

## The complaint

A limited company, that I will call K, has complained that H.W. Wood Limited mis-sold it a business insurance policy. K says it was sold a different policy when it renewed on 1 March 2020 and if H.W. Wood had provided better advice, it would have had cover for losses arising from the Covid-19 pandemic.

Ms J1 and Ms J2, directors of K, have brought the complaint on its behalf.

## What happened

K operates as a gym and had business insurance that ran from 1 March 2019 to 28 February 2020. H.W. Wood approached K in early 2020 and offered to arrange its insurance for the following year. K took out a policy through H.W. Wood starting 1 March 2020. Shortly afterwards, K made a claim under the new policy for business interruption losses arising from the Covid-19 pandemic but the insurer said the claim was not covered.

K says the previous policy it had would have covered the claim and so H.W. Wood mis-sold the policy, as it had asked for like-for-like cover and H.W. Wood did not provide the cover requested.

H.W. Wood said that while the previous policy provided cover for infectious diseases, it didn't think it would have covered the claim. However, it did accept it had not provided a policy that was exactly like-for-like. H.W. Wood says some aspects of cover under the new policy were enhanced but the business interruption cover sum insured was previously higher. It arranged for the sum insured to be amended retrospectively.

One of our Investigators looked into the matter. He thought the complaint should be upheld, as he thought the policy had been mis-sold and if K had known there was not similar disease cover, it is likely it would have renewed with its previous insurer. The Investigator therefore recommended that H.W. Wood have the claim assessed, in accordance with the terms of the previous policy and add interest to any amount to be paid.

H.W. Wood didn't accept the Investigator's assessment. H.W. Wood made a number of points in response to the Investigator. I considered everything it said but have summarised the main points below:

- K did not mention wanting or requiring Covid-19 cover and says it only saw the renewal invitation from the previous insurer in September 2022 and there is no mention of Covid-19 cover in any of that documentation.
- Covid-19 wasn't mentioned to it by K, so it cannot be criticised for not providing a policy that would cover it; and if K had discussed Covid-19 cover with the previous insurer it would emphasise that unfairness to H.W. Wood given K did not ask it to provide such cover.
- If the previous policy would cover the claim, this would only be by complete chance. The previous insurer had declined claims and it was only after the Supreme Court judgment that it was deemed to cover claims.
- It did not state it would provide K a like-for-like policy – it didn't see the details of the

- previous policy, only a policy schedule for 2018-2019 - so could not have done so.
- The circumstances concerning Covid-19 were unknown at the time its policy was arranged. It is unfair to decide this case with the benefit of hindsight and not the circumstances at the time.
  - K has provided a copy of an email sent internally between staff of K, which says they should probably check for cover for Covid-19 but this was never communicated to it before taking out the policy and has not been raised during the initial complaint.
  - K asked it to provide a quote for cover on 26 February 2020. It responded immediately asking for a copy of the renewal invitation from K's previous insurer (which it never received) and spoke to K on 28 February 2020 to arrange cover. Within 40 minutes of that call, it had provided K two options for cover. K's cover was to expire the next day and it considers the timeframe and urgency with which it had to work to arrange this cover should be taken into consideration. The fact cover was only requested at the end of the last working day before the policy expired emphasises the unfairness of the complaint against it.
  - It thinks the offer of renewal from the previous insurer was possibly rescinded or was no longer available, otherwise K would not have been seeking to arrange cover at the last minute. It has no reason to believe K would not have taken out the policy with it, even if it had been explained there was no cover for Covid-19 under this policy. If it had not taken the policy, K would have been uninsured and would have had to close until insurance was arranged.
  - If it has to meet the value of the claim it reserves the right to adjust that claim, taking account of Government loans etc.

As the Investigator was unable to resolve the complaint, it was passed to me. I issued a provisional decision on the matter earlier this month and have copied part of that decision below:

"H.W. Wood sold the policy to K 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. 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, as far as possible, for the customer having considered their demands and needs.

#### Was it an advised sale?

H.W. Wood has said this was a non-advised sale. I do not agree and I will explain why.

H.W. Wood approached K and offered to provide a quote for its business insurance. Its email to K said: "*We have negotiated a bespoke insurance offering for the entire ... group with preferential premium rates and expanded cover*".

H.W. Wood also wrote to K on 21 February 2020 stating:

*"In order to give you certainty the [policy] ... negotiated on your behalf will maintain your current limits and excess levels along with increasing cover in certain areas"*.

Stating it had negotiated bespoke coverage for K suggests that H.W. Wood has tailored the coverage to meet the specific demands and needs of K; and that K could

rely on the policy being suitable for its needs. And nothing in the quotation and summary documentation I have seen sets out that it was on an information basis only. Instead the written quotation sent on 28 February 2020 says:

*“We have assessed your demands and needs to obtain a policy that provides material damage insurance for your property as described to insurers plus loss of income following insured damage”.*

I have not seen any specific terms of engagement between K and H.W. Woods but even if this states it is offering an information only sale, having considered the information provided to K at the time, it is my opinion this was in effect carried out on an advised basis, so H.W. Wood 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.

#### Was the policy provided to K by H.W. Wood mis-sold?

Having decided that this was an advised sale, I have to determine if H.W. Wood provided clear, fair and not misleading information about the policy in order that it could make a reasonably informed decision whether to take the policy; and whether it took all reasonable steps to ensure the suitability of the policy it was offering for K's needs at the time.

H.W. Wood says the policy it provided is a standard policy for this type of risk and widely used for businesses such as K; and that while there are slight variations in wordings around the disease clause this is not material and would not render the policy unsuitable or inadequate for the risk K presented.

H.W. Wood says it acted as a reasonably competent broker and obtained a standard market policy widely used for this type of risk. The policy provided to K does cover an occurrence of any one of a list of specified diseases at the premises or within five miles of the premises. However, Covid-19 was not one of the specified diseases. So there was no cover for Covid-19 under the policy sold by H.W. Wood.

I have also seen K's previous policy document wording dated 19 February 2020, which includes cover for business interruption as a result of:

*“contagious or infectious diseases (excluding acquired immune deficiency syndrome (AIDS) or and Aids related condition) an outbreak of which a competent public authority has stipulated shall be notified to them, manifested by any persons whilst at the premises or within a 25 mile radius of it.”*

This provides much broader cover for the occurrence of diseases than the policy provided by H.W. Wood and it is possible that K's claim might have been met under this policy, if it could show there was manifestation of Covid-19 at, or within a 25 mile radius, of its premises.

H.W. Wood says it did not state that it would provide a like-for-like policy but *“it went through, in some detail, the key elements of cover in the [new] ...policy, which were different from some elements of ...[K's] previous insurance cover”* and it had offered to match K's previous policy's limits and excesses. In addition, it stated in emails at the time that it would maintain K's cover with some additional increased cover in certain areas.

In my opinion, this does imply that it was going to provide like-for-like cover. And

H.W. Wood's final response letter seems to accept it had agreed to provide like-for-like cover, as it says:

*“as part of our investigation we conducted a policy wording comparison of your ...policy wording compared to ... [the previous policy]...We agree with your complaint that the ...policy did not offer blanket like for like cover compared to the ... [previous] policy”.*

H.W. Wood acknowledged the sum insured was not the same and retrospectively amended that. It did not comment on the difference in the disease cover and why this was not considered at the time of the sale of the policy in its final response letter but stated it did not think that the claim would have been covered by K's old policy in any event.

I agree with H.W. Wood that it is right to consider what would have been reasonable and in the minds of the parties at the time the policy was taken out and not look at this with the benefit of hindsight. There is no evidence that K raised any query about the disease cover, or Covid-19 generally with ... [H.W. Wood]. I have seen the internal email, which mentions asking H.W. Wood to provide a quote and also checking cover for Covid-19 but this doesn't prove it asked H.W. Wood about such cover.

However, it does show that Covid-19, and the possible need for insurance cover relating to Covid-19, was in K's mind. Given the pandemic and the increasing number of cases at the time it provided the quote, which was just a few days before Covid-19 was made a notifiable disease in this country, I would have expected it to have also been in H.W. Wood's mind too.

As H.W. Wood has said, by around mid-March insurers were becoming aware of increasing numbers of potential Covid-19 claims and taking steps to change their wordings to exclude Covid-19 related claims. While the policy H.W. Wood recommended may have been relatively standard and the disease cover might not have ordinarily be considered a significant term, given the circumstances at the time, and the fact H.W. Wood said it discussed K's cover in detail and compared the previous policy, I think it should have done more.

While H.W. Wood did not apparently have the 2019 to 2020 documents, it had the previous year's policy documentation. Given the circumstances at the time, I think it should have discussed the possibility of claims arising from Covid-19. And, even if it did not have sight of the previous policy terms, H.W. Wood could have been clearer about the disease cover within the policy it was recommending to K. It could also have told K to check what disease cover it had on the existing policy, so that K had clear information about the cover for Covid-19 before going ahead with the policy.

H.W. Wood has also said it should be borne in mind that it was arranging the policy urgently and K would have potentially been left without any cover, if it had not arranged this policy. I do not think this absolves H.W. Wood of its basic responsibilities as an independent insurance broker.

Having considered all the evidence, I do think that H.W. Wood did mis-sell the policy, as it did not give K sufficiently clear information about a significant policy term and did not take reasonable steps to ensure the policy it was arranging was suitable for its needs.

Would K have been able to renew with its previous insurer?

Having decided that the policy was mis-sold, I have to consider what would have happened if H.W. Wood had given the right information and advice on 28 February 2020.

H.W. Wood says it was not possible to get a policy that would cover any notifiable disease by the time this cover was put in place for K, as the pandemic had become understood by insurers who were changing their policy wordings to exclude Covid-19 related claims.

I also note that an internal note on H.W. Wood's file says that K's previous insurer had not invited it to renew cover. However, I do not think that is correct. I have seen the renewal documentation sent to K in February 2020 by its previous insurer, which includes the same disease wording as the previous year (*i.e.* cover for a manifestation of any infectious disease at the premises or within 25 miles radius of the premises).

The previous insurer sent an email dated 20 February 2020 attaching the renewal documentation which said K only had to contact it before 1 March 2020 to confirm renewal of the policy.

So K may have been arranging the policy with H.W. Wood at the last minute but I see no reason to think this was because K could not renew with its previous insurer.

It seems clear to me from the evidence that K could have renewed the previous policy, with the wider disease coverage, up to 28 February 2020, if it had decided not to take the policy offered by H.W. Wood. I also think it is likely K would have chosen to renew its previous policy, if it had known that there was no cover for any Covid-19 claim under the new policy. I will explain why.

From the information I have seen, the main reason K was seeking the alternative cover from H.W. Wood was to see if it could get the same cover for a lower premium. The new policy was quoted at just over £2,000 and the renewal with its previous insurer was quoted at just over £3,000 for the year. The difference in price was significant.

However, I also note that K had made mention of cover for Covid-19 internally, so it was concerned about the possible effect of Covid-19 on its business. I think if it had known of the difference in disease cover between the two policies, it is likely K would have renewed its previous policy and would not have gone ahead with the policy offered by K.

I also consider it likely that K's claim would have been covered under the previous policy, so I think H.W. Wood should compensate K for the missed opportunity to claim under the insurance policy for its losses.

I have to therefore consider what financial loss K has suffered by not being able to make this claim. I have done so by considering the terms of the previous policy and how I think the previous insurer would have assessed K's claim.

The previous policy, said it will cover loss resulting from:

*"Murder Disease or Public Health Closure*

*Interruption of or interference with your Business in consequence of Damage as*

*insured by this Section shall include ...*

*(b) contagious or infectious human disease ... an outbreak of which a competent public authority has stipulated shall be notified to the, manifested by any person whilst at the premises or within a 25 mile radius of it."*

It goes on to say that:

*"Insurers liability under this extension in respect of each and every claim shall not exceed 10% of the sum insured (or 133.33% of the estimated amount) or £100,000 whichever is the less or unless stated otherwise in the Policy Schedule".*

The sum insured for business interruption was £700,000, over 24 month indemnity period, so the maximum claim payment would be £70,000.

In the event of business interruption covered under the above section, the policy will provide for loss of gross profit:

*"Gross profit Means amount by which*

*(1) The sum of the amount of the Turnover and the amounts of the closing stock and work in progress shall exceed*

*(2) the sum of the amounts of the opening stock and work in progress and the amount of Uninsured Working Expenses".*

The policy also states:

*"Basis of payment... the amount payable as indemnity thereunder shall be*

*(i) in respect of reduction in turnover the sum produced by applying the Rate of Gross Profit to the amount by which the Turnover during the indemnity period shall fall short of the Standard turnover in consequence of the damage... less any sum saved during the indemnity period in respect of such of the charges and expenses of your Business payable out of Gross Profit as may cease or be reduced in consequence of the Damage".*

Standard turnover being the turnover in the preceding 12 months immediately before the damage. And rate of gross profit *"means rate of Gross Profit earned on your Turnover during the financial year immediately before the date of the Damage".*

K has calculated what it considers it has lost from March 2020 up to February 2021 as, even though the business interruption losses continued after that date, it accepts that the insurer would have changed the policy terms meaning it would not be covered after this policy year ended. However, the policy provided a maximum indemnity period of 24 months for business interruption, so I think cover would have extended beyond the end date of this contract in February 2021, if the insured peril continued.

The insured peril that would have triggered cover under the policy was the manifestation of Covid-19 within a 25 mile radius of K's premises. I think it likely that after the last lockdown, which started in January 2021 and ended in April 2021, there were no further losses caused by manifestation of the disease within the relevant policy period. That's because I think any further losses due to Covid-19 would have been due to manifestations of the disease which occurred after the policy would have ended and so not been covered. So, I think the total indemnity period is likely to be from March 2020 to April 2021.

K said that in the period March 2020 to February 2021 it lost £130,584.41 in income. K also says it received several grants and furlough payments totalling £90,666, so it put its total net loss of profit at £39,918.41 over the 12 months. However, whilst we consider insurers can take account of the furlough payments K received when assessing the loss of gross profit, as they represent a saving in wages costs, the local Government grants K received should not be deducted. These amount to £36,000 from the information I've seen.

K also says there was an upward trend in business but I am not persuaded that it is reasonable to make any adjustment to reflect an upward trend. This is because while there were fluctuations in gross turnover in the preceding 12 month period the average gross turnover in the period March 2019 to February 2020 inclusive was approximately £28,000, and in February 2020 it was £27,210.21 and March 2020 it was £28,665.32. I also note there was higher gross turnover than this in April, September and October 2021 and January 2020... So while there were fluctuations and K says March 2020 was the first month it broke even, I can't see there was a consistent upward trend in business.

K also said it had made some savings in normal costs for marketing, electricity and water bills but overall it had incurred additional costs of working of just under £11,000 from March 2020 to February 2021. This includes around £2,500 for additional cleaning costs, £1,000 for health and safety equipment and £8,419.04 in legal fees in relation to the deferral of rent.

However, the policy schedule stated that additional costs of working were not insured, so I do not consider that these can be taken into account. And as stated above, the policy states the basis of payment will be based on the difference in turnover/income in the indemnity period compared to the preceding 12 month period. So even though the additional costs might affect the net profit K earned in this period, they are not covered.

However, the insurer would be entitled to deduct the savings, which appear to be £1,160 for water, £1,605 for electricity and £320 for marketing, so a total costs saving of £3,085.

K says the loss of net turnover was £130,584.41. Having deducted the furlough payments of £58,602 and costs savings of £3,085, this means a loss of net turnover of £68,897.41.

I consider it likely there were other wages savings, as K says that it topped up the furlough payments for three members of staff, so they received their full wages, which suggests it did not top up the wages of other members of staff. This would be a saving on its normal costs.

K has confirmed that in the year 23 March 2020 to 28 February 2021, it paid £8,388.61 less in wages than the same period in the previous year. So this would bring the loss of net turnover to £60,508.80.

This has all been calculated from 23 March 2020 to 28 February 2021 (a period of 342 days) and equates to an average loss of around £176 per day. But, as said above, I think the indemnity period would have been up to 12 April 2021.

The indemnity period would then go from 342 days to 385 (43 days more). If I pro

rata the loss, it would be £68,116.63 for the period March 2020 to April 2021. I think this is fair, as the premises could not open until 12 April 2021, so its losses are likely to have been the same in the period from February to April 2021.

This might not be exactly how the insurer would have calculated K's loss but the opportunity to have this assessed by the insurer has been lost due to the mis-sale of the insurance policy to K.

I have therefore considered what I think the fair and reasonable outcome is, having regard for all the circumstances and consider that H.W. Wood should pay compensation of £68,116.63, less any excess that would have applied under the previous policy.

I also have to consider whether interest should also be added to this amount, given that if K had been able to make the claim to its insurer, it is likely that it would have been settled some time ago. In relation to an ongoing claim of this nature, it is reasonable that an insurer waits for losses to accrue before making settlement. However, it is not necessarily reasonable that an insurer wait for the end of an indemnity period before making settlement.

Generally speaking, I would expect regular monthly payments to be made. It is also reasonable that an insurer will need some time to assess any claim and make a settlement. I consider a reasonable time to do this on a claim of this nature would be around a month from when the claim is claim.

So, if K made a claim immediately it was required to close, the first payment would not have been before May 2020. And the whole settlement would likely have been paid by February/March 2021. K has also told us that it took out a Government 'bounce back loan' of £50,000 in May 2020. As part of this loan was for the money that K should have received from its insurer, I think it is relevant.

I understand interest is not charged on the bounce back loan for the first 12 months and thereafter interest is charged at 2.5%. So K would have started to pay interest of 2.5% on this amount from May 2021.

Having considered everything, I therefore don't think H.W. Wood need pay interest until May ...[2021], as K had the loan for more than the claim amount at 0% interest until then. After that date, I think it would be fair and reasonable for H.W. Wood to [pay] 2.5% simple interest per annum on the whole settlement as due to H.W. Wood's error K was without money it should have had."

For the reasons set out above, I concluded that I intended to make H.W. Wood pay K the sum of £68,116.63, less any excess that would have applied to the business interruption claim under K's previous policy, as compensation for the mis-sale of its insurance policy; plus interest at 2.5% simple per annum on the whole settlement amount from the date interest became payable on K's bounce back loan (in May 2021) until the date H.W. Wood makes payment.

## **Responses to my provisional decision**

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

K has responded and confirmed it has nothing further to add.

H.W. Wood has also responded. It does not accept my provisional decision. It has made a number of comments, which I have summarised below:

- On 27 February 2020, Covid-19 was daily headline news and the Government had been advised to expect 80% of the UK population to become infected.
- On 28 February 2020, the first UK case had been transmitted within the UK and it was the worst stock market trading week since 2008.
- On 5 March 2020, only a few days after the insurance was put in place, Covid-19 was designated a notifiable disease in the UK.
- The pandemic was getting worse each day and all this caused the UK insurance market to start imposing “*blanket restrictions on all types of policies relating to anything arising from Covid-19, to minimise their exposure and essentially shutting the door to any possibility of negotiating such cover*”.
- So while the deadline for K to accept the quote from its previous insurer was on 28 February 2020, it is likely it would have imposed an exclusion for any Covid-19 related claims if K had contacted it that day to renew.
- It therefore does not think that K would have been able to renew the previous policy on the same terms; and given the circumstances at the time it is unfair and harsh to require it to effectively provide K with Covid-19 cover when such cover was not available by the end February 2020.
- This would be “*out of step with the well-known legal principle of causation*” as even if it did mis-sell the policy it recommended to K, it was not the cause of K’s loss.

### **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 considered in my provisional decision whether it was likely that K could have renewed the previous policy and concluded that I thought it likely that it was still available to K to renew up to 28 February 2020, if it had chosen not to take the policy proposed by H.W. Wood.

I agree that the pandemic was becoming more serious at that time. In my provisional decision I referred to an internal email provided by K which mentions asking H.W. to provide a quote and also checking cover for Covid-19. So it was in K’s mind at the time. I also agree it would have been in the minds of any insurers. It should also have been in H.W. Wood’s mind, which is why I concluded that it should have been clearer about the disease cover within the policy it recommended to K and told K to check what disease cover was provided with its previous policy as well.

I also accept that some insurers might have been starting to impose exclusions relating to Covid-19 from end February 2020. However, it was not the case that all were and there is no evidence that K’s previous insurer did so. The previous insurer had offered the policy to renew on the existing terms and had not made any suggestion that the was no longer available to accept. K had until 28 February 2020 to renew that policy.

I remain of the opinion therefore that it is more likely than not that K could have renewed with the previous insurer and would have done so, if it had been alerted to the fact the disease cover in the two policies differed. I also remain of the opinion I think it is more likely than not that the claim would have been covered under the previous policy.

H.W. Wood has not made any comment on the way I calculated the financial loss K suffered as a result of this. And K has not provided any further information about this either. I

therefore see no reason to change my provisional decision that H.W. Wood should pay the sum of £68,116.63, less any excess, together with interest.

### **My final decision**

For the reasons set out above, I uphold this complaint and require H.W. Wood Limited to do the following:

Pay K the sum of £68,116.63, less any excess that would have applied to the business interruption claim under K's previous policy, as compensation for the mis-sale of its insurance policy; plus interest at 2.5% simple per annum on the whole settlement amount from the date interest became payable on K's bounce back loan (in May 2021) until the date H.W. Wood makes payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask K to accept or reject my decision before 27 April 2023.

Harriet McCarthy  
**Ombudsman**