

The complaint

A company I'll refer to as J has complained that Diamond Rocket Trading Ltd trading as Coversure (Brentwood) mis-sold J a business interruption insurance policy.

Mr A, a director of J, has brought the complaint on J's behalf.

What happened

In 2019 J arranged a commercial insurance policy through Coversure, an insurance intermediary. The policy included business interruption insurance. J claimed on its policy after its business was impacted by Covid-19 and the Government's response to the pandemic.

The insurer agreed to pay J's claim, but it reduced the claim payment because it said J had been under-insured. As a result, the payment for J's claim of £100,000 (less the agreed £250 excess) was reduced to £80,519, leaving a shortfall of £19,231. J says it received the balance of the insurance payment on 1 September 2021.

The reason for the shortfall was that J's turnover was estimated to be £250,000 per year but the sum insured for the 24-month indemnity period was also £250,000. The insurer told J that the sum insured should either have been £500,000 for the 24-month indemnity period, or alternatively £250,000 but for a 12-month indemnity period.

J complained that Coversure had mis-sold the policy. Coversure did not agree. It said that it had, as requested, provided cover on a like-for-like basis to J's previous policy while also enhancing some cover, including the business insurance sum insured.

Unhappy with Coversure's response, J brought its complaint to us. It said that it had opted to arrange its insurance with Coversure, which had offered a competitive premium. But J had recommended enhancements to J's previously held insurance policy and so J didn't accept that Coversure had simply offered a like-for-like policy.

Our Investigator looked into the complaint and recommended that it be upheld. She concluded that Coversure had not taken reasonable steps to ensure that J's cover was suitable. J had estimated its turnover at £250,000 and the cover provided of £250,000 for a 24-month indemnity period was not consistent with J's demands and needs. So, she recommended that Coversure pay J the shortfall in its insurance claim payment of £19,231 together with interest at a rate of 8% simple per annum from the date of the insurance claim payment until the date Coversure settled the shortfall.

Coversure agreed to meet the shortfall of £19,231 but it disagreed about the 8% interest. In summary, it said this rate was punitive, unfair, and inappropriate in the context of a commercial dispute. It asked for an Ombudsman to review the interest award.

J accepted our Investigator's findings.

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.

Coversure has accepted our Investigator's findings and agreed to pay J the shortfall of £19,231 in its business interruption insurance claim. Therefore, this issue is no longer in dispute. But, for completeness, I should add that I think it is fair and reasonable for Coversure to pay the shortfall because it did not take reasonable steps to ensure the business interruption cover was suitable for J's demands and needs.

The only issue that now remains for me to decide is whether and to what extent Coversure should pay interest on the insurance claim shortfall of £19,231. I've considered Coversure's arguments about a fair level of interest.

In summary, Coversure has made the following points: it says that interest at 8% simple per annum is inconsistent with the rate a court might award in the context of a commercial dispute. Also, it says that interest is awarded at 8% only to unpaid judgment creditors. With the base rate being (previously) 1.25% an interest rate at 6.75% over base rate is uncommercial and would not put J back in the position it would have been but for any breach or negligence. Instead interest at this level would overcompensate J while being unreasonably punitive on Coversure.

I accept that a court might reach a different outcome. But I'm required to make a decision based on what I think is fair and reasonable in all the circumstances.

Our usual approach is to apply an interest rate of 8% simple per annum broadly to reflect the opportunity cost of being without the funds.

I've considered Coversure's arguments, but I think the relevant issue here is the opportunity cost of the lost funds to J. I cannot be certain about the cost to J of being deprived of the money because, as a community club, it might have used the funds in a variety of ways. In this case I don't consider that awarding interest at 8% would result in J being overcompensated. To award interest at 8% is not intended to be punitive but rather to reflect the loss of opportunity to J.

Without any compelling reason to depart from our usual approach, I consider it fair and reasonable that Coversure pays J interest of 8% simple per annum from the date J received the balance of the claim payment to the date that Coversure makes the settlement payment to J.

Putting things right

I have decided to uphold this complaint.

To put things right Coversure must:

- Pay to J the amount of £19,231 representing the shortfall in J's insurance claim payment due to the underinsurance, as Coversure has already agreed to do; and
- Add interest to the amount of £19,231 at a rate of 8% simple per annum from the date J received the balance of the claim payment (which J says was 1 September 2021) to the date Coversure makes the settlement payment to J.

My final decision

For the reasons I've explained, I uphold this complaint and I require Diamond Rocket Trading Ltd trading as Coversure (Brentwood) to take the steps I've set out under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 14 December 2022.

Amanda Maycock
Ombudsman