

The complaint

Mr T complains, on behalf of his group of companies that I will refer to as H, that Jelf Insurance Brokers Limited provided him with misleading information about H's insurance policy. And this led to H being underinsured.

What happened

Mr T is the director of a group of companies; H. He arranged insurance for H through Jelf – an insurance broker.

H was originally a single company. However in 2017 Mr T contacted Jelf to inform it that he had restructured the company. He said there were now four separate companies that came under the umbrella of H, and he needed insurance for all four.

Jelf contacted the insurer and asked if H's policy could be amended to meet the new requirements. It later confirmed to Mr T that the same policy would remain, with the new companies added as additional insureds. And the terms remained unchanged.

In 2019 there was a leak at H's premises that caused significant damage to the building and business equipment. Mr T made a claim on H's insurance.

While the claim was being investigated it transpired that the policy limits of the insurance applied jointly across the four companies. Rather than each company having its own individual limit, as Mr T had understood to be the case. This meant the business was underinsured and the claim pay out was around 25% of the true risk value, as the insurer applied an average.

Mr T wasn't happy with this and he made a complaint. He said he had made it clear to Jelf when he made the adjustment to the policy that he wanted all four businesses to be insured in the same way. And the policy schedule Jelf had provided stated that additional insured parties are covered on the same basis as the insured. So he had thought all four businesses had the same level of cover – each up to the policy limits. He therefore said Jelf had provided unclear and misleading information and were responsible for the losses H had suffered due to the underinsurance.

Jelf didn't uphold his complaint. It said it was Mr T's responsibility to make it clear to it that he required each limit to apply to each individual company. And it should have been clear to him that this wasn't the case as the cost of the policy didn't increase when it was amended.

Mr T didn't think this was fair. He said due to the fact that he only received 25% of the true value of the settlement, H had suffered significant losses. And he wouldn't have agreed to the policy if he had known the limits wouldn't apply individually. He brought his complaint to this service.

Our investigator recommended H's complaint be upheld. He said he agreed Jelf had provided unclear information when the policy was adjusted. So he thought it should pay H

the remaining 75% of the claim, without the average applied. He also thought it should pay H £2,000 compensation to make up for the inconvenience it had caused. However he didn't agree there was enough evidence to show that Jelf had caused the business losses H had suffered. So he didn't agree it should pay H any for these consequential losses.

Jelf accepted our investigator's opinion. However Mr T didn't agree. He said he thought Jelf had caused H to lose around £300,000 and provided a detailed breakdown of these losses. He said as Jelf caused the losses due to its mistake, it should reimburse H to put it back in the position it would have been in if it had got the correct pay out.

This didn't change our investigator's view, so the complaint has come 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.

Underinsurance

Mr T says that when he asked Jelf to make the adjustment to his policy, he had understood that all four of his companies would have the same cover as the original company – including the same applicable policy limits.

Companies that sell insurance have a duty to provide their customers with clear and not misleading information, both at the point of sale and when adjustments are made. In this case Jelf has advised that it was acting under 'supervised delegated authority'. This means that while it is the insurer that makes decisions about the cover offered, it is Jelf that puts the policy documents together and issues them to its customer. So it is its responsibility to make sure any significant terms in the policy are made clear. I need to decide if it provided clear and not misleading information when it made the adjustment.

Mr T originally called Jelf to enquire about making the adjustment. I've listened to this call and it's clear that Mr T didn't know what needed to be done in order ensure he had the correct level of insurance. He explained he was restructuring his company but asked a number of times what he would need to do in order to ensure they all had insurance. From this, I think it was clear that he was seeking guidance from Jelf as experts. And therefore may not have known what information would be needed or which questions to ask.

After this Mr T sent through more detail about what each of the companies does – as requested by Jelf. And shortly after, Jelf confirmed the change to H's policy. It said in the email: *'I can confirm [the insurer] are happy to add all companies to the policy and with amended business activities. They have also agreed to do this at no additional charge.'*

The email attached a copy of the new policy schedule which showed the three extra companies as additional insureds. And in the 'additional insureds' section, next to the name of each it said 'covered on the same basis as the insured'.

Having considered all the evidence I don't think Jelf did enough to ensure it was providing clear and not misleading information. It was clear from Mr T's first enquiry that he was unsure what he would need to do to get the right level of cover. And after this enquiry Jelf provided very little information, other than to confirm the change had been made. Given that Mr T was looking for guidance, I think it would have been prudent and reasonable for Jelf to ask further questions of both Mr T and the insurer. To make sure It provided Mr T with clear information about any significant terms.

Having reviewed the full policy document, under 'General Conditions' it states that *'If more than one insured is named in the schedule, the total amount we will pay will not exceed the amount we would be liable to pay any one of you.'* So I can see that the policy limit would be the total payable, rather than applying to each individual insured. However this is included in the full policy wording only. And isn't highlighted by Jelf in the policy schedule or the key facts document – the documents that were sent to Mr T when the change was made. In the circumstances I think this is a significant term in the policy – especially as the policy was changing from having just one insured to multiple insureds. So previously it wouldn't have been significant, but following the change it was. So I think Jelf should have highlighted this term to Mr T when the adjustment was made.

But as Jelf didn't highlight this, I think the information on the policy schedule that was attached to the email, suggested that the cover for all four companies would be the same as the main insured. So I think it would be reasonable for Mr T to assume this meant that all four companies had identical cover to the policy the first company had always had in place.

So for these reasons I agree with our investigator that Jelf didn't do enough to ensure it provided Mr T with clear and not misleading information about the change to the policy. And I think this resulted in H being underinsured and receiving a reduced pay out. So in order to put H back in the position it would have been in, I will require Jelf to pay the remainder of the claim without the average applied - £48,288.93. I will also require Jelf to pay 8% simple interest on this amount from the date the claim should have been settled until the date payment is made, to make up for the time H has been without the money.

I've also considered the impact the underinsurance has had on H, to decide if Jelf should do anything more.

Consequential loss

Mr T has said that due to the fact H was underinsured, it's suffered significant losses. He also says that Jelf delayed the payment of the claim, which led to further losses.

When an insurance claim arises, there will usually be some loss suffered due to the insured event itself. In this case there was a leak that flooded H's premises. It caused significant damage to the building and business equipment. These things would have been disruptive to H's day to day running.

When looking at this part of H's complaint, I can only make an award if I'm persuaded that Jelf's actions directly caused H's losses, rather than the losses being a consequence of the leak itself. I therefore need to be satisfied that it's most likely that H wouldn't have suffered the losses if it hadn't been underinsured, or if Jelf hadn't caused unnecessary delays.

To decide this, I have first considered whether Jelf caused unnecessary delays.

I've looked at the correspondence and claim notes provided by Jelf. I can see it took around four months for it to investigate the matter and provide a response to H. While this took time, I don't think this was unreasonable in the circumstances. The matter involved enquires with both Jelf and the insurer. And H also made a complaint to the insurer, who subsequently provided two final responses – one in April and one in June. And Jelf was reliant on the insurer's response in order to conclude its own investigations.

Further I can see that Jelf was in correspondence with the insurer throughout its investigation and there was a lot of back and forth between the two when considering the matter. So while I appreciate it took a long time for Jelf to provide a full response to H,

having looked at the notes from the investigation, including correspondence between Jelf and the insurer, I don't think this delay was avoidable.

As I don't think Jelf caused unnecessary delays, I have gone on to consider whether the fact H was underinsured caused the business losses.

Mr T has said that the main reason H has suffered losses is because its staff didn't have an appropriate place to work from, nor did they have the correct equipment. He says this meant the business couldn't continue as usual, causing it to lose customers, income and eventually staff. And if it'd had the full insurance settlement it would have been able to arrange these things and avoid the losses.

I agree that these factors would have had an impact on the day to day business of H. And I can see that H's turnover reduced in comparison to previous years since the leak happened. So I don't doubt that the business has been greatly impacted by the disruption. However I'm not persuaded that if H hadn't been underinsured that these losses would have been avoided.

It usually takes some time for a claim to be assessed and verified, and therefore H wouldn't have received the settlement on the day of the event. In this case the settlement was offered to H by the insurer towards the end of May 2019 – but had the average applied. At the time Mr T didn't accept the amount as he was disputing the underinsurance. However if H hadn't been underinsured it's likely he would have accepted the settlement at this stage.

The leak happened in February 2019, so this was already over two months after the event. And during this time, H hadn't secured alternative premises or replaced equipment. So regardless of the settlement amount, this period of time without the correct premises or equipment would have impacted H. And this alone would have caused H financial loss.

I appreciate that had H received the full settlement in May it could have used the money to start the process of replacing the equipment and moving to a new premises. But even if this had happened, I've not seen enough evidence to show that this would have meant H didn't suffer the losses it has. Or that the loss would have been substantially less.

So while I recognise H has clearly suffered significant losses, I can't reasonably say that these were as a result of Jelf's actions. But were instead an unfortunate consequence of the damage caused by the leak. For this reason it wouldn't be fair for me to ask Jelf to pay for these losses. So I won't require Jelf to pay H for the losses it has suffered as a result of the claim.

Compensation

While I'm not persuaded that Jelf is responsible for H's losses, I agree that it has caused it inconvenience. The fact H was underinsured led to a delay in Jelf's investigation, and while I don't think this delay was unreasonable in the circumstances, it did mean H was inconvenienced. It meant Mr T had to spend extra time corresponding with Jelf, at a time when H was already suffering the impact of the leak. For these reasons I agree with our investigator and will require Jelf to Pay H £2,000 compensation to make up for the inconvenience it caused.

My final decision

For the reasons I have given, I require Jelf Insurance Brokers Limited to:

- Pay H £48,288.93 - the remaining 75% of the claim, if H hadn't been underinsured.
- Pay H 8% simple interest on this amount from the date the claim should have been settled until the date payment is made.*
- Pay H £2,000 compensation to make up for the inconvenience it has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 11 June 2021.

Sophie Goodyear
Ombudsman