

## The complaint

A company, which I'll refer to as P, complains that Johnston Financial Limited ("Johnston"), a broker, has provided inaccurate information to its insurer related to a claim made under its group income protection ("GIP") policy.

Mr R, who is a director of P, brings the complaint on P's behalf.

## What happened

The background of this complaint is well known to all parties, so I'll summarise events.

- P holds a GIP policy – underwritten by Company A. This was taken out through Johnston as a broker in 2018.
- This insurance provides cover in the event of one of P's employees being unable to work through long-term illness or injury. And provides P with a percentage of the employee's monthly salary to be paid in turn to the employee by P – when they are incurring a loss of earnings as a result of absence.
- In September 2020 one of P's employees (Person F) was signed off work. And P claimed on its Company A policy. The claim was paid in full until June 2021 and then in part until November 2021 following a return to work on reduced hours.
- And in doing so, it came to light that the policy arranged covered Person F for 75% of their basic salary which did not factor in bonuses (and for which a lower salary figure was given by mistake). P complained, saying this wasn't what it had arranged.
- Our Investigator looked at what happened and upheld the complaint. She said Johnston had made a mistake and not shared the relevant information and income data – that P had provided it with – with Company A, leading to a reduced amount of cover for Person F being set up.
- So, the Investigator directed Johnston to pay the shortfall between the accepted claim and Person F's full income and bonuses in line with its policy terms, adding 8% simple interest. She also explained she was unable to award any compensation for Mr R or Person F as the policyholder in this case was P.
- Johnston agreed to settle the complaint, but put forward additional considerations it thought should be taken into account. Following some back and forth, our Investigator agreed that Johnston could reasonably factor in the lower premiums P had paid as a result of the lower cover in place, as well as sums received through furlough.
- P rejected the offer, saying it wouldn't be fair for Johnston to charge for increased premiums, and to the contrary, it should also refund any premiums charged. P also said the offer was not reflective of the full timeframe of the claim, furlough payments had been reversed by HMRC, and that the figures were wrong.
- Johnston said the evidence provided only suggested what P intended to do, not that furlough funds were actually repaid. Johnston said it would settle this claim up until 4 June 2021 and no further unless P provided it with payslips and a P45 to show

Person F was off during this time.

- Our Investigator reached out to Company A. It confirmed it had not been given evidence to show any furlough sums were repaid, and gave commentary about Johnston's offer. The Investigator said Johnston's offer appeared correct given Company A's comments. She also felt it was fair for the claim to be paid until May 2021 only in light of the evidence outstanding (related to reduced working hours and furlough payments), saying P should provide this to Johnston. A revised offer from Johnston, that totalled £9,410.82, was shared by our Investigator as a fair settlement.
- Following a further back and forth, P submitted payslips between June and November 2021, and the P45 in question, and said HMRC had asked P to carry on receiving furlough payments.
- Johnston raised concerns about the information P provided to Company A and said it had been inconsistent about the furlough payments. And refused to cover the period from June 2021 onwards.
- P disagreed. It said Company A's calculations for the June to November 2021 period were accurate, and Johnston simply needed to pay that sum minus the amount Company A paid as a basic salary, saying the sum owed is £60,649.86 plus 8% simple interest. P also said Person F will begin repaying furlough payments after this claim is settled in line with their employment contract.
- So, the complaint came to me. I reached out to Johnston with my comments on the period of June 2021 onwards. I acknowledged Johnston had concerns about the evidence provided to Company A, and stated:

*"[Company A] is aware of these earnings and to my knowledge hasn't taken action to this effect. As a result, I'm not satisfied [Company A] would've declined the claim based on the available evidence..."*

*I take into account Johnston may have taken a difference stance on the matter. And I can understand the back and forth regarding the P45 and payslips may have delayed matters. But I have to consider what [Company A] would've done as ultimately this is the company that the policy was in place with. And based on what I have, it appears [Company A] would've settled the second part of the claim..."*

- Johnston replied with an offer for the period from June 2021 – November 2021 totalling £18,963.14. I shared its comments with P and calculations. And issued a provisional decision giving my thoughts on the offer. I've included part of my decision below.
- *"The central issue in this complaint is already resolved – in that Johnston has agreed it put the wrong level of cover in place for P which impacted a claim made under its Company A policy. So, I don't need to go over these points again within this decision.*
- *In considering this complaint, I have to consider if the redress Johnston has proposed is fair and reasonable in the circumstances, in light of Johnston's error.*
- *The policy that was in place at the time of the claim covered P's employee for 75% of her basic salary, and not bonuses. Johnston and P accept it should've been set up to cover 75% of her actual salary including bonuses.*
- *So, I think Johnston's redress should be putting P back into the position it would likely have been in, had Johnston set up the policy correctly. And this will include the additional claim amount P would've received, as well as any additional premiums the correct cover would've required P to pay.*

- *Two of the main issues that remain in contention relate to Johnston's consideration of furlough payments and premiums paid by P.*
- *There has been a lot of discussion about P's treatment of furlough payments. Johnston has taken into account these payments when calculating how much salary Person F has lost whilst off work. As it stands, P has said the funds haven't been refunded but they will be in the future once this settlement is resolved.*
- *Given there's no certainty these payments will be repaid, and they haven't been to date, I'm in agreement that P should not receive funds to replicate an income it has already received from elsewhere. So, I'm not intending to direct Johnston to reconsider its position on furlough payments and I'm satisfied it is fair for it to consider these as it has done within its offer calculation.*
- *Johnston has also said it should be able to consider the likely increased premiums that would've been charged had the policy correctly been set up to cover the increased risk. In principle, I agree this is a fair consideration as P would've been liable for these increased costs had the policy been set up correctly.*
- *P has objected to this, saying Johnston should instead refund premiums for the period the policy was in place given its mistake, but I disagree. I say this as I don't think it would be fair for Johnston to receive the benefit of a policy without paying to have the insurance in place. I say this as the premium would always have been paid even if Johnston hadn't made a mistake, so it's fair to factor it in.*
- *The methodology that Johnston has proposed to estimate the premium is to pro-rata the premium paid in line with the proportional additional salary role that was covered. On its face, this seems sensible to me as Company A has confirmed it cannot given an exact calculation retrospectively, and I've been given no alternative evidence from P that persuades me would be more accurate.*
- *Johnston's offer for the period up until June 2021 has been shared between parties and discussed at length, so I won't repeat this in full here. It totals £9,410.80 for that period. Having reviewed its calculations, I'm satisfied these are accurate and in line with Company A's figures.*
- *The period from June 2021 onwards (as outlined above) which totals £9,552.32 also appears in line with what I'd expect – taking into account its consideration of premiums and furlough payments.*
- *Johnston has included 8% simple interest within its offers to P in line with this Service's approach. However, this 8% should continue up until the date the payment is made. So, within my direction I will also expect Johnston to revisit this calculation and ensure the 8% continues until the payment itself is made."*
- *Both parties responded. P reiterated concerns about Johnston and the impact of its mistake on its business and wellbeing of Mr R. Johnston revisited its calculation to bring its 8% calculation up to date, bringing the total to £ 19,043.17 – and the details of this offer were shared with P with my comment that this appeared in line with what I'd expect to have seen.*
- *P replied further to Johnston and this Service, stating it would share details of its accounts and requested recordings from Johnston that he said showed Johnston had a lack of awareness about life insurance policies. I replied to explain that neither accounts data nor the recordings described would likely change my mind in the circumstances, so I wouldn't request these myself. But I would still consider anything provided by the deadline provided – which was 27 September 2022.*
- *Johnston provided a further response. It included comments from Company A which have since been shared with P. In summary, Company A has said that it never had*

sight of Person F's earnings between June and November 2021 – and *“Had these figures been disclosed at the time of the claim then we would almost certainly not paid any benefits for that period...”*

- Company A also said *“In respect of the FOS’ statement “I’m not satisfied [Company A] would’ve declined the claim based on the available evidence”, again I would disagree (although technically speaking we would have **ceased** the claim at that point, as opposed to declining it).”*
- I reconsidered this matter, and said as a result, it seems Company A would’ve ceased to cover the period of June 2021 onwards. And I was now minded to say that Johnston was only required to make the payments up until June 2021 as it previously proposed. This was because whether or not P had been sold sufficient cover for its needs, I was satisfied Company A simply wouldn’t have covered this period. And I requested any final submissions to be received by 4 October 2022.
- Johnston recalculated its offer to be £9,468.89 (£8,713.70 + 8% interest). P stated it still intended to share account data with this Service, but we’ve received nothing further from it since.

The deadlines of my provisional decisions have now passed, and so the complaint has been passed back to me for an Ombudsman’s final decision.

### **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’m upholding this complaint for the reasons previously outlined.

- Within my provisional decision I explained that I was satisfied that Johnston’s offer was fair and the reasons for this. With the exception that its calculation of 8% interest was not brought up to date. It has since updated this offer and its calculations have been shared with P for its comments – which it hasn’t provided any on this subject.
- I explained in my provisional decision that I would expect Johnston to be acting as if Company A had been handling the claim. And based on the information I had at the time, I believed Company A would’ve settled the second part of the claim for the period from June 2021 onwards. But in light of the information I’ve now received from Company A, I’m satisfied it had justified concerns and wouldn’t have paid the claim for this period. So, I won’t be directing Johnston to cover this period.
- P said it would provide account details that show the alleged impact of Johnston’s mistake. While it hasn’t gone on to provide these, it appears to me these would only show the financial position of P as opposed to demonstrate that Johnston’s actions directly caused the failure of the business as P has said.
- And while I’ve taken P’s comments into account, based on the available evidence I’m not persuaded it would be reasonable to hold Johnston accountable for the failure of P’s business as it has alleged. So, I’m not directing it to do anything further beyond the above offer.
- P has mentioned a call recording that it says shows Johnston was not knowledgeable of certain insurances. But in this case, it’s not in dispute that Johnston set up the policy in question incorrectly – and Johnston has acknowledged this. So, even if I’d been provided with a call to this effect, it wouldn’t change my mind.
- P has asked me to direct Johnston to make payments to HMRC directly in relation to furlough it had received previously. To the contrary, I think the obligation sits with P

to demonstrate these furlough funds have been, or will be, refunded to HMRC. And to date it hasn't done this. So, I don't think it would be fair or reasonable to direct Johnston to interfere with P's financial affairs with HMRC in this way.

- So, for the above reasons and those outlined previously, I'm satisfied Johnston's offer to put things right is fair and reasonable in all of the circumstances.

### **My final decision**

Johnston Financial Limited must pay P the following:

- £8,713.70 for the claim; *and*
- 8% simple interest calculated until the date this is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 2 November 2022.

Jack Baldry  
**Ombudsman**