

## **The complaint**

Mr C is unhappy that, following his commercial property owner's insurance claim for fire damage, his property was found to be substantially underinsured. He believes that South Essex Insurance Brokers Limited (SEIB) set the reinstatement value of the property and failed to advise him to revise it.

## **What happened**

Mr C took out his insurance through SEIB in 2003. His brother arranged it and spoke to SEIB, filled in the proposal form and sent it to Mr C for signature. The policy was duly set up. In the first few years of the insurance SEIB recommended the policy to Mr C as suitable for his needs. In subsequent years the policy was sold "non-advised" which meant that it had a duty to provide Mr C with enough information to make an informed choice about the cover he took.

Mr C advised that he knew nothing about the difference between reinstatement value and market value and that his brother gave the details of the property to SEIB who set the reinstatement value in the first year of the policy. The value was index linked and the policy renewed each year until 2017. Mr C says he had no reason to dispute the valuation as this was provided by SEIB. So he was distressed to find that when he made a claim for fire damage in early 2018 the property was found to be 40% underinsured which meant that he only received payment from the insurer for 60% of his claim. He thought that SEIB was responsible for this.

SEIB said that Mr C's brother contacted it in respect of the insurance. It did not set the reinstatement value for the property but would have pointed out the matters that have to be taken into account in setting the value. Those matters are clearly set out in the proposal form, which was completed by Mr C's brother, signed by Mr C and returned to it. It no longer has records of phone calls going back to 2003. In subsequent years, although Mr C was anxious to keep the price he paid for the policy down, he was reluctant to read any information given to him at renewal. It did however as required, send him information each year, highlighting the need to read through all the paperwork to check all the values were correct. It also set this out clearly in its renewal letters. From 2014 onwards it set out the need to ensure the property was valued correctly and enclosed a leaflet specifically warning of this. In 2016 and 2107 this was highlighted by a PS at the end of the letter enclosing the renewal notice, warning that 80% of properties were undervalued for insurance.

Mr C says he never received the leaflet about underinsurance, he asked for documents by email and this document wasn't attached. He believes the need to value the property properly was never highlighted to him, buried in pages of documents which he didn't have the legal experience to read.

On referral to this service our investigator didn't uphold the complaint. He said that SEIB had complied with its obligations to give Mr C enough information to make an informed choice about the cover he took. And that it had set out the information in a way that was clear, fair and not misleading.

Mr C disagreed with this, and pointed out that in the 2003-5 renewals SEIB specifically recommended the policy for his demands and needs. He says the letters made it clear that his brother set out the details of the property and that SEIB set the value.

The matter has been passed to me for further consideration.

### **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.

In deciding this matter I'm aware that the initial setting of the reinstatement value took place in 2003. There are no recordings of the telephone calls back then. The original adviser is not available and Mr C's brother has had to rely on his recollection of a call some 18 years again. With this in mind I have to decide what is likely to have happened based on the evidence we have.

The policy was sold "advised" from its inception in 2003 up to and including the 2008 renewal. An *advised* sale means the seller is recommending (or advising) that a customer buy a particular policy. As Mr C has pointed out the policy was recommended to him in those years. If the policy contains any unusual, onerous or restrictive terms, this needs to be clearly highlighted. But there's an additional duty on the seller to ensure that the policy being recommended is suitable for the customer's needs. In Mr C's case these were:

Cover with a leading UK insurer  
Competitive premium  
Exceptionally wide policy cover  
Reliable claims service

So far as I'm aware these remained Mr C's needs up to and including the 2017 renewal. But that doesn't mean that SEIB necessarily chose or recommended what values to put in the policy

Mr C says that SEIB "*chose a wildly incorrect sum for my buildings cover.*" SEIB denies that it chose this sum. It says that "*As far as [it] is aware it has never been our practice to advise regarding the sums insured, we have always recommended that the client takes professional advice from a surveyor.*"

As there are no telephone records going that far back I have had to draw inferences from the correspondence at the time, which still exists. Firstly the insurance was arranged through Mr C's brother. The telephone consultations were with him and the proposal form for the policy was sent to him for completion. In the accompanying letter in 2003 it said: "*Cover would be for a re-building sum of £150,000 plus contents...*" Assuming that Mr C's brother hadn't obtained a surveyor's valuation, I infer from this that the telephone conversation did involve some discussion of the reinstatement value of the property. And Mr C's brother had written to SEIB setting out the details of the property which at the time consisted of shop premises and two flats above.

The proposal form was completed by Mr C's brother with that figure inserted. The proposal form set out what needed to be included in the reinstatement value, such as Landlord's fixtures and fittings, outside buildings/annexes, walls gates and fences, services, architect's, surveyor's and consultant's fees, and debris removal. So Mr C would have known (through his brother) the nature of reinstatement costs as opposed to the market value. And the form

clearly set out that “..if your sums insured are inadequate, you will have to bear a proportionate part of any loss ie if any sum represents 75% of the “true amount” you will only receive 75% of any loss.”

I think it likely that the original sum insured was set by agreement with Mr C’s brother. But I think it very unlikely that a broker would give advice as to the actual figure to set. I think Mr C’s brother was given sufficient advice about what the figure should include. I don’t know if the figure set in 2003 was the “right” one. But as Mr C says the market value *now* is considerably less than the indexed policy value I can understand if he thought at the time that the sum was adequate.

From 2009 onwards the policy wasn’t sold advised, which means the policy itself wasn’t recommended to Mr C. This means there was a duty on SEIB to make sure that Mr C was given enough information that was clear, fair and not misleading so that he could make an informed choice about whether the policy was right for him. It’s clear from the correspondence for several renewals that Mr C was concerned about keeping the premiums down, but questioned why he had to read through the documents sent to him each year. For instance in June 2014 he asked, “*Please could you explain to me exactly why I must read these documents?*” At the 2016 renewal SEIB advised Mr C that it had sent the renewal documents by post to his address abroad. Mr C advised that he had not been at that address for five years. He asked that SEIB send documents to the risk address, but also asked that it communicate by email. Again he made it clear that he didn’t want the documents.

I think the renewal documents at least from 2014 onwards set out clear information in a readable format. Each time the renewal schedule was accompanied by a letter which said in its second line “*Please read through all the paperwork to ensure that the Sums Insured, Limits and Estimates meet your current requirements as summarised in the table below.*” This was followed by a table setting out the policy limits.

Given that Mr C had made it clear that he didn’t want to read through all the policy documents, and that there were each year a number of such documents I think that SEIB needed to highlight, so it was reasonably prominent, what information it needed Mr C to understand. He clearly understood the premium due as he queried it over several policy years. As to whether he was adequately informed about possible underinsurance, I understand Mr C’s point that he didn’t want to have to read though a number of lengthy documents to understand the main points. Whilst the renewal letter highlighted the insurance values and it was Mr C’s responsibility to check these he wouldn’t have anticipated that he might be underinsured. But I note that the renewal letters for the 2016 and 2017 renewals have a PS which says:

**“PS:** *Research shows up to 80% of properties in the UK are under-insured – please see the attached ‘Property Valuations’ leaflet for further information.”*

Mr C has pointed out the property valuations leaflet wasn’t attached to the email (it was enclosed with the posted documents). He argues that the PS was an afterthought and not something that would draw his attention. I don’t agree – a PS on a commercial letter is placed so as to draw the reader’s attention, and the 80% figure is quite eye-catching. In my view the renewal letters for 2016 and 2017 draw attention to the schedule of values, to the renewal premiums (which are set out in a table) and to the fact that Mr C was likely to be underinsured. He could have enquired about the property valuations leaflet. In any case in the email attachment following the letter and the invoice there is a page headed in bold letters “*Important Considerations for Property Owners.*” The page goes on to set out that it is not uncommon for properties to be

underinsured, and to explain that experts are increasingly recommending that properties be valued by a surveyor every three to five years.

I think that at least for the 2016 and 2017 renewals SEIB did set out as clearly as it could that it was Mr C's responsibility to check the values and that he was at risk of being underinsured. As he was reluctant to read through large bundles of documents, I think that by setting the values and premiums in tables, by adding a PS that most properties are underinsured and having a page headed in bold letters did draw Mr C's attention to those points.

So I think that overall the method of valuing a property was notified to Mr C through his brother and that in later years he was told in clear way to check the values and ensure he wasn't underinsured. In those circumstances I can't uphold the complaint.

### **My final decision**

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 30 March 2021.

Ray Lawley  
**Ombudsman**