

The complaint

A limited company, which I will refer to as Y, complains about the arrangement of its commercial insurance policy by Kennett Insurance Brokers Limited.

What happened

Both parties are aware of the circumstances leading to this complaint, so the following is intended only as a brief summary. Additionally, other than where necessary, I have just referred to Y and Kennett rather than any specific individual. Reference to Kennett also includes the company that Kennett took over, which was directly involved in the sale of the insurance involved in this complaint.

Y operates as a manufacturer of scientific equipment. Y also provides other services connected to this, including refurbishment. Y originally took out insurance through Kennett in 2016, and the policy renewed annually until 2019.

As a result of the COVID-19 pandemic, Y made a claim for business interruption under the policy taken out in October 2019. Y's insurer met the claim, but reduced the settlement payable due to Y being underinsured. Essentially, the insurer said that Y ought to have been insured on the basis that its gross profit, as defined by the policy, was over £800,000. The 2019 policy was arranged by Kennett on the basis that Y's gross profit was just under £430,000. Y considers that Kennett is responsible for this underinsurance.

Y's argument is largely based on a phone conversation it says took place with an employee of Kennett who I will refer to as M. Y says that M merely asked Y what its gross profit was, and did not provide any verbal guidance on how this should be calculated – even though Y apparently made it clear it was reading this information from the company accounts. Y has also raised some other points about the sale, including that there was no explanation given of trends or indemnity periods.

Kennett's position is that no verbal conversation took place in relation to the 2019 sale. And that the guidance Y was provided with in writing made it clear that "gross profit" carries a specific policy definition and gave an explanation of how this should be calculated.

Y brought its complaint to the Ombudsman Service. However, our Investigator did not recommend it be upheld. He thought Kennett had provided Y with clear information on how what gross profit meant in relation to the policy. And that Kennett was only able to provide advice based on the information Y responded with.

Y remained unsatisfied, so its complaint has been passed to me for a 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.

Having done so, I am not upholding this complaint. I'll explain why.

Firstly, I will just reiterate that the summary above is intentionally brief. Both parties have made detailed submissions, and Y has raised a number of specific points. I have considered all of these, but I will not be commenting on them all individually. This is not meant as a discourtesy, but instead reflects the informal nature of the Ombudsman Service. I have instead focussed on what I consider to be the key issues.

Kennett had a number of obligations when arranging Y's policy. These included obtaining relevant information from Y and then using this to produce a demands and needs statement, and recommending a policy that met those demands and needs.

In terms of the obtaining of information, Y has been adamant that there was a conversation with M. Looking at the exchange of emails that took place in 2019 though, there is no indication of any conversation happening. There is no reference to such a conversation, and the exchange appears to be the entirety of the communication at this time.

Kennett does not have any recordings of previous phone conversations either. It isn't clear whether this is just because Kennett does not have any recordings at all – having taken over the previous company – or because such conversations did not take place. Kennett has been able to provide the sale reports from 2016 onwards. And I note that the 2016 insurance was arranged by M. In all later years, the renewals were arranged by a different employee.

Given that Y recalls a conversation with M, it may be that this is a conversation that took place in 2016. Without a recording of this conversation, I am unable to know what was said. I have noted Y's testimony about the content of this call. But I do need to bear in mind that there will have been a number of years that passed between the call and these recollections. And memories can and do fade over time. So, I need to consider how much weight I can place on Y's testimony.

I should also make it clear that, as Y has more than 10 employees, it falls into the category of a "small business". The jurisdiction of the Ombudsman Service to consider complaints from small businesses only began in April 2019. So, whilst I am able to consider a complaint about the arrangement of the insurance renewal in October 2019, I am unable to consider any complaint Y has about sales or renewals prior to this.

The sale in 2016 does form part of "all the circumstances" of Y's complaint about the 2019 renewal. And I have thought about what it might mean if Y was not clearly advised in 2016. However, based on Y's testimony, it does not seem M or Kennett gave Y incorrect advice. The suggestion is that M did not make it clear that Y should consider the specific policy definition of gross profit. Whilst this information may not have been as clear as it ought to have been, I do have to take into account the rest of the circumstances – and this includes the subsequent information that was provided.

Renewal reports were created for each renewal. And these would've been provided to Y. As well as setting out Y's demands and needs, the reports contain, what I consider to be, clear instructions and guidance on the fact that "gross profit" within the policy has a different meaning to that which it has in accountancy terms. And on how this should be calculated.

The reports state:

"Gross Profit – NB The definition of "Gross Profit" under your insurance policy is not the same as that defined by accountants. Typically the accountant's definition excludes wage roll – wage roll should be included in Insurable Gross Profit. Insurable Gross Profit is defined as;

"Turnover plus closing stock and work in progress

Less

- a) Opening Stock and work in progress and
- b) Uninsured variable costs”

“Uninsured variable costs” are the costs you incur that will always vary in direct proportion to turnover, including purchases; packing, carriage and freight; transport costs.”

I note that the director of Y that was involved in the arranging of the insurance has some experience of accounting. With this background, it is understandable that their initial understanding of the term “gross profit” would be coloured by that. But whilst I appreciate they would not be expected to have a good understanding of insurance, I consider the guidance above that appeared in the insurance reports was clear, fair and not misleading.

So, even if a warning or guidance was not provided over the phone in 2016, I consider it is reasonable that Y would, or ought reasonably to, have been aware by the 2019 renewal that “gross profit” in relation to its insurance required a different calculation.

I do note that Kennett does not appear to have provided the 2019 renewal report to Y prior to the insurance being arranged in 2019. Technically, this is likely in breach of its regulatory requirements. However, it appears that this was at least in part due to a delay in Y having communicated around the time of the renewal.

I have also thought about whether this late provision of the demands and needs caused any detriment. Taking into account the fact that Y did not act upon receipt of this report to correct any information, and that it had not acted in this way in previous years despite similar reports being provided, I am not persuaded that Kennett providing this report after the policy had commenced caused any material detriment in the circumstances of this complaint.

I note Y has raised some other points about potential other cover and about the length of the indemnity period applicable. However, it is necessary to consider the recommendation made – and the needs of Y – at the time the sale took place. With the benefit of hindsight, a policy that provided lengthy cover for the circumstances that arose in relation to the pandemic would be desirable. But I don’t consider that Y’s circumstances at the time of the sale meant that such a recommendation was something Kennett ought to have made. The pandemic was largely unforeseen. And the fact Y had any cover for this was largely a matter of fortune.

Additionally, regardless of the overall indemnity period applicable to Y, the specific cover provided by the insurance policy it took out was limited to three months for any one claim that arose from the pandemic – something that is very common to the relevant type of clause. So, even if Kennett had recommended Y take out – and pay for – a policy with a longer maximum indemnity period, this would not have changed the indemnity period applicable to the claim it actually made.

Y has said that Kennett ought to conduct site visits. But this is not something brokers are expected to do as a matter of course. So, I do not consider Kennett ought to have done more here.

I can appreciate Y’s frustration at not being able recover all of its losses that arose from the pandemic. Y has not complained about the settlement it received from the insurer, and consideration of this does not form part of this complaint. This complaint is about whether Kennett acted appropriately to obtain relevant information from Y, and whether it recommended a policy suitable for Y’s needs based on this information.

Ultimately, a broker is reliant on the information provided by its customer. The broker ought to provide guidance on what information is required and how this should be calculated. I

consider that, taking all of the circumstances of the complaint into account, Kennett provided Y with clear, fair and not misleading guidance on what information was required. And that Kennett's recommendation met Y's needs based on the information it received back. It follows that I cannot fairly and reasonably ask Kennett to do more in the circumstances of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Y to accept or reject my decision before 11 April 2025.

Sam Thomas
Ombudsman