

## **The complaint**

A limited company which I'll refer to as U complains Primassure Limited mis-sold it a business protection insurance policy.

U is represented in bringing this complaint by one of its directors, Mrs T.

## **What happened**

U has had business protection insurance arranged through Primassure since 2014. In 2023 it claimed on its policy. I understand it said its premises were no longer suitable for trading (as a result of issues with dry rot and the failure by a contractor for carry out repairs). Its insurer said for there to be a successful claim for 'Consequential Loss / Business Interruption' there needed to be physical damage to the premises which wasn't otherwise excluded. It thought exclusions for defective design or deterioration would apply here.

Mrs T said as there also was an exclusion in the 'Buildings' section of the policy for theft any claim for business interruption following that would also not be covered. And given the nature of U's jewellery business this was a significant issue for it. She thought that showed Primassure had mis-sold the policy. She also said it had previously provided inaccurate information about how labour costs should be included. And she said it wrongly told her to reduce the amount of cover insured for stock to a level below the correct amount because the value of the stock was too high for the safe U owned.

Primassure said the business interruption section of the policy would cover loss of profits resulting from theft. It didn't accept it had provided Mrs T with inaccurate information and said the sum insured in respect of stock would be the maximum amount paid out in the event of theft. Business interruption insurance could cover loss of profits in the event U was unable to trade for a period. And it provided further information on the position in relation to the safe.

Our investigator reviewed the policy terms and explained why she thought this could provide cover for a business interruption claim following a theft. And she said U's insurer had confirmed that, in general terms, what she'd said was correct. So she didn't think the policy had been mis-sold. And she didn't think there was evidence to show U had been advised to reduce its stock to a lower level than was accurate. Nor did she think the evidence showed Primassure had provided U with incorrect information about how labour costs should be included when calculating the sums insured under the policy.

Mrs T didn't agree. She said this had been an advised sale and thought that was supported by information on Primassure's website and by the correspondence she'd had with it. And it wasn't made clear to her that exclusions in the 'Buildings' section of cover impacted what would be paid out for business interruption insurance. It was essential for her business that cover was provided to replace stock in the event of a theft.

And she believed policy cover was also insufficient because it wouldn't have enabled her business to continue trading in the event of a theft as reimbursing the cost of raw materials

wouldn't have provided an income while replacement stock was manufactured. She'd been told by Primassure the business interruption section of the policy would cover manufacturing costs but she didn't agree that was the case and U's insurer had confirmed that to her.

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.

First, I appreciate this has been a very difficult experience for Mrs T and her business. She says as a result of the issues at U's premises and the decline of her claim she had to relocate and start trading from home. I know that will have been challenging and stressful for her and I was sorry to learn about that. However, I'm not considering in this decision any issues relating to the decline of that claim; that was a decision taken by her insurer (which I understand Mrs T has accepted in any event).

What I'm looking at here are her concerns about what Primassure did in selling (and renewing) the policy. And in particular her view that it didn't provide cover for a key aspect of her business. In doing so I've taken into account our normal approach which is to consider whether a respondent business did something wrong. And if it did whether that's caused a loss to the complainant the respondent is responsible for and needs to remedy.

Primassure says this was a non-advised sale. And an 'Important Information about our Service' document it provided to U at the most recent (and previous) renewals of the policy said *"You will not receive any personal recommendations from us. You will be provided with information about the products that we offer in order that you may make your own decision about how you wish to proceed. We may ask some questions to narrow down the selection of products that you will be offered"*. And it went on to explain *"We do not provide advice or a personal recommendation in relation to the suitability of this product for your individual circumstances and you will need to decide if the cover available is sufficient for your requirements."*

Mrs T doesn't accept that and believes Primassure did provide advice. And she's drawn attention to information on its website (current and historic) which she believes supports her position on that. I've reviewed that information. I appreciate the website does say Primassure understands the different needs of jewellers and has policies available which can address those needs. But it doesn't say it will recommend a suitable policy to a customer based on an individual assessment of those demands and needs.

And while it clearly engaged in some quite detailed correspondence with Mrs T about U's policy (in particular at renewal in 2022) that was in response to queries she'd raised about the way in which her policy operated. Taking all the evidence into account I think this was a non-advised sale and I don't think the contact Mrs T had with Primassure in 2022 could reasonably be said to change the basis of sale to advised.

However, in any case I'm not persuaded this issue is key to the outcome of U's complaint. That's because Mrs T's main argument is around whether the policy provided cover for business interruption (described as 'Consequential Loss of Profits' in this policy) following theft. I accept that, given the nature of U's business, that's something it likely had a need for. So a policy that didn't provide cover for that wouldn't have met its needs in that regard and might have been unsuitable for it. However, having carefully considered the points Mrs T, Primassure and her insurer have made about this I think this policy did provide cover for that. I'll explain why.

U's policy schedule includes 'Consequential Loss of Profits' with a sum insured for gross profits of £150,000. And the policy terms say *"If during the period of insurance any building or other property or any part thereof at the premises at which the Assured's business is conducted, or at any other place, or location with the prior agreement of Underwriters, be lost, destroyed or damaged from any cause whatsoever except as specifically excluded by this policy, (loss, destruction or damage so caused being hereinafter termed 'Damage') and the said Business carried on by the Assured at the Premises be in consequence thereof interrupted or interfered with, this Section will indemnify the Assured in respect of each item stated in the Schedule the amount of loss resulting from such interruption or interference."*

I don't think it's in dispute that section in itself could cover loss of profit resulting from theft. But it doesn't provide cover where the cause of the loss is specifically excluded by the policy. U's insurer turned down its claim for problems resulting from damage to its premises because it thought the cause of that was excluded by the defective design or deterioration exclusions in the 'Buildings' section of the policy. And I appreciate that section of the policy does also contain an exclusion for *'Theft or attempted theft'*.

But that's within a section of specific exclusions which only apply to the 'Buildings' section of the policy. So a theft claim which fell within that section would be caught by that (meaning it wouldn't then be covered by the business interruption section). But a claim for theft of jewellery items that U had manufactured wouldn't be considered against that part of the policy. It would potentially fall within 'Stock, Goods in Trust and Money in Transit' which covers 'Stock' and 'Money' against *"Physical Loss or Damage arising from any cause whatsoever"*. Alternatively, and depending on the circumstances, it might fall within 'Damage to Premises by Thieves' given that covers the *"property of the Assured...against damage (other than Fire) done by Thieves or persons attempting to commit Theft"*.

Neither of those sections of cover have any exclusion for theft (and it would run counter to the purpose of the insuring clause if that were to be the case). So in my view a claim for 'Consequential Loss of Profits' arising from a cause falling within one of those sections wouldn't be specifically excluded by the policy and would be one it could cover.

I've taken into account the other information Mrs T has provided and in particular an email from her insurer which says for a theft of stock claim to be covered *"the policy requires there to be physical damage to the building itself and theft is another of the listed exclusions"*. But looking at that response as a whole it appears to relate to a claim made under the 'Buildings' section of the policy. I agree that a theft claim under that section wouldn't be covered but for the reasons I've already explained I don't think the same would be true of claims under the other parts of the policy I've referenced.

And U's insurer confirmed as part of our investigation that the view our investigator set out on policy coverage (which was along broadly the same lines I've outlined) was correct. That matches with a response the insurer provided to Primasure in March 2021. At that time Mrs T asked what would happen in the event of theft as she'd need to recreate items before U could sell them which would take 12 months. The insurer said *"It would get picked up by their BI [business interruption] cover assuming that the loss occurred on the premises"*. Taking all of that into account I think it's likely this policy could cover 'Consequential Loss of Profits' as result of theft of stock. And in general terms the policy applied to the type of business U was carrying out and offered cover which it had a need for. I haven't seen evidence that any of the other significant exclusions or conditions of the policy made it unsuitable for U. And it hasn't suggested the cost was unaffordable for it.

So I don't think Primasure would have done anything wrong in recommending this policy to it (if this was an advised sale – which for the reasons I've already set out I'm not persuaded

it was). And given my findings on that I don't think being given more information about the policy would have changed U's decision to take it out either.

I've also considered the comments Mrs T has made about the calculation of the sums insured under the policy. I've reviewed the quite extensive email exchanges she had with Primassure about this in 2022. The focus of that was on what sum insured should be included for business interruption insurance to ensure that properly reflected increased costs U would incur in recreating items in the event of a claim for loss or damage to them.

Primassure sought advice from U's insurer on the right way to approach this issue which I think was reasonable. And it then sought information from Mrs T on the costs of manufacturing her items so those could be included within the sum insured for 'Consequential Loss of Profits'. I understand an increase in the sum insured for that section was agreed. Given that part of the policy includes costs relating to 'Increased Cost of Working' I don't consider the information Primassure provided about this was incorrect.

However, the policy says the basis of settlement for a claim relating to unsold stock would be *"the replacement cost price at the date of loss"*. I'm not clear if the sum then insured for 'Stock' accurately reflected the cost price of the items; I can see there was discussion over whether this amount should include labour costs and I think some of the emails Primassure sent in relation to this could have been clearer.

But I don't think U has lost out because of anything Primassure got wrong here. The policy schedule that was issued following those discussions said the sum insured for stock was £93,000 I've not seen clear evidence to show that didn't include labour costs and didn't meet U's requirements. Even if that is the case, if that amount was too low and should have been higher U would have needed to pay more in premiums to reflect that increased risk – which it hasn't done. I appreciate that in the event of a claim an inadequate sum insured for stock could have created problems for U. But as it hasn't needed to make such a claim there isn't a loss here.

As a result even if Primassure did provide inaccurate information to U about how to calculate the sum insured for stock I don't think there's anything it needs to do to put things right. I can see in emails with Primassure from earlier this year Mrs T has suggested the total value of U's stock is around £114,000. So if Mrs T considers the sum insured for this needs to be increased that's something she can discuss with Primassure if she hasn't already done so.

Mrs T also says Primassure told her to reduce U's cover for 'Stock' to a lower level than was accurate because the value was too high for the safe it was using. I've not seen clear evidence of that. Mrs T did provide information on how U operated its business including what items were stored in the safe and queried whether this met current requirements. But the information Primassure then provided to U's insurer appears to have correctly reflected those details and that was the basis on which cover was agreed. In any event, for the same reasons I've already explained, even if Primassure did get something wrong here as no claim for 'Stock' has been made I'm not persuaded U has suffered a loss as a result.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask U to accept or reject my decision before 8 January 2025.

James Park  
**Ombudsman**