DRN-5199255

The complaint

M, a limited company, complains about what Lifestyle Insurance Brokers Limited did when selling and renewing a business protection insurance policy. The complaint is brought on its behalf by its representative, Mr F

What happened

In October 2020 M contacted Lifestyle as it wanted a quote for business protection insurance. Lifestyle discussed its requirements and cover was arranged with an insurer. The business interruption section of the policy schedule said the sum insured for gross profit was £78,000. At renewal the following year M confirmed that figure was correct.

In July 2022 M made a claim to its insurer following a fire at its business premises. I understand its insurer found the sum insured for business interruption was inadequate. And the claim was significantly reduced as a result. Mr F said when taking out the policy Lifestyle hadn't explained how gross profit should be calculated or reviewed the previous cover it had. He thought Lifestyle should have realised the figure provided for gross profit was wrong.

He also said previous policies had separate cover for portable hand tools whereas this policy only included them under general contents. Again he thought that was something Lifestyle should have explained to M. He argued Lifestyle was responsible for the reduction in the value of its claim.

Our investigator said Lifestyle had provided information which explained what the policy covered and she didn't think it should have realised the information M provided about gross profit was wrong. And she thought as a commercial customer M should have been aware of the difference between gross profit and net profit.

Mr F on behalf of M didn't agree. In summary:

- He accepted Lifestyle's responsibility was to provide clear, fair and not misleading information. However, when cover was agreed it was aware M's gross profit had been declared as £78,000 but it had also said salary costs were £200,000. So there was an obvious shortfall here which should have prompted it to ask further questions which would have led to the underinsurance coming to light prior to the loss.

- He thought not identifying something so basic and obvious from the information provided to it did represent a failing by Lifestyle as it was clear from that the insurance being proposed was inadequate. That should have been brought to M's attention.

- In relation to the hand tools he argued there was a significant change from M's previous policy which should also have been brought to its attention. And while M was a commercial customer it wasn't an expert in insurance and relied on input from the broker to identify what was and wasn't covered under the policy. That was particularly the case as it was essentially a '*one man band*'.

I issued a provisional decision on the complaint in November 2024. In summary I said:

Lifestyle says this was a non-advised sale. I queried with it whether that was correct given an email it sent M confirming cover was in place in October 2020 said "after thorough discussion and in accordance with your stated demands and needs to attain the insurance cover requested at the best possible price, we enclose policies recommended as most appropriate for your requirements…" And its terms of business which were sent with the same email say "our role is to advise you and make a suitable recommendation after we have assessed your needs".

In response Lifestyle didn't accept this was an advised sale within the meaning set out in the Insurance Code of Business Sourcebook – ICOBS. It said the intent of the documentation was to "point out that after discussion (a fact-find or presentation) and establishing the type of cover required from a customer (we sell various insurance products, not restricted to motor trade) we have obtained an insurance policy that meets those requested requirements, based on the customer's demand and needs".

ICOBS says "a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment.". Given what Lifestyle has now confirmed about how the sale took place (providing a policy that met the customer's requirements following an assessment of their individual demands and needs) I think this would reasonably be classed as an advised sale. That means Lifestyle should have asked questions to assess what M's needs were before recommending a policy to it. And it was still required to provide M with clear, fair and not misleading information about the policy.

Lifestyle hasn't been able to provide a copy of the call recording between it and M's representative from October 2020. It says at the time staff were working from home due to the Covid-19 pandemic and it didn't have the ability to record home workers. So I can't be sure what was said. But it doesn't appear Lifestyle produced a statement of demands and needs for M or an explanation of why this insurance would meet its requirements.

Nevertheless, the evidence suggests Lifestyle did ask M about its needs and circumstances because that information was then provided to the insurer to allow it to assess whether this was a risk it wanted to take on. And in general terms this policy does appear to have been suitable for M; it applied to the type of business it was carrying out and offered cover which M had a need for and wasn't met by any other policies it would be continuing with.

M says its previous policies covered hand tools but these were "now being excluded in the policy under consideration". I appreciate M may well have had a need for cover for portable hand tools. So a policy that didn't provide cover for that at all might not have been suitable for it (in that regard). But this policy did provide cover of up to £20,000 for hand tools. I appreciate that appears to fall within the overall limit for 'All Other Property. But I think it's likely all those figures were arrived at following discussion with M about its demands and needs during the initial fact find call; it's included in the information the insurer based it's quote on (which was informed by the risk presentation Lifestyle provided to it).

I haven't seen evidence that, in response to questions asked by Lifestyle, M provided information to it which showed a policy structured in this way would be unsuitable for it. And I've not seen anything to show any of the other significant exclusions or conditions of the policy made it unsuitable for M either. Nor does the cost appear to have been unaffordable for it. So I don't think this policy was in itself an unsuitable recommendation for M.

In fact M hasn't suggested the policy was unsuitable for it. Its argument is focussed on the sum insured for business interruption insurance. I don't think it's in dispute that the figure recorded for that in the policy schedule was wrong. It also seems to be accepted that

Lifestyle accurately recorded the figure M provided. It appears the problem arose because M provided a figure which related to net rather than gross profit.

M's argument is that when comparing that figure with the other information it provided it should have been obvious to Lifestyle the figure was wrong. And it should have queried that with it. I can't be sure what discussion was had in relation to this issue when the policy was first taken out. But I have listened to the call M's representative had with Lifestyle prior to renewal in 2021. During that the adviser highlights the gross profit figure and M's representative confirmed that was correct.

I appreciate the adviser didn't question that further. But I don't think it was impossible for the figures to be correct as M's representative has suggested; the business could have been trading at a loss. However, I don't think that's the key issue here. The policy contains a definition of gross profit which is different to what I think the commonly understood position on that would be. So regardless of whether Lifestyle should have picked up on the discrepancies in the figures that M provided when discussing cover it should have explained the basis on which gross profit would be calculated in this case. And I haven't seen evidence which shows that took place when it discussed cover with M.

However, where there's been a failing by a business I then need to consider whether there's a causal link between that and any loss to the complainant. I don't think there is in this case. That's because I think it was clear from the other information Lifestyle provided to M the basis on which gross profit should be calculated. In particular its terms of business which were sent when the policy was first taken out and at renewal specifically reference the policy definition of gross profit and explain that "'Accounting Gross Profit' and 'Insurance Gross Profit' are not the same thing. Where your policy includes this cover, the Sum Insured for 'Gross Profit' should normally be calculated using the following method: Annual turnover plus year-end stock and work in progress; less opening stock (and work in progress) and purchases, bad debts and uninsured variable expenses (such as the purchase of raw materials or shipping costs)".

That document also said "You will be responsible for ensuring that all sums insured and indemnity limits are adequate for the cover requested". And the covering email said M should check the attached documents carefully to ensure the information outlined matched what had been disclosed to its advisor. And "failure to disclose material facts can invalidate your policy and could lead the rejection of a claim in the future".

I appreciate M wasn't an expert in insurance matters but it was a commercial business which had cover for business protection in place for at least the previous three years prior to taking out this policy. I understand those policies included a sum insured for business interruption insurance significantly in excess of the figure M provided when taking out this policy. And I don't think Lifestyle would have been in a position to review the previous cover M had because it doesn't appear details of that were provided to it; all it received was confirmation of M's no claims discount some weeks after the policy had been taken out. Nor do I think it's correct to describe M as a 'one man band'; in its initial contact with Lifestyle it said it had four employees.

I think it would have been reasonable to expect M to review the documentation it was sent by Lifestyle including thinking about whether the sum for gross profit was correct. And Mr F has described the amount that was recorded as "an obviously inadequate sum". I appreciate that was said in support of an argument that Lifestyle should have identified this issue but I think it would also apply to M's subsequent review of the documentation. And M had an opportunity to correct the position both when the policy was first taken out and at the subsequent renewal and didn't do so.

I've also thought about whether Lifestyle gave M clear information about how the policy limit for 'All Other Property' interacted with that for portable hand tools. I can't be sure what was said about this when the policy was first taken out. But M doesn't appear to have been aware of the implications of this. And so it may be there was a failure by Lifestyle to properly explain this.

However, even if that is the case, I'm not satisfied M would have acted differently if it had been given more information. It's not clear at the point the policy was taken out the limit set didn't meet its needs. And that limit appears to have been set based on the information it provided. But in any case it doesn't appear M had the option of continuing with its current insurer. And I think it likely that increasing the limit for 'All Other Property' would have come at increased cost which it's not clear M would have been prepared to pay. I note at the next renewal it was keen to reduce the premium from the figure quoted on the basis of its existing cover and policy limits. And M wouldn't have course have been aware at inception or renewal of the circumstances which would give rise to its subsequent claim. So that couldn't have informed its thinking.

Overall, I do think it likely there were some failings in how Lifestyle assessed the suitability of this policy for M and in relation to the information it provided about it. However, for the reasons I've explained I don't think there's a causal link between those failings and the loss M incurred following the reduction of its claim. So I don't think there's anything Lifestyle needs to do to put things right here.

Responses to my provisional decision

Mr F provided some further comments on behalf of M. In summary:

- He provided details of M's previous cover which showed it had been insured for gross profit of around £285,000. And he showed M had provided Lifestyle with authorisation to contact its previous insurer to obtain information about that cover.

- He thought Lifestyle should have requested that documentation to ensure the cover it was arranging was being provided on the correct basis. If it had done so it would have realised the gross profit figure proposed was insufficient (he also thought obtaining authorisation to contact the broker supported this being an advised sale).

- He accepted an insured should check documentation it was provided with but said M weren't insurance experts and so could only do so within the basic level of someone running a business. And while M did have other employees they were mechanics and not clerical workers. He thought the information M had provided was sufficient to have alerted Lifestyle to the need to make further inquiries in relation to both tool and BI cover.

- He said Lifestyle had requested the completion of an information form prior to cover being agreed and the discrepancy in relation to gross profit was clear on this given that included the salaries being paid by M. He accepted the business could have been trading at a loss but thought the figures in this case should have prompted an inquiry in relation to that given the risk to an insurer that would involve.

Lifestyle also provided some further comments. It said sums insured under the policy reflected the amounts M requested and it had confirmed those were correct when the policy renewed. So I need to reach a final decision.

What I've decided – and why

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

I've reviewed the further information Mr F has provided. The sum insured for gross profit is clearly significantly higher on M's previous policy than the one it took out through Lifestyle. I don't think it's in dispute the later figure was wrong because M provided an amount relating to net rather than gross profit. But I think Lifestyle are right to say the sums insured under the policy reflected the amounts M requested when cover was discussed with it. And Lifestyle didn't have access to the previous policy information at the point it did so; authorisation to obtain that was only provided some weeks after cover was agreed.

However, I'm not clear Lifestyle took further action in relation to that as its focus appears to have been on confirming information provided in relation to M's no claims bonus was correct. I understand why Mr F feels discrepancies in the information Lifestyle was provided with should have led it to question the position further. He's right the information form showed a figure for salaries significantly in excess of the figure for gross profit. So if that figure was correct M would have been trading at a fairly substantial loss. And I've already concluded Lifestyle should have provided a clear explanation of the basis on which gross profit would be calculated for insurance purposes when it discussed matters with M.

But the question remains as to whether there's a causal link between anything Lifestyle got wrong and the loss M subsequently incurred when making its claim. My view remains there isn't. I think the other information Lifestyle provided to M did make clear the basis on which gross profit should be calculated. And while I recognise M wasn't an expert in insurance matters (and other employees wouldn't have been focussed on this issue) Mr F has acknowledged it was able to check information relating to the running of the business. I think M would have been aware from the information it was sent that the amount listed for gross profit on this policy was significantly lower than that on its previous policy.

I continue to feel it would have been reasonable to expect M to review that documentation including thinking about whether the sum for gross profit was correct. It had an opportunity to correct the position both when the policy was first taken out and at the subsequent renewal. And I think it was in a position to do so. So even if Mr F is correct to identify further failings by Lifestyle when the policy was sold I don't agree the loss M incurred flows from that. My view remains there isn't anything Lifestyle needs to do to put things right.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 14 January 2025.

James Park
Ombudsman