

## **The complaint**

K complains that Bryan James & Co Ltd trading as Brass Band Insurance Services ("BBIS") failed to meet its obligation as a broker when renewing K's policy.

As a trustee of K, Mr D brings the complaint on its behalf.

## **What happened**

K is a charity that operates as a band of musicians. It has insurance to cover its premises, contents and equipment that it takes out through a broker. The policy has renewed each year since its inception, which was around 2007.

In June 2019 there was a fire at the premises and Mr D made a claim on K's policy. The insurer of the policy accepted the claim, however it said that K was underinsured for a number of areas of policy cover. It therefore applied an average to the settlement amounts.

Mr D didn't think this was fair. He said the differentiation between the different areas of cover hadn't been made clear when the policy was taken out and renewed. In particular, it wasn't clear what should fall under 'contents' and 'band equipment'. And he said as the total sum insured, when all sections are added up, was correct, K shouldn't be penalised for the unclear definitions of each section of cover.

Mr D made a complaint to BBIS. He also said that it hadn't supported him adequately through the claim and had failed to index link the sum insured each year, which had further impacted the claim amount that the insurer paid. As BBIS failed to respond to his complaint in the required time, Mr D brought the complaint to this service to investigate.

Our investigator considered the issues and recommended the complaint be upheld in part. He said as the claim settlement and policy wording were the responsibility of the insurer, he couldn't hold BBIS responsible for these. And while the original sale of the policy was too long ago for this service to look into, he was satisfied BBIS had provided details about the sum insured at each renewal and the onus would have been on Mr D to ensure this was sufficient for K's needs. However he agreed that BBIS hadn't index linked the sum insured in the 2019 policy year. And he thought it should recalculate the claim settlement based on the index linked amount and pay the difference in the settlement to K.

BBIS didn't respond to our investigator's outcome. However K didn't think the outcome went far enough, as it said BBIS hadn't made it clear which items should be included under which sum insured. Mr D said he also didn't think BBIS did enough to support him with the claim and thought the sum insured wasn't indexed link at a number of different renewals, so the resolution to the complaint should reflect this.

As agreement hasn't been reached, 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.

This complaint has arisen because the settlement K's insurer paid out for its claim was reduced due to it being underinsured. Mr D doesn't think the way the items insured have been apportioned between the different categories for sums insured is fair. Nor does he think the policy is clear in explaining what each sum insured relates to. The settlement of the claim and the wording of the policy are both matters that are decided by the insurer of the policy. As the complaint I am reviewing relates to BBIS - the broker, I can't consider these matters. As BBIS had no involvement in either the claim decision or writing the policy and its definitions. I can therefore only consider how the broker dealt with the sale or renewal of the policies and the information it provided to Mr D.

Further, while the initial date of inception of the policy isn't clear, BBIS has confirmed it was before 2007. And the policy has renewed each year since. The FCA sets out a set of rules that govern which complaints this service can look into, these are called the Dispute Resolution rules ('DISP') and can be found in the FCA handbook. They include a rule relating to time limits for when a complaint can be brought to this service. And we're unable to consider complaints that are brought to us more than six years after the event that is being complained about, or three years after the complainant realised they had cause to complain.

Here, it would have been clear to Mr D, or any former trustee, if there hadn't been enough information provided at the point of sale and therefore that they had cause to complain. So as the sale was considerably more than six years before the complaint was brought to this service, I won't be able to consider the initial sale of the policy. Therefore my review will focus on the renewals of the policy in the six years leading up to the claim.

### **Information provided at renewals**

Both Mr D and BBIS have provided copies of renewals from the years leading up to the claim in 2019, including the relevant policy year. I can see that in each of those provided a policy schedule is included in the renewal documents. And this shows the breakdown of the sums insured and that they are split into various categories with the amount insured printed next to each. The cover letter provided with the documents also draws attention specifically to the amounts insured and asks Mr D to ensure these amounts are correct for K's needs.

I think the documentation was enough to show Mr D what was insured under each section and to highlight that it was his responsibility to ensure the amounts are correct for K.

I note Mr D doesn't think BBIS made it clear enough what the definition of each section for the sums insured included. However there is a brief description of what the cover for each includes. And if Mr D had been unsure about whether the amounts listed were sufficient for each section, it would be for him to check that the amount was correct. And I've seen nothing to show that Mr D asked BBIS to clarify what each section referred to in order to ensure these were correct. Instead from what I've seen, each year the documents were sent, including the details of the sums insured, and Mr D didn't query these amounts.

For these reasons I think BBIS did enough to meet its obligation as a broker when renewing K's policy. It provided clear information about what the sums insured were set as and gave Mr D the opportunity to check these each year.

### **Index linking**

Mr D has said that the policy states the sums insured will be index linked each policy year to make up for usual price increases. He's provided details of areas of the policy that he says

haven't been index linked over the years leading up to the claim.

BBIS has confirmed that in the policy year 2019 the policy wasn't index linked. And it has said there was no reason for this other than it being an omission. I've looked at the renewal documents from that year and the cover letter clearly states that the sums insured have been index linked. As this hasn't been done, I agree that BBIS has made an error. And if it hadn't, K's policy would have included larger sums insured at the time of the claim and therefore would have benefited from a slightly higher claim payment.

Therefore to put things right, I agree with our investigator that BBIS should calculate the correct sums insured had the policy been indexed linked at the 2019 renewal, and therefore the correct settlement based on the average applied by the insurer. It should then pay K the shortfall in the index linked settlement and the settlement paid by the insurer to make up for this error.

Mr D has said that he thinks there were other years when index linking also wasn't applied. However this is to areas of the policy such as the contents, where costs don't rise as sharply. And during these years the sum insured elsewhere in the policy does appear to have increased. Further BBIS has only identified one year before the claim when index linking wasn't applied, so I've not seen enough to persuade me that further increases were missed. For this reason I don't consider it fair to ask BBIS to pay any additional increases.

### **Support throughout the claim**

Mr D has also said that he doesn't feel BBIS has provided the correct level of support during the claim. I can see that this claim has resulted due to a really distressing situation. And that the fact the full claim amount hasn't been paid has no doubt caused Mr D and K difficulties. However when a claim is made, the role of a broker is to ensure information is passed effectively between the customer and the insurer. And I've not seen anything to suggest that this wasn't the case. So while the matter would have undoubtedly caused Mr D some distress, from what I've seen this is due to the claim and the outcome of the claim rather than the actions of BBIS. So I haven't found that BBIS got anything wrong in this regard.

### **My final decision**

For the reasons I've given, I uphold K's complaint in part. I require Bryan James & Co Ltd trading as Brass Band Insurance Services to:

- Calculate the correct sums insured for K's 2019 policy renewal based on the relevant index linking that should have been applied for that policy year.
- Re-calculate the settlement amount offered by K's insurer based on the correct sums insured and the average that was applied by the insurer.
- Pay K the difference between the correct amount based on the index linked sums insured and the settlement it was originally paid by the insurer, to make up for the shortfall caused by its error.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 7 February 2023.

Sophie Goodyear  
**Ombudsman**