

The complaint

R, a limited company, has complained that it was mis-sold a business insurance policy by Aon UK Limited.

Mr P, a director of R, has brought this complaint on its behalf.

What happened

R runs two separate leisure businesses. It took out a commercial insurance policy through its broker Aon for the first business in January 2017. In August 2018 it asked Aon to arrange separate cover for the second business on the same basis as the existing cover for the first business.

In 2020, R made a claim to the insurer for its business interruption losses after its businesses were required to close during the lockdown restrictions. Initially the insurer declined both claims. It later accepted the claim for the first business under the Non-Damage Denial of Access (NDDA) section of the policy. It didn't accept the claim made in respect of the second business on the basis that this policy didn't include NDDA cover.

R complained that Aon had mis-sold it the policy for the second business as it hadn't told it that the policy didn't include NDDA cover. Aon said that the renewal report it had sent R in August 2019 showed that the cover didn't include the NDDA extension. Aon said R didn't specifically request this extension and was happy to proceed on the basis of the terms set out in the renewal report.

R brought a complaint to this service. Our Investigator recommended the complaint be upheld. He didn't think Aon had acted fairly. He thought Aon should have identified that the policy didn't include NDDA cover and either have raised this with the insurer or advised R of this difference in cover. He recommended that Aon should pay R £50,000 being the likely amount which the insurer would have paid out in settling a claim if NDDA cover had been in place.

Aon said it seemed the insurer was changing the availability of NDDA cover for different clients and didn't highlight the change to it at the time. It said R was not concerned with NDDA cover which was an add-on provided by certain insurers.

As Aon didn't agree, the matter has been referred to me.

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.

Under the Insurance Conduct of Business rules when selling an insurance policy, a firm should specify its customer's demands and needs. It should also propose a policy which is consistent with those demands and needs. Aon sold R a policy on an advised basis. That

means it had to take reasonable steps to ensure the suitability of its advice. It also had a general duty to provide advice that was clear, fair and not misleading.

In this decision I'm going to focus on the August 2019 renewal of the policy for the second business as that was the policy in force at the time of the claim. I have taken the previous events into account to the extent they form part of all the circumstances of the complaint.

The policy that was due to expire in August 2019 did not have any NDDA cover. Aon sent R a report on the renewal terms. On page 27 of the report under the heading "*Business Interruption*" it said that there was cover for:

"Loss resulting from an interruption to the business following loss of or damage to the insured property arising out of the Insured Risks as defined below."

R asked Aon to renew the policy on the basis of the terms set out in the report. The policy renewed on 19 August 2019.

The policy covering the first business provided cover for business interruption as a result of:

"Denial of access (non-damage) cover

We will cover you for any loss insured by this section resulting from interruption of or interference with the business where access to your premises is restricted or hindered for more than the franchise period shown in your schedule arising directly from:

The actions taken by the police or any other statutory body in response to a danger or disturbance at your premises or within a 1 mile radius of your premises...

Provided that

- 1. The insurance provided by this cover shall only apply for the period starting with the restriction or hinderance and ending after 12 weeks during which time the results of the business are affected..."*

This provides much broader coverage than the policy for the second business and it's likely that R's claim for business interruption losses arising due to Covid-19 would have been met under this policy.

We asked Aon why the insurer didn't include the NDDA cover in the policy for the second business. Aon said according to the insurer this extension was optional and chargeable. It wasn't included because it wasn't requested at the time of quotation. We also asked why Aon didn't identify that the two policies weren't the same and tell R that the cover wasn't like for like. Aon said it had requested cover on a like for like basis and the insurer didn't highlight the difference in cover to it. It said:

"Prior to Covid and the March 2020 lockdown this element of cover was deemed to be a relatively minor extension, with the benefit of hindsight this position is now very different. At the time, NDDA cover was not something that was of particular importance to clients, brokers or insurers, and not something that would have been given specific attention."

I agree with Aon that it is right to consider what would have been in the minds of the parties at the time the cover was taken out and not look at this with the benefit of hindsight. But the fact remains that R wanted cover that was like for like with the policy for its first business and that's not what it got.

Having considered all the evidence, I think that Aon did mis-sell the policy to R as it was evident that at the outset R wanted the same cover as it already had for the first business. I haven't seen anything to suggest that R's demands and needs in this respect had changed by the time of the 2019 renewal. Aon did not identify or give R clear information about how the new policy differed from the policy in place for the first business.

Having decided that the policy was mis-sold, I need to consider what would have happened if Aon had drawn R's attention to the lack of NDDA cover in August 2019. Aon has told us that the same insurer would have agreed to add the NDDA extension if it had been requested at that time and that would have led to an increase in the premium. It would have expected the insurer to apply a sub-limit of £50,000 for that cover.

The insurer has not been able to tell Aon how much it would have charged for the NDDA extension if that had been requested at the August 2019 renewal. From what I have seen, the extra premium would likely have been modest and since R was already paying for the first business to have this cover, I think it would probably have wanted to have it added for its second business too.

The next thing I need to look at is what financial loss R has suffered by not being able to bring a NDDA claim in respect of its second business. I have done so by considering the terms of the policy for the first business. The sum insured under that policy was 100% of the sum insured (£535,000) or £50,000 whichever is less. So the maximum claim payment would have been £50,000.

In the event of business interruption covered under this section the policy provides for loss of gross profit. The term "*Gross Profit*" is defined as:

"The amount by which the sum of the turnover, closing stock and work in progress exceeds the sum of the opening stock, work in progress and uninsured working expenses.

The amounts of the opening and closing stocks (including work in progress) will be arrived at in accordance with your usual accounting methods with provision being made for depreciation."

Our Investigator calculated that R's loss of gross profit for the indemnity period was over £230,000. He sent a copy of his calculations to both parties. Neither party disagreed with them. So I think it's reasonable to conclude that R's loss exceeded the policy limit of £50,000 and that if it had not been mis-sold the policy by Aon, it would have had cover in place that would have paid it £50,000 for the losses it suffered during the first lockdown. To put things right I think Aon should pay this amount to R.

My final decision

For the reasons set out above, I uphold this complaint and require Aon UK Limited to pay R £50,000.

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

Elizabeth Grant
Ombudsman