

complaint

Miss F, on behalf of business "R", has complained that Waveney Insurance Brokers (Commercial) Limited failed to make R aware that it had to trade using certain terms. It didn't use these terms and its insurer avoided its policy (treated it as though it had never existed) and, by association, declined its claim.

background

R moved and stored goods for clients. Its storage centre was damaged along with a number of its clients' possessions. R made a claim to its insurer. An interim payment was made but the insurer then obtained copies of the terms R was using. These weren't the same as the ones the insurer had previously approved. The insurer said, had it been made aware of these other conditions, it wouldn't have offered cover.

R's director complained to Waveney; it said it felt the policy had been mis-sold and may never have met its needs. The director also told Waveney R was ceasing to trade. This caused Waveney to not respond to the allegation of mis-sale. Miss F complained to this service and Waveney told us that the policy required certain terms to be adopted by R and it had told R to do this. Waveney didn't accept it had mis-sold the policy.

Our adjudicator didn't uphold the complaint. He felt that Waveney had asked for the required terms to be adopted and hadn't been aware that R was using other terms.

The director of R said Waveney had never asked to see what terms R was using. So he felt it wasn't fair for R to be left without cover.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

From the evidence I've seen; Waveney emailed R in July 2010 with a copy of some terms it said R should adopt. This email followed a phone call during which the adoption of these terms seems to have been discussed in more detail. There isn't any sign in any of the paperwork I've seen that R responded with any objection to adopting these terms.

At renewal of the policy the following year Waveney was asked by the insurer to confirm the current terms being used by R. Waveney sent a copy of the terms it had asked R to adopt in 2010. On the basis of these terms the policy renewed and continued renewing into 2013, the year of the claim that eventually caused the insurer to avoid the policy.

So I'm satisfied that Waveney did tell R about the terms it was meant to use and that these were terms that the insurer was happy to offer cover on. I don't think Waveney needed to ask to see what terms R was using because it had told it what it should use. Ideally, in 2011, Waveney would have checked with R before it confirmed use of the terms it had advised R to adopt. But I don't think it's fair to say it should reasonably have assumed these hadn't been adopted until such time as R told it they had been. Rather it was reasonably entitled to expect R to follow the instruction it'd given it.

This means I don't think Waveney mis-sold this policy to R. I think Waveney advised R appropriately about the terms it needed to use and any failure to use those terms, and the consequences that resulted from that, weren't Waveney's fault.

my final decision

I don't uphold this complaint or make any award against Waveney Insurance Brokers (Commercial) Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask R to accept or reject my decision before 4 January 2016.

Fiona Robinson
ombudsman