

The complaint

A micro-enterprise, which I will refer to as R, complains that it was mis-sold a commercial insurance policy by Arthur J. Gallagher Insurance Brokers Limited. R says it was sold a policy that was unsuitable, as it was unable to successfully claim for business interruption losses arising out of the COVID-19 pandemic.

What happened

The following is intended only as a summary.

R operates as a social club, and generates income through bar sales, etc. It held a commercial insurance policy, underwritten by a third party which I will refer to as V. The policy had been arranged by Arthur J. Gallagher Insurance Brokers Limited (AJG).

In January 2020, the policy was coming up for its annual renewal. On 6 January 2020, AJG wrote to R, recommending that it renew the policy with V. In this correspondence, AJG said that it was recommending this policy as being suitable for R's requirements. But that R should read the policy documents. R responded on 10 January, agreeing for the policy to be renewed. And this renewal took place on 28 January 2020.

It is worthwhile setting out some of the timeline around COVID-19 over this period. On 31 December 2019, the World Health Organization (WHO) was informed of pneumonia cases of unknown cause in China. On 12 January 2020, WHO announced the discovery of a virus, and named the associated disease COVID-19.

On 22 January 2020, the UK Department of Health and Social Care and Public Health England issued a statement to the effect that the coronavirus situation was being constantly monitored. The risk level was raised from "very low" to "low". At this stage, there were no confirmed cases in the UK. On 28 January 2020, the UK Foreign Office advised against travel to the relevant area of China.

The general events over the next few months are widely known, as COVID-19 spread throughout the world, and countries were impacted in various ways. In the UK, the government-imposed restrictions introduced in March 2020 meant that R's business was interrupted.

R claimed for its losses resulting from this interruption, but V declined the claim. V said that the policy R had only covered interruption resulting from certain, specified illnesses that were listed within the policy documents. And COVID-19 was not one of these.

R has now complained that AJG mis-sold it the policy. R said that AJG ought to have sold it a policy that provided cover for diseases more generally, rather than one containing a specified list. AJG responded, saying it could not have been expected to have arranged cover for the risk of an unprecedented international pandemic and national lockdown.

R brought its complaint to the Financial Ombudsman Service. However, our Investigator thought that AJG's recommendation had been appropriate, given the circumstances at the

time.

R remained unsatisfied. And, as our Investigator hasn't been able to resolve this complaint, it 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.

When recommending the policy, AJG needed to think about R's demands and needs. But these were the demands and needs that existed at that time, taking into account foreseeable future events that might take place within the policy period.

It is not possible for insurance to cover every eventuality though. And the more that a policy does cover, the higher the cost. So, a broker needs to balance the risks of a foreseeable event happening, against recommending a policy that offers an unjustifiably high level of cover – at a higher price.

The basic purpose of business interruption cover is to provide protection in the event of something happening which causes damage to property – e.g. a fire or flood. Some policies then contain additional cover in relation to other, non-damage, events.

It is important in situations such as this to avoid considering matters with the benefit of hindsight. I don't think it is overly disputed R would likely have been able to cover its losses if AJG had recommended a policy in January 2020 that provided business interruption cover in the event of a broader definition of disease – such as all infectious or contagious diseases. Some policies did offer cover on such a broader definition. But the majority of customers who found themselves with such cover, did so purely on the basis of fortune. Most businesses in the UK had no cover that provided protection for the pandemic.

Regardless, the question that I need to consider is whether it is fair and reasonable to have expected AJG to have recommended R have broader cover.

As the brief timeline above shows, when AJG gave its recommendation and when the policy was renewed, COVID-19 had only just started to emerge. Both the WHO and UK Government did not have significant concerns about its impact on the world or UK. And, as R itself has said in its submissions, no-one had heard of COVID-19 or could have predicted the pandemic. I do appreciate that a customer might expect an insurance broker to have more of an understanding about potential risks than the customer. But I don't consider it is fair or reasonable to say that AJG ought to have identified a risk that even the relevant health and government bodies had not.

Ultimately, I don't think AJG could or should have taken COVID-19 into account when making its recommendation.

So, the question then becomes, did R need broader disease cover than was recommended – without taking into account COVID-19?

R is a social club, and provides hospitality. So, having some disease cover in place where people are intermingling, and food/drink is being provided, does make sense. However, the policy AJG recommended did include some cover in the event disease caused an interruption to business. This was limited to certain diseases. But this list did include things

like legionellosis, etc.

I consider it was reasonable for AJG to determine that the types of disease that are listed in the policy are those which, prior to COVID-19, R would have needed cover for. For example, legionellosis is something that can impact a venue's health and safety, so having insurance against the risk of this is appropriate for a business such as R's. And this is the cover AJG recommended. Whereas there was no indication that businesses such as R's were likely to be impacted by a global epidemic.

AJG also provided R with links to the full policy documents, and advised R to read them. If R had done so, I think it would've been clear that it was only covered for certain diseases. And it did not raise any concern about this at the time. Given the content of R's email to AJG at the point a claim was attempted, it is possible that R did not read the content of the policy. But I don't think it would be fair or reasonable to hold AJG responsible for this.

Taking all of this into account, I don't consider it would be fair or reasonable to expect AJG to recommend broader disease cover for R. It follows that, at the time it was made, I consider AJG made a recommendation that was suitable for R's purposes. And that AJG did not mis-sell the policy.

I do appreciate this is not the outcome R or its members were hoping for. And I am sorry to hear about the impact the pandemic has had on them. But I am satisfied that, in all of the circumstances of this complaint, it would not be fair or reasonable to require AJG to do more.

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 R to accept or reject my decision before 30 July 2025.

Sam Thomas
Ombudsman