

## **The complaint**

N, a company, complains about a commercial legal protection insurance policy sold to it by Peninsula Business Services Ltd ('Peninsula'), alongside a service agreement.

N says the policy was mis-sold.

## **What happened**

N was engaged in a dispute with a former employee which was being pursued through the Advisory, Conciliation and Arbitration Service (ACAS).

As N didn't have a Human Resources department able to deal with a claim like this, it got in touch with Peninsula for help to protect its position.

Peninsula sold N a service agreement together with commercial legal protection insurance. The subject of this complaint is the sale of the commercial legal protection insurance policy. N says that Peninsula led it to believe the policy it was taking out would cover any awards made against it at Employment Tribunal in the current claim brought by its former employee, whilst Peninsula says it made clear what the policy would cover and this situation wasn't one that would be capable of that.

Our investigator considered N's complaint and concluded it should be upheld. She thought that the policy had been missold and that Peninsula needed to return the policy premium to N together with interest at 8% per year simple. Neither party agree so the matter has been passed to me to decide.

## **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.

Having done so, I am upholding N's complaint for broadly the same reasons reached by the investigator. I'll explain why.

As I understand it the policy was sold in person on a non-advised basis. That means that Peninsula needed to give N enough information to allow it to decide whether to take the cover out, but it didn't need to ensure it was suitable for its needs and circumstances- that was a decision N needed to make for itself.

I've thought about what both parties have said and the evidence in this case. It's Peninsula's position that the information N was given about the policy was clear and that at no time was any information given that suggested Tribunal awards would be covered for matters predating the policy. Peninsula relies on the Insurance Product Information Document (IPID) which sets out that matters outside the period of insurance aren't covered. They also say N signed a declaration confirming they had read the important information of the contract and the IPID as well as had the opportunity to ask questions about and check its understanding of the policy.

In addition, Peninsula has produced witness statements from two of its representatives who were present at the meeting. Those statements essentially say that at no time did they advise that Tribunal awards would be covered by the insurance sold alongside the service agreement. One of those statements talks about the representative giving an analogy of car insurance not covering a policyholder for an accident which had taken place before entering into the insurance, but that it would cover future claims.

N says that Peninsula's representatives led it to believe that any Tribunal award would be covered by the insurance purchased alongside the service agreement. And because it wanted to be satisfied this was correct it emailed the representative after the meeting to confirm the matter. The email exchange reads as follows:

*"Can I check if the insurance for the tribunal award covers the current case we discussed yesterday?"*

Peninsula then responded to another point on the same email, so N sent a further email chasing for a response. It said:

*"Can you shed light on my other question highlighted in my original email for clarity?"*

The response from the Peninsula representative said:

*"Apologies- yes it does it covers you for any early conciliation we may need to complete via ACAS and also for any future tribunal cost (legal bundle, opening and closing statement, defence etc)".*

Having considered the complaint and supporting documents in their entirety, I have no doubt that the representative for Peninsula was intending to set out what the service agreement covered. But the answer he gave led N to believe that Tribunal awards were covered by the insurance, which is the question N specifically asked.

I appreciate the evidence Peninsula has provided and I accept that it is possible information was given that suggested the insurance wouldn't engage in relation to the specific dispute N was seeking assistance with, but I also find that unlikely. I say so because N engaged Peninsula for specific help in relation to the dispute that it was engaged in at the time. So, I don't think N would have been interested in insurance cover that wouldn't assist it with this if the dispute wasn't going to be covered by it. This is further corroborated by N seeking written confirmation on the position regarding the extent of cover. N refers to the insurance as being *"for the tribunal award"* which suggests to me that it thought that was the purpose of the cover.

Even if I'm wrong and Peninsula did tell N the policy wouldn't engage for this particular dispute, I think the misinformation it gave it in the email exchange that followed was enough to mislead N into thinking an award would be covered by the insurance. Whether that was Peninsula's intention is not relevant. That's because I think that N relied on what Peninsula said when deciding whether to take out the cover.

In order to determine that Peninsula did something wrong, I also have to be satisfied that N would have done something differently if Peninsula had not led it to believe the insurance would cover it in the circumstances of the dispute it was engaged in. In this case and given the specific help N was looking for related to this claim, I'm persuaded that it would have.

I've given thought to what this action might have been and I haven't seen anything persuasive that supports N would have been able to source an alternative policy at a similar price elsewhere that covered it for such awards. The policy N bought was for matters that

weren't known to it when the insurance was purchased so it was priced accordingly. N hasn't provided anything that supports that it would have been able to find and source an alternative policy elsewhere, even at a considerably higher cost that covered these awards. In the absence of that, I think N would have simply decided not to take out the insurance.

I accept that N might also have decided not to take out the service agreement Peninsula sold it, but I'm not considering that in this complaint. As such I think Peninsula should put things right in the way I've set out below.

### **Putting things right**

Peninsula should return the policy premium N paid together with interest at 8% per year simple from the time it was paid, until it's reimbursed.

I note that Peninsula object to the payment of interest on the policy premium on the basis that it places N in an advantageous position. I don't agree. Had Peninsula not provided misleading information then I don't think N would have taken out the policy. As such it follows that N is entitled to interest on money it would have had at its disposal for other uses.

N have also asked for a different settlement to be made to deter Peninsula from future misselling. N should note that I can't punish Peninsula for the action it took or make awards that act as deterrents- that's a matter for the regulator. I can only direct it to put things right on the facts of this specific complaint and that's what I've done here.

### **My final decision**

For the reasons set out above, I uphold N's complaint against Peninsula Business Services Ltd and direct it to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 7 September 2023.

Lale Hussein-Venn  
**Ombudsman**