

The complaint

Mr and Mrs J have complained that Brian Thornhill & Son Insurance Brokers Limited (BTS) provided incorrect information when they tried to find out if their business interruption insurance policy would cover a claim for Covid-19.

What happened

Mr and Mrs J held business interruption insurance cover through BTS. They called BTS on 25 February 2020 to ask if they would be covered for losses caused by Covid-19. BTS replied to say there was an element of cover and directed Mr and Mrs J to the business interruption insurance section of their policy.

On 26 February 2020, Mr and Mrs J contacted BTS again as they couldn't see that they were covered. Mr and Mrs J said that BTS said it didn't know if there was cover so it would speak to the insurer and get back to them. However, BTS didn't respond.

Mr and Mrs J said that they tried to contact BTS again a number of times between 13 and 17 March 2020 without reply. On 17 March 2020 BTS replied to say there wouldn't be cover for a claim due Covid-19.

Mr and Mrs J ultimately complained to BTS as they said BTS had provided misleading information in telling them they were covered. Mr and Mrs J thought BTS should honour the information it had given and pay for their losses as it had prevented Mr and Mrs J from securing cover elsewhere.

BTS said it hadn't told Mr and Mrs J that there was cover. It said it didn't know how an insurer would consider the terms within the policy and so had pointed Mr and Mrs J to the terms of the policy. BTS said it would have been unable to secure cover anyway as insurers offering cover had withdrawn from the market and cover for pandemics was only offered by insurers offering bespoke policies. BTS said February and March 2020 had been a particularly busy time but accepted there had been some delay in responding, although it didn't think any delay had caused Mr and Mrs J a loss. BTS offered Mr and Mrs J £2,500 on a without prejudice basis to resolve things.

Mr and Mrs J turned down BTS's offer of £2,500 and brought their complaint to our service. Our investigator looked into Mr and Mrs J's complaint but didn't recommend BTS do anything further. He thought the email BTS sent on 25 February 2020 should have been clearer but didn't think that Mr and Mrs J would most likely have got cover elsewhere.

Mr and Mrs J asked for an ombudsman's decision. They said that as BTS had made a mistake and confirmed they had cover it should compensate them to the value of the claim. BTS clarified that it had withdrawn its offer of £2,500. It said this had been offered in an attempt to resolve the complaint and not because it thought it had provided misleading information.

I issued a provisional decision on this complaint on 15 September 2022. In that decision I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm sorry to hear that the pandemic and the Government's related actions have had an impact on Mr and Mrs J's business. However, I'm not going to require BTS to compensate them for their financial losses. I'll explain why.

The questions I've needed to consider are whether BTS made any errors and, if so, whether the errors caused Mr and Mrs J a loss they wouldn't otherwise have had. Mr and Mrs J have made a number of detailed points. I'd like to reassure them that I have considered them all but I'm not going to address them all in this decision and instead will focus on what I consider to be the central issues in this complaint. I also don't intend to repeat the very detailed timeline provided by Mr and Mrs J as it's well known to both parties.

I've considered the email BTS sent to Mr and Mrs J on 25 February 2020 and I think BTS intended to point to the business interruption insurance section of cover within the policy. I think this was a reasonable thing to do given the uncertainty at the time about how insurers would consider claims under the policy. However, I think it wasn't worded as clearly as it could have been and left things open to interpretation. I can understand why Mr and Mrs J interpreted the email to indicate that there was some cover for Covid-19.

I can see why Mr and Mrs J were uncertain about the answer BTS gave but I don't think that any lack of clarity in this email was the cause of their loss. I say that because they read the wording in the policy and said they couldn't see that they were covered. So they got back in touch on 26 February 2020 and were told that BTS didn't know if they were covered or not. So, I think by this date they had been informed that BTS didn't know if there was cover.

I can see that, following this, Mr and Mrs J tried to find out further information from BTS, but they didn't find out that they wouldn't be covered until 17 March 2020. BTS said it was a particularly busy time given the emergence of Covid-19, but it accepts that there were delays in responding to Mr and Mrs J's queries. However, I'm not persuaded that any delay caused Mr and Mrs J a loss they wouldn't otherwise have had.

I accept that it's possible that if Mr and Mrs J had known earlier that their policy didn't provide cover they might have bought a policy which ultimately was found to cover the circumstances of their claim. However, on the balance of probabilities, I am not persuaded that would have been the case. There are several relevant factors:

- BTS wouldn't have been able to amend Mr and Mrs J's policy to cover Covid-19 on 25 February 2020.*
- BTS didn't sell any other policies which would provide cover and would have advised Mr and Mrs J of this.*
- At the time of the query, it was unclear which policies would provide cover in the context of the Covid-19 pandemic and the Government's related actions, so Mr and Mrs J would have been switching to a different policy in a context of significant uncertainty.*
- Many insurers had started writing exclusions into their policies to make it clear that cover wasn't provided, and many others didn't believe their policies would provide cover.*
- Other policies might not have been as suitable for the rest of Mr and Mrs J's needs.*
- I understand Mr and Mrs J added an extension to a policy for another business which they thought would provide cover but due to an issue with their other broker they haven't received payment for that claim.*
- Mr and Mrs J knew they weren't covered by 17 March 2020 and could have looked*

for alternative cover after that. However, they didn't buy an alternative policy.

As I don't think it's more likely than not that Mr and Mrs J would have bought an alternative policy which covered their claim, I don't believe they experienced a loss that they wouldn't otherwise have had if it wasn't for any error by BTS. Therefore, I'm not going to require BTS to compensate Mr and Mrs J to the value of their claim.

I recognise that between 26 February and 17 March 2020 Mr and Mrs J found it difficult to get an answer from BTS about whether their policy would provide cover. While I recognise that this was a busy time for BTS and also a time of uncertainty, I do think the lack of response would have caused Mr and Mrs J distress and inconvenience at an uncertain time even if I don't think it led to their financial losses.

I have considered that BTS made an offer of £2,500 but having reviewed BTS's response to a query about this I understand it made the offer on a commercial basis in an attempt to resolve the complaint. This is more than I would award in the circumstances so I'm not going to require BTS to pay that. I do, however, think £200 is a fair and reasonable amount for BTS to pay Mr and Mrs J for the distress and inconvenience caused by the delays in response.

I therefore intend to require BTS to pay Mr and Mrs J £200.

BTS responded but didn't provide any further comments. Mr and Mrs J said it was clear from my provisional decision that BTS had misguided them and delayed in responding. They said at the very least BTS should stand by its offer of £2,500.

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.

I've considered Mr and Mrs J's comments, but they haven't persuaded me to change my provisional findings. I accept that BTS made the offer of £2,500 in an attempt to resolve the complaint and as the amount BTS offered is more than I would award in the circumstances I'm not going to require it to stand by its offer.

Putting things right

I remain of the opinion that £200 is a fair and reasonable amount for BTS to pay Mr and Mrs J to compensate for their distress and inconvenience.

My final decision

My final decision is that I uphold this complaint and require Brian Thornhill & Son Insurance Brokers Limited to pay Mr and Mrs J £200 compensation for their distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs J to accept or reject my decision before 27 October 2022.

Sarann Taylor
Ombudsman