

## **The complaint**

A partnership, which I'll refer to as R complains Advisory Insurance Brokers Limited (AIB) mis-sold it an insurance policy.

Mr R who is a partner of R brings the complaint on its behalf.

## **What happened**

R carried out work for a client in 2016. In March 2023 the client notified them of proposed legal action in relation to the work. R sought assistance under the commercial legal expenses section of its policy. The insurer of its 2016 policy turned down the claim because it said that didn't include cover for contract disputes and this was only included from the 2018 renewal. R has made a separate complaint about that decision. It settled the claim with its client and complained to AIB that its policy didn't include the cover it thought it should.

AIB said the policy R held with it lapsed in June 2016 and cover wasn't in place through it until a new policy was taken out the following year. However, it accepted Mr R had wrongly been told by it in April 2023 that R did have a policy in place which included legal cover. And it offered to pay £150 in recognition of the inconvenience R was caused.

As part of our investigation R provided evidence which included a statement showing it had paid AIB for a policy in 2016. AIB accepted that was the case (the policy it said had lapsed was one which provided different cover). It said it would increase its offer of compensation to £500 given the confusion it had caused.

Our investigator reviewed the available policy wordings and was satisfied that although these contained legal expenses cover 'Contract Disputes' wasn't listed as an insured event until the policy associated with the 2018 renewal. It was unclear why it had been added then but she didn't think there was evidence to show the earlier policies had been mis-sold because they didn't include this. And she thought the £500 AIB had now offered for providing inaccurate information about what cover R had in place was fair.

Mr R didn't agree. He said when taking out cover it would have been important to R to have legal cover in place for potential disputes with clients. He queried what would have led his insurer to include 'Contract Disputes' cover in 2018. And he provided copies of policy documentation. He said historic policies and those from 2018 onwards all had the same policy number. However, the policy taken out in 2016/17 had a different number.

He thought that meant there must have been a change in relation to that policy year which meant it didn't include 'Contract Disputes' cover as this had been included for policies issued before and after that date. And he thought AIB was responsible for this because R had renewed its insurance on the same basis every year. He also queried whether 2016 was the correct date to consider in relation to the claim he made as the first point R had any indication of a problem with work it carried out was in 2018. So I need 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.

AIB has said the claim against R was made in 2023. And as legal expenses policies are issued on a claims made basis it argues that's the policy period which R's claim would fall within. So it's asked why questions are being raised about what cover was in place in 2016 as there was no claim that could have been made at that time.

The legal expenses cover R had in place for contract disputes from 2018 and subsequently requires that the date of occurrence of the insured incident happens during the period of insurance. The policy definition of date of occurrence includes "*the date of the event that leads to a claim...*". I appreciate a claim wasn't made against R until 2023 but its insurer declined the claim it then made because it believed cover wasn't in place at the time of the event leading to that claim. So the question of whether that was because of something AIB got wrong is relevant here.

I've thought first about R's argument that the policies it held before and after 2016 included cover for 'Contract Disputes' but that was omitted from the 2016 policy. I haven't seen evidence to support that. The only policy wording I've seen that includes cover for contract disputes is that from 2018 (I understand subsequent policies also included cover for this). None of the policies I've seen (whether supplied by R or AIB) for the 2016 period or prior to that do include cover for this as part of the legal expense section.

And while Mr R is right to say a policy reference number did change in 2016 before reverting back to the previous number in 2018 AIB has explained this number is a scheme reference. Its purpose is to inform the insurer the policyholder contacting them is a customer of AIB and it doesn't determine the basis of cover. I haven't seen any clear evidence to show otherwise. So I'm satisfied the policy wording I've reviewed is the one that applies to the cover R took out. And, as I've said, the legal expenses section, didn't include cover for 'Contract Disputes' prior to 2018.

I've gone on to consider whether it's as a result of something AIB got wrong that wasn't included when the policy was sold to R. I understand it first took out cover through AIB in 2011. And AIB has confirmed this was an advised sale. The relevant rules (the Insurance Code of Business Sourcebook - ICOBS) say that for an advised sale "*a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.*" In doing so it should establish the customer's demands and needs by "*using information readily available and accessible to the firm and by obtaining further relevant information from the customer, including details of existing insurance cover*".

In this case it's difficult to say whether AIB did what it should or not. It told us it no longer has any records showing how R's demands and needs were initially assessed because of the time that has passed since the original sale. I don't think that's unreasonable given it took place around 13 years ago.

And while R says it would have been important for it to have legal cover in place for potential disputes with clients it hasn't provided any further information to show that's something it made AIB aware of when the policy was sold. I'm mindful of the fact that as the sale took place thirteen years ago the passage of time will inevitably mean any recollections of what happened will have faded. I also note that, having had the opportunity to review the policy wording, R doesn't appear to have raised any concerns about coverage at the time or at any point prior to 2023.

I'm also conscious of the fact the main aspect of policy coverage related to employer's and public liability cover. I accept cover for legal expenses is something which R may well have had a need for in general terms. But I'm not persuaded the detail of exactly which insured incidents were covered by that particular section of the policy is something that would have been important to it or AIB when considering whether this cover met its needs. Taking all of that into account I don't think there are grounds on which I could safely conclude the policy AIB recommended to R in 2011 was unsuitable for it.

Even if I was persuaded on that I've not seen clear evidence there was an alternative policy available to R at that time which would have provided cover for 'Contract Disputes' that it would most likely have taken out. So I can't conclude the reason R didn't have cover for this in place in 2016 was because of something AIB got wrong.

I appreciate that cover for 'Contract Disputes' was included in the policy that renewed in 2018 (and I understand subsequently). AIB hasn't been able to provide any further information on why that was which is disappointing. However, as it doesn't appear this was something that either AIB or R was aware had taken place I think it may have reflected a commercial decision by its insurer to expand the scope of coverage its policy offered. In any event, for the reasons I've explained, there's not enough evidence for me to conclude the absence of this cover in previous policies results from something AIB got wrong.

However, I do agree AIB provided R with inaccurate information when it contacted it about this matter. It appears not to have correctly checked its records leading it to give confusing and inaccurate information about what cover R had in place. I agree that did cause R a reasonably significant degree of inconvenience as it was put to time and effort in finding evidence to demonstrate the position AIB had taken was wrong. But I think the £500 AIB has now offered during our investigation of the complaint is the right amount to put things right.

Finally, R has queried whether 2016 is the correct date to consider in relation to the event giving rise to its claim. However, the decision on claim coverage is one that has been taken by its insurer. So if there are arguments R wants to make in relation to that (bearing in mind the full definition of 'Date of Occurrence' the policy contains) those are ones it can make as part of its separate complaint against that insurer.

### **My final decision**

Advisory Insurance Brokers Limited has now made an offer to pay £500 to settle the complaint and for the reasons I've explained I think this offer is fair in all the circumstances. So my decision is that Advisory Insurance Brokers Limited should pay R £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 31 October 2024.

James Park  
**Ombudsman**