

## **The complaint**

P complained that Global Re Broking Solutions Ltd “GBS” mis-sold an insurance policy to cover them for their business premises and contents. GBS were acting as P’s broker in the sale of the policy.

## **What happened**

GBS acted as a broker or intermediary in the sale of an insurance policy to P. GBS asked P to complete a form setting out various details about the business. GBS used these details to recommend insurance cover for P and then arranged it with the insurer.

P carried out their daily business by selling products in a shop. Unfortunately, P suffered at the hands of criminals who broke into the shop and vandalised it. P said their business is no longer a going concern.

P made a claim under the policy. However, when the insurer validated the claim, it identified that the nature of P’s business wasn’t accurately disclosed to it when the policy was taken out. Had the insurer known about the full nature of the business, it said it wouldn’t have insured P as the risk was seen as too high. So, the insurer voided the policy, and it didn’t consider the claim.

P doesn’t think GBS fulfilled its responsibilities as broker when it sold the policy. P didn’t think GBS did enough to understand their business and didn’t think it had done a satisfactory job at representing P when arranging the insurance. P wants GBS to indemnify them for the loss they’ve suffered.

Our investigator decided to uphold the complaint. He didn’t think the broker had asked enough questions or clear enough questions of P. He didn’t think the information collected was sufficient for GBS to reasonably represent the risk to the insurer of covering P. So, he thought GBS should step into the insurer’s shoes and settle the claim. GBS disagreed, so the case has been referred to an ombudsman.

## **My provisional decision**

I made a provisional decision on this on 8 June 2023. I said:

*“Before I share my decision on this complaint, I wanted to clarify this complaint is against the broker, so I won’t be considering any of the actions carried out by the insurer. My decision will only consider whether the broker acted reasonably in arranging the sale of the policy.*

*The policy was voided by the insurer, as when P came to make their claim, the nature of their business was inconsistent with what was presented to the insurer. So, I’ve considered the process that GBS followed to gain assurance it had presented the correct details to the insurer to properly insure P.*

*GBS asked P to complete an “Insurance Factfind” form. So, I’ve reviewed the form to see what questions were asked about the nature of P’s business and what specific questions*

were asked to understand any inherent risks in insuring that business. The form asks some generic questions about the premises, security, financial details and insurance cover needs. The form is extremely brief – its three pages with an additional blank page for any other information.

In the other information section, P provided a high-level description of what the business was using its own words. I don't think P would've known exactly what information would've helped GBS fulfil its responsibilities. I don't think it was P's role to know this. I think the form is limited. Given the role of the broker is to represent P to ensure their insurance needs are properly met, I don't think there is evidence to show GBS has fulfilled this role reasonably. I don't think GBS has collected enough information to accurately represent the risk to the insurer. I think it was GBS' responsibility to define what information was collected from P.

I can see GBS also held a call with P around this time. It would've been helpful to listen to this call as it may have provided further evidence of what was discussed during the sales process. It's generally seen as good practice in the industry to record these calls for many purposes, such as this sale to check back on facts. Unfortunately, GBS said it didn't record the call. GBS and P disagreed on what was discussed on this call. However, as the call isn't available to listen to, I have relied on the evidence that was collected (i.e., the "Insurance Factfind" form).

I can see the account executive from GBS who was on the call did make a note to inform a colleague about part of the call. She said "P did mention food supplements during our initial conversation, but I didn't press [P] on the nature of the ingredients of the 'food supplements' which perhaps I should have. I was advised the retail unit would be selling soft drinks, confectionary and food supplements which I believed to be vitamins, meal replacements drinks etc, in my ignorance I have no knowledge of any CBD products or their uses so it wouldn't occur to me that they would or could be deemed a supplement".

Whilst I can't make a judgement on the call itself, I think this note does further add evidence to the limited information collected on the form. I think it provides evidence that P's business wasn't fully understood by GBS when it arranged insurance for them. The account executive has admitted she should've asked more detailed questions and she has shown she didn't understand all the answers given.

I think it's clear GBS didn't do enough to understand the business requirements it was representing or the limitations of the policy it was recommending. The two sides of the equation didn't match. If GBS had done its role properly it would've known the specific risk factors the insurer needed to know and it would've made sure it captured this information from its client, P. GBS were the expert in this process, I don't think it was reasonable for GBS to expect P to know what was required and to put all these details on the free form section of the "Insurance Factfind" form.

The insurer said had it known about the risks, it wouldn't have offered cover. I haven't seen any evidence provided to show what P was selling was illegal. I've seen a Police Report that covers the incident, so I would've expected any illegal activity to have been identified there. On this basis, I don't have reason to think P wouldn't have managed to get insurance elsewhere with a different provider. No evidence has been provided to show P wouldn't have gotten cover somewhere, so I think P could reasonably have expected to have his claim paid.

I don't think GBS has done its role reasonably. I think it's likely P would've attained insurance elsewhere had the facts been properly presented to an insurer, so I intend to uphold this complaint as GBS' shortcomings has caused financial consequences for P. I think GBS has mis-sold the policy. I don't think it was appropriate for P.

*I intend that GBS settle the claim in line with the remaining terms and conditions of the voided policy. I think this is fair, as this is the insurance P thought GBS had arranged for it. It's reasonable as it limits the liability for GBS in the same way as the policy would've done for the insurer.*

*However, I appreciate GBS doesn't normally settle claims and in this case I don't think it's easy to calculate a monetary settlement as further investigation is required. It's worth noting that if there are any difficulties in agreeing the settlement, any subsequent complaint may not be in the jurisdiction of our service.*

*Therefore, I intend to hold GBS liable for the payment of P's claim. I think the fairest way to proceed is to get GBS and P to agree to jointly choose and instruct (at the expense of GBS) a loss adjuster to assess how much, if anything, the insurer would've paid. GBS are required to settle the liabilities as set out by the loss adjuster. I intend this approach to allow GBS to fairly indemnify P. If P is prepared to put forward a monetary figure GBS would accept before getting an expert report commissioned, then this would remove the need to appoint an expert and would provide a more amicable closure to these claims".*

## **Responses to my provisional decision**

GBS disagreed with my provisional decision. It provided a detailed response which I will summarise:

GBS said "*P did not present themselves accurately or honestly to GBS*". It said, "*it is only when a prospective policyholder provides full and open disclosure of their business activities, that a broker can do their job properly in presenting that risk to the insurance market*". GBS said that it reasonably didn't know the confectionary store sold anything out of the norm.

GBS said it takes further issue with the true extent of any such losses claimed. It has provided CCTV footage to support its view. GBS said it doesn't believe there are circumstances where a valid business interruption claim would pay out on the fact of these incidents.

P didn't respond to my provisional 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.

I appreciate the efforts GBS has gone to explain why it doesn't think P disclosed accurately the nature of their business. However, I don't think it has provided any new information here that I didn't consider in my provisional decision, so I maintain my decision to uphold this complaint.

GBS has disputed the losses P has claimed for. I'm not a loss adjuster, so it's not my role to investigate a claim and validate any losses that have taken place in the context of the terms and conditions of the policy. That's why I think the most appropriate course of action is for the claim to be investigated. Given the circumstances, I think this is best done by both parties jointly agreeing who the loss adjuster should be. Or alternatively as I set out previously, if P is prepared to put forward a monetary figure GBS would accept before getting an expert report commissioned, then this would remove the need to appoint an expert.

## **My final decision**

My final decision is that I uphold this complaint. I intend Global Re Broking Solutions Ltd to:

- Agree with P and jointly choose and instruct (at the expense of GBS) a loss adjuster to assess how much, if anything, the insurer would've paid in these claims. GBS are required to settle the liabilities as set out by the loss adjuster. If P is prepared to put forward a monetary figure GBS would accept before getting an expert report commissioned, then this would remove the need to appoint an expert.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 26 July 2023.

Pete Averill  
**Ombudsman**