

## complaint

T have complained about S & J Palmer Ltd's (SJP) handling of T's commercial motor vehicle insurance policies.

T are represented in their complaint. But, for ease, I will refer to the representative's comments as being those of T.

## background

I issued two provisional decisions in this complaint, the first on 19 December 2019, and the second on 18 March 2020. Both are appended to this decision in full and set out the complaint background and my provisional findings.

I grouped and addressed T's complaints under the following four headings:

1. Suitability of the policies
2. The loans and cancellation of the policies
3. The reporting of claims
4. Removing vans from the policies

For the reasons explained in my provisional decisions, I upheld T's complaints in relation to points 1 and 2. I didn't uphold point 3 and T decided to not pursue point 4.

SJP disagreed with my provisional findings in relation to points 1 and 2. They said the policies they arranged for T were suitable for them and their actions in relation to the loans arranged to finance the policies and the subsequent cancellation of the policies were reasonable. But SJP said in the interest of bringing the dispute to a conclusion they were prepared to accept my decision.

T agreed with my provisional decision to uphold their complaint points 1 and 2. But they disagreed with my decision to not uphold point 3.

In my first provisional decision I said:

*"before I can make a direction as to the appropriate remedy, I require T to provide me with detailed information, with any supporting evidence, explaining how they say the issues I intend to uphold [points 1 and 2] have impacted them; what loss (if any) they suffered; and how they feel they should be compensated."*

And:

*"Once I've received the requested information from both parties, I will issue a further provisional decision incorporating any relevant information I've been provided and my views on compensation. That will give the parties the opportunity to comment further before I issue my final decision."*

T said that quantifying their loss was difficult. But they said the following:

- The cost of insuring each van through SJP was £3,000. But following the cancellation of the policies by SJP in February 2017, the cost per van on their new fleet policy was £4,400, an increase of £1,400 more per van. T said that increase was as a result

of *“the urgent need for alternate insurance to be arranged...”* The new fleet policy started with 28 vans.

- On cancellation, SJP failed to return the premium refund due to T. T estimated the refund they were due to be around £23,500.
- T suffered losses due to the legal dispute they had with the company they hired their vans from. That's because the claims were not paid which resulted in the van hire company taking action against T. This relates to complaint point 3 which I didn't uphold.
- *“Hurt to their business reputation, increased accountancy fees, interest cannot be easily quantified but nevertheless need to be accounted for in the quantum calculation.”*
- *“Finally statutory interest needs to be added from 2017 until such time as any FOS award is actually paid by SJP.”*

SJP said T's claimed losses were unsubstantiated. SJP's response to each of the points made by T in the five bullet points, above, are as follows:

- T have said their new policy cost £1,400 more per van. But they would need to evidence that cheaper cover would have been available, which they haven't.
- T were not due a premium refund on cancellation. SJP did receive a premium refund of just over £9,000 from the underwriter. But once that was deducted from the amount T still owed for the policies, T still owed SJP almost £60,000 in premiums for the time on cover they benefitted from.
- SJP were not responsible for the van hire company taking action against T and therefore SJP were not responsible for any losses arising from that action.
- *“The reputational damage to T's business is pure conjecture and should not be considered. If they have arranged alternative cover, how is there any reputational damage? I fail to see how this would result in increased accountancy fees.”*
- T are not entitled to any interest payments.

SJP concluded by saying:

*“We understand that the ombudsman's decisions are to put the client in the position they would have been in had the issues not occurred. Although we do not agree with the outcome, we would like to make the point that even if we do accept that a fleet policy would have been more suitable, the customer would still have had to pay the appropriate premium for this policy. In addition, they would need to pay the time on risk charge (even if we assume this is entirely pro-rata) for the previous policy as cover was held and was in force for all vehicles prior to cancellation. As it stands, T has only partially paid the time on risk charge for this period. We feel that our offer to waive the remaining time on risk charges is more than reasonable, as T will in effect be receiving a benefit that they were not entitled to (i.e. they have not paid in full for cover held).”*

Having considered the parties further submissions, and their comments in relation to losses T said they suffered, I issued my second provisional decision on 18 March 2020. As mentioned above, my second provisional decision is appended. But, in summary, I said:

- I maintained my decision to uphold the T's complaint that the policies arranged by SJP were unsuitable for T. But I said: *“I don't intend to make a compensatory award under this head, because I haven't been provided with any convincing evidence as to what loss, if any, T suffered as a result of SJP arranging unsuitable policies.”*

- I maintained my decision to uphold T's complaint that SJP's handling of the loans and cancellation of the policies wasn't reasonable. By cancelling the seven policies unreasonably SJP deprived T of the benefit of using those policies for the remainder of their terms. For that reason I said SJP should calculate the premium for the unused portion of each of the seven policies. That being the period each policy was cancelled on 15 February 2017 until the date on which each one was scheduled to lapse. Under each policy where a van was removed from cover, T were entitled to a pro-rata refund. But if the van in question was subject to a claim, T were not entitled to a pro-rata refund. But given my decision that the cancellation was unreasonable, I said that SJP should carry out the calculation for every van to see if T were entitled to a pro-rata refund. I said that calculation should include vans that were subject to claims which, ordinarily under the policy, wouldn't have entitled T to a refund. I agreed with SJP that T should pay their premiums for the time their vans were on cover. But I didn't agree with them that on cancellation T were obliged to pay the full premium on each of the seven policies until their scheduled end dates. Because to do so would have meant that T were paying for cover twice during an overlapping period. I say twice because they would have been paying for their new fleet policy and for the cancelled policies with SJP. And the seven cancelled policies had unused periods remaining ranging between seven weeks to nine months. I said that if SJP's calculations showed that the total premiums T paid for all seven policies (up to the point of cancellation) was higher than the cost of the total premiums for the time on cover for all the vans on all seven policies, then SJP should refund T the difference together with simple interest at 8% a year from 15 February 2017 (the date all the policies were cancelled) until payment is made.
- In relation to the third complaint point about the reporting of claims, for the reasons given in my first provisional decision, I maintained my intended decision to not uphold that.

In April 2020, SJP completed the calculation I asked for and produced a spreadsheet showing the cost of every van insured on all seven policies during the time they were active. It showed when each van was put on cover; how many days it was on cover; its annual premium; the admin fee applicable for the van; and the pro-rata cost for the number of days the van was on cover. SJP's calculation showed that the pro-rata cost of all the vans T had on cover across all seven policies was £71,752.10. SJP said T paid premiums totalling £56,227.01. SJP therefore concluded that there was a shortfall of £15,525.09. In other words, T paid £15,525.09 less than they should have for the time all their vans were on cover. That meant T were not entitled to a premium refund.

Our service provided T with a copy of SJP's spreadsheet for comment. T commented on SJP's calculations as follows:

- There appeared to be a number of anomalies that needed further investigation.
- Because SJP are in possession of the information that was used to prepare the spreadsheet it's very difficult to interrogate or to prove/disprove its accuracy.
- T believe SJP's spreadsheet is impossible to accurately check and there are questions on its accuracy. So, T don't believe this is the right basis for an award calculation.
- T feel a fairer approach would be to take the cost of the new fleet policy they took out in February 2017 and for SJP to pay the pro-rata cost of that policy up until the natural expiry date of the SJP policies so that the unilateral and unfair mid-term cancellation by SJP could be remedied. T said that as the seven SJP policies ranged in expiry from April to November 2016 that it would be fairer to SJP if a mid-point

date was used rather than run the calculation to November 2017 (the expiry date of the sixth and seventh policies).

- In an email to us dated 18 May 2020, T said: *“Following on from previous email, can I also add that we did not agree with the payment information provided by [SJP]. We had a different slightly higher figure which again calls into question the accuracy of their data.”* [The underlined text is my emphasis]

T also made some further comments in relation to some of the other complaint heads:

- I had said in my provisional decisions that while I felt the policies arranged by SJP were unsuitable for T (point 1), no compensatory award should be made as T hadn't proven that they had suffered a loss. T disagreed with me.
- I had said that given the underwriter hadn't paid T's claims on the policy even after the underwriter had all the relevant claims details meant that even if SJP had reported all the claims to the underwriter expeditiously it would have made no difference (point 3). T disagreed with me and said *“a policy of insurance can only be suitable if it pays out valid claims and we do assert that part of the intermediary [SJP] duty of care is to source suitable cover - part of which is the claims paying ability of not the insurer but the middleman [name of the policy administrator] who had full claims settlement and payment delegated authority vested in them by the end insurer.”*

## my findings

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my decision remains the same. I'll explain why.

### *suitability of the policies (point 1)*

For the reasons explained in my two provisional decisions, I upheld T's complaint that the policies arranged by SJP were unsuitable. And for the same reasons I maintain that decision. But I'm not making an award for compensation.

In my first provisional decision I said: *“before I can make a direction as to the appropriate remedy, I require T to provide me with detailed information, with any supporting evidence, explaining how they say the issues I intend to uphold have impacted them; what loss (if any) they suffered; and how they feel they should be compensated.”*

T haven't provided me with any convincing evidence that they suffered a loss as a result of the policies being unsuitable. T have said that under their new fleet policy the premium for each van cost them £1,400 more than the cost per van under the SJP policies. But T haven't shown me evidence that the cost per van under a fleet policy would have been cheaper at the time the SJP policies were incepted. So they haven't demonstrated any actual loss.

### *the loans and cancellation of the policies (point 2)*

The evidence provided by SJP shows that T were not due a premium refund. The premiums paid by T didn't fully cover the time on risk of their vans. According to SJP's spreadsheet T's premium payments fell short by £15,525.09. T questioned the accuracy and reliability of SJP's calculations. But I note that T said: *“we did not agree with the payment information*

*provided by [SJP]. We had a different slightly higher figure which again calls into question the accuracy of their data.” [The underlined text is my emphasis].*

It's not clear to me if T meant the shortfall figure was slightly higher or if the premium payments made by T were slightly higher. And T hasn't provided me with any evidence beyond their comments in support of that. But which ever it is, T's comment suggests that, even though they question SJP's calculations, SJP's figures are only “*slightly*” out. So, it would appear that T's premium payments didn't cover the time on risk for all their vans across the seven policies, which means they weren't due a refund.

I will now comment on T's suggestion that a fairer approach would be to take the cost of the new fleet policy they took out in February 2017 and for SJP to pay the pro-rata cost of that policy up until the natural expiry date of the SJP policies. But I don't think that's a fair approach. On SJP's calculations, at the time the policies were cancelled, T had paid around £15,000 less for the time their vans were on cover. So, if as suggested by T, SJP were to pay T's premiums for their new fleet policy that would better T's position. That's because not only would they be free from the SJP policies having paid around £15,000 less for the time on cover, but they would also get part of their new fleet policy's premium paid for them by SJP. That would mean T would have a period of time where they didn't pay anything for their insurance cover.

#### *the reporting of claims (point 3)*

For the reasons explained in my provisional decisions, I didn't uphold this aspect of T's complaint. SJP did have a role in the claims process, namely that they had to obtain the claims details from T and pass them onto the underwriter's claims handler/administrator. But as I explained, there were problems on the underwriter's end. And even after the claims details were given to the underwriter T's claims weren't paid. The underwriter had ample time to deal with those claims but they didn't, and they subsequently went into administration. I therefore think that even if SJP had passed on the claims details in a timely manner, given the problems experienced by the underwriter, T's claims still wouldn't have been paid.

On this point T have said that “*a policy of insurance can only be suitable if it pays out valid claims and we do assert that part of the intermediary [SJP] duty of care is to source suitable cover - part of which is the claims paying ability of not the insurer but the middleman [name of the policy administrator] who had full claims settlement and payment delegated authority vested in them by the end insurer.*” I disagree with T. The ultimate responsibility for paying T's claims was with the underwriter and not SJP. And SJP cannot be held responsible for the underwriter or indeed their other agents. I therefore don't uphold this part of the complaint.

#### **my final decision**

For the reasons set out above, I uphold this complaint in part, namely in relation to T's complaint points 1 (suitability) and 2 (loans and cancellation). But I'm not asking S & J Palmer Ltd to take any action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H, on behalf of T, to accept or reject my decision before 30 July 2020.

Mehmet Osman  
**ombudsman**

## **Appended**

### **First Provisional Decision dated 19 December 2019**

#### **complaint**

T have complained about S & J Palmer Ltd's (SJP) handling of T's commercial motor vehicle insurance policies.

T are represented in their complaint. But, for ease, I will refer to the representative's comments as being those of T.

#### **background**

T, a courier company, were created at the end of 2015. Their two directors were Mr F, who dealt with the vans and insurance side of the business, and Mr H, who dealt with other aspects of the business. I understand that T hired rather than owned or leased most, if not all, of their vans. To carry out deliveries they engaged a number of self-employed drivers.

In early 2016, T appointed SJP, an independent insurance broker, to advise and assist them in getting insurance cover for their vans. SJP, acting as credit broker, were also to arrange the finance T needed to pay for the insurance.

SJP arranged a number of commercial vehicle insurance policies for T. The policies were underwritten by another company (the insurer). The first policy started in April 2016 and a number more followed as T grew their business and the number of their vans increased. SJP said that a maximum of 10 vehicles could be added to each policy before the next policy would have to be taken out. In total, seven separate policies were taken out with each covering a number of vans. While each of the seven policies was intended to run for 12 months, SJP cancelled them all on 15 February 2017, before their scheduled end dates. The start and intended end dates of the seven policies were as follows:

- Policy 1 – 22 April 2016 to 21 April 2017
- Policy 2 – 10 June 2016 to 9 June 2017
- Policy 3 – 17 June 2016 to 16 June 2017
- Policy 4 – 23 June 2016 to 22 June 2017
- Policy 5 – 21 October 2016 to 20 October 2017
- Policy 6 – 26 November 2016 to 25 November 2017
- Policy 7 – 28 November 2016 to 27 November 2017

Numerous amendments were made to the policies, for example when vehicles and drivers were added or removed.

SJP also arranged loans from a finance provider for T to pay for the insurance policies. I understand that after the first loan was taken out for the first policy, a number of additional loans were taken out to pay for the subsequent policies and for the additional premiums charged on existing policies, for example where additional vans were added to a policy.

SJP said they provided a “one-stop service” in that they would assist T with any claim they may have. SJP charged T an additional fee for this service and provided a dedicated telephone claims line for T to report claims. The insurer had appointed another company to handle the claims (the claims handler). I understand the process to be followed was: T would

report accidents or incidents that gave rise to a claim to SJP; and SJP would then pass on the information to the insurer's claims handler who would process the claim.

T said they realised around September 2016 that things were going wrong. One of the main problems was, other than their claims not being paid, that their loan payments for the finance SJP had arranged were increasing and that T were having cash flow problems. T said they raised their concerns with SJP who told T that they had arranged with the finance provider to split T's loan payments from once a month to twice a month, to help with T's cash flow. T said they later found out (around January 2017) that rather than splitting the single loan payments into two monthly payments, SJP had cancelled the original loan and set up two new loans in October 2016. The repayments on those loans were two weeks apart, which gave the impression that the single loan payments had been split into two.

In November 2016, when SJP set up two further policies, they arranged two further loans to pay for the additional premiums.

T said they discovered that when arranging the original April, October and November 2016 loans, SJP had told the finance provider that the policies were being underwritten by insurers that were unconnected to the policies. T said SJP did that because they knew the finance provider was unlikely to have given T loans had they known who the actual underwriter of their policies was. T suggested SJP did that to ensure they earned commission for arranging the loans.

SJP accepted that they used other insurers' details when taking out the loans, but they said they didn't do so fraudulently or to make a gain. They said they acted in the best interests of T at all times and with the intention of helping T's cash flow problems. SJP said T knew that SJP had cancelled the April loan and that two October loans had been set up. And that T also knew SJP hadn't used the actual insurer's name but instead used other insurers when arranging the loans. SJP said Mr F, who had signed the April and October 2016 loan agreements on T's behalf, was fully aware and in agreement with what had been done. SJP said the reason they used other insurers' details was because when setting up the loans, they (SJP) had to declare who the insurer was. But they said the actual insurer wasn't available to choose from the finance company's list of insurers, so SJP selected other insurers.

T also said that the policies SJP had arranged weren't suitable for them. They said that a single fleet policy should have been arranged rather than seven individual policies that had different start and end dates. T said that it would have been much easier to manage a single fleet policy. And that it was better for cash flow purposes given vehicles added to a fleet policy were charged pro-rata for the remainder of the policy term (as opposed to taking out a new 12 month policy) and additional charges were billed quarterly.

In early January 2017, as T were unhappy with how things were going, they decided to use another broker and told SJP. In response, on 17 January 2017, SJP's director met with Mr H and Mr W, who had taken over Mr F's responsibilities for T's insurance matters, at T's offices. SJP said during that meeting the parties agreed for SJP to cancel the two October and two November 2016 loans and to replace them with four new loans with payments one week apart. SJP said they also gave T a payment break of a month. SJP said that setting up four new loans a week apart was intended to help T with their cash flow problems as it would have meant their payments to the finance provider would be spread over four payments a month. T said that while SJP did say during the meeting that their payments would be changed from two to four a month, SJP didn't tell T that they would cancel the existing two



loans and set up four new ones. SJP said that they also discussed the outstanding claims for damage to T's vans and also the issue of identifying T's current vans to ensure vans not being used by T were not unnecessarily being insured.

T said that during January 2017, they were being assisted by the other broker they wanted to take over from SJP. And that contact was made with the finance provider of the loans and the Financial Conduct Authority (FCA) over SJP's handling of the loans. T said that given their concerns about the "fraud" over the loans, they were advised to cease contact with SJP.

SJP said that on 25 January 2017, they cancelled the October and November loans and set up four new loans on the same day. The new loan agreements, like before, said that insurers other than the actual insurer had underwritten the policies. SJP said that for the four new loans to become effective, T had to sign the four new loan agreements. SJP said they repeatedly asked T to sign the new agreements but T ignored SJP. SJP said after several attempts they wrote to T on 8 February 2017. In that letter SJP said that as the "*credit agreement*" had been cancelled and the finance provider requested payment of the outstanding balance, unless T paid the balance by 15 February 2017, the insurance policies would be cancelled. On 15 February, SJP cancelled all seven of T's insurance policies. T said that they only found out about the cancellations the following day on 16 February. So their vans had been driven while uninsured. On 17 February, T's new broker arranged a single fleet policy.

T said that at the time of the policies being cancelled, they weren't in arrears on their loan payments, that their direct debits to the finance provider were still in place and that they were willing and able to pay their monthly instalments.

SJP said that on cancellation of the seven policies, the total premiums due by T for the time they were on cover was just over £123,000. SJP said T only paid around £55,000 (T said they paid almost £57,000) of the premiums which meant SJP had to pay the insurer the shortfall of just under £68,000. When the loans were taken out, the finance provider had paid all the loan amounts to SJP. And SJP had in turn paid the insurer for the premiums on T's behalf. Once the loans were cancelled, the balance of the loans became due to the finance provider, which I understand was just over £82,000. I understand that SJP received some premium refunds from the insurer for some of the policies because they had been cancelled early. I also understand that SJP paid the finance provider the outstanding balance of the cancelled loans. SJP said they were out of pocket by around £68,000 because they had to ensure both the finance provider's cancellation balance was paid and the insurer's premiums for T's time on cover were paid. So SJP said T should pay them (SJP) that amount.

T complained, but SJP didn't uphold it saying they hadn't done anything wrong. T didn't think that was fair, so they brought their complaint to us. T said:

- The seven individual policies SJP set up were unsuitable for T. A single fleet policy should have been set up instead.
- The loans SJP set up were fraudulent and with a view of earning commission.
- SJP failed to pass on details of a number of claims to the insurer's claims handler in a timely manner, which contributed to those claims not being processed and settled. Due to non-payment of claims, T suffered financial problems and was forced to take out loans to keep their business running.
- SJP failed to amend policies to remove vans that were no longer being used by T, which contributed to higher costs.

- SJP wrongly cancelled the insurance policies.

One of our investigators looked into T's complaint. She felt that:

- The policies SJP arranged were suitable.
- Using other insurers' details to set up the loans wasn't best practice, but that didn't have an adverse financial impact on T.
- The cancellation of the loans in January 2017 didn't cause T any financial loss as they could have continued paying for them.
- Of the claims T reported to SJP, SJP failed to pass on only one to the insurer's claims handler in a timely manner.
- There wasn't convincing evidence to show that SJP failed to amend policies to remove vans that were no longer being used by T.
- SJP were wrong to cancel the insurance policies, because even though the loans had been cancelled, T were not in arrears and could have continued paying the loans.

As neither T nor SJP agreed with our investigator, the complaint has been passed to me to decide.

### **my provisional findings**

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 intend to uphold this complaint in part. I'll explain.

#### *the suitability of the policies*

I understand that T told SJP that they intended to hire the vans that were to be insured. T also told SJP that they intended to expand their business fairly quickly and increase the number of vans that needed insuring. Given T's plans, I think SJP should have arranged a policy that catered for T's needs, in particular their rapid expansion and increase in vans, and the need to regularly add and remove vans, which I understand is common practice with a courier business. Being a new business, I think T's cash flow should have also been a significant consideration. Equally, I think being a new business with no proven track record T's business might not have taken off in which case they might not have wanted to continue their insurance beyond the first year. For the reasons I'll explain below, I think the way SJP arranged T's policies meant that T would have been tied to the insurer for more than the initial 12 month period. And because of the way the policies were arranged, SJP advised T to let the policies run their course, which would have meant T were stuck with the same insurer beyond the first year. But I think that having flexibility and not being tied to the same insurer for longer than a year would have been to T's benefit. I think T, like any policyholder, would have wanted the flexibility of being able to shop around for a different policy with a different insurer at the end of their first year.

T said that a single fleet policy was more suitable for their needs rather than a number of individual policies. T said that a fleet policy would have put less of a financial strain on them compared to the policies SJP arranged. And that a fleet policy would have been much easier to manage given there would have only been one start and one end date, compared to having several individual policies that start and end on different dates.

With a fleet policy the premium for any new van added after the policy has started will usually be charged on a pro-rata basis for the remainder of the policy term. Not only does that mean the newly added van's cover will come to an end at the same time as all the other vehicles, but it also means the cost of its cover will be lower than a full year's premium. To illustrate the point, the fifth policy SJP arranged started with four vans on 21 October 2016, almost exactly six months after the start of the first policy. Because it was a separate new policy the premiums charged for those four vans were for a whole year. But had there been one fleet policy, the cover for the four new vans added in October would have ended on the same date as the first batch of vans insured six months earlier. So, T would have only been charged pro-rata for the remaining six months of the fleet policy for the extra four vans and not a full year. Given on average each van cost T around £3,000 a year to insure under the policies SJP arranged, assuming the cost would have been similar under a fleet policy, it would have meant that T would have borrowed around £6,000 less (£1,500 per van for six months) to insure those four vans in October 2016. That would have been to T's financial benefit given they would have taken on less debt. Furthermore, I understand that many insurers of fleet policies invoice their policyholders quarterly for amendments, such as where additional vehicles are added or removed. So, in T's case, with the addition of those four vans in October 2016, if they had a fleet policy, T wouldn't have had to pay for the additional premiums until the next quarterly invoice, which could have been beneficial for T's cash flow.

I should say that when a new van was added to any of T's seven existing policies after they had started, the additional premium was charged on a pro-rata basis until the end of that particular policy. But, as I've explained above, that wasn't the case whenever new 12 month policies were set up to cover new vans. Vans added to new policies at the start were charged premiums for the full 12 months. Which is why T ended up with seven separate policies with seven separate start and end dates. And although SJP said that each policy they set up had a 10 van limit before a new policy had to be created, I note that on a number of occasions SJP set up the next new policy before the previous policy had reached its tenth van. For example, the third policy started on 17 June 2016, while at the time the second policy only had one insured van; and the seventh policy started on 28 November 2016, while the sixth policy only had five vans insured. That shouldn't have happened because every time a new policy was started it meant T were tied to the insurer for a further new 12 month period and that the vans added to the new policy at the start attracted a premium charge for the full 12 months, rather than pro-rata. It's not clear to me why that happened.

In their final response letter (FRL), SJP said that at the time the first policy was set up with three vans there was an *"understanding that if the company grows as quickly as you thought it would we could look to arrange a fleet policy at a later date."* Within four weeks four more vans were added to the policy. And in the fifth week a further three vans were added. In their FRL, SJP said *"further vehicles were then added to the policy until on the 31st of May 2016 you reached [the policy's] limit of 10 vehicles. At this point a discussion was had with [Mr A] advising that a Fleet policy would probably be the best course of action and that I would approach our panel of insurers to begin obtaining quotations."* SJP's comments demonstrate that they knew from the beginning that T intended to expand their business *"quickly"* and that a fleet policy was *"the best course of action"* once the number of vans increased. So at that stage, it would have been beneficial for the next policy they arranged to be a fleet policy that allowed for a greater number of vans to be insured. That way T could have added their other vans to it when their original policy lapsed. But SJP didn't do that.

SJP further said that when in October 2016 T asked to have more vans insured, at which point they had almost 50 vans, SJP *"suggested that a Fleet policy covering all your vehicles would be more suitable"*. But SJP said that they advised T against taking out a fleet policy at

that stage because several claims had by that point been reported and settled by the insurer, which meant T couldn't get a premium refund. SJP went on to say that their advice to T was, if they took out a fleet policy at that stage: *"not only would you need to pay for a new fleet policy you would also need to continue paying for the cancelled [current policies] due to the outstanding claims. It was again agreed that we should allow the policies to run until renewal and then look to arrange fleet cover at that point. A new policy was again incepted with"* the current insurer. But while that might have been the case, rather than setting up the new policy that they did, SJP could have begun a fleet policy at that stage, which would have allowed T to add their other vans to that fleet policy as and when their other policies lapsed. But it seems SJP's approach was simply to keep setting up new individual policies.

But SJP knew from the beginning that T intended to grow their business and increase the number of their vans quickly. And they accept that a fleet policy was more *"suitable"* with increased numbers of vans. So, I tend to agree with T that a fleet policy from the beginning would have been more suitable rather than a number of individual policies. SJP said that what prevented them from taking out a fleet policy in October 2016 was the fact that at that stage T had a number of claims on their policies which meant T couldn't get premium refunds. And if they started a fleet policy at that stage they would have effectively been paying twice, for the new fleet policy and for the existing policies. But when SJP arranged the individual policies, having accepted they were aware that T intended to expand quickly and that a fleet policy was more *"suitable"* for multiple vans, SJP should have known that there was a strong likelihood that T would be making claims on their policies (given it was a courier business), which would be an obstacle to getting premium refunds in the event that T wanted to cancel the policies early. So, knowing what they knew at the time, I think SJP should have set up a fleet policy from the start. Alternatively, they could have done so from June 2016 or even October 2016, when they realised that further policies would be required.

SJP said in October 2016 that, despite believing a fleet policy was more *"suitable"* for T, they advised T to *"allow the policies to run until renewal and then look to arrange fleet cover at that point."* But SJP at that point incepted a new 12 month policy with the existing insurer. So, what SJP effectively did was to prolong by a further 12 months those vans being added to a fleet policy. And SJP should have known that there was a strong likelihood that T would have made claims on their October 2016 policy. And if that happened, using SJP's reasoning for not taking out a fleet policy in October, namely that they would be financially worse off cancelling a policy where a premium refund couldn't be obtained, T would have been stuck with an unsuitable policy for a further 12 months. And in November 2016, SJP incepted a further two new 12 month policies for T. So, again, SJP sold T policies they knew weren't most suitable for T and for which SJP knew would tie T into the insurer for a further 12 months.

It's not clear why SJP, from the moment they acknowledged a fleet policy would have served T's interests better, didn't arrange a fleet policy to cover all of T's new vans going forward, while leaving the individual policies – that didn't entitle T to a refund – in place for them to run their course. And I think the existing policies for which T were entitled to get refunds could have been cancelled, and the vans under those policies added to the fleet policy. Had that happened, although there would have been a fleet policy and a number of separate policies running at the same time, but covering different vans, within a few months the separate policies would have ended and T would have been left with a single fleet policy, which SJP accepted was more suitable. So I don't think SJP handled T's policies fairly. I think they sold policies that weren't suitable for T's growing business when SJP were fully aware of the sort of policy that was suitable for T.

For the above reasons, I intend to uphold T's complaint that the policies SJP arranged were not suitable for T's needs.

*the loans and cancellation of the policies*

SJP have accepted that when they arranged T's loans they didn't give the right information about which insurer underwrote the policies concerned. In their FRL, SJP said T's director Mr F was aware that *"the incorrect insurer would be displayed on the credit agreement"* because the insurer wasn't on the finance provider's list of insurers. But the name of the business SJP referred to in their FRL as being the insurer wasn't the correct insurer, it was the intermediary that administered the policies. But despite referring to the intermediary instead of the insurer, SJP said that they did know who the insurer was. SJP said: *"different insurers were selected as [the insurer wasn't] selectable from the [finance provider's] Insurers list. This does not mean that [the finance provider] would not offer policies for this insurer and we simply selected an alternative insurer to set up the loan."*

T said that SJP acted fraudulently by giving the names of different insurers so that they could set up a number of loans for T. T said that if SJP had told the finance provider who the actual insurer was, the finance provider wouldn't have given the loans and SJP wouldn't have made a financial gain, namely commission from the finance provider and separately from the insurer. SJP vehemently deny acting fraudulently to make a gain, they said their commission was minimal and their sole motivation was to help T.

I haven't been provided with any evidence from the finance provider to say whether or not they would have given the loans had they known who the actual insurer was. And while Mr F has given a statement in support of SJP to say that both he and the other director, Mr H, were aware that SJP had used incorrect insurers' names when taking out the loans, I don't think it justified SJP's actions even if one or both directors knew. But I should say that Mr H, in the statement he gave, said he wasn't aware that SJP used incorrect insurers.

I should make it clear that fraud is a criminal offence and it's not within my remit to make such a finding. So I don't intend to comment further on this point. But I think it was inappropriate for SJP to misrepresent the insurer to the finance provider for the purposes of obtaining loans for T. The loan agreements between T and the finance provider specified a number of events that would cause a *"default"*. One of those default events was: *"You have given false information... in connection with this Agreement"*. So even if SJP used other insurers' details with T's best interests in mind, I think by using incorrect information SJP put T at risk of being found to have given *"false information"* and thereby put T at risk of being in default of the loan agreements. Had that happened the finance provider, in accordance with the finance agreements, could have demanded that T pay all the unpaid amounts on the loans immediately. Had that happened, I think that could have led to the cancellation of the insurance policies, which would have no doubt had a detrimental impact on T. So SJP shouldn't have acted in the way they did.

Turning back to the issue of whether or not T were aware of what SJP did in relation to the loans. As I understand it, T have raised two main concerns about SJP's conduct in relation to the loans. The first is that SJP misrepresented the identity of the insurer to the finance provider when SJP arranged: the original loan in April 2016; the two loans in October 2016 (having cancelled the April 2016 loan); the two additional loans in November 2016; and the attempt to set up four new loans in January 2017 (having cancelled the two October and two November 2016 loans).

The second issue, as I understand it, is that SJP cancelled the April 2016 loan and replaced it with two new loans in October 2016, which T say was without their knowledge; and in January 2017 cancelled the October and November 2016 loans and attempted to replace them with four new loans – again, T say without their knowledge. T said their understanding was that SJP split their single monthly loan payment into two monthly payments from October 2016 onwards. Likewise, T said that during the meeting with SJP in January 2017, SJP told T they would further split the two monthly payments into four monthly payments a week apart so as to help with their cash flow problems.

Dealing with the first issue, it was Mr F who almost exclusively dealt with SJP on behalf of T from early 2016 until early January 2017 in relation to the insurance side of the business. I'm aware Mr F and Mr H had a falling out which led to Mr F's resignation from his directorship and he left T in February 2017. There are a number of statements, including one from Mr H, that suggest Mr F has only given a statement in support of SJP to spite Mr H and T. The evidence of Mr H and T's accountant also suggests that until Mr F left T, he too was unhappy with and critical of SJP's conduct.

From the evidence I've seen, on balance, I'm satisfied that Mr H wasn't aware of SJP's conduct, which I've described as the first and second issues above. Mr H had little involvement with SJP or with the loans and insurance policies until around January 2017. And it was Mr H and Mr W who met SJP on 17 January 2017, Mr F wasn't present. SJP have said that it was agreed between the parties during that meeting that SJP would cancel the four October and November 2016 loans and set up four new loans. SJP said Mr H agreed to that. Mr H, however, said that no such discussion or agreement took place. Mr H said SJP only mentioned that they would split the two monthly payments into four monthly payments a week apart. SJP's contemporaneous notes of that meeting say: Mr H was *"happy with everything, cancel 2xDD [two direct debits] and arrange 4"*. The notes make no mention of the existing loans being cancelled and four new ones being set up. The very same day, after that meeting had taken place, SJP emailed Mr H and thanked him for meeting earlier. But SJP made no mention of an agreement to cancel the existing loans and set up four new ones. What followed over the next several weeks was a number of email exchanges between SJP and T about various issues, such as the outstanding claims and an up to date list of vans T were using, but again SJP made no mention of an agreement that the existing loans would be cancelled and four new loans set up.

On 3 February 2017, SJP emailed Mr W. In that SJP said *"...I'm slightly confused as to what's going on? As agreed with [Mr H] I've given you a payment break to help get everything sorted but less than 2 weeks later I get a call from your insurer advising the policy is being transferred to [the new broker]..."* Again there was no mention of an agreement to cancel the existing loans and set up four new ones. Nor was there a request to sign new loan agreements.

SJP next sent T an email on 7 February 2017. SJP said *"In regards to payments for the insurance I have managed to split this weekly for you as discussed with [Mr H], payments will begin on the 15th of Feb and the first payment will be £2,622.92. [Mr F] asked me to email you and let you know."* Again SJP made no mention of an agreement to cancel the existing loans and set up four new ones. Nor did SJP ask T to sign any new loan agreements. Had it been agreed during the January 2017 meeting I would have expected SJP to have mentioned it. But, instead, SJP said they had *"managed to split"* the payments, which I think supports T's version of what happened, namely that there wasn't an agreement to cancel the existing loans and set up four new ones, but only that the monthly payments

would be split into four a month. And SJP's words – "*I have managed to split*" – also suggested that as of 7 February SJP had already rearranged T's payment plan.

Correspondence from SJP to T continued until 15 February 2017, the day SJP cancelled all the insurance policies. And from the information I've seen, not once did SJP say in writing that T had agreed to the cancellation of the existing loans; the setting up of four new ones; and the need for T to sign four new loan agreements. Nor did SJP express surprise at T's refusal to sign the four new finance agreements despite agreeing to. Similarly, SJP didn't warn T that they (SJP) had, as agreed, already cancelled the existing loans on 25 January 2017. And as a result of T refusing to sign the four new loan agreements there was no current payment arrangement in place, which meant T would be in default of the finance agreements, which would inevitably lead to the cancellation of the insurance policies. Had it been the case, as suggested by SJP, that Mr H knew and was in agreement with SJP's actions of using the wrong insurers to set up the loans, and with the original April 2016 loan being cancelled and two new loans being set up in October 2016, I think SJP would have confirmed in writing to Mr H what SJP said they had agreed to in the January meeting.

But T said they didn't know that SJP had cancelled the October and November 2016 loans. T said that as far as they were concerned, the loans and their direct debit mandates were still in place. And T said that they were up to date with their payments to the finance provider. But SJP said that T were aware of the cancellation of the loans not only because of the January meeting, but also because the finance provider had sent T four letters dated 25 January 2017, that were titled "*advice of early settlement/cancellation*". Those letters said the October and November 2016 loans had been cancelled and set out the outstanding balances on the loans, which were a combined total of over £82,000. But I have seen confirmation from the finance provider that said they didn't "*issue*" those four letters to T because all documentation had been "*blocked*". The finance provider said that although they had blocked all correspondence, SJP had access to the cancellation letters. But I've seen no evidence that SJP sent those four cancellation letters to T either. SJP sent T a letter dated 8 February 2017 by recorded delivery. In that letter SJP said they had received correspondence from the finance provider to say the "*credit agreement had been cancelled and payment to clear the outstanding balance has been requested*." SJP's letter was worded as though they had only just found out from the finance provider that the existing loans had been cancelled. But there is no dispute that it was SJP who had cancelled the existing loans, so they already knew about it. SJP's 8 February letter went on to say the outstanding balance had to be paid in full by 15 February 2017, otherwise insurance cover would be cancelled. But SJP's letter didn't say what the balance was and it was worded as though only one credit agreement had been cancelled whereas all four had.

I don't think that Mr H had agreed in the January 2017 meeting, or at any stage, for the October and November 2016 loans to be cancelled and for four new ones to be set up. I think that's why there is an absence of any written correspondence or confirmation on the point. And even if SJP felt that was agreed during the meeting, it's not clear to me why SJP cancelled the existing loans before first getting the four new loan agreements signed by T, which SJP said was the reason why the four new loans didn't come into effect. While T were having cash flow problems, the evidence indicates that they were clearly still willing and able to meet their payments. And I have seen confirmation from the finance provider that at the time of "*cancellation*" T were not in arrears. Although the finance provider didn't specify whether they meant at the time of the cancellation of the October and November 2016 loans or at the time of cancellation of the insurance policies.

I note that SJP said they cancelled the four October and November 2016 loans on 25 January 2017. And the four cancellation letters from the finance provider have the same date. And I have seen the “*statement of accounts*” produced by the finance provider which also says the October and November 2016 loans were cancelled by SJP on 25 January 2016. But SJP’s file notes titled “*History of [policy] as at 30 May 2017*” suggest that they cancelled those loans on 7 February 2017. SJP’s entry dated 7 February 2017 says: “*Manual entry Credit agreements have been cancelled and re arranged as per discussion with [policyholder].*” There is no mention in SJP’s 25 January 2017 notes of the loans being cancelled on that date. I think SJP’s notes also suggest that they arranged the four new loans on 7 February. SJP’s entry on 7 February refers to the credit agreements being “*re arranged*”. And the finance provider’s “*statement of accounts*” say the “*Received Date*” of the four rejected new loans was 7 February 2017, which seems to suggest that was the date on which SJP tried to set them up. The “*statement of accounts*” said that the four loans SJP tried to arrange were “*rejected*” because “*they did not adhere with our requirements with the broker*”.

But, separate to the matter of the loans, another issue that was running parallel, was T’s desire to end their relationship with SJP and use another broker. Coincidentally or otherwise, that issue also came to a head on 7 February 2017. The evidence shows that on 13 January, the new broker T wanted to take over from SJP called SJP asking for a transfer of business. T’s written transfer request was signed by Mr F. That was followed up by Mr H’s call to SJP on 17 January also saying T wanted to transfer to the new broker. It was T’s desire to change brokers that led to the impromptu meeting between SJP and Mr H and Mr W on 17 January. T said that on 27 January they agreed to stay on with SJP only because SJP threatened that T’s outstanding claims wouldn’t be paid if T transferred to a new broker. I think SJP were clearly unhappy that T wanted to use another broker. In an email to T on 3 February, SJP said: “*I’m slightly confused as to what’s going on? As agreed with [Mr H] I’ve given you a payment break to help get everything sorted but less than 2 weeks later I get a call from your insurer advising the policy is being transferred to [the new broker]*”.

On 7 February, the insurer’s intermediary sent SJP an email. They said: “*As the [broker T want to transfer to] don’t have agency with us, if the transfer is successful then ultimately the policies will have to be cancelled and I’m not sure [T] realises this. I’ve been advised that as the most recent correspondence we have is [T] asking to be transferred to [the new broker], we have 7 days from today to clear this up otherwise we’ll have to follow through with the request, and will have to issue notice of cancellation on all existing policies.*” On the same day SJP forwarded that email to T and said: “*Please see below email from your insurer, please can you call or email me so we can sort, or let me know what the problem is.*” That same day, SJP sent another email to Mr H, Mr F and Mr W of T and said: “*Please can someone call me urgently, as it stands [the new broker] are trying to transfer your policy to them with immediate effect, [the new broker] do not have an agency with your insurer which means that the policy will be cancelled, no claims will be paid and you will still have to continue to pay for the policy, I was under the impression from my visit the other day that everything was sorted and the relationship was all good and that we would be open and honest with each other going forward, please can you email me or call to let me know what’s going on as I can’t help if I don’t know what the situation is.*” The emails above suggest that as of 7 February, the only threat to the insurance policies being cancelled was because T wanted to transfer to a new broker. Not once did SJP say in any of their correspondence – between 17 January and 7 February – that the parties had agreed to cancel the existing loans and set up four new ones; that T were refusing to sign the four new loan agreements; that the policies would be cancelled because T were in arrears; or that the policies would be



cancelled as there was no payment facility in place because the existing loans had already been cancelled.

While T maintain that the four new loans didn't come into effect because the finance provider blocked them due to the suspected fraud, SJP say they didn't come into effect because T failed to sign the four loan agreements. But in January 2017, through the new broker's involvement, T were in contact with the finance provider. And I have seen correspondence from the finance provider in which they said they had "*blocked*" "*all documentation*". So I think the finance provider had concerns regarding the loans and what they had been told by T.

Even if SJP are correct in that they did send T the four new loan agreements, I can understand why T would have refused to sign them and why the finance provider would have blocked the new loans. T said that they found out from the finance provider that SJP attempted to set up four new loans. Each loan was for an identical amount just under £25,000. And that the loans, according to what T were told by the finance provider, made a number of misrepresentations. The most significant was that: each of the four new loans were being taken out for four new insurance policies starting on 15 and 22 February, and 1 and 8 March 2017; and that the four new policies were underwritten by three different underwriters. But, in fact, T were not taking out any new insurance policies. The seven insurance policies that had been incepted with the insurer between 22 April and 28 November 2016 were still active.

So, I think SJP's attempt to take out four new loans on T's behalf was unreasonable for the following reasons:

- The terms of the credit agreements said that each loan was being given to buy an insurance policy. But, contrary to SJP's representations made to the finance provider, new policies weren't being bought but SJP were trying to restructure T's payments for the existing policies. I think that fell foul of the credit agreements' terms and conditions.
- The four new loans, like the previous loans, were structured in a way to ensure that they were repaid in full before each 12 month insurance policy came to an end. That's why repayments were to be done in 10 instalments. The reason for that was to give the finance provider security in case T defaulted on their loans. Each finance agreement said the finance provider had a "*charge*" over the policy and T agreed to assign their rights and interests in the policy over to the finance provider. Under the finance agreements, in the event there was a default on a loan, the finance provider could approach the insurer to cancel the policy and to get any premium refund due to T for the remaining period of the policy. But that could only work if the policy for which the loan was taken out was scheduled to end after the last loan payment was made. But had the four loans been successfully taken out, not only would it have been the case that the existing policies didn't relate to the loans, but there would have been a period of time where all the policies would have ended while the four loans were still continuing. Likewise, the loan agreements said that the finance provider could recover money owed to them by T from any claims settlements the insurer were to make to T. But given the four loan agreements would have continued well past the scheduled end dates of the policies, the finance provider's ability to recover money through potential claims settlements would have been reduced. So, I think SJP's arrangement of the four new loans wasn't compatible with the terms of the finance agreements.

- I should say that further to the problems I've outlined above, SJP's actions in the way they tried to take out the four new loans could have also led to the finance provider holding T in "default" of the finance agreements had the loans been successful. The finance agreement says T could be found to be in default if: "*You have given false information or have otherwise committed or assisted another person to commit fraud in connection with this Agreement*". The representation made to the finance provider was that the four new loans to be taken out were to pay for four new insurance policies being underwritten by a number of insurers. But that simply wasn't the case. So SJP's actions could have led to very serious consequences for T.
- Also, if the four loans were successfully taken out and used to restructure T's payments for the existing seven policies, it's likely that T would have been paying off the loans until January or February 2018. But all their existing seven policies would have ended by November 2017. So if T took out a new 12 month policy in November, I think they would have had a period of time where they would have been paying for two sets of premiums: one for the new policy and one for seven policies the new policy had replaced. And given the large cost of the premiums T were paying because of the number of vans they insured, I think paying two sets of premiums would have placed T under financial strain. But had SJP arranged one suitable 12 month fleet policy for T from the start and arranged appropriate finance for T, the expectation was that T would have paid the premium within the life that policy. And once that policy came to an end and T took out a new policy in the following year, they would have started afresh without having the burden of carrying over a debt for the previous year's insurance cover.

I think that once T became aware (through their new broker) of what SJP had tried to do with the loans, if SJP did ask T to sign the four new loan agreements and T refused, I think T's refusal was reasonable.

I understand that SJP cancelled all seven of T's insurance policies in reliance of a condition in their terms and conditions that said: "*It is a term of any Instalment arrangement that you authorise us as your agent to instruct the Insurers to cancel your insurance if any payment under those arrangements is in arrears and not paid on time.*" But, as I've mentioned above, the finance provider confirmed that T weren't in arrears. But, even if T were in arrears, I think it was SJP's unreasonable actions in relation to how they dealt with the loans that led to that situation.

For the reasons given above, I feel that SJP's actions in relation to the loans and the resulting cancellation of the policies were unreasonable. I therefore intend to uphold this part of T's complaint.

#### *the reporting of claims*

Processing claims under the policies was the responsibility of the insurer and not SJP. And the insurer's policy terms gave instructions as to how T should make any claims. But separate to that, SJP charged T an additional fee to provide a claims service. That wasn't optional but a requirement placed by SJP when taking out insurance. SJP's terms and conditions said "*in order to provide a full "one-stop" service, we require customers taking out Motor Vehicle insurance to also pay an additional charge for our claims service*". It went on to say: "*you authorise [SJP] and its agents to take all necessary actions to handle your claim including dealing with your insurers, third parties and their insurers and other service suppliers on your behalf.*"

T said that they reported a number of claims to SJP, but SJP failed to pass the details onto the insurer which meant that claims weren't paid. That resulted in T having to pay the owner of the hired vans the costs of repair and extended periods of hire because the vans couldn't be hired in their damaged state. SJP, however, said in their FRL that they reported T's claims to the insurer the same day T reported them to SJP. SJP said that when T reported claims they failed to provide all the necessary information that was needed by the insurer to process them. SJP said their understanding was that the insurer had sent T claim forms but they were not completed and therefore claims were not settled.

My understanding is that T reported the majority of their claims by phone. That is not surprising as SJP's instruction was for T to report claims to their claims line. My expectation is that SJP, when taking the claims reports, should have advised T as to what information was necessary. But I haven't been provided with any call recordings so I don't know what was discussed. T also made a number of the claims in writing and I have seen a number of emails.

I should say that very soon after the policies were cancelled in February 2017, T complained to both SJP and the insurer. This decision only relates to SJP. But part of T's complaint to the insurer was about T's claims not being paid. Our investigator did her best to mediate between T and the insurer for the claims to be processed. But the insurer went into administration at the end of 2018 before the claims were paid and before our service could issue a final decision on the point. I should make it clear that T's complaint against SJP is that SJP didn't pass on T's claims to the insurer. But soon after the meeting between SJP and T in January 2017, SJP did (in early February 2017) pass on the details of claims to the insurer. Although T would say that was done belatedly. And after that both our investigator and T's new broker made further contact with the insurer to get the claims processed. But my understanding is that the outstanding claims weren't paid, despite the insurer having had the necessary details about the claims for some time.

While I'm not making any findings against the insurer in this decision, I think the claims not being paid after the relevant details were passed to the insurer is relevant to the complaint against SJP. My understanding of SJP's position is that: they received T's claims and passed them onto the insurer in a timely manner; from that point onwards it was the insurer's responsibility to deal with the claims; the insurer sent T claim forms to complete, but T failed to do so.

I understand that the vast majority of the claims related to accidents at the end of 2016 and early 2017. So even if I was to make a finding that SJP failed to notify the insurer of the claims in a timely manner, I have to also look at what impact that had on T. Or, in other words, what might have happened if SJP had reported all the claims to the insurer in a timely manner. Given the claims weren't paid even after SJP reported them in February 2017; our investigator and T's new broker gave the insurer details about the claims; and the insurer had well over a year to process the claims, but didn't do so, I can't say that the position would have been any different had SJP passed on the claims' details more promptly. So, I can't say SJP's actions caused any of the claims to not be paid. I should also say that within the evidence I've been provided, there were some occasions where T's drivers failed to report accidents to T, which would have meant that those accidents wouldn't have been reported by T in a timely manner.

For the reasons explained, I don't intend to uphold this part of the complaint.

*removing vans from the policies*

During the time the seven insurance policies were active, T had a large number of vans insured at various times. There were many occasions where vans were added or removed from the policies. As each van was charged a premium it was important to ensure that any vans no longer required by T did not remain on cover.

T said that they told SJP every time a van had to be removed from cover but SJP failed to act on some of T's requests, which led to vans not being used remaining on cover at the expense of T. SJP deny that and said that T didn't always tell SJP which vans no longer needed cover.

From the evidence I've been provided, I can see that there were a number of occasions, especially towards the end of 2016 and in early 2017, where SJP repeatedly asked T for an up-to-date list of vans they were using which needed cover. But I don't think T gave SJP the necessary information. I understand that when SJP met with T in January 2017, it was established that a number of vans were still on cover that shouldn't have been. But given SJP asked T before then on a number of occasions for an up-to-date list of vans, I can't say that SJP were at fault. So I don't intend to uphold this part of the complaint.

#### *summary*

I intend to uphold the complaints that the policies were not suitable for T and that SJP's actions in relation to the loans and the cancellation of the policies weren't reasonable. I don't, however, intend to uphold the complaints in relation to the claims and the updating of the policies with the vans requiring cover.

I apologise to the parties for the time it has taken to give my provisional decision. As the parties are well aware the issues in this complaint are complex; the evidence is voluminous; there is the added complication of T's separate complaint against the insurer where I think there is some overlap; and another complication is the fact that the insurer went into administration while our service was considering that complaint. I understand that T claimed compensation from the Financial Services Compensation Scheme (FSCS) in relation to their complaint about the insurer. I don't know what the outcome of that claim is. Given there is some overlap between T's complaint against SJP and the insurer, it's important for me to know the outcome of the FSCS claim before I can't at this juncture fairly conclude what actions SJP needs take to put things right.

Similarly, before I can make a direction as to the appropriate remedy, I require T to provide me with detailed information, with any supporting evidence, explaining how they say the issues I intend to uphold have impacted them; what loss (if any) they suffered; and how they feel they should be compensated.

Equally, I would welcome SJP's comments on my provisional findings.

Given the complexity of the complaint; the length of my provisional decision; and the obvious interruption to business and schedules due to the impending festive period, I am giving the parties six weeks to provide their comments to my provisional decision. Should either party require longer, they should ask for an extension giving reasons.

Once I've received the requested information from both parties, I will issue a further provisional decision incorporating any relevant information I've been provided and my views

on compensation. That will give the parties the opportunity to comment further before I issue my final decision.

**my provisional decision**

For the reasons set out above, I intend to uphold this complaint in part.

Both parties should provide their comments on my provisional findings. But, additionally, I require T to provide me with detailed information, with any supporting evidence, explaining how they say the underlying issues of the complaints I intend to uphold have impacted them; what loss (if any) they suffered; and how they feel they should be compensated. T should also give details, with supporting evidence, of the outcome of their claim to the FSCS.

Mehmet Osman  
**ombudsman**

## Appended

### Second Provisional Decision dated 18 March 2020

#### complaint

T have complained about S & J Palmer Ltd's (SJP) handling of T's commercial motor vehicle insurance policies.

T are represented in their complaint. But, for ease, I will refer to the representative's comments as being those of T.

#### background

I issued a provisional decision on 19 December 2019, which is appended to this decision. Please refer to that decision for the background and my provisional findings.

The parties were invited to comment on my provisional findings. Both parties provided further comments. I have summarised the parties' comments under the four headings as they appear in my provisional decision.

#### *suitability of the policies*

SJP said:

- *"As previously disclosed, at the inception of the first Mini fleet policy, Mr F [one of T's directors] required 3 vehicles to be insured immediately, with an option for future growth. As noted, in the provisional decision, this was a new business with no track record. Therefore, our advice was based on the best option that could be sourced at that time and best met the client's needs, which was a mini fleet policy. At that time, it was to provide insurance for 3 vehicles, with the ability to add more vehicles (up to a maximum of 10) when required. This gave the client the flexibility to add and remove vehicles up to a maximum of 10 vehicles on a pro rate basis. In addition, it would also allow the monthly payments to be adjusted accordingly and additional mini fleet policies to be arranged when required, thus helping with their cash flow.*
- *The mini fleet policies would also allow the business to build up fleet experience to take to the market, allowing a standard fleet policy to be obtained at a later stage. We did try to obtain a standard fleet quote on the 1[0]th June 2016, when the client reached 10 vehicles. (Copy email to [fleet specialist agent] attached below) But due to this being a new venture, we were unable to obtain a rate in the market. This said if a standard fleet policy could have been obtained this would be based on a be [sic] quarterly declaration for changes, thus affecting cash flow as payment for changes would then be in arrears with no direct debt facility in quarter four, compared to the mini fleet option offered.*
- *In October 2016, a Fleet policy could have been provided, however, as explained previously due to the claims made on the other policies, they would have been paying twice for the same cover. As explained above, previous attempts to obtain a standard fleet policy were not successful.*
- *An assumption has been made in the provisional decision, that T would have been tied to the insurer for more than the initial 12-month period. This is speculation, as the initial policy did not run its full 12 months. We cannot say what would have*

*happened at that time but the policy would have been rebrokered and T's needs would have been reassessed. T would have also been more than welcome to shop around.*

- In the provisional decision, there is focus on the fact that on a standard fleet policy, vehicles can be added on a pro rata basis. In this case, none of the policies ran the full period, so I do not see the bearing on this case. We had advised T of this situation and they were aware the cancellation terms were time on cover with refunds not being available for any vehicles that had been involved in claims. While it means T was technically taking on more debt, they were aware of the situation and the cancellation terms were time on cover, so there was a partial refund from the provider.*
- We appreciate that a standard fleet policy may allow for quarterly declarations. However, as this didn't happen, we don't feel assumptions can be made on what impact this would or wouldn't have had on their cash flow.*
- In my opinion, due to the claims experience and risk type the cost of a standalone policy would have been more expensive than the current mini fleet's on cover with less flexibility for the client to down size the fleet. Standard fleet cases can include a minimum deposit which could result in a 75% time on risk charge from day one.*
- We cannot agree that the policies were unsuitable, as they provided cover for the vehicles that needed to be covered. You will indeed note that the vehicles have been involved in incidents that have had the claims paid so it is incorrect to say the policies were not suitable. We would agree that a fleet policy may have been a more suitable policy after the rapid expansion however, for the reasons already explained, this was not possible at the time the last vehicles were added. It would however have been fully assessed at renewal."*

T agreed with my provisional decision under this head and said:

*"We would also pick up Para 2 on page 6 of the decision where SJP is alleged to have advised Mr [H] that as a result of claims, a premium refund would not be forthcoming if the policies were cancelled early. Our belief is that this advice was solely commission driven, especially when it is learned that the [insurer] did indeed allow cancellation refunds when SJP did unilaterally cancel the policies in February 2017 under false pretences. SJP has not refunded this unknown amount to [T] and indeed, we suspect that it has been utilised for the purpose of reducing SJP's indebtedness to [the finance provider] under the terms of the agreement between those two firms. This is tantamount to theft – although we accept that it is not within the Ombudsman's remit to make findings on criminal matters."*

*the loans and cancellation of the policies*

SJP said:

- "Upon knowing the client had a cashflow issue, we tried to assist with the agreement at the time of setting up 4 loans which enabled payments to be split more evenly. As at that time the client was entering a default situation, which they paid to allow the direct deb[i]ts to be cancelled and new ones created, thus a 1 month's period of grace was agreed.*
- Whilst the incorrect insurance providers name was given on the agreement, this would not have had an impact on the acceptability of the loan as the insurers in question were acceptable. At no stage was anything done [inappropriately], but was done to aid the client due to the current cashflow issue. An assumption has been made that that the loans could have been cancelled due to the incorrect insurers*

*name[s] being present on the documents. This is an assumption and did not happen, so should not have any bearing on this case.*

- *At no time was any underhand activity undertaken as Mr F was fully aware of what was happening with their loans and it was only done to aid their business and cashflow. It was not to benefit us. Mr H & T were also fully aware of the situation after my meeting in January 2017. Only upon dealing with another broker did they find reason to walk away from our business relationship.*
- *I would further add that our actions were entirely to aid the customer. We have a facility agreed with our finance provider [name] whereby, providing certain processes are followed, the facility is entirely non-recourse meaning there would be no debt to us in the event of default. We were fully aware that by allowing the customer to separate the loans into 2 to aid cashflow that this would put us outside of our agreed non-recourse facility with [the finance provider]. The result of this was that the loans would revert to a recourse basis meaning we would be responsible for any shortfall (as has happened here). We were however more than happy to do this in order to assist the customer with their cash flow issues, as we valued the relationship and were keen to do what we could to support them even if that posed a risk to our own business. I highlight this to reiterate that there was absolutely no reason for us to do this aside to assist the customer.*
- *The statements provided by accountant should be called in to question as no evidence can be given to show Mr F wrote this in spite, so undermines the complaint by Mr H & T. In any event, to say that our evidence should be disregarded as a result of the accountants' comments does not feel reasonable. We were communicating with Mr F as we were instructed to do and are not expected to be aware of the complexities of the relationship of the two directors.*
- *Since Mr F and Mr [W] have parted company with T they have both instructed us to deal with their new insurance requirements remaining clients of our business to this day. This would speak volumes on the service given by us while they undertook business for T, and cast doubt over the statements made as if this was not the case both would have not intrusted our services again.*
- *I feel the complaint has been done under the direction of a third party to obtain their business. The action taken by our business was always well intended to help resolve ongoing cashflow issues with their agreement."*

T agreed with my provisional findings under this head. T also said:

- *"There has been sufficient dialogue on the set up of the loans and that they bore no resemblance to the policies set up on behalf of [T] – not only in terms of the identity of the insurers but also in respect of the amounts borrowed/repaid. We note SJP vehemently deny acting fraudulently (and again we acknowledge that such a finding is outside of the Ombudsman's remit), however, picking up on the SJP comment that commission on the loans was minimal, we would refer to the very early notes from [the finance provider] that the interest rate charged by SJP (who had the authority to apply a rate of their choosing) was 7% in several instances (against the retail rate given to Brokers by [the finance provider] of around 3%) and so if a 100% mark up was minimal, we have to accept SJP's comments although in monetary terms, this commission would have been in the region of £3-£4000 on top of the commission received from the insurer for arranging the policy cover.*
- *As regards cancellation, our estimate of the amount of the policy refund has been documented previously although we have no knowledge of the actual amount reimbursed by the insurer but we believe it runs to several thousand pounds. Legally, this belongs to [T] and cannot be used to reimburse loans with [the finance provider]*



*that bore no resemblance to the amounts, the insurers or the policies that SJP did effect in the name of [T].*

- We note the comment in para 1 of page 10 of the decision we can clarify that the finance provider's comment that T were not in arrears (nor had the bank mandate been cancelled) was made to [T's new broker] and therefore definitely referred to the then policy cancellation threat in February 2017.*
- We note the comment in para 1 of page 11 of the decision and the falsehood that if the policies were cancelled early by the insurer, that claims would not be paid and premiums would continue – designed to put undue and unfair pressure on T.*
- The cancellation itself could have caused significant damage to [T] especially as SJP advised that they had been instructed by [the finance provider] to terminate the cover (untrue) on the basis that the direct debit mandate had been cancelled (untrue) and that the loans themselves were in arrears (again untrue). The effective date and time of cancellation by SJP was after 9pm in the evening but it was not until 3pm the following day when Mr [H] was informed by [the insurer's agent] that cover was no longer in force. Consequently, [T] were breaking the law by inadvertently driving uninsured. If vans had been pulled off the road, [T's large customer] would have terminated their contract with [T] (a courier without vans on the road is not of much use), leaving the firm bankrupt and likely, it's Director in a similar position.*
- This meant that alternate cover had to be sought as a matter of extreme urgency and we touch on this point in our summary to this response and thoughts on quantum."*

*the reporting of claims*

SJP didn't comment.

T didn't agree with my provisional decision under this heading. T said:

*"We note the decision comment that even if all claims had been reported promptly by SJP, it would have made little difference because of the lack of action on the part of the ultimate underwriter. However, we make points here:*

- When the intermediaries used by SJP produced a spreadsheet in February 2017, listing the claims that they knew about, there were many omissions proving that SJP had NOT satisfied their obligation to T to report the claims promptly. The Ombudsman has a copy of this spreadsheet (further copy attached to the accompanying email).*
- As further evidence, there was one specific accident involving vehicle [registration] September 2016 where the repairs were in excess of £10,000 – this does not appear on the insurer spreadsheet and yet SJP had referred this claim to their own claims handling firm [name] with [SJP] being copied into an email dated 16/11/16 of which FOS has a copy. T ended up paying this claim amongst all of the others to [the van hire company used by T] after the latter issued a winding up order against T for non-payment of claims. This order was later withdrawn by [the van hire company] after T agreed a payment plan including interest and legal costs in excess of £100,000.*
- In para 1 of page 13 of the decision, the Ombudsman identifies that SJP overrode the insurer responsibility to process claims by providing a mandatory claims "service" and so T were perfectly entitled to their view that SJP would process their claims once they were reported to them on the telephone as required by SJP. T never received any correspondence from the*

*insurer's intermediary but again, it is a Broker's responsibility to not only report claims to an insurer but to follow them up – the failure to do this by SJP is perfectly illustrated in ii above.*

- iv. *It is interesting to note that the ultimate insurer [name] has issued litigation against their intermediary through whom SJP had arranged the cover in a multi-million pound law suit relating to the alleged inadequate processing of claims – so it seems that it may not have been the ultimate insurer that let T down but the intermediary with whom SJP enjoyed agency facilities. SJP therefore under the law of agency should have acted in the capacity of agent for the policyholder and failed to do so.*

*It is a prima-facie of an insurance broker to undertake due diligence on all parties in the insurance chain both in terms of service and claims paying ability prior to a contract of insurance incepting and we challenge SJP to provide evidence that they sought to undertake any activity of this nature.*

*There is online anecdotal evidence that this intermediary through whom SJP placed this business have a certain "reputation" for dealing with non-regulated insurers who passport into the UK market under EU regulations. It would seem that [the insurer] the third insurer that they have dealt with who have encountered financial difficulties and currently a fourth insurer is under close scrutiny by [overseas] regulators. [T's new broker] celebrate their 30<sup>th</sup> year in business this year and can report that they have never placed business through this intermediary ....and never will."*

*removing vans from the policies*

SJP didn't comment.

T said that although they do not agree with my provisional decision under this heading, they will accept the decision in view of the lack of documentary evidence to support the fact that telephone instructions were given to delete specific vehicles.

#### *T's losses*

In my provisional decision I asked T to provide me with detailed information, with any supporting evidence, explaining how they say the underlying issues of the complaints I intend to uphold had impacted them; what loss (if any) they suffered; and how they feel they should be compensated. T had a separate complaint about the insurer which we were looking into. But as the insurer went into administration at the end of 2018, before our service made a final decision, the matter was referred to the FSCS. I had also asked T to provide details, with supporting evidence, of the outcome of their claim to the FSCS. T responded, as follows:

*"This is the most difficult part of the response. The administration of the insurer has further complicated matters and that aspect is in the hands of the FSCS, having had this case referred to them by the FOS. However, in that long period and in response to the FOS question, there has been no contact from the FSCS in what is likely to be a case that may take a considerable time to resolve. We are not even sure that the FSCS will accept outstanding claims in respect of cancelled policies is within their remit and feel that the FOS should take this into account.*

*In [the investigator's opinion], the suggestion was that SJP should pay compensation calculated on the basis of the cost of the new policy that replaced the SJP policies up until the intended expiry date of those covers. T queried as to what date would be used given varying expiry dates and suggested a mid-point pro-rata calculation in the interests of fairness to both parties.*

*In an attempt to catalogue the costs incurred by T, the following listing is not exclusive:*

- a. Increase cost of insurance in Feb 2017 – it was stated by SJP that the annual cost of van insurance was £3,000 per vehicle. The urgent need for alternate insurance to be arranged given the unilateral cancellation by SJP called for a cost of £4,400 per vehicle, inclusive of [tax] initially, before the addition of credit charges ([T's new broker] charged 3% with no commission added) so an increased annual cost of £1,400 per vehicle (28 vans on cover at start of the policy).*
- b. The failure to return the refund to T after cancellation of their policies by SJP – we have never been appraised of this amount but given that in their FLR, SJP referred to an amount outstanding to [the finance provide] was circa £82,000 and in their recent attempt to reach an agreement with T (see covering email), SJP refer to an amount "owing" of £58,415, this suggests the refund was circa £23,500.*
- c. The [finance provider] loans were for amounts that bore no resemblance to the total of the premiums of the various policies arranged by SJP and this should not be a factor in any calculation.*
- d. T still maintains that SJP let them down on claims service and having paid a six-figure sum to [the van hire company] maintain the view that SJP failed under their duty of care to T. However even if it is held that the responsibility for claims payments were the responsibility of [the insurer] and now effectively the FSCS, there still remains the question of legal costs and interest which T says would not have incurred had SJP provided the claims service that T were paying a separate mandatory fee for.*
- e. Hurt to their business reputation, increased accountancy fees, interest cannot be easily quantified but nevertheless need to be accounted for in the quantum calculation.*
- f. Finally statutory interest needs to be added from 2017 until such time as any FOS award is actually paid by SJP."*

I asked SJP to comment on T's claimed losses, as detailed above. SJP said:

*"T has provided details of their losses all of which we note are unsubstantiated and have provided our further commentary as below.*

*While we sympathise with the situation, the administration of the insurer is beyond our control. T was aware of the insurer, as this was discussed at length with [Mr] F. The FSCS should be dealing with any valid claims against the insurer irrespective of if the policy is live, providing they have been reported.*

*Our history notes that have been provided as evidence clearly show that when a claim was reported to us it was dealt with immediately, had T followed our simple claims procedure then they would not have been in this situation, as the claims would have been settled by the insurer in good time. One of the biggest issues here was that no information was provided by*

*T when an incident happened, sometimes months after an accident had occurred, we would be asked to get the vehicle repaired. This makes it almost impossible for a claim to be settled as without knowing locations, circumstances, who was driving etc.*

*We have addressed each part of the schedule of losses below:*

- a) The policy was cancelled as T failed to complete the direct debit agreements and you will appreciate that a policy cannot continue without a valid payment mechanism. The increased cost further illustrates our point that a fleet policy would have been more expensive for the customer. It is conjecture to say that the "urgent nature" increased the premium. Even if we were to accept this point as correct (which we don't), T would need to evidence that cheaper cover would have been available. The new broker is responsible for advising T to go down this route, if the client wanted to continue to pay approx. £3K per vehicle they should have continued to pay SJP for cover.*
- b) The original cost in premiums including cancellation refunds at the point the policy was cancelled was £123,138.80. Payments were received from T totalling £55,359.50. At the point of cancellation, the total debt to SJP was £67,779.30. SJP were able to agree a further refund of £9,364.25 with [the insurer] some weeks later leaving a total debt of £58,415.05. The fact that T has not paid for the cost of the cover that they had which cannot be disputed (some claims have been settled & evidence has been provided of cover) how can a claim for refunded premiums be made, the refund was used to reduce the amount of money that was owed to SJP by T. T surely at the very least must pay for the cover that they had. There is no financial loss here to T, in fact it is quite the opposite, the financial loss is to SJP, T had full cover for all vehicles and didn't even pay for 50% of the cost. The offer from SJP to come to an agreement with T was not a recent one, this offer was passed to the ombudsman several months ago and should have been relayed to T, the offer being to write off the debt of £58,415, owed to SJP.*
- c) The loans arranged through [the finance provider] were to the penny to cover the cost of insurance through SJP, at the point the 4 loans were arranged through [the finance provider] in order to assist T to be able to continue to pay for the cover they needed. As was previously confirmed by the ombudsman following their investigation, these loans must have been discussed and evidenced as [the finance provider] have sent the ombudsman copies of the signed agreements signed by [Mr] F.*
- d) SJP has provided evidence relating to T's comments on the claims service this already, an insurer cannot be expected to settle a claim without knowing anything about it or not knowing anything often until months after the incident. The Fleet was purely managed by T and SJP cannot be held responsible for poor admin processes at T's head office. Our history notes clearly show that claims reported to us were actioned immediately, as do emails that have also been provided as evidence.*
- e) The reputational damage to T's business is pure conjecture and should not be considered. If they have arranged alternative cover, how is there any reputational damage? I fail to see how this would result in increased accountancy fees.*
- f) We would dispute that any interest would be payable. We have at all times complied with the requests for information and were keen to draw this matter to a speedy conclusion. The delays are not the fault of SJP.*

*I fail to see that there has been any financial loss to T, T made the decision to stop contact with SJP and follow advice of the new broker. This has caused SJP to have no other option than to cancel T's insurance SJP cannot insure a client that does not pay for policies. The*

*fact that the new broker was not able to offer a policy through [the insurer's agent because T's new broker didn't have an agency agreement] only makes the situation worse, as best advice would have been to allow the policies to run their course paying a far lower premium and if the client was really unhappy with SJP they could have obtained a policy from the new broker at expiry. SJP have provided a large amount of evidence to prove that T was actually quite happy with the service that they were getting from SJP, a letter from [Mr] F (T's director that dealt with SJP) which cannot be dismissed, [Mr] F and [Mr] W are still clients of SJP, T took a new policy for Liability out with SJP after the original transfer to the new broker, why would they do this if they were unhappy? It is clear that the new broker is very persuasive and has not really considered the detriment to their client with the advice they have given.*

*In conclusion the advice provided on inception of all policies was in the best interest of the client and at no time has the client been financially affected by the actions taken.*

*We understand that the ombudsman's decisions are to put the client in the position they would have been in had the issues not occurred. Although we do not agree with the outcome, we would like to make the point that even if we do accept that a fleet policy would have been more suitable, the customer would still have had to pay the appropriate premium for this policy. In addition, they would need to pay the time on risk charge (even if we assume this is entirely pro-rata) for the previous policy as cover was held and was in force for all vehicles prior to cancellation. As it stands, T has only partially paid the time on risk charge for this period. We feel that our offer to waive the remaining time on risk charges is more than reasonable, as T will in effect be receiving a benefit that they were not entitled to (i.e. they have not paid in full for cover held).*

*We would re-iterate our offer to write off the debt owed to us of £58,415 in order to draw this matter to a conclusion."*

### **my provisional findings**

I've again considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm intending to uphold this complaint in part on the same grounds as explained in my first provisional decision. I'll explain why.

The parties have made a lot of detailed points and I've considered them carefully. I will only comment on what I feel is necessary to reach a decision on the key outstanding issues.

#### *suitability of the policies*

I have considered SJP's comments in response to my first provisional decision carefully. But I'm not intending to change my findings. I will respond to SJP's comments as follows.

I haven't been provided with a statement of demands and needs which I assume SJP would have completed when advising T as to the best course of action for T's circumstances. And I've not seen any convincing evidence to satisfy me that the fleet policy option was considered at the very beginning but decided against, or that there were no fleet policies available to T at that time. The implication given by SJP is that a fleet policy was considered as they say "*the mini fleet policies would also allow [T] to build up fleet experience to take to the market, allowing a standard fleet policy to be obtained at a later stage.*" SJP's reference to "*mini fleet policies*" is to the individual policies they arranged for T. Yet SJP's email to a fleet specialist agent on 10 June 2016 asking them to "*look at a fleet*" policy for T was less

than seven weeks after T's first policy was inception on 22 April. SJP obviously felt the need to make an approach for a fleet policy very early on so I question how much consideration had been given to the suitability of such a policy before the first policy was taken out at which time SJP were aware that T intended to expand rapidly. I would find it unlikely that SJP would consider seven weeks to be a sufficient period of time to be able to say T had built *"up fleet experience to take to the market"*. But I think the email of 10 June is an indication that SJP felt very early on that a fleet policy was more suitable for T. And as detailed in my provisional decision, SJP were later on explicit in saying a fleet policy was *"more suitable"* for T, yet SJP kept arranging more individual policies.

SJP again accept that a fleet policy could have been arranged in October 2016, but they said they decided against that *"due to the claims made on the other policies, [T] would have been paying twice for the same cover."* That was at a time when SJP said a fleet policy was more suitable for T. But I don't agree with SJP's reason for not taking out a fleet policy at that time. I don't accept that T would have been paying twice for the same cover. SJP said that pro-rata refunds could have been obtained for the individual policies on vans that weren't subject to a claim. But pro-rata refunds wouldn't be given for vans that had claims. So, I see no reason why SJP, who were of the belief a fleet policy was more suitable at that time, didn't cancel the policies on the vans for which they could get pro-rata refunds and leave the policies for the vans they couldn't get refunds on to run their course. So, if for example at that time T had insured 50 vans and 15 of those had claims which meant pro-rata refunds wouldn't been given, I think SJP could have cancelled the policies for the 35 vans for which pro-rata refunds would have been given. And those 35 vans could have been put into a new fleet policy while the remaining 15 vans continued under the existing individual policies until they lapsed. So, while there would have been two sets of policies, on the one hand a new single fleet policy and on the other a number of individual policies, T wouldn't have been paying twice as suggested by SJP. The cover for each individual van would have been paid just once. And the unsuitable, individual policies would have been phased out as and when they came to an end. But, as I explained in my provisional decision, every time SJP arranged a new, individual policy with a maximum of 10 vans they extended the period of time T remained with unsuitable policies with the same insurer. And because it was probable a claim would be made on a van within each new individual policy of 10 vans, following SJP's reasoning for not taking out a more suitable fleet policy, they would have continued to arrange a new, unsuitable, individual policy every time T reached 10 vans on the latest policy.

SJP said: *"In my opinion, due to the claims experience and risk type the cost of a standalone [fleet] policy would have been more expensive than the current mini fleet's on cover with less flexibility for the client to down size the fleet. Standard fleet cases can include a minimum deposit which could result in a 75% time on risk charge from day one."* This comment by SJP contradicts their earlier opinion that a single, fleet policy was *"more suitable"* for T by October 2016.

SJP also said: *"We cannot agree that the policies were unsuitable, as they provided cover for the vehicles that needed to be covered. You will indeed note that the vehicles have been involved in incidents that have had the claims paid so it is incorrect to say the policies were not suitable."* SJP seem to suggest that claims being paid is the determining factor whether or not the individual policies were suitable. But SJP are aware that, although some claims were paid, a large number of claims weren't paid despite all the necessary information being provided to the insurer and their claims handler. So, using SJP's reasoning, the individual policies couldn't have been suitable.

For the reasons given above and in my provisional decision, I intend to find that the individual policies were unsuitable. While SJP dispute that they were unsuitable from the start they accept that by October 2016 a single fleet policy was more suitable, yet they continued to arrange new, individual policies.

I don't intend to make a compensatory award under this head, because I haven't been provided with any convincing evidence as to what loss, if any, T suffered as a result of SJP arranging unsuitable policies.

#### *the loans and cancellation of the policies*

I have dealt with this aspect of the complaint extensively in my first provisional decision. SJP in their comments reiterate that they acted in T's best interest in the way they dealt with the loans and they did nothing inappropriate. T suggest SJP's motivation was to earn commission and additional interest SJP added to the rate given by the finance provider.

SJP were providing a service, so it's to be expected that they were to make money from that service. But as I explained in my provisional decision, the way they dealt with the loans was inappropriate. Misrepresentations were made as to the identity of the insurers and the purpose of the loans which fell foul of the finance agreements. And even if SJP acted in T's interests, their actions put T at risk of being in default of the loan agreements. Had T been held in default there would have been serious, detrimental consequences for them.

SJP seek to justify their actions by saying Mr F was aware of how the loans were structured. That may have been the case, but Mr F's knowledge doesn't mean SJP were justified in making misrepresentations on T's behalf that could have led to serious consequences. SJP were in a position of trust with expert insurance knowledge who were providing professional advice. So, it was incumbent on them to ensure that things were done properly.

And, as I explained in my first provisional decision, I don't believe Mr H or Mr W were aware of how SJP had structured the loans and I don't believe it was discussed during the January 2017 meeting. That is why I think SJP never made mention of it in any of their written correspondence.

Although T had cash-flow problems they were willing and able to continue paying their instalments. And at the time SJP cancelled the policies T weren't in arrears. It was therefore unreasonable for SJP to cancel the policies. I'm therefore intending to uphold this part of the complaint.

At the time SJP cancelled the seven policies on 15 February 2017, a large number of vans were on cover. The first policy had around seven more weeks before it was due to end. The seventh policy had well over nine months to run as it wasn't due to end until the end of November 2017. SJP wrongly cancelling the policies meant that T were deprived of using the policies for the remainder of their terms. T took out a single fleet policy with another insurer on 17 February 2017. T said they are entitled to a refund as SJP obtained refunds from the insurer. SJP said T still owed almost £60,000 for the time they were on cover.

SJP said the total cost of the premiums for all seven policies at the time they were cancelled was £123,138.80. SJP said they got a refund of £9,364.25 from the insurer, which I presume was a pro-rata refund for the remaining periods where T were not on cover. The policies only entitled T to pro-rata refunds on vans that weren't subject to claims. So, vans that had claims wouldn't have entitled T to pro-rata refunds of premiums. But that would have been the case

had T cancelled the policies. But that wasn't the case. As I intend to find that SJP unreasonably cancelled the policies I think T are also entitled to pro-rata refunds on those vans that had claims. That's because had SJP not cancelled the policies T would have continued to enjoy cover for those vans. And because SJP cancelled those policies early while there were still periods between seven weeks and over nine months left to run, T had to take out new insurance.

SJP should therefore provide a detailed breakdown showing the following:

- The total premium cost of the seven policies.
- The premium cost per van under each policy.
- The total amount of premiums T paid for each of the seven policies.
- The number of days T were on cover for each of the seven policies. The seven policies all started on different dates but were all cancelled on 15 February 2017.
- The number of days each van was on cover.
- The number of days each van had remaining on the policies from 15 February 2017, until their intended end dates (the pro-rata days remaining).
- The premium cost of each van's pro-rata days remaining on the policies as at 15 February 2017.

The purpose of the above breakdown is to establish the pro-rata refunds T are entitled to for all the vans that were on cover at the time of the policy cancellations on 15 February 2017. Any pro-rata refunds should include all the vans that were on cover including vans that had claims which wouldn't have entitled T to a refund had they cancelled the policies. T should confirm whether or not they agree with SJP's calculations. And if T don't agree they should explain why they don't.

If the above calculations show that the total premiums T paid for all seven policies is higher than the cost of the total premiums for the time on cover for all the vans on all seven policies, then SJP should refund T the difference together with simple interest at 8% a year from 15 February 2017 until payment is made.

#### *the reporting of claims*

T didn't agree with my provisional decision that even if SJP reported all claims to the insurer promptly it would have made no difference because of the insurer's failure to settle the claims even after they had all the relevant claims information.

T said because SJP charged a fee for providing a claims service, SJP "*overrode the insurer responsibility to process claims*". The ultimate responsibility for paying claims is with the insurer and not SJP. While SJP clearly had a role within that process, it's clear that there were failings by the insurer. I say that because after the cancellation of the policies and well before the insurer went into administration, all the necessary claims information was provided to both the insurer and their claims handler. T's complaint is that SJP failed to pass on claims details to the insurer and/or the insurer's claims handler. And that led to claims not being paid which led to T's van hire company instigating legal proceedings for a winding up order against T. T managed to avert a winding up order by agreeing to settle the outstanding amounts the van hire company asked for. T had to pay substantial amounts, including legal fees and interest. Had the claims on their policies been paid I think T could have avoided the problems they experienced with the van hire company. But the winding up petition wasn't made until August 2017 and that order was dismissed in January 2018 after T agreed to pay the monies claimed by the van hire company.



As I explained in my first provisional decision, even if it were the case that SJP failed to pass on claims information to the insurer on a number of T's claims in a timely manner or at all, I don't think that would have made any difference to the trouble T subsequently experienced with the van hire company. That's because soon after February 2017, the necessary information relating to the claims were passed on directly to the insurer and their claims handler by T, their new broker and our investigator. But, despite having the necessary information about the claims, the insurer failed to pay the claims despite having ample time to do so before the winding up petition in August 2017 and before the insurer went into administration at the end of 2018. And because the insurer failed to pay the claims, T had made a separate complaint about the insurer because they were responsible for the claims not being paid.

T said: *"It is interesting to note that the ultimate insurer [name] has issued litigation against their intermediary through whom SJP had arranged the cover in a multi-million pound law suit relating to the alleged inadequate processing of claims – so it seems that it may not have been the ultimate insurer that let T down but the intermediary with whom SJP enjoyed agency facilities. SJP therefore under the law of agency should have acted in the capacity of agent for the policyholder and failed to do so."* This is not a point that was raised before so SJP haven't had the opportunity to respond. But I don't think SJP can be held responsible for the actions of the insurer or their claims handling agent for the failure to pay claims once the insurer and their claims handler had all the necessary information.

T also said:

*"It is a prima-facie of an insurance broker to undertake due diligence on all parties in the insurance chain both in terms of service and claims paying ability prior to a contract of insurance incepting and we challenge SJP to provide evidence that they sought to undertake any activity of this nature."*

*"There is online anecdotal evidence that this intermediary through whom SJP placed this business have a certain "reputation" for dealing with non-regulated insurers who passport into the UK market under EU regulations. It would seem that [the insurer] the third insurer that they have dealt with who have encountered financial difficulties and currently a fourth insurer is under close scrutiny by [overseas] regulators. [T's new broker] celebrate their 30<sup>th</sup> year in business this year and can report that they have never placed business through this intermediary .....and never will."*

This wasn't a complaint point raised with SJP before the complaint was brought to our service and SJP haven't had the opportunity to address it. If T want to pursue this point they would have to raise a new complaint with SJP.

For the reasons given above and in my provisional decision, I don't intend to uphold this head of complaint.

#### *removing vans from the policies*

T said that although they do not agree with my provisional decision under this heading, they will accept my decision to not uphold it in view of the lack of documentary evidence to support the fact that telephone instructions were given to delete specific vehicles. I will therefore not comment on this issue any further.

### *T's losses*

In response to T's comments on their losses, I note the following:

- As explained above, I think T should only be responsible for the time on cover for their seven policies. And they should get pro-rata refunds on all vans whether or not claims were made. That may or may not result in a refund to T. T agreed with our investigator's suggestion that SJP should pay part of T's new fleet policy that was taken out on 17 February 2017, to replace the seven policies arranged by SJP. Our investigator had suggested that SJP pay the cost of T's new policy until the dates the SJP arranged policies ended. But that is not what I intend to ask SJP to do. The seven policies arranged by SJP were unsuitable for the reasons explained in my first provisional decision and above. Therefore, even though I think SJP cancelling those policies was unfair, it meant that T were able to free themselves from those policies early and take out a fleet policy that better suited their needs. So, ultimately, I think T not having to continue with the SJP arranged policies was to their advantage. So, rather than ask SJP to pay for T's new fleet policy until the seven policies would have ended (the last of which would have been the end of November 2017), I think T should only be responsible for the time they were on cover for the seven policies. And that includes being given pro-rata refunds on all the vans including those that were subject to claims.
- T said that under the seven policies arranged by SJP the cost of insuring each van was around £3,000 per year whereas under their new fleet policy the cost per van was around £4,400. T suggest that SJP should pay the difference. But other than suggesting the increased cost was due to *"the urgent need for alternate insurance to be arranged given the unilateral cancellation"* by SJP, no convincing evidence has been provided why the cost per van was higher and why SJP should be held responsible for the increase.
- T said: *"The [finance provider] loans were for amounts that bore no resemblance to the total of the premiums of the various policies arranged by SJP and this should not be a factor in any calculation."* Without further clarification it's not clear to me what is meant by this. My understanding is that, although I think SJP's handling of the loans wasn't reasonable for the reasons given in my provisional decision and above, the purpose of the loans was to fund T's insurance policies. And SJP confirmed the loans were only used to pay for the policies. I understand that both parties have details of the policies, the premiums and the loans. So, comparing the loans with the cost of the policies should be something that the parties can do if there are any concerns.
- T feel that their losses relating to the van hire company taking action was as a result of SJP's failure to handle their claims appropriately. But I've explained, in my first provisional decision and above, that I don't intend to uphold that part of the complaint. And that aspect of T's complaint against the insurer is currently under consideration by the FSCS. T said: *"even if it is held that the responsibility for claims payments were the responsibility of [the insurer] and now effectively the FSCS, there still remains the question of legal costs and interest which T says would not have incurred had SJP provided the claims service that T were paying a separate mandatory fee for."* But given the legal costs and interest T had to pay as a result of the van hire company's action are inextricably linked to the non-payment of their claims under the policies, it's not something that can or should be split.
- T suggest that any compensation should take account of: *"Hurt to their business reputation, increased accountancy fees, interest cannot be easily quantified but nevertheless need to be accounted for in the quantum calculation."* Without further

explanation, supporting evidence and quantification, I don't intend to ask SJP to compensate T under these heads.

**my provisional decision**

For the reasons set out above, I intend to uphold this complaint in part. I intend to require S & J Palmer Ltd to pay T any premium refunds if due as explained under "*the loans and cancellation of the policies*" heading, above. If any refunds are due I intend to require SJP to also pay interest on any amounts due from 15 February 2017 until any refunds are paid to T.

Mehmet Osman  
**ombudsman**