DRN-5686831

The complaint

E, a limited company, complains that Harris Balcombe LLP ("HB") has misrepresented the facts of their claim to their insurer and this Service in relation to a commercial insurance policy.

Any reference to E or HB will include respective agents and/or representatives.

What happened

This complaint relates to a claim made under E's pub insurance policy and specifically concerns HB's actions in representing E in making the claim and subsequent complaint about the outcome.

E has previously made complaints to this Service regarding two insurance claims following the fire, as well as a complaint concerning the actions of E's broker.

- *Complaint one:* In February 2023 I issued a final decision in which I determined that E's insurer had fairly declined a property damage claim.
- *Complaint two:* In June 2023 one of our Ombudsmen issued a final decision in which they said the insurer had fairly declined a business interruption claim.
- *Complaint three:* In April 2024 one of our Ombudsmen issued a final decision in relation to the broker of the insurance policy and information given at renewal. This complaint was not upheld.

The background of the fire and history of actions taken by E's insurer is well known between the parties and has been detailed in the above decisions, so I'll only provide a summary that focuses on the key issues within this complaint.

- E's premises were damaged following a kitchen fire. E made two claims to its insurer (Company A). One claim for property damage, and another for business interruption.
- Company A determined there was a material breach of a policy condition which stated power to cooking equipment needed to be shut off outside of working hours. So, it declined the claims for this reason.
- E disagreed, and brought a complaint ("complaint one" that I've referenced above) which concerned the property damage claim. At this time, E was represented by HB. E says that within HB's submissions, it had inaccurately described E as being aware of the specific condition in question, and misrepresented E's efforts to comply with it.
- One of our Investigators assessed the complaint and didn't uphold it. Around this time HB was no longer the representative of E. E was then represented by a different party ("Company B") who argued that the comments of HB shouldn't be relied upon. And that E had not been fairly represented by HB when making comments about E's awareness of the policy. And Company B argued that E had no awareness of the conditions in question and therefore Company A should not have been able to rely upon them. I issued a final decision considering all of these points in February 2023.

E has since made this current complaint against HB. E said:

- HB had submitted a complaint form on E's behalf. E says it was not aware of the contents of the submission until after my final decision in February 2023.
- My final decision did not dispute that Company A had breached ICOBs 6 but excused this due to the submission from HB describing awareness of the conditions. And they argued that I had put weight on a complaint form that was not legitimately signed by one of E's directors. Therefore HB's actions had prevented their claim from being upheld and cost them financially as their claims remained declined.
- E described concerns regarding HB's ability to act in a claims management capacity and therefore any submissions they made should be null and void.

E raised these concerns to HB and it issued a final response to E's complaint on 24 October 2023. Within this it said:

- HB said it had submitted two complaint forms to this Service. One which was blank that contained a wet signature of one of the directors. And another that contained the submissions that E disagreed with. HB said E's director agreed to these comments, and their content had come from discussions between HB and that director as well as a witness statement from the same director from 2019.
- HB said it forwarded on a copy of the initial assessment to E which included reference to the submissions of E's knowledge of the conditions. HB said at no point did E tell HB these submissions were inaccurate. And it pointed to my decision of February 2023 that it said included similar comments. It also argued the reasoning within my decision included other key factors that led to it not being upheld.

E brought its complaint to this Service. It reiterated it did not believe HB was authorised to act in the capacity that it had. But even so, E believed HB had fallen short of relevant rules in handling the matter. It said HB had failed to retain calls, emails and records of advice given. And it reiterated it only became aware of the statements within the complaint form it had not seen after the final decision was issued.

Following some back and forth between parties as to whether this Service had jurisdiction to consider the matter, this point was resolved. HB was satisfied that it was carrying out a regulated activity in relation to assisting and advising E (its insured clients) when making a complaint to this Service.

Our Investigator looked at the complaint and didn't uphold it, saying:

- His review did not concern the merits of the previous complaint that was already decided. Only the actions of HB.
- E had placed emphasis on quotations from HB that it said were not accurate – which it said had been relied upon in the previous decision. One of these referred to the establishment being operated with impeccable standards and adherence to rules, regulation and compliance with the insurer's policy conditions. The Investigator highlighted that this statement stemmed from a witness statement of October 2019 signed by one of E's directors.
- The Investigator highlighted that even aside from specific sections related to discussion of policy conditions, the director had described in length the importance of managing the pub well and included details of a contractor they appointed to ensure the kitchen was professionally clean, as well as describing steps the kitchen staff take to ensure a clean and safe environment.

- The Investigator said he inferred from the director's statement that he believed he was compliant with the policy – and in turn HB could reasonably rely on this statement to put forward E's position.
- E's most recent statement that it had no awareness of the conditions in question suggested that the statement E's director signed in October 2019 was not an accurate statement. And he challenged why the director would sign an inaccurate statement or not challenge this at the time it was given – with no indication this took place. As a result he was satisfied HB was only relying on the statement and information given by E.
- The Investigator also addressed concerns regarding two separate complaint forms being submitted by HB. One blank form that had wet signatures within it but no detail of the complaint, and another that had E's arguments put forward and written by HB. He said this second complaint form included reference to E following the key policy condition to a higher standard than was required. The Investigator was satisfied this was in keeping with E's director's witness statement.
- The Investigator said HB had been given permission to handle matters, and overall HB had done this – whether or not it had shared all communications with E.
- The previous decision had made it clear that E's argument the conditions weren't made clear to them had no bearing on the overall outcome.

E disagreed. It provided an email from HB in which an agent had written suggested wording to E's director. E argued this suggested that HB was the author of the submission and this contradicts HB's position.

This didn't change the Investigator's mind, and he stated the suggested wording appeared in keeping with E's director's witness statement of 2019. Since then, E has made substantial representations, reiterating many points it had previously made. In addition to existing points E said:

- HB should not be recognised as being authorised to act on their behalf. And they've referenced making a complaint of this nature to the FCA. They've said HB's actions were unlawful and unenforceable.
- E said HB gave suggested wording to E, then since has quoted that back as E's statement. And it mentioned this may be a breach of the SRA's code of conduct for solicitors.
- HB may have withheld significant evidence from this Service. Including an email regarding an argument that E believes was flawed. And that HB's line of argument was not a competent one. It puts forward that had it been advised correctly it would have put forward a very difficult argument that E was unaware of the clear conditions and Company A had failed to explain these terms.
- E's director was reliant on the regulatory expertise of HB when giving his witness statement, and did not set out the regulatory consequences or limitations of the statement at the time. E has also suggested that HB should not have collected such a statement in line with its regulatory ability.
- The Ombudsman's decision of February 2023 was based on false factual background engineered by HB. And that we cannot separate the conclusions from the misleading information given at the time.

So, the matter has been passed to me for an Ombudsman's 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.

When considering what's fair and reasonable in the circumstances, I need to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time. Having done so, I'm not upholding this complaint. I'll explain why.

As I've outlined above, this Service has previously considered matters related to the merits of E's complaint against Company A. So, I'm not going to consider these matters again. What I have considered here is HB's actions and role in E's submission of its previous claim and subsequent complaint against Company A.

The crux of this complaint concerns E's belief that HB has misrepresented its understanding of the policy. And in turn, it has said this prevented it from making a successful claim (via this Service) under its pub insurance policy.

So, my starting point here is I have to consider if HB misrepresented E as it has indicated. That is to say, did it gave false statements about E's knowledge of conditions, and whether it do so without E's knowledge.

I've been given a witness statement signed by one of E's directors in October 2019.

At the start of this witness statement, it states that the person giving the statement:

> "…*can confirm that the content of this written document is true to the best of my knowledge and belief. I understand that if anything stated within this statement is deliberately or recklessly false or misleading in any way that I may render myself liable in legal proceedings hereafter*."

Within the statement, E's director describes a detailed account of events, including turning off the fryers as standard when the kitchen closes for the day, and specifically that he recalled them being off when he checked on the day of the incident. I found this to be a detailed account of events and his version of events on how the kitchen was run.

E's director also lists a number of the conditions of the policy within this statement, then gives responses below them to illustrate how they were complied with. This included the following statement:

> "*Equipment is not left unattended whilst heat source is operating and power is off*.
>
> *Our processes are to "exactly" comply with this can only surmise an accidental error by sub contractor in plugs being swapped over – undermining our process.*"

The director's statement goes on to conclude:

> "*We have complied with all requirements of our Insurance policy and warranties. It is out of our control if a sub contract* [sic] *company makes a mistake that leads to a fire. We did everyone we possibly could and more to affect safety and prevent any type of incident, including fire, and I believe we have demonstrated that within this statement.*"

These statements satisfy me that E's director believed that E had met all of the relevant

terms and conditions of the policy. And I'm persuaded this belief is why he quoted the relevant conditions of the policy in relation to kitchen safety, then described E's own cleaning regime and steps it would take to ensure a safe environment. It seems his belief, at least at the time, was this was simply an accident from a third-party contractor which fell outside of E's control.

More recently E has said the director was not aware of the conditions, and that various conditions were not complied with – highlighting that the statement was not accurate, and that he gave this statement on the advice of HB. E's own director signed a witness statement giving their version of events – and I'm satisfied if they believed this was not an accurate account they should've challenged this at the time.

E has indicated that "*regulatory consequences*" of giving this statement were not explained to them around this time. Even if such rules were to apply to the relationship between E and HB, this simply wouldn't change my mind. I say this as E is a director a company, and he signed a statement to say this was the truth. I've seen nothing to support this was under duress or that he's not freely signed it. If he did so knowing it was inaccurate, this is not something I'm persuaded to hold HB accountable for.

E has also said that it was poorly advised and if it'd been advised correctly about the argument to make – a focus on whether the conditions had been made clear, it would've made that argument instead. This in itself concerns me as it suggests E would have liked to made what it considered to be the strongest argument, not simply the truth of what happened. So, this doesn't change my mind.

E has indicated this witness statement and argument was all produced by HB. And it referenced an email where HB had provided some suggested wording to E. But I see nothing inherently wrong with suggesting wording to a party – and I would think it reasonable that if the receiving party disagreed with such suggestions or found them to be inaccurate, they should challenge this. And I think E's statement that HB should not have completed such a witness statement has no bearing on this matter, simply because E's director gave his version of events and signed that it was accurate.

The statement itself was handwritten by HB - I think the fact this was physically written by HB's agent has little bearing on its contents, given its detail and the fact that E's director signed it.

If I were to accept E's current argument, I'd have to accept it either signed a statement it knew to be inaccurate and didn't challenge it. Or that it was prepared to sign a statement without considering whether the contents of the statement were accurate. I'm not satisfied either of these are reasonable positions. And on balance, I'm satisfied its more likely E's director signed the statement they considered to be accurate.

E has made reference to many regulations and rules that it says HB has failed to comply with in relation to claims management – including an obligation to keep records. Again, even if such rules were to apply to the relationship between E and HB, this simply wouldn't change my mind in light of the evidence I've outlined above that satisfies me HB's submission was reflective of E's account.

E has argued that HB's alleged misrepresentation was material to the outcome of the Service's decision of February 2023. And E has argued if it had known of the specific policy conditions that impacted its claim it would've changed its approaches to always unplug each of its plugs.

I am in a strong position to answer this point as I wrote that previous decision. And even if I

agreed that HB had misrepresented E – which I don't believe it has – this still wouldn't change anything. This is a specific point that I considered at the time in 2023 so this isn't a point I need to determine here. But simply, my previous decision said:

> "*So, whether I agreed that* [Company A] *should've presented this term in a clearer way within any of its documentation, I'm simply not satisfied this would've changed anything. And this is because E's directors were aware of the risks of leaving a fryer on, and have explained that their intention would be to turn this off – which I don't doubt given the risks involved.*"

So even if I agreed that HB misrepresented E's position – which I don't – and had HB argued E had no knowledge of the condition, for the reasons I gave within previous final decision, this wouldn't have changed the outcome in that case.

E has argued that HB did not have the authority to act in a particular capacity. In light of an ongoing dispute, this is a matter for the FCA to determine. But from my perspective, if I were to be satisfied a mistake had occurred on the part of a firm, I would need to consider what impact this would've had. And here, a determination either way would not alter my view that HB would not be responsible for E's claim with Company A not succeeding. E has also referenced the SRA – again this is a matter for it and not a determination that I can make.

For all of these reasons, I'm satisfied that HB doesn't need to do anything further, and I'm not upholding this complaint.

My final decision

For all the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask E to accept or reject my decision before 18 September 2025.

Jack Baldry
Ombudsman