

The complaint

Mr E – on behalf of Company W – complains that Morgan Richardson Ltd (“MRL”) mis-sold it a commercial property insurance policy which has resulted in it being underinsured following a claim.

What happened

W owns a public house. It took out a commercial property insurance policy through its broker, MRL, in May 2017 with a buildings sum insured set at £400,000. This was following an initial quote and fact find that had been completed previously in 2014, but which didn’t result in the policy being taken out at that time.

The policy renewed in May 2018 and 2019, when the sums insured were increased each time in line with index linking. Mr E later contacted MRL on 5 June 2019 as he was concerned about the total sum insured and enquired how he should go about obtaining the correct figure. The broker advised him that he would need to seek the advice of a professional surveyor as they could not determine the total rebuild figure for him. Mr E subsequently chose to increase the total sum insured to £450,000 and MRL updated the policy documents to reflect the amendment.

W subsequently made a claim under the policy on 11 June 2019 following a kerosene leak at the property next door to the public house. Loss adjusters were appointed (“CPA”) by the insurer (“Argo”) and liability was accepted. However, following an onsite visit from CPA, it transpired that W was significantly underinsured on its buildings sum, as the loss adjusters estimated that the total rebuild figure ought to have been set at around £938,000 instead of the £450,000 it had been insured for. As a result, Argo said the amount it was liable for would be reduced in proportion to the amount of underinsurance as per the ‘averaging clause’ set out in the policy terms and conditions.

W complained to MRL saying it had mis-sold the policy. It was also unhappy about various aspects of the way its claim had subsequently been handled. W’s points of complaint include, but are not strictly limited to:

- MRL sold the policy on an advised basis, yet they failed to offer adequate advice regarding the total sum insured; they failed to provide sufficient information upon inception and renewal, which has resulted in W being sold a policy that is not fit for purpose as it has been left significantly underinsured;
- MRL failed to comply with the necessary disclosure of information and they have further tampered with a call recording that W had requested;
- CPA reported to the insurer that the area of flat felt roof represented around 16% of the building area, contrary to what Mr E had previously disclosed. He is unhappy that the calculations for the building material composition of the property have been changed from 95% standard materials to 84% standard (and 16% nonstandard) without his consent. He also disagrees with the figure quoted by the loss adjuster in relation to the total value of the property.
- MRL changed W’s statement of fact based on the incorrect information provided by CPA.

Our investigator didn't uphold W's complaint as he was satisfied that MRL had complied with their relevant obligations with regards to the selling of the policy and had provided cover based on the information Mr E had provided. W disagreed, so the matter has been escalated to me to determine.

What I've decided – and why

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

Having done so, I've decided not to uphold it. I'll explain why.

There have been several parties involved in W's insurance claim and subsequent complaint, including MRL (the broker), the insurer (Argo), the loss adjuster acting on behalf of the insurer (CPA), professional surveyors as well as loss assessors acting on behalf of W.

W has raised various points of complaint that cover both the sale of the insurance policy and the handling of the insurance claim (including its dissatisfaction with the loss adjuster's estimated valuation of the rebuild sum). However, the sole respondent to this particular complaint is MRL in their capacity as an insurance broker. MRL have confirmed that they hold no claims authority in this instance (as this falls to CPA and Argo), and I've seen nothing else that would suggest they are otherwise responsible for the acts or omissions of agents of the insurer in respect of the handling of the claim.

Within this decision, I can only consider the actions of MRL as the broker's and cannot comment on any acts or omissions of any other party involved – such as CPA, Argo, or the surveyor. Should W want to raise a complaint about the handling of its claim, for example, or the insurer's decision to rely on the averaging clause, this would need to be directed to the insurer or other relevant party in the first instance.

W says that MRL failed to offer adequate advice regarding the total sum insured and further failed to provide adequate information to enable it to make an informed choice. W has raised concerns regarding how the policy was initially sold at inception in May 2017, including the fact that MRL relied on information that was given in 2014. However, following the initial sale, the policy renewed each year and new documentation relating to each new insurance contract was sent to W. And while the initial sale in 2017 is still relevant insofar as it was the first instance where information was provided about the property and the sum insured, I've also got to consider what has happened since the sale, and what the relevant obligations were of the parties upon each subsequent renewal of the insurance contract. And given that the date of loss was 7 June 2019, I've placed particular focus upon the policy renewal that took place directly before this in May 2019.

MRL have confirmed that the policy was sold to W on an advised basis – which means they had to ensure the policy was suitable for its demands and needs. This does not mean that the broker was responsible for calculating the rebuild figure or setting the total sum insured. But given that MRL recommended the policy, at the very least I think they ought to have:

- Asked W to confirm the total replacement/rebuild cost (and explained that it was the policyholder's responsibility to decide this);
- Given clear guidance on how to calculate those figures, or have told it where to get further information/advice on how to calculate the total sum; and
- Clearly told W about the consequences of providing incorrect figures, such as any averaging clauses the insurer may rely on if the policyholder transpired to be underinsured.

I've reviewed the policy documentation MRL sent to W by email on 10 May 2019 ahead of the policy's renewal date on 31 May 2019. In their email. MRL explained:

"Where applicable the sums insured are index linked and have increased accordingly. Please advise us immediately if you require any amendments to the sums insured or whether your business activities have changed".

The total sum insured in the renewal documentation (after increases in line with index linking) was set at £423,944. This was originally based on the figure of £400,000 set by W when the policy was first taken out in May 2017. The statement of demands and needs that was sent to W (as well as the statement of fact) also sets out:

"It is your responsibility to provide complete and accurate information to insurers when you take out an insurance policy, and throughout the duration of the policy and when you renew your insurance. Failure to disclose any material information could invalidate your insurance and may result in part or all of any claim not being paid by insurers. If you are in doubt as to whether information is material, you should disclose it".

I can see that an insurance prospectus had also previously been provided, which sets out the following on page 1:

"Insurance values and protection against inflation

It is very important that you insure your business at its correct value. You should review and update your cover periodically to ensure it remains adequate. If you underinsure you may receive a reduced payment in the event of a claim...

Buildings should be insured for the cost of rebuilding, not for their market value. A sum should also be added for architect's fees, debris removal, the cost of meeting any local authority requirements and loss of rent, where applicable".

So, in light of the above information MRL had provided, I'm satisfied that the broker had given adequate guidance on how to calculate the total sum insured, and also made it clear that it was W's responsibility to do this. I'm also satisfied, based on the extracts quoted above, that they warned W of the consequences of underinsurance – i.e. that it could result in it receiving a reduced payment in the event of a claim.

I acknowledge, however, that MRL could have perhaps gone further in explaining the average clause and how this works in practice. But even if they did explain the clause in more detail, I don't think this would have likely made any difference to the actions W took in any event. I say this because Mr E contacted MRL on 5 June 2019 to express his concerns regarding the total sum insured as shown in the renewal documentation. I've listened to the call recording and can see Mr E asked MRL whether he should increase the buildings sum, to which they said:

"That would be an estimate you give to us, you could have a surveyor come out and give you the rebuild cost"

Mr E said he wasn't sure whether he should get a surveyor or not, but indicated that he wasn't sure what it was worth as the whole business was only valued at £550,000, to which MRL responded:

“We can’t give instruction or advice on what the amount should be but if it’s something you’re concerned about then I would advise maybe to get some advice from a professional on how much that would be and once you’ve done that you could give us another call and we can increase it further if that’s something you need to do as you can increase it at any time”.

Based on the discussion Mr E had with MRL, he was clearly already concerned that the total sum insured was not enough to cover a rebuild. So I don’t think any further explanation of the averaging clause would have made much difference in these circumstances (i.e. have prompted him to reconsider the rebuild sum), because it’s clear he already had doubts as to whether the figure was correct. Mr E was advised by MRL to seek professional advice by way of a survey if he was not sure of the correct value to insure, but he decided only to increase the buildings sum to £450,000, despite the policy documentation stating that it may result in a reduced payment if a claim was made and W was underinsured.

So, having considered MRL’s relevant obligations under the ICOBS regulations of the Financial Conduct Authority (FCA) Handbook, I’m not persuaded they have failed in their obligations – e.g. ICOBS 6.1.5 (which requires a firm to give appropriate information so the customer can make an informed choice) as I think appropriate information was provided within the renewal documentation. It included information such as a statement of demands and needs, any changes that had been made to the policy, as well as the policy benefits and total sums insured. The broker had also clearly set out what the insured sum had to include, where and how W could seek further advice if it wasn’t sure, and also outlined the potential consequences of being underinsured. On this basis, I therefore don’t consider there was a breach of the ICOBS regulations or that MRL had mis-sold the policy.

W further submits that MRL have failed to comply with the necessary disclosure of information when it requested personal data. However, I understand it has been in contact with the Information Commissioners Office (ICO) in this regard, who determined that no breach of the relevant data regulations had been identified because the data protection legislation only applies to living individuals; companies such as W do not hold their own personal data. As such, MRL were not required to respond to W’s data request, and I also do not consider the broker to have acted incorrectly in this regard.

W alleges that the copy of the call recording/transcripts of the call Mr E had with MRL on 5 June 2019 has been tampered with as the times do not match up. We put this to MRL for comment who said that the call was taken at 16:04:20 and lasted for a duration of 6 minutes and 11 seconds. They said that when typing up the transcript of the call, reference was made to the end time, but not the start time. The MP3 file they’ve provided also bears a time stamp of 160420. I’ve seen no persuasive evidence that the call recording has been tampered with, so I will not be commenting on this further.

W has also said that MRL changed the specifications of the building on its statement of fact without its consent. But it appears this was changed based on the information reported by CPA and its surveyors following its site visit, as they did not consider the initial specifications disclosed by Mr E to have been accurate. I don’t think this was an unreasonable course of action for the broker to take in these circumstances, as they need to ensure the information on the policy is as accurate as possible for the insurer/underwriter to properly assess the risk and set an accurate premium. So I do not think they have done anything wrong by updating the building specifications based on information that had been reported by a surveyor.

In summary, having considered all the evidence, I’m not persuaded MRL have done anything substantially wrong in these circumstances, and I’m satisfied they’ve fulfilled their obligations with regards to the selling the policy and also assisting W in making its claim to the insurer. I understand this will come as a disappointment to W, but should he wish to

make a complaint about the handling of his claim or the rebuild figure estimated by the loss adjuster, he will need to direct this to the appropriate firm responsible.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask W to accept or reject my decision before 4 February 2021.

Jack Ferris
Ombudsman