that it had made it clear that it wanted business interruption cover for any eventuality when taking the policy out in 2016. And that Advisory Insurance had not advised them that this could not be provided. As the Investigator was unable to resolve this complaint it was passed to me for a decision.

Since that time, X has partially met F's claim. However, this has not covered all of F's losses and it remains unhappy that it was not sold a policy which provided comprehensive cover. I also understand that F is unhappy with changes to the policy that applied following the

July 2020 renewal. These issues – including any involvement of Advisory Insurance – will need to be raised separate to this complaint however.

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.

The key policy relevant to this complaint is that which renewed in 2019. However, I have considered the events prior to this as they are nonetheless relevant. I also note though that F has referred to comments made when it was claiming in 2020. But these are not directly relevant to the sales process itself, so I will not comment on them.

As the sale(s) of F's policy were on an advised basis, Advisory Insurance had a responsibility to recommend a policy that was suitable for F's needs, and to provide information that was clear, fair and not misleading.

A conversation took place in 2016 where Advisory Insurance sought to identify F's needs. F has said that its request at this time was for business interruption insurance to cover any eventuality. There are no written, contemporaneous references to this request though. And it seems likely that this request, if made, was made during this face-to-face conversation F had with Advisory Insurance in 2016.

The notes from the meeting in 2016 indicate that there was a conversation around business interruption cover, but all these indicate is that the financial level of cover was discussed. This level of cover being an issue is supported to an extent by the comment in the 9 March 2016 email that has been referred to by the parties, which states the new policy will provide, "Business Interruption [that] is correctly calculated". However, this does not mean that this was all that was discussed in relation to this cover.

I understand that F suffered damage to its premises in 2014 and this caused an interruption to its business. However, it was unable to claim for its losses as a result of this because at that time it did not have suitable cover for business interruption. This led it to seek cover that did provide for business interruption losses. So, I am persuaded that F would have made it clear that there was a need for business interruption cover.

Without a clear record of the details of the conversation, it is not possible for me to be certain what was discussed or how this was framed. On balance though, I am persuaded that F most likely did ask for business interruption insurance to cover any circumstance.

Advisory Insurance did not arrange cover of this nature. Nor did it provide F with clear information that it was unable to source such cover. The policy documents that were provided to F in 2016, and that Advisory Insurance said were available on request at each subsequent renewal, set out the details of cover. And Advisory Insurance did direct F to read these. I also don't consider the limitations on cover to have been unusual or onerous.

However, given I think it most likely that F had requested exhaustive business interruption cover, I think Advisory Insurance should have highlighted that this policy did not provide that. And there is no clear evidence that this happened. So, I consider there was most likely a failing here by Advisory Insurance.

The question however is what the consequences of this failing were. Our role is effectively to put the parties back in the position that they would have been in, had there been no failing.

So, I need to think about what would most likely have happened otherwise.

No insurance policy available on the general market will provide cover for all eventualities. So, I don't think Advisory Insurance, or any other broker, would have been able to identify a policy that would have provided this for F.

Thinking about the requirements of F's business, other than the desire for exhaustive business interruption cover, I consider that the policy recommended by Advisory Insurance was suitable. It did offer cover for business interruption and, as the Investigator has said, this was in fact more comprehensive than many policies available.

The policy provided cover in the event the business was interrupted due to damage to the premises or to other property within a mile of the premises. Or where access to the premises was restricted by public authority action. (It is this clause that has provided F with some cover in the circumstances, albeit this has only covered some of its losses.) There was no indication that F had any need for cover in the event of a pandemic such as the COVID-19 one – such an event was largely unforeseen. And the policy did provide some cover in relation to disease, which would – in other situations – likely have been more than F required, given the nature of its business.

So, if Advisory Insurance had made it clear that the business interruption insurance provided by the policy had some limitations, but that this was still suitable for F's needs, I consider it most likely that F still would have taken out this policy.

It follows that I consider it most likely that F would unfortunately have still found itself in the same position when it came to claim in March 2020. And that I cannot fairly or reasonably ask Advisory Insurance to do anything further to put matters right. I appreciate this is not the outcome F was hoping for. But hopefully I have clearly explained why I am unable to uphold this complaint.

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 F to accept or reject my decision before 5 February 2024.

Sam Thomas
Ombudsman