

The complaint

A company I will refer to as S has complained about the service provided by its brokers, Jelf Insurance Brokers Limited trading as Marsh Commercial.

What happened

I issued a provisional decision on this matter in August 2022, the main parts of which are copied below:

“S, a limited business, arranged its professional indemnity insurance with Jelf. The policy was due to renew on 7 July 2021. Jelf contacted S on 30 June 2021, a week before the renewal date, and advised that the current insurer was no longer offering cover. Jelf said it had two other insurers that might be able to provide the cover and asked S to confirm if anything had changed since the previous year. S responded the same day and asked to discuss the renewal on the phone. It also emailed Jelf on 5 July 2021, to inform that there was a change in the trading name of the business.

Jelf provided two quotes on 8 July 2021. The premiums were higher than previously, which it said was because fewer insurers were offering professional indemnity cover than before and only two insurers out of six it approached would offer cover at all.

S then made Jelf aware of further trading names on 9 July 2021, which Jelf said needed to be disclosed to any new insurer, as the names had not been on the previous insurance. S also told Jelf on 21 July 2021 of a legal dispute with a client, which Jelf said could be a potential claim under any professional negligence insurance policy and so would also have to be disclosed to any potential insurer. Jelf disclosed this to the insurer that had quoted for cover and they withdrew their offer to provide cover.

S arranged its own cover elsewhere which began on 26 August 2021 and is very unhappy with the service provided by Jelf. S complained and has made a number of submissions, which I've summarised below:

- Jelf only contacted it five working days before the renewal date, which left insufficient time to arrange essential cover.
- Jelf misled it about why the premiums had increased so much – the only reason was because it had increased its commission. The commission for the 2021-2022 [policy] ... was around 60% of the premium, compared to 27% previously and it was not open about this; and the administration fee was also due to rise by £20.
- It asked the agent on 8 July 2021 why the premiums were so much higher and what their commission was and was told they couldn't discuss it.
- It had to get professional indemnity insurance elsewhere, which was problematic because Jelf had misinformed insurers of a potential negligence claim.
- It settled the issue with its former client in August 2021 and there was never a professional negligence claim. All it did was pass on a copy of a comment made by a solicitor that had no foundation and was never pursued.
- Jelf's errors meant it was left without professional indemnity insurance from 7 July 2021 and 26 August 2021, which has left it open to risks.

- The directors spent lots of time trying to resolve this (including sending over 20 emails); calls missed and not returned; and over 16 hours of time finding alternative insurance cover (which it values at more than £2,000 based on its charge out rate).

S has asked for compensation for delayed responses and the delay in providing renewal terms; for the incorrect information given about the premium increase; lack of professional advice, and the fact incorrect information was given to underwriters..

Jelf accepted that it should have contacted S about renewing the policy sooner than it did and that there were some delayed responses from its agents. It apologised for this. Jelf also said that its commission is set out in the renewal documents sent to S and it provided information as requested. It also says that the potential commission and the administration fee are set out in its terms of business that were sent to S.

One of our Investigators looked into the matter. She upheld it in part as she agreed there were some delays and missed calls. She recommended that Jelf pay £100 compensation for this. The Investigator did not, however, think Jelf had acted incorrectly in disclosing the potential claim when seeking the insurance cover for the next year. The Investigator was also not convinced that it was any error on Jelf's part that meant S was without cover for a period of time because none of the insurers available to Jelf were able to offer cover. Jelf confirmed it accepts the Investigator's assessment.

S does not accept the Investigator's assessment and is also unhappy at how long the complaint has taken. S says it made clear that there was no professional negligence claim against them, just that a vague comment had been made. S says the investigation was clearly flawed, as the recommendation that Jelf pay only £100 compensation is ridiculous. It says it charges £125ph plus VAT and it spent more than 16 hours on this matter, so has lost over £2,000. Earlier it also suggested compensation of around £600 would be more appropriate, given the time involved in this matter. S also says it was without cover for a period of several weeks, which means any future claims that arise out of anything done in that period will not be covered.

As the Investigator was unable to resolve the matter, it has been passed to me.

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.

Should Jelf have disclosed the potential claim?

S told Jelf it had an ongoing breach of contract legal claim about payment by a former client. From the notes on the file, I understand the client hadn't paid as they alleged S had not completed the agreed services adequately. Jelf said that it had a duty to disclose this to any potential insurer, as it related to circumstances that could give rise to a claim under the professional negligence insurance it was arranging.

S says no clear allegations of professional negligence had been set out by the client's solicitors, only a "*vague comment... insinuating potential negligence*". However, given there was an allegation the services had not been completed properly, I think it was reasonable of Jelf to say it had an obligation to make any underwriters aware of this claim, as I think this is a matter that a professional negligence insurer would want to know about. So, I can't say Jelf did anything wrong by making the prospective insurers aware of this.

Disclosure of commission

The Investigator said that we cannot consider the issue of the commission as in the end no commission had been paid, because Jelf didn't place the insurance for S.

S's complaint is that Jelf didn't disclose the amount of commission they were to receive from the premium. It asked specifically why the premiums had increased so much since the previous year and Jelf told it that it was general price rises, as there were fewer insurers offering this cover. S says this was misleading because most of the increase in premium was because Jelf's commission had significantly increased. If it had known this, it would have no longer dealt with Jelf and gone to another broker sooner.

We can consider this point. However, having said that I do not think Jelf did anything wrong and will explain why.

ICOBS 4.4 sets out the rule on commission disclosure for commercial customers. It says:

"(1) An insurance intermediary must, on a commercial customer's request, promptly disclose the commission that it and any associate receives in connection with a policy.

(2) Disclosure must be in cash terms (estimated, if necessary) and in writing or another durable medium. To the extent this is not possible, the firm must give the basis for calculation."

S asked about commission on the phone on 8 July 2021 and the agent said they could not discuss it but asked him to put his request in writing and she would then pass it on to the appropriate team at Jelf to answer his questions about commission. S did so and Jelf disclosed the commission when asked in writing. S might consider this unfair but Jelf acted in line with the regulations set out above.

S is also unhappy with the amount of commission it was going to charge but I have no power to regulate this or require a business to change its commission levels.

Service provided and gap in cover

As a broker, Jelf was required to invite renewal of the insurance policy within 'good time'. There is no set timescale however. Jelf accepts that it should have contacted S sooner than it did to arrange the renewal and I agree a week's notice would not usually be considered reasonable.

Once it did contact S, Jelf made reasonable efforts to place the cover. I note that were some calls that were not returned and delays in communications, however I do not think these affected the placing of the insurance. As stated above, I think it was entitled to disclose the legal claim and it responded to the other changes in cover required in reasonable time and tried to obtain cover.

In a call on 4 August 2021, S was advised to try and find cover from other brokers, who might have access to other insurers. On 16 August 2021, S told Jelf that the breach of contract claim had been settled and there had never been a professional negligence claim. And on 17 August 2021, Jelf confirmed it could not place the cover for S. It was another nine days before the new policy started on 26 August 2021. So altogether it took around eight weeks to arrange new cover.

S is adamant that the period of time without cover was entirely due to Jelf but I do not agree. I say this because there was difficulty in finding insurers willing to accept the business, even before the legal claim was disclosed, which it seems to me would have happened anyway. There were also changes to the cover required and as stated the ongoing legal claim, which

Jelf was told about two weeks after the policy expired, to disclose which all contributed to the difficulty in arranging cover and the time taken to do so.

It seems to me that even if Jelf had contacted S say one or even two weeks earlier than it did, there would still have been a period of around four to five weeks without cover. As stated it was not unreasonable of it to disclose the legal claim and it did make reasonable efforts to place the insurance. So it seems to me it would have always taken around eight weeks and Jelf would still have not been able to place cover with any of its insurers. As I do not think that Jelf is responsible for S being without cover for the period 7 July to 26 August 2022, I do not propose to make any award in this respect.

Compensation

S says it has spent over 16 hours trying to resolve this matter and arrange the insurance. There was a lot of time involved in trying to make the insurance arrangements and pursuing the complaint. However, I can only make an award for something Jelf did wrong.

S didn't agree with Jelf's approach but as stated I do not agree it acted wrongly when dealing with the potential insurers. Its only error in my view was sending the renewal invitation a week or two later than it should have and in some problems with communications, which while frustrating didn't impact on the placing of the insurance as far as I can see. The insurance arrangements were complicated and would have been time consuming in any event. And the time taken finding alternative insurance cover would have been necessary anyway, as no other insurers that Jelf dealt with would offer cover.

I can only make an award that recognises the impact on the eligible complainant. In this instance, the eligible complainant is a limited company, rather than any individual. A limited company cannot suffer distress or frustration and so I can't make an award in this category. I can make an award for inconvenience. There was management time involved in chasing calls to arrange the insurance and having taken everything into account, I consider £100 to be reasonable for this.

My provisional decision

I intend to uphold the complaint against Jelf Insurance Brokers Limited trading as Marsh Commercial in part and require it to pay S the sum of £100 compensation for the inconvenience caused by its handling of the insurance matters."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered. Both parties have confirmed they have nothing further to add.

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 considered everything again and as no further information has been added, I see no reason to change my provisional findings.

My final decision

I uphold the complaint against Jelf Insurance Brokers Limited trading as Marsh

Commercial in part and require it to pay S the sum of £100 compensation for the inconvenience caused by its handling of the insurance matters.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 11 October 2022.

Harriet McCarthy
Ombudsman