

The complaint

A limited company, which I will call S, has complained that its business insurance policy was mis-sold to it by Premier Insurance Centre Ltd.

What happened

In the policy year August 2019 to August 2020, S made a claim under the policy for loss of income arising out of the Covid-19 pandemic, based on its annual income of around £1.3 million. The insurer agreed to meet the claim but said S was underinsured, as it had only applied for cover for revenue of £250,000 per annum. The insurer therefore paid a proportional settlement only.

S is very unhappy about this. It says it declared its income to Premier and that it needed cover for income of £1 million when renewing the policy in 2019. It says Premier failed to place the insurance with due care and has asked it to pay the shortfall of its claim, which it calculates as being almost £85,000.

S first took the policy out in 2015. Premier says it arranged the same level of cover that S had with a previous insurer, which was cover for income of £250,000. The policy renewed each year and Premier says S never increased the level of cover it wanted for revenue. Premier says that at renewal in 2019, S told it that its turnover was likely to be £1million but this is different from revenue. It says it put in place the cover S asked for.

S brought a complaint about this to our Service. One of our Investigators looked into the matter. He did not recommend it be upheld, as he was not persuaded Premier was responsible for the underinsurance. He said it was clear both parties understood the difference between turnover and revenue and S had not taken the chance to change the cover for revenue at renewal.

S didn't accept the Investigator's assessment. It said that Premier made an incorrect assumption about its revenue; the turnover figure it provided to Premier was the revenue for that period and its accountants can verify that. As the Investigator was unable to resolve the complaint, it was passed to me.

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

"Premier sold the policy to Mr B and set it up. However, it isn't the insurer/underwriter of the cover. I can't therefore look at the handling of the claim itself or whether it was fair to limit the indemnity provided in this decision. Any complaint about that needs to be addressed to the underwriter. I am also only looking into the renewal in August 2019 and not any of the earlier sales of this policy.

Those selling insurance have a responsibility to provide clear and fair information about the cover provided, so that ... [customers] can make an informed decision

about whether or not to buy it. If the seller is also recommending the policy, they also have to take steps to try and ensure it is suitable for them.

This renewal in 2019 was carried out on an advised basis, so Premier had a responsibility to ensure as far as possible that the policy was suitable, this would include that it provided an appropriate level of cover.

Premier says its advice was based on S's declarations and the pre-renewal report it sent S set out clearly what the cover for business interruption was and it asked S to review the information and let it know of any changes required.

I do not agree with Premier that its pre-renewal report was as clear as it says. I say this because, the report consists of nine pages, the first being a title page. On the second page, headed "*Client Details and General Information*" it lists the name, address and status of the company and then says:

"Material facts...and then details number of subsidiary companies, turnover, waggeroll and employees".

On page six of the report, it says: "*business interruption cover basis gross revenue/income business interruption sum insured £250,000*".

Next to this is a box to be ticked if the sum insured was agreed, and a box to complete if revisions were required. The box was not ticked by S.

In response to the pre-renewal report, S asked for the following amendments to cover to be made:

- "1. Turnover is likely to be 1,000,000*
- 2. Waggeroll - £450,00.00*
- 3. Number of Employees – 12"*.

S says its turnover and revenue are the same and it believed it was asking for revenue/income cover of £1 million.

The insurance policy says it is a general condition of cover that turnover figures be provided. However, the policy defines turnover and gross revenue as being almost exactly the same:

"Turnover means money paid or payable to you for goods sold and delivered and for services rendered".

"Gross revenue means the money paid or payable to you for work done and for services rendered in course of the business at the premises."

And it seems that turnover, if it is treated differently from income/revenue, would not have any significance on the level of cover. The significant factor in determining the level of cover provided is the revenue/income.

In addition to all of this, the insurer's agent has said "*Allowing for the anticipated turnover for the period March 2020 to end of February 2021 is circa £1,300,000 and this is the level that should have been requested for the Gross Revenue/Income Sum Insured*".

So the insurer appears to have treated the turnover figure as being the same as the revenue income figure and of course S did think it had asked for cover for £1 million. So it is not clear to me why a turnover figure (if it was treating this as being different from revenue) would be significant enough to be on the first content page of the pre-renewal report and a revenue/income figure would not be on that page at all.

I do not think this pre-renewal report makes sufficiently clear that Premier was interpreting revenue differently from turnover and that the sum insured it was going to put in place for S would not be influenced by the turnover figure. Overall, I can see why S believed the turnover figure it was providing would be the level of cover it was applying for and I do not think it was clear enough that it needed to specifically check page six to see the sum insured.

In addition, Premier had an additional duty to ensure the policy was suitable and there is no evidence that it asked for further information from S given the disparity in the turnover and the sum insured.

If Premier had provided sufficiently clear information about the cover to S, I believe it would have had a policy in place that provided cover based on income of £1 million per year. I therefore need to decide how S can be put in the position it would have been in had this happened.

I've seen a letter from the insurer's agent in which they calculate the net losses as being £147,241 in total, but only paid £28,315.58 (so it made a deduction of £118,925.42) because of the underinsurance. Insurers are sometimes entitled to make deductions in the event of underinsurance, if there has not been a fair representation of the risk they were being asked to cover. To be clear, I have not considered whether the insurer was entitled to do this or not in this case. If S wants that to be considered, it would need to be done separately. However, as the insurer did apply a deduction for underinsurance, it seems likely to me that it would have done so even if the insurance had been set up with cover for business interruption of £1 million, as it would still have been less than it said the sum insured should have been (*i.e.* £1.3million).

From the evidence provided, if there had been cover for £1million and the insurer had made the same rate of deduction, S would have received a total settlement of £113,262.31, which is £84,946.73 more than it did. I therefore intend to require Premier to pay the deficit of £84,946.73.

Interest should also be added at our usual rate on this amount, from the date the insurer made its payment to the date of payment by Premier."

I concluded that I intended to uphold this complaint against Premier Insurance Centre Ltd and require it to pay S the sum of £84,946.73, together with interest at 8% simple per annum from the date S received part settlement of its claim from its insurer to date of payment by Premier.

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

S has accepted my provisional decision.

Premier has not accepted my provisional decision and has made a number of submissions in response to it. I have considered everything it has said but have summarised the main point below:

- The pre-renewal document is used by all major insurers and brokers and it cannot see how it could be clearer.
- S did not return the pre-renewal form, so it did not see that the revenue box was unticked.
- Revenue cannot be confused with turnover. The insurer asked for separate figures which is not unusual. The change in turnover had no impact of the cover shown in the schedule. It impacts liability cover, which has fixed sums insured.
- S didn't blame lack of clarity in the pre-renewal form, or say it didn't understand the difference between revenue and turnover. In fact, S confirmed it understood the difference between turnover and revenue, rather S said it believed if it was insured for £250,000 it would receive £250,000. But this is not what the policy documents say.
- The agent that sold the policy to S in 2015 has said that the initial sale took place "*after a very short call*", S had been referred by another customer and wanted Premier to replicate the exact cover they already had but at a cheaper price. S sent a copy of its previous insurance and the agent sent the quotation for the cover it was recommending provide the cover requested "*by return*".
- The initial sale was therefore not based on the pre-renewal report which I thought was unclear. S was provided with full documentation that did to mention turnover at all and made clear the cover was for gross revenue of £250,000 and did not mention turnover.
- Even if the documentation was not clear, which it does not accept, S confirmed it understood the difference between turnover and revenue and therefore, as a business of 20 years standing, should have questioned why the sum insured didn't change.
- S did ask why turnover and revenue would be looked at separately (although it is not clear from the submissions when this was but it seems it was around the time of the claim) which did raise concerns about a lack of understanding. One of its agents looked at S's business model and concluded it is likely turnover could increase but revenue stay the same, as S has to pay for advertising space which would be paid to S and then paid to the magazine but would not add to S's gross revenue. So the turnover and revenue figures could be considerably different.
- There was a breakdown in understanding between S and the insurer as to how the insurance would deal with a claim for business interruption and asks how it can be blamed for that.
- S did not give the insurance the required focus and did not take reasonable case to make a fair representation of risk. It refers to The Consumer Insurance Disclosure Representations Act 2012 ("CIDRA") and S's obligations under it.
- In any case, the calculations provided about the underinsurance and value of the claim are wrong.
- It doesn't know where the £1.3 million figure comes from given the turnover figure provided by S was far lower. How could S miscalculate its turnover by 30%? It is being asked to meet the value of the claim based on a miscalculation.
- We should also be questioning the insurer's basis for settling the claim. The insurer calculated the total loss as £147,241 but it is concerned about the level of investigation done by the insurer to support this. It wants the right to question the quantification of the loss the policy would have paid in the event the cover had been adequate.

- It's not fair to apply 8% interest to the entire period since the claim was paid, as much of that time has been while this Service has been considering the complaint.

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.

Premier has referred to S's obligations to make a fair representation of the risk it is seeking to insure and suggests that it failed to do so. Premier referred to CIDRA but, as S is a commercial customer, it is the Insurance Act 2015 that would apply rather than CIDRA.

The Insurance Act 2015 imposes obligations on commercial insurance customers to make a fair representation of risk and sets out remedies available to an insurer if they have not done so. In this case the insurer has relied instead on a clause in the policy which provides that in the event of underinsurance, it would make a proportionate settlement in the way it did based on the amount of income covered.

Premier makes much of S's obligation to examine the contract and satisfy itself of the cover provided and says it didn't take due care to check any misunderstanding about the difference between turnover and revenue and provide the correct figures.

Of course there is some responsibility on customers to understand what they are buying. However, those selling insurance have a greater responsibility to give a customer appropriate information about a policy, such that the customer can make an informed decision about the arrangements proposed and which might affect their decision to buy the policy. And, as stated in my provisional decision, in this case Premier also had an obligation to ensure the suitability of its advice.

Premier has referred back to the original sale of this policy to S. To be clear, I am only considering the sale in August 2019 and am not making any finding on any of the previous sales to S. However, some of Premier's comments are relevant to my consideration of this complaint. Premier said it only had a very quick phone conversation with S when the policy was first sold and it has been by email since then. Premier says it replicated the same cover S previously had at its request and it would not question what a customer has asked for. In an email dated 23 April 2021 Premier also said *"we arrange cover based on the details provided by our clients relaying that detail to insurers"*.

However again, as this was an advised sale, Premier had an obligation, regardless of what cover S had previously, to ask questions and ensure as far as possible that the policy was suitable for the customer. Its statements in response to the provisional decision seem to me to confirm that it did not do so. I do not think that simply relaying information provided by a customer, without asking questions or explaining the significance of figures asked for, fulfils the requirement to take reasonable steps to ensure the suitability of its advice. And I do not think the fact S has been operating for a number of years makes any difference to that professional obligation on Premier.

The pre-renewal document might not have been produced by Premier and might be commonly used but Premier has a responsibility to explain anything that is not clear. It asks how it can be blamed for any lack of understanding as to how the policy would work but it seems to me that an important part of an independent broker's role is to explain exactly how the insurance will work.

Premier has said S didn't return the pre-renewal form and so it didn't know the revenue section was unticked. Premier received the email from S stating the turnover figure had

increased to £1million but it didn't seek clarification of the significant difference between the turnover and the revenue sum insured.

Ultimately, it was for Premier to propose a policy that was consistent with S's demands and needs and it needed to take reasonable steps to ensure the suitability of its advice to S. If it had queried the disparity between the two figures, it would have alerted it and S to the fact that the policy cover was not adequate and did not meet S's insurance needs.

Premier says it thought the disparity could be explained by S's business model but this is something it has suggested after the event. It did not make any enquiries about this or make sure S knew why the insurer wanted separate turnover and revenue figures before placing the insurance.

S did say, after the claim, that it understood the difference between turnover and revenue and that both were in the region of £1 million but that it understood that the limit of cover (so the maximum payment it might receive in the event of a claim) would be £250,000. I think this indicates that S did not understand that the revenue sum insured should have been its total gross revenue/turnover figure.

Premier says that on S's understanding the £250,000 sum insured would be pro rata and for the three month indemnity period of this claim, would mean S could only expect to receive £62,500. But I don't think that is what S was saying in its email. I think it said that it expected the maximum for any claim would be £250,000. Ultimately, it seems clear to me that S did not fully understand that the sum insured should have been its total annual revenue figure and as it says its turnover and revenue are virtually the same, it thought it had provided Premier with the correct information in order to get adequate cover for its needs.

I therefore remain of the opinion that Premier failed to make sufficiently clear to S that the revenue sum insured needed to be its actual annual gross revenue and was different from turnover; and if it had done so, S would have had revenue cover for £1 million, instead of £250,000.

As far as the quantum is concerned, Premier queries the insurer's calculations. Premier says the award proposed in my provisional decision is based on incorrect figures, as the insurer has said revenue cover should have been for £1.3 million and it is unfair to make it pay based on this incorrect figure.

However, I have seen sufficiently persuasive evidence of the value of the loss to S. I have no reason to doubt the calculations provided by the insurer, or that the insurer carried out a proper investigation of the claim before making its settlement. The insurer's calculations were sent to Premier and it has not provided any convincing reason they can't be relied on.

The insurer said the insurance should have been for revenue sum insured of £1.3million. Based on this, the insurer deducted £118,925.42 from S's settlement for underinsurance. I have not proposed that Premier pay this figure. I remain of the opinion, as set out in my provisional decision, that even if Premier had explained the revenue sum insured properly, there would have been some underinsurance, as S said it needed cover for £1million.

I therefore worked out the same rate of reduction as the insurer applied (which was: loss of revenue x sum insured, divided by the actual annual revenue). Having done so it showed that S would have received a total settlement of £113,262.31 if cover had been put in place with revenue sum insured of £1million. I remain of the opinion that Premier should pay the difference between this figure and the £28,315.58 the insurer already paid, i.e. £84,946.72. I remain of the opinion that this is what is required to put right the error made by Premier in the sale of this policy.

With regard to interest, I consider the interest payment is required to properly indemnify S for its financial loss and put it back in the position it would have been in had the error by Premier not occurred. It is not a penalty but reflects the fact S was without monies that it should have had and which I've determined should be paid by Premier, regardless of the reasons for the delay in payment.

My final decision

For the reasons set out above, I uphold this complaint and require Premier Insurance Centre Ltd to pay S the sum of £84,946.73, together with interest at 8% simple per annum from the date S received part settlement of its claim from its insurer, to the date of payment by Premier.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 21 March 2023.

Harriet McCarthy
Ombudsman