DRN-5926374

The complaint

A limited company, which I will refer to as H, complains about the sale of its commercial insurance policy by Premierline Limited. H says that failures in the process left it unable to recover the full loss it sustained due to the COVID-19 pandemic.

What happened

The following is intended only as a brief summary. Additionally, even though various other parties have been involved in the process, I have largely just referred to H and Premierline.

H is a medical healthcare provider and, in March 2020, it purchased a commercial policy through Premierline. The policy was underwritten by a third party, which I will refer to as T. The policy was purchased online, through an "information-only" sales process. This means Premierline did not offer any advice on its suitability for H.

The policy provided cover for a number of areas of risk, including Business Interruption. Due to government-imposed restrictions, introduced as a result of the COVID-19 pandemic, H suffered losses during the period of cover. It claimed for these on the policy. Ultimately, T agreed that there were valid claims for the periods of national lockdown, but limited the settlement it was willing to pay – as it considered H was underinsured.

T considered that H's expected income for the 12-month period of insurance was over £900k. However, when taking out the policy, not only had H said that its expected income was £700k, it had also said that it only needed £250k of Business Interruption cover.

H complained to Premierline, ultimately bringing this complaint to the Financial Ombudsman Service. H said that the policy only provided three months of cover anyway, so it thought £250k was enough. H also said that, despite the sale being online, Premierline ought to have carried out a check to ensure the policy was suitable.

Our Investigator recommended the complaint should be upheld – though not for the reasons H had argued. He agreed with Premierline that it had no obligation to check the suitability of the policy, but said Premierline did need to provide clear information during the sale process. And he did not consider Premierline had done this.

Our Investigator explained that the sales process asked a clear question about H's expected annual turnover, to which H responded with £700k. But that, whilst warnings were given about what might happen if H did not insure the full value of its property, no specific warning was given around the Business Interruption figure. And that, whilst a warning was given about the duty of fair presentation, it was not explained what would happen if H did not insure the full risk posed by interruption of its business. He thought that, if such an explanation had been given, H would have insured the full value and that T would have accepted this risk – albeit at a higher premium.

Our Investigator recommended that Premierline should cover the difference between what T was paying as a settlement, and the amount it would have paid had H insured £700k of Business Interruption losses – less the difference in premium that would have been charged.

He also recommended Premierline add interest to this sum, for the period H was without it as a result of Premierline's mistake.

Premierline did not agree with this outcome. As our Investigator was unable to resolve the 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 upholding this complaint. I've explained why below.

Firstly, I'll just repeat that the above is intended only as a summary. Additionally, whilst I have considered all of the submissions from the parties, I have not referred to each point or argument within this decision. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

Secondly, H has a linked business which has a very similar complaint. These have been dealt with separately, as the H is a separate complainant to the other business. But, as the circumstances are similar, the content of this decision is naturally similar to the content of the decision I have reached on the other complaint.

H's initial complaint was based on the policy only providing three month's cover for interruption of business. However, whilst this is true for certain situations – including the "disease" clause H's claim has been made under – other situations are covered for the full maximum indemnity period. In H's policy, this was 12 months.

So, unless H was taking a deliberate decision to self-insure – and had discussed this with its insurer – it ought to have insured the full potential loss; i.e. the full annual gross turnover/revenue.

Arguably, the fact that H had declared its annual gross turnover, and then selected an amount less than this to insure might have set off some alarm bells for Premierline and T. However, neither of these parties had any obligation to advise H during the sale. H had decided to go through a non-advised sales process. So, it was H's responsibility to make sure it was taking out appropriate cover.

However, the only way H can reasonably be expected to do this is if it is provided with "clear, fair and not misleading" information (to paraphrase the regulatory requirement).

Part of this responsibility is on T, in that it needs to provide policy documents that meet this requirement. However, the sales process is Premierline's responsibility. It was Premierline's process that gathered the information from H that led to the cover being taken out.

Having reviewed the complaint, I think part of the issue likely stems from the fact that T had changed its policy wording in early 2020. However, it would seem that Premierline had not updated the sales process to reflect this.

Prior to the change, T's policy wording included an "average clause" that only related to certain sections of cover – buildings, contents, etc. This clause did not apply to the Business Interruption section. After the change, wording was introduced to the Business Interruption section that made it clear that:

> "if the sum insured in respect of gross revenue is less than the annual gross revenue

… the insurer's liability will be proportionately reduced."

However, the sales process did not reflect this amendment.

It is clear from the documents provided to H following the sale that the policy it took out was based on the new wording. For example, the reference number on the statement of fact matches that in the new wording booklet. And T has dealt with H's claims on the basis of the new wording.

It is notable though that, even within Premierline's communications with the Financial Ombudsman, it has referred to the old version of the policy wording, and the average clause that did not apply to Business Interruption.

Whilst H may have been provided with the new version of the policy wording, and would have been able to read this to identify the potential impact of not insuring the full annual gross revenue, I consider that Premierline had a responsibility to highlight this during the sales process.

I don't think the sales process made it clear that H needed to select cover for its full gross turnover to avoid issues with recovering its full loss in the event of a Business Interruption claim. The duty of fair presentation warning only clarified that it needed to make an accurate declaration. And H considered that it had done so when declaring its turnover and then the amount of cover it thought it required – though I note these answers were not entirely correct.

I appreciate Premierline has raised some questions around what H had done in previous policies, taken out with different insurance brokers. But my role in this complaint is to consider whether Premierline did what it ought to have done and, if not, what the impact was of this error.

I consider that, had an appropriate warning been provided when H was asked to select the Business Interruption cover, it would have insured its "full" annual gross revenue. Given the error it made when stating this amount earlier in the sales process though, I think it most likely that H would have repeated this and selected £700k of cover. This would still have left it underinsured to an extent, but less so. I consider Premierline is responsible for the increased level of underinsurance, but not the initial underinsurance.

It follows that Premierline ought to put H in the position it otherwise would have been in. T has confirmed that a policy would have been offered had H selected £700k of Business Interruption cover. And that this would have led to an increase in premium. I consider, given the amount involved, H would have paid this additional premium. This would mean that T would have settled H's claims for more. Premierline should then make up the difference between what T's final settlement and what T would have paid, less the additional premium. And, as H has been without this amount since T's final settlement, Premierline should also add interest to this sum.

Putting things right

Premierline Limited should pay H:

- The difference between the final amount T has agreed to settle H's claims for, and the amount that T would have settled the claims for had H selected £700k of cover,

- Less the difference between the premium T charged, and the premium it has confirmed it would have charged for £700k of cover,

- Plus interest on this overall sum from the date T settled or settles the claims, to the date Premierline makes payment. (It isn't clear whether T has paid the final settlement at this point. Interest should run from the date it did or will.) Interest should be calculated at 8% simple per annum.

My final decision

My final decision is that I uphold this complaint. Premierline Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 6 March 2026.

Sam Thomas
Ombudsman