

## The complaint

E, a limited company, says Xbridge Limited (trading as Simply Business) didn't tell it about changes to its legal expenses insurance policy when this renewed in 2021.

## What happened

E is a business which leases properties from landlords and lets them out. It has legal expenses insurance arranged through Xbridge on a non-advised basis. It's made successful claims on that policy. At renewal in 2021 the insurer and policy terms changed. In particular the renewed policy contained an exclusion for claims relating to *"the sale, purchase, terms of a lease, licence, or tenancy of land or buildings."*

In 2022 E claimed on its policy because it had a dispute with the landlord of one of the properties it leased. The insurer turned down the claim as it thought the above exclusion applied. E complained to Xbridge the policy didn't cover the key thing it needed cover for. It thought Xbridge was responsible for its loss of income from the leased property. It said if insurance cover had been in place, it would have been able to take legal action to regain possession of that property.

Xbridge accepted that prior to renewal it hadn't highlighted the change in wording to E. It instructed the current insurer of E's policy to ignore that exclusion and progress the claim (which included assessing whether it had reasonable prospects of success – a requirement of both this and E's previous policy). And it agreed to pay the legal fees E had incurred up until that point which amounted to £1,920. It also offered to pay a further £300 in recognition of the inconvenience E was caused by what it got wrong.

Our investigator noted the assessment of the claim which had by then been carried out concluded it didn't have good prospects of success. He said if E wanted to challenge that it would need to provide the insurer with a contrary legal opinion. But he didn't think the compensation awarded did enough to recognise the impact on E of what Xbridge got wrong. He thought that should be increased to £750. He also said Xbridge should refund the payments E had made for the legal expenses cover.

Xbridge agreed to the increased compensation and the refund (though as it wasn't able to cancel the policies said it was happy to leave the cover in place). E didn't agree. It thought Xbridge was responsible for the financial loss it had suffered and the proposed compensation wasn't sufficient to recognise this. And it challenged the rationale for the negative prospects assessment of its claim.

Our investigator explained that matters to do with the insurance claim didn't form part of this complaint. In relation to the matters that did he didn't think E had shown there was a link between the failing by Xbridge and the losses it had incurred. He said he'd move the complaint for review by an Ombudsman unless E said it accepted his view. As no response was received the complaint has been passed to me to reach a final 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 understand Xbridge arranged cover for E on a non-advised basis. So under the relevant rules it didn't need to ensure the policy was suitable for it. But it did need to provide E with clear, fair and not misleading information so it could decide for itself if the policy was right for it. And in relation to renewals the rules generally require a firm must *"take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed"*.

Xbridge has accepted that at renewal of the policy in 2021 it didn't draw E's attention to the change in the policy terms which meant that cover for claims relating to *"the sale, purchase, terms of a lease, licence, or tenancy of land or buildings"* was now excluded. And that's significant for E given the focus of its work is on the leasing and letting of properties. I also understand that prior to the change E made successful claims on its legal expenses policy. So I think this is something that would have been important to E. And it's likely that if it had been made aware of the change it would have ensured it had legal expenses insurance in place that didn't contain an exclusion like this.

I've gone on to think about whether the actions Xbridge has taken do enough to put E back in the position (as far as possible) it would have been but for the failing on its part. I can see Xbridge instructed E's current insurer to consider the claim against the policy terms disregarding the relevant exclusion. I think that does put E back in the position it would have been without any failing by Xbridge; the cover that would have been in place but for that failing is available to E.

I appreciate E is unhappy with how the insurer then progressed matters and its decision to decline the claim based on a negative prospects assessment. But that's something it will need to pursue with that insurer; it isn't something that results from what Xbridge got wrong. The requirement for a claim to have reasonable prospects of success is common to nearly all legal expenses insurance policies. And our investigator explained to E what it would need to do, in line with our normal approach, where a policyholder wants to challenge a prospects assessment.

I've gone on to think about whether the compensation for the delay in cover being put in place is appropriate. E has suggested that if cover had been available from the outset it could have taken immediate action to protect its interests and it wouldn't have lost control of the property to the landlord (meaning its subsequent loss of rental income would have been avoided).

I don't think the evidence supports that. I understand the landlord of the property issued a notice on 1 July 2022 seeking to terminate E's lease of the property. E made clear in response it didn't accept this. The landlord nevertheless took possession of the property on 14 August 2022 by changing the locks. E engaged solicitors (I understand after its claim had been declined by its insurer) who sent a letter before claim in September 2022. And in its complaint to us E said it was unhappy it was *"having to pay thousands of pounds for legal expenses to make this claim privately"*. I've not seen evidence to show that even if E's insurer had accepted the claim at an earlier date the position on prospects of success would have been any different. So the policy wouldn't have provided funding for the claim. And even if the position on prospects had been different the loss of control of the property was caused by the landlord changing the locks. I haven't seen anything to show an earlier acceptance of the claim would have prevented that.

In addition, E appears to have protected its position by responding to the notice from its landlord and engaging its own solicitors who then sent a letter before claim. So legal steps were taken in relation to the matter. As a result I can't see Xbridge can be held responsible for the loss of rental income from the property; there isn't a causal link between that and what it got wrong. The cost of employing solicitors might be linked to that but only if this is something the policy would have covered but for Xbridge's error. And given the claim was subsequently assessed as not having good prospects of success I'm not persuaded it would. But as Xbridge has agreed to refund these costs this isn't an issue I need to determine in any case.

I appreciate E was caused inconvenience by what Xbridge got wrong. I recognise it took a number of months for this issue to be resolved. But while E has suggested compensation should reflect distress the 'eligible complainant' in this case is E which is a limited company. A limited company isn't a natural person and can't suffer distress in the way an individual can. E has also suggested it suffered potential reputational damage as a result of what Xbridge got wrong. That is something I could consider but I haven't seen other evidence to support that. Taking everything into account I think £750 (in addition to refunding the solicitor's costs E incurred and the payments made for the policy) does enough to recognise the inconvenience E was caused by what Xbridge got wrong.

### **Putting things right**

Xbridge will need to reimburse E the legal fees it incurred of £1,920. It will also need to refund the amount it paid for the policy (£192.50). And it will need to pay compensation of £750 for inconvenience caused to E.

### **My final decision**

I've decided to uphold this complaint. Xbridge Limited will need to put things right by doing what I've said in this decision.

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

James Park  
**Ombudsman**