

## **The complaint**

F, a limited company, complains that it was mis-sold a commercial insurance policy by Arthur J. Gallagher Insurance Brokers Limited.

## **What happened**

The following is intended only as a brief summary of the main events. Additionally, whilst other parties have been involved, I have largely just referred to F and Arthur J. Gallagher Insurance Brokers Limited (AJG).

In June 2019, F took out a commercial insurance policy through its brokers, AJG. F is also connected to other companies, which also took out insurance through AJG at the same time. This complaint only concerns F, but the circumstances of the other companies are informative to the overall situation.

In 2020, F claimed under its policy for losses it sustained as a result of the COVID-19 pandemic. Its insurer ultimately agreed to meet the claim. But said that F was underinsured as the policy it had taken out only covered £250,000 gross revenue, whereas the insurer said this should have been just over £1.8M to cover a 24-month maximum indemnity period. So, the insurer only met part of F's claim.

F complained to AJG that it had mis-sold it the policy. Partly, its complaint was based on AJG using a previous insured sum of £285,000 to estimate F's turnover for the following 12 months.

AJG said that the calls it had with F's director at the time of the sale were not recorded, so it could not be sure what was discussed. However, it said that the information used to set up the policy was taken from the policy F had with a different insurer for the 2018 to 2019 year – a policy that AJG had not been involved with. And that F had not indicated that any of these details were incorrect. So, AJG did not consider it was fully responsible for F being underinsured. However, AJG did acknowledge that it should have set the policy up with £570,000 of cover using the figures provided, to take into account the maximum indemnity period was 24 months rather than 12 months. As a result, AJG offered F just over £11,000 to reflect the amount F's insurer would have paid had the cover been for £570,000.

F remained unsatisfied and referred its complaint to the Financial Ombudsman. Our Investigator did not recommend the complaint be upheld though. He thought that even though the sale was an advised one, F ought reasonably to have checked that the figures provided to AJG would lead to an appropriate level of cover.

F did not accept this outcome. It said that the previous year's insurance details should not replace a fact find. F also said that the figures provided were in relation to its annual turnover, not its future/projected turnover – so checking these would not have led to it confirming the figures were incorrect. F does not consider it was asked the correct question at the point of sale. And that the £285,000 figure was the best information that could be provided at the time and was provided in good faith.

As the Investigator was unable to resolve F's 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 F's complaint. I'll explain why.

That AJG did not set the policy up correctly is not disputed. It has acknowledged this and offered redress. The dispute largely centres on whether AJG is fully responsible for the policy being set up incorrectly.

F is correct in that, as this was an advised sale, AJG had a responsibility for gathering the relevant information about F's circumstances and then obtaining a level of cover suitable for F's needs.

Without the relevant call recordings, I can't be sure what was discussed at the time of the sale. However, the policy was set up with details, including financial information such as the relevant estimated wage-roll, that was not present on the information provided relating to the previous year's policy. So, it seems there was at least a discussion about certain information, including that of a financial nature, which was relevant to F's circumstances.

I don't know whether any specific questions were asked about the level of F's turnover – either its previous turnover or its estimated turnover for the following 12 or 24 months. But I also need to think about F's circumstances at the time. F had only begun to operate in 2017.

F's accounts show that its turnover for the partial trading year of 2017 to 2018 was around £150,000. This covers around nine months of trading. For the full year 2018 to 2019, this had increased to just over £600,000. And F's insurer has determined that the expected turnover for 2019 to 2020 was over £900,000.

I accept that F may not have been aware of the exact figures for the 2018 to 2019 turnover at the point of sale; its accounts may not have been audited by this point. However, I have to take into account that this turnover was around three times the previous year's, that F ought reasonably to have known that its business was continuing to expand, and that the figures it had provided to AJG were for a sum less than half of this 2018 to 2019 turnover.

I also have to take into account the wider circumstances here. F works in the financial industry. And, as I have said, F is connected to two other companies. One of these companies is authorised and regulated by the Financial Conduct Authority for the sale of insurance products. This other company acts, in part, as an insurance broker. Whilst F is a separate company to this regulated company, its director is the director of this regulated firm. And it was this director that was involved in the sales process.

Given these points, it seems reasonable that this director ought to be aware that the sum insured was an important factor in insurance.

This then leads to a situation where F ought reasonably to have been aware that it had a rapidly increasing turnover, and that this was in itself a likely material circumstance for the purposes of providing insurance to cover the potential loss of this turnover. But that it failed to provide this information to AJG.

AJG ought to have done a better job during the sales process. And it also ought to have

asked F the actual question that was relevant to the information being provided to the insurer – i.e. what the expected future turnover was rather than the current turnover.

However, I consider F had an obligation to fairly present its circumstances and should have commented on the expanding nature of its business at the time the policy was being taken out. This would have put AJG, and hence the insurer, at minimum on notice that it needed to make further enquiries.

As it does not seem F did provide this information, I do not consider it fair and reasonable in all the circumstances of this case to hold AJG responsible for the full level of underinsurance F found itself in. And I consider that the level of settlement AJG has already offered is appropriate.

### **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 12 October 2023.

Sam Thomas  
**Ombudsman**