

The complaint

R complains that McCarron Coates Ltd ('MC') mis-sold it a business protection insurance policy which didn't extend to covering the risks its business was undertaking.

R wants MC to reimburse it for the loss it says it has suffered as a result of this.

R's complaint is brought by Mr G on its behalf, but I shall refer to all submissions as being its own for ease of reference.

What happened

In 2022 MC sold R business protection insurance policy intended to protect its equipment. R transported and operated that equipment as part of its business.

In 2023 the equipment was damaged whilst in use. R made a claim on the policy MC sold it which was declined by the insurer of that policy because R's cover didn't extend to damage whilst the equipment was in use, but rather only when it was in transit. R says MC were aware that its business was both to transport and operate the equipment in question, so they should have sold it cover for this, but failed to.

R is claiming for losses amounting to roughly £30,000 for the amount it paid to have the equipment repaired and for loss of income as a result of it being out of use.

Following its complaint to the Financial Ombudsman Service, MC made two offers to settle R's complaint. First, they offered to pay half the value of the estimate R had initially submitted to support the cost of repairing the equipment, which amounted to roughly £9,260. MC rejected this. Following this MC made a further offer to settle R's complaint by paying it roughly £4,500 which represented half of the policy premium R paid MC for the policy in 2022. R rejected that offer too.

Our investigator considered R's complaint and concluded MC had done nothing wrong. He said that R hadn't evidenced the losses it said it had suffered and in those circumstances, MC didn't need to do anything further. R doesn't agree so the matter has been passed to me to determine.

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 don't uphold R's complaint. I'll explain why.

R says the policy was mis-sold by MC. MC were aware that R's business consisted of both transporting and operating the equipment that was the subject of the claim R made. It's not clear to me why therefore MC didn't draw R's attention to the fact that they would not have been covered for claims for damage to that equipment whilst it was in use. I have seen a response to a question asked of MC by our investigator where MC confirms it agrees it mis-

sold the policy to R, namely by failing to sell it insurance that would engage when the equipment was in use. So, I don't think there's a dispute about this. And it appears to me that there was a failing on MC's part to make it clear to R that such cover wasn't in place in 2022.

But in order to uphold R's complaint, I would need to be satisfied that R incurred a loss that MC were responsible for. And that would be on the basis that R would have sought and taken out cover for the damage to the equipment whilst it was in use at an additional premium. R was offered insurance for the equipment whilst it was in use by MC the following policy year and after the claim it made was turned down. But R didn't take MC up on this offer. I'm not clear why this was but it could suggest R did not feel it had a need for it. And that may well have been the case the previous year, before R's claim was turned down. But even if I take the view that R would have accepted the offer of insuring the equipment whilst it was in use in 2022, I'm not satisfied that R have established they had a loss that would have been capable of being covered by an insurer in any event.

I say this for two reasons. First R has not been able to provide proof of any of its losses that I consider an insurer would require to accept such a claim. R has supplied a quotation and an invoice for repair of the equipment but no evidence it paid for this repair to happen. R has said that the repair was conducted but the payment is still owed to the company who conducted it pending the outcome of the Financial Ombudsman Service's determination of its complaint. Our investigator asked R for some form of evidence from this company to confirm the sum for repair that is still owed to it by R, but R has not been able to supply that and instead has said that it had a verbal agreement with the company and that they're not prepared to provide anything to substantiate this due to their business strategy.

Whilst that might be the case, I don't think that adequately establishes that R owes a debt for the repair of the equipment to another company nor that it has suffered a loss. An insurer wouldn't pay out a claim in those circumstances. We wouldn't expect MC to fund that sum as a loss to R if it could not be established with adequate evidence.

Turning now to the loss of income claim, R has supplied details of what they think this amounts to including the number of bookings due to be taken on the days the equipment wasn't working. But again, it has not been able to show, with evidence, how that loss has been calculated. An insurer would expect to see evidence of what income R was expecting to make whilst the equipment was out of use and what it actually made during that time. And if there was a decline in profit, some evidence supporting why this was. I would expect this to include details of bookings that were cancelled due to the machine being out of use and that any savings made on running costs were not outweighed by an evidenced loss of income.

R has been provided with ample opportunity to supply this sort of evidence. If they were presenting their claim to an insurer, I'm satisfied that the insurer would turn down their claim based on what they'd presented and there would come a point where they would not consider the claim any further and consider it to be closed.

In the absence of anything that persuades me that R would have been able to establish a quantifiable loss with evidence to an insurer had MC sold it a policy it could have claimed on, I don't think R's claim should be upheld. I haven't seen anything in this complaint that supports that even if MC had sold them a policy R could have claimed on, that such a claim would have been successful and therefore I don't think there's a loss to R that MC should be responsible for.

My final decision

For the reasons set out above, I don't uphold R's complaint against McCarron Coates Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 9 January 2025.

Lale Hussein-Venn
Ombudsman