

The complaint

A company that I'll refer to as G has complained that Agency Management Network Limited (AMN) did not place its Marine Cargo insurance policy when requested, which led to its claim not being covered by the insurer.

Mr T, a director of G, has brought the complaint on G's behalf.

This complaint concerns the actions of AMN's appointed representative. As AMN has accepted it is accountable for the actions of its appointed representative, any reference to AMN includes the actions of its appointed representative, although I will also at times refer to the agent as well.

What happened

G purchased business protection insurance through an appointed representative of AMN, who I will refer to as W, to start on 1 April 2020. AMN is an insurance intermediary. G said it believed that the cover it purchased included a Marine Cargo insurance policy.

G claimed on its policy with the insurer after an item it owned was damaged in transit on 3 April 2020. The insurer declined G's claim. It said there was no cover in place as the Marine Cargo policy had not been inceptioned until 6 May 2020.

G complained to AMN. It said W had confirmed that cover for Marine Cargo insurance had started on 1 April 2020, as requested, and provided documents to show a start date of 1 April 2020. G said that it only discovered that it was not covered after making the claim. G said this had led to a financial loss of around £90,000 for the damaged item, as well as causing it a great deal of stress and frustration.

AMN said that G had asked for cover for Marine Cargo insurance on 4 May 2020 and W had confirmed cover to G in an email dated 6 May 2020. It said G queried the level of cover on 22 May 2020 and then reported a claim on 28 May 2020.

Unhappy with AMN's response, G brought its complaint to our service. In addition to the points it has already made to AMN, it provided a letter it had received from the insurer which asked to interview G about what happened at the sale of the policy. The letter said that W had been arrested in relation to amending G's policy documents.

AMN said that W put cover in place when it was requested on 4 May 2020. And that, when requesting the cover, G did not declare that there was likely to be a claim until 28 May 2020, even though the incident had occurred in April 2020. AMN also said that it had pursued a

claim against the third party on G's behalf as G did not think that its business should be penalised for damage that it was not responsible for. AMN said that it had no knowledge of the insurance documents showing a start date of 1 April 2020. It said the only document it was aware of was the schedule from the insurer which showed a start date of 6 May 2020.

Our Investigator looked into G's complaint and recommended it be upheld. He thought W

had made an error in how it sold the policy and that had caused G a financial loss. To put things right he thought AMN should pay G the value of its claim, plus 8% simple interest. He also said AMN should pay G £500 to compensate for the inconvenience it had caused.

G accepted our Investigator's findings but AMN did not. It said that the emails between W and G in March 2020 were quotes and it was clear from an email on 7 April 2020 that G did not have the cover in place. AMN said that it thought G had called up to add the cover in May 2020 knowing that it needed to claim but did not disclose this information. Our Investigator provided AMN with a copy of the Marine Cargo insurance documents which showed a start date of 1 April 2020, as well as the letter from the insurer relating to W's arrest.

AMN said that the letterhead on the document showing a start date of 1 April 2020 was not on the correct letterhead and it could not find any communication from W showing that the Marine Cargo insurance had been incepted prior to 6 May 2020. AMN said it was aware that W had been arrested in relation to this, but said that the arrest was largely due to other issues. It said that if W had amended the documents then it would have done so under duress from G. AMN added that it was no longer associated with W.

I issued a provisional decision on 28 April 2023 where I explained why I intended to uphold this complaint. I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In order to reach a decision on this complaint, the key question for me to consider is whether W, as AMN's appointed representative, did anything wrong which caused G to incur a financial loss. Having done so, I intend to uphold this complaint. I'll explain why.

AMN said that the policy was sold on a non-advised basis. This means that W had to provide G with enough information which was clear, fair and not misleading to enable G to decide if the policy was suitable.

The information available from the sale of G's policies is limited. I understand that calls occurred between W and G but they were on W's mobile and therefore not recorded. So I have reached a decision on the information I have available, based on what I think is most likely to have happened.

In an email dated 12 March 2020 W refers to a meeting where cover for "every eventuality" was discussed. W went on to provide quotes for different options for cover at around £72,000 per year and £78,000 per year. I have not seen any notes from the meeting that W referred to, nor have I seen anything which sets out G's demands and needs. However, in response, G said "Can we double check that this includes; Maritime insurance, business interruption and business intervention". W replied saying, "Yes I can confirm that all of the below is insured". W said that the only thing that wasn't covered was coronavirus. There are some further emails where G said it wanted to get the price down to around £5,300 per month. W said it could do this but there would be significantly less cover and for liabilities only.

W sent G an email on 7 April 2020 setting out all of the cover provided. This did not include Marine Cargo insurance, but did include Business Interruption insurance, which includes what G referred to as business intervention. The total cost of the policy was just over £80,000 for the year. I can see that G received this email as it replied to say the company name had changed and needed amending.

AMN said that G called to request Marine Cargo cover on 4 May 2020. However, I have not been provided with this call. There are emails after 4 May 2020 in which W said that G has cover in place for Marine Cargo insurance. But I do not think that these emails show when the cover was requested.

G has provided an email which indicates that on 19 May 2020 W sent G a Marine Cargo Insurance Schedule which said that the period of cover was from 1 April 2020 until 31 March 2021.

I do not believe that it is in dispute that cover for Marine Cargo Insurance was inceptioned on 6 May 2020. However, on balance, I think that G requested the cover when buying the policy in March 2020 and W made an error in not adding the cover to the policy from 1 April 2020. I say this because G "double checked" that the quote included Marine Cargo insurance which indicates to me that it had previously been discussed. The other policies were inceptioned on 1 April 2020, including Business Interruption insurance, which was the other part of the cover G asked about when double checking the cover included.

While there was some discussion about removing cover to reduce costs, the overall cost of the policy did not reduce from the amount quoted. Therefore, I don't think it's likely that Marine Cargo insurance was removed to reduce costs and I don't think G would have wanted to have been left without Marine Cargo insurance given the risk it would incur in transporting its items around. I appreciate that Marine Cargo insurance was not included in the list of covers that W sent to G on 7 April 2020 and G did not query this. However, I think G was entitled to rely on W's email of 12 March 2020 which confirmed that Marine Cargo insurance was covered.

My view that the broker made an error is supported by W providing G with a Marine Cargo insurance schedule on 19 May 2020 which showed the cover for Marine Cargo insurance started on 1 April 2020. I have also taken into account that AMN has been unable to provide any call recordings relating to the sale of the policy and do not think it would be fair and reasonable for G to be disadvantaged by this.

For all of these reasons, I am not persuaded by AMN's view that G only called to add the cover after the item was damaged. As G has forwarded the email from W with the Marine Cargo schedule showing cover starting on 1 April 2020 attached, I am also not persuaded that G amended the document to reflect the incorrect date.

I believe that if it was not for W's error, G would have had cover in place at the time of the item being damaged. I have not seen anything from AMN to indicate that the policy would not have provided cover if it had been in place. Therefore, I intend to find that the fair and reasonable outcome to this complaint is for AMN to compensate G to the value of what it would have received in settlement of its claim as this is the financial loss W's error has caused.

G's policy covers damage to items of cargo damaged in transit. The policy says that the insurer has the option to repair or replace the insured item, so I think this is what the insurer would have done if the cover had been in place. I note that AMN initially offered to try to recover the cost of repairing the item directly from the third party. G has confirmed that AMN was not successful in doing this but if AMN did recover any money from the third party on

G's behalf it should let me know by the response date given above.

G has provided invoices for repair which total £89,597.81. I note that this includes VAT. As G is VAT registered AMN will not need to pay the VAT element of the repairs which from the invoices I believe is £5,492. I also think it is fair and reasonable for AMN to deduct the £250

excess G would have needed to pay under the policy.

Therefore, unless AMN provides me with any information which persuades me the costs set out above would not have been recoverable under the policy, or are unreasonable for any other reason, I think part of the fair and reasonable outcome is for AMN to pay G the total amount it is claiming for repairs, minus VAT and an excess. This means that to put things right AMN should pay G £83,855.81.

As G has paid these invoices I also think it would be fair and reasonable for AMN to add 8% simple interest per annum from the date G paid each invoice to the date it makes payment. This is to compensate G for being without money it should have had.

I also accept that this error has caused G some inconvenience as it has had to arrange and pay for all of the repairs itself. I agree with our Investigator that £500 is a fair and reasonable amount of compensation to reflect this.”

G accepted my provisional decision but AMN strongly disputed my findings. In summary, it said:

- It had assessed G’s needs for Marine Cargo insurance and placed the cover when requested.
- Marine Cargo insurance was not mentioned in W’s quotation email of 12 March 2020. AMN is unable to trace any of the subsequent correspondence between W and G but it does not believe that any of the emails provided by G evidence the placing of the Marine Cargo cover. There was no instruction from G to place Marine Cargo insurance until 4 May 2020.
- W sent G an email on 7 April 2020 which set out the cover that had been placed. This did not include Marine Cargo insurance and G did not question that. In the absence of a note of the conversation or a subsequent email, the best evidence of what G had requested is the email of 7 April and G’s response which only requested a name change.
- AMN did not agree that it was reasonable for me to conclude that G was entitled to rely on W’s email of 12 March to confirm that Marine Cargo insurance was included. It was for G to check the documents, as it appears to have done given that it requested a name change.
- Marine Cargo insurance would have incurred an additional cost of £4,050, which has not been paid. This is a significant cost given that G had stated its priority was to keep monthly costs low.
- W placed the cover as requested on 4 May 2020 and sent G a letter dated 6 May 2020 clearly stating that the cover started from 6 May 2020. AMN would have expected G to query the cover if it had been provided with contradictory schedules.
- AMN cannot find any record on its system of the email from W to G dated 19 May 2020 showing the policy had a start date of 1 April 2020.
- There is no record of G disclosing the damage or the potential claim prior to the call on 4 May 2020.
- AMN did not agree that the policy would have provided cover. The policy included a clause which required the insured to notify the insurer of the damage as soon as

reasonably possible. AMN said G appears to have been aware of the damage on 3 April 2020 but did not inform AMN of the damage until 28 May 2020 and this may have prejudiced the insurer's position.

- AMN agreed that, in the event of it being required to compensate G, it should not be required to pay the £250 excess or the VAT element. It also said the amount should be reduced by the outstanding £4,050 premium.

I asked for G's comments on whether it had paid the outstanding premium. G sent copies of payment slips which it believed showed that this premium had been paid. It said it had paid a total of £80,213.04.

I also asked G for evidence that it had Marine Cargo insurance in the previous policy year and for a video from its system opening the email dated 19 May 2020 and the attachment of the schedule showing a cover start date of 1 April 2020. G provided this evidence and the video clip was provided to AMN for its comments.

I asked AMN for evidence from its system showing that the letter from W to G dated 6 May 2020 had been sent; as well as screenshots showing the searches it had carried out to locate the email from W to G dated 19 May. I also asked AMN for a breakdown of the premiums for the cover placed for G.

AMN did not provide the requested screenshots from its system nor did it provide any comments on G's video clip. It provided a breakdown of premiums which totalled £77,280 plus interest at approximately 4.5%. AMN said G owed it a further £4,200 for another Marine Cargo policy which it had subsequently placed. AMN added that it was contacting the third party responsible for the damage to ascertain whether G had recovered any of its losses from them.

Before reaching a final decision, I sent both parties an email dated 20 July 2023 in which I set out my provisional findings on the further information I had received. I said:

"I thank both parties for their comments following my provisional decision and subsequent email.

Further information has been provided. And while this does not change the outcome I intended to reach in my provisional decision, I am giving both parties an opportunity to respond to my reasons for this.

I asked G to provide a video showing how it accessed the message from W, including access to the attachment showing that the policy commenced on 1 April. I have not seen anything in this video clip which persuades me that it is likely that the email has been amended by G. AMN has been provided with this video and has been given an opportunity to comment. I understand AMN said it has issues with its software but our Investigator sent the clip on 21 June 2023 so I think AMN has had sufficient time to view the clip.

I also asked AMN to provide evidence from its IT system to support that it had looked for an email from G's broker dated 19 May 2020 as well as evidence that the letter showing that cover started on 6 May 2020 had been sent. I have not been provided with this.

AMN said that G's policies were funded by a loan which totalled £77,280.00, plus interest of about 4.5%

The funding covered the following:

- 1 x Commercial Motor Fleet Policy - £47,200
- 2 x Commercial Combined Policies - £28,326.50
- 1 x Property Owners Policy - £1,753.50

Total amount funded

£77,280.00

This amount, when adding interest to the loan, is consistent with the quote provided by G's broker. This reinforces my belief that it is most likely that G's broker did not include Marine Cargo insurance when quoting and made an error when confirming in the email of 12 March 2020 that the cover included marine insurance. Taking everything into account, I remain of the view that it was reasonable for G to rely on this information and believe that cover for marine insurance was included. G has also provided its insurance policy for 2019-2020 to support that this is cover which it would have wanted.

Therefore, I intend to require AMN to compensate G for its loss.

AMN said the premium for the marine cargo policy remains outstanding, as does a separate Marine Cargo policy which was inceptioned later.

G said it paid £80,213. This is consistent with the amount AMN believes has been paid when adding interest to the premiums set out above. I understand G believes that it has paid for the Marine Cargo policy but I don't think it's likely that it did. I think it's more likely than not that even though W confirmed that the quote included Marine Cargo insurance, this wasn't the case. I think it is fair and reasonable that G pays for the policy as this is a cost it would have incurred if its broker had not made an error. Therefore, AMN can deduct £4,050 from the £83,855.81 I intend to require it to pay. The other outstanding premium for the separate Marine Cargo policy is not part of this complaint and therefore I am not going to allow AMN to also deduct that amount.

This means that I intend to require AMN to pay G £79,805.81, plus 8% interest from the date G paid the invoices until the date AMN makes payment, plus £500 compensation for the unnecessary inconvenience."

I asked both parties to respond with any further comments by 2 August 2023.

G responded to say that it had no further comments. AMN did not respond.

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.

As there has been no further comments in response to my email of 20 July 2023, I have not been persuaded to depart from the provisional findings I reached.

For the reasons set out in my provisional decision and subsequent email of 20 July 2023, I remain of the view that AMN's agent's error led to G's Marine Cargo insurance policy not being placed when it should have been. If not for the error, I believe that G would have bought Marine Cargo insurance and would have had the cover in place when making the claim.

AMN does not believe that G's insurer would have paid the claim, given the late notification. I have considered this point but I am not persuaded by it. The notification clause that AMN has pointed to says:

"You must notify Us as soon as reasonably possible using the contact details supplied in the Schedule, of any Damage likely to give rise to a claim under this policy. You will still be covered if You fail to give such notification provided that the incident is notified to Us in writing within three months from the time You first become aware of it provided that in Our opinion the delay in notification:

A) has not prejudiced the investigation or mitigation of the claim and

B) has not materially influenced the renewal of, or Our underwriting of this policy."

AMN said G became aware of the damage on 3 April 2020 and notified AMN on 28 May 2020. This is within the three months set out by the clause above. I have noted AMN's point that the notification might have prejudiced the insurer's position but it has not provided me with anything to persuade me that would most likely be the case. Therefore, it remains that I believe AMN's agent's error caused G a loss it would not otherwise have had; and the fair and reasonable outcome is for AMN to compensate G for the loss caused by the error.

Putting things right

The fair and reasonable outcome is for AMN to compensate G for its losses by paying it £79,805.81, plus interest on that amount at 8% simple per annum from the date of G paid the invoices until the date AMN makes payment. AMN should also pay G an additional £500 compensation for the unnecessary inconvenience.

My final decision

For the reasons set out above, in my provisional decision and email of 20 July 2023, I uphold this complaint and require Agency Management Network Limited to do as set out in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 12 September 2023.

Sarann Taylor
Ombudsman