

The complaint

Mr M complains on behalf of his business, M, about poor and incorrect advice from M's insurance broker Bothwell Bridge Associates Limited (BBA), leading to inadequate cover.

What happened

I set out the background to M's complaint in my Provisional Decision and here.

M suffered two break-ins in August 2020 in which tools and hired plant were stolen. Mr M's claim was rejected as the policy didn't cover tools and business equipment. He said BBA told him hand tools should be removed and M's perimeter fence wasn't adequate security.

Mr M said M held business insurance via BBA since 2017. He said he received a renewal quote from BBA in April 2020, which stated tools are included within the policy. He accepted the quote but said the insurance documents didn't arrive until 1 June 2020. Mr M complained to BBA about the cover and said the tools were within a secure container and full perimeter fencing was in place. He said they had provided M's requirements to BBA, but these had been ignored as cover wasn't adequate, and BBA hadn't advised of changes in the cover.

BBA said the insurer required a guarded security compound and thieves had just unclipped M's fencing. It said there's no cover for business equipment or tools – and no difference between the quote and the policy - the former is an overview and the latter gives full details. BBA said it's a non-advisory broker not offering clients advice about what to cover; they must ensure the policy meets their needs. It said delayed documents were due to the pandemic.

The investigator didn't recommend the complaint be upheld. She said the quote mentions tools but doesn't say they are covered. And the quote asks if M has full perimeter fencing to which the answer was 'Yes'. She said the cancellation period started when M received the policy documents and if it didn't want the policy it could have cancelled at that time.

Mr M disagreed with the investigator and requested an ombudsman review M's complaint. He asked why BBA hadn't highlighted significant differences in what M agreed to against the actual cover. He asked why BBA didn't give advice to suit M's demands and needs and what's the point of a broker that doesn't advise. Mr M pointed to statements within BBA's 'Commitment to You' that indicates it will provide advice and recommendations to clients.

my provisional findings and the parties' responses

I have set out the findings from my provisional decision below.

I didn't consider the actions of M's insurer as this is a separate business. Mr M said BBA should have ensured M had the cover it needed. I considered whether M held the wrong cover and whether BBA is to blame for this, in other words if the policy was mis-sold to M. BBA gathered basic information from M on its 'Submission Form' to meet the insurer's requirements. If BBA was intending to make an informed recommendation about the cover I thought it would have needed far more information. Under the section for 'Contractors All Risks' it sets out limits for 'own plant taken to client sites' and hired plant. There is also a

value for own tools, but I said the document doesn't set out what's covered and there's no mention of cover for tools. I thought that the value of tools would have been relevant had M selected this cover, but it's very clear from the policy documents that M had not done so.

BBA's quotation sets out M's cover including 'Contractors All Risks', but there's no mention of tools or cover for tools here. Mr M's wife said she told BBA that tools should be covered when the policy started in 2017. But there's no mention of tools in any policy agreed for M and I haven't seen any instruction on behalf of M to add tools cover to the policy.

The quotation warns that the information doesn't take precedence over the policy documents. As a quotation, it's subject to any changes that M might require. I said that M agreed the quotation and as it didn't include tool cover I didn't accept Mr M's point that there's a difference between the cover in the quotation and the policy documents.

I thought about whether the policy was mis-sold to M. I said that M's policy was the correct one for its type of business. However, for reasons that aren't clear M didn't request the cover for tools that was available under the policy.

Mr M asked why BBA didn't give advice to suit M's needs and why it doesn't advise clients. BBA describes itself as a non-advisory insurance broker that doesn't offer its clients advice about the risks they face and the cover they might need. It sent M a link to its registration with the Financial Conduct Authority to show that it can assist in the administration and performance of a contract of insurance, but not to advise and recommend insurance policies. I said this means BBA is not the same as brokers that take full details about their clients' business in order to recommend a policy that will meet their needs.

A *non-advised* sale means the seller isn't advising or recommending a client buy the policy but provides information and leaves it to the consumer to decide if the policy is suitable for their needs. BBA's responsibility was to provide fair, clear and not misleading information about the cover to enable M to decide if the cover was suitable for its needs.

BBA pointed out that its Terms of Business Agreement with M states; '*The capacity in which we act for you. We source and arrange products but do not offer advice or make recommendations when arranging your insurance. However, we may ask some questions to narrow down the selection of products on which we will provide details; you will then need to make your own choice about how to proceed.*'

I said that as a non-advisory broker BBA only needs to gather information for an insurer and point clients to a policy. BBA states, '*We can arrange the policy described in this quotation. This policy is suitable for your requirements as described in the attached Submission Form, but it is not a recommendation*'. And further, '*We have identified this policy based on our understanding of your requirements and our knowledge of the insurance market place.*'

I said there's no duty on BBA to recommend a policy that it thinks is suitable for a client's needs. This responsibility remains with the policyholder. I thought that it was M's choice as to whether the insurance cover offered was sufficient for its needs.

Mr M suggested that BBA's stated commitments go beyond this. I can see his point. As a non-advisory broker, I wouldn't expect to see all of the following statements BBA has made to M within its Key Facts and Terms of Business:

We will advise and make a recommendation for you after we have assessed your needs for non-investment insurance.

We will meet with you throughout the duration of your cover to ensure the quality and comprehensiveness of your cover.

We will provide advice on reducing risks and future premiums.

Our permitted business is advising customers on insurance contracts (recommending specific insurance policies to customers);

We provide detailed information to you on appropriate insurance policies after we have assessed your demands and needs, and to arrange and administer policies on your behalf. We will provide these Services in a professional and efficient manner.

I thought these statements were contradictory to BBA's regulatory status, and its response to M's complaint. But I said they overstated the service offered to M and hadn't made a difference to the cover M agreed. I think the more relevant statement from BBA to M concerned not making a recommendation about the policy and M making its own choice. I think M opted for the cover in any event and so would have lost out on the claim anyway.

I considered if BBA told M everything it should've about the restrictions on cover for plant hire. BBA is required to bring to M's attention the limitations of the cover. I didn't see a specific warning about this from BBA, but thought the policy documents were clear that unattended plant wouldn't be covered unless held within a locked and secure building or locked and guarded security compound. I thought the restriction was sufficiently brought to M's attention, and it was Mr M's choice about whether or not it could meet the requirement of the unattended plant clause. BBA asked M to review the cover to ensure it met its needs.

BBA said the insurance documents were delayed from 21 April to 1 June 2020 due to the pandemic and it had alerted its clients. I thought this was understandable. The Statement of Facts issued in June repeated the information about cover in the quotation. Given that M hadn't queried the cover required for its claim to be met I didn't think there was any effect in the delay and in any event, the documents were received over two months before the thefts.

The policy documents confirm that the 14-day period within which M could cancel the policy starts on the day the policy documentation is received, or the day the contract of insurance is entered, whichever is later. And so, it was open to M to cancel the policy in June 2020 when the documents were received.

I sympathised with Mr M for M's loss on its first claim, but I didn't think that BBA had made a mistake or was to blame for this.

Mr M responded to the Provisional Decision. He said, '*Under BBA's Key Facts and Terms of Business – this is false and fraudulent advertising.*' And said I had contradicted myself when considering these. Mr M said M's tools were within a locked container within a secure compound as required by the policy.

Mr M said BBA asked for M's information and provided a quotation with a value of £25,000 for the tools, but provided different cover and shouldn't get away with this.

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 remain of the view that the complaint should not be upheld.

Mr M said M's tools were within a locked container within a secure compound as required by the policy. M's claim was considered and rejected by its insurer including on this point. As the claim wasn't rejected by BBA I can't consider this here. It's open to Mr M to bring a separate complaint about the rejection of M's claim against the policy insurer should he wish.

Mr M said, '*Under BBA's Key Facts and Terms of Business – this is false and fraudulent advertising.*' And said I had contradicted myself when considering these.

The 'Key Facts' and 'Terms of Business' are requirements on brokers to inform clients about how their business will be handled and how to make complaints. They are not advertising, though as I've said I think they go beyond BBA's regulatory status and are contradictory to the statements it's made within its policy communications to M.

In its direct communications with M about the policy, BBA said; *We source and arrange products but do not offer advice or make recommendations when arranging your insurance. However, we may ask some questions to narrow down the selection of products on which we will provide details; you will then need to make your own choice about how to proceed.* BBA further told M that it wouldn't make any recommendations about cover.

In considering whether or not BBA mis-sold the policy to M I have thought about all of BBA's statements. Although contradictory, I think the tenor of its statements concerning the policy give a reasonably clear indication about the limit of the service available to M. Overall, I still don't think the statements made a difference to the cover M agreed and so had little effect on the outcome of the claim.

I said that M agreed the quotation and as it didn't include tool cover I didn't accept Mr M's point that there's a difference between the cover in the quotation and the policy documents. This means that although the quotation might have been clearer, the policy documents were clear there was no cover and Mr M was requested to check to see that the cover met his needs. He could have done so In June 2020 when he received the policy documents and amended the cover. Unfortunately, he didn't and is responsible for the lack of cover for the claim.

Having reconsidered this complaint and Mr M's points I remain of the view that BBA is not to blame for the absence of cover for the items stolen from M.

My final decision

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M on behalf of M to accept or reject my decision before 21 September 2021.

Andrew Fraser
Ombudsman