

## The complaint

Mr A, Mrs S and Mr S complain that MD Insurance Services Limited withdrew its offer to provide warranties for their development. They're also unhappy about the administration fees charged.

For ease, I'll refer to Mr A, Mrs S and Mr S as 'the complainants' throughout this decision.

## What happened

The complainants were redeveloping some properties for private rental, as well as commercial use. In July 2017, they applied to MD for two structural warranties to cover their developments.

The aim of the warranties was for the underwriter to protect against faults that arose in the first ten years of insurance cover. The warranties would start once MD was satisfied that the development was carried out to a satisfactory standard and was suitable for warranty purposes.

Over the next two years, MD carried out a number of site visits. Then in October 2019, MD told the complainants that the order for their warranties had been cancelled because of outstanding structural review information. It retained part of the premium as an administration fee for the work already carried out. Unhappy with this, the complainants brought a complaint to this service.

Our investigator thought MD had acted unfairly. He didn't think MD had been entitled to withdraw cover. Though as the complainants had arranged a replacement combined warranty that was cheaper than the two warranties initially offered by MD, he didn't think MD needed to do anything further in that respect.

However, our investigator didn't think MD ought to have charged an administration fee when it withdrew cover. He therefore recommended that MD refund that fee, plus interest. He also thought MD should pay the complainants £250 additional compensation for poor customer service.

I issued a provisional decision on 23 March 2021. Here's what I said:

*"MD advised the complainants that it had cancelled their order for technical reasons due to outstanding structural review information.*

*After our investigator reached his view on the matter, MD provided this service with a Rule of Registration document. MD says this is the contract between it and developers (the complainants).*

*The Rule of Registration document says:*

*"Once the Company has accepted a quotation for insurance for a New Development and has paid the applicable premium, the terms as put forward on the quotation will apply unless:*

*a) the Surveyor is unable to issue a Certificate of Approval for the New Development or Home(s);*

*...*

*e) there is a low quality assessment score for other New Development(s) of the Company.*

*...*

*In any of the above circumstances, the Scheme Administrator or the Underwriter reserves the right to amend or withdraw the terms of its quotation or any offer to provide insurance..."*

*It would have been helpful if MD had provided this document with its file papers, rather than at such a late stage of this service investigating the complaint.*

*The Certificate of Approval is the certificate issued by MD's surveyor on or following satisfactory completion of the development.*

*I accept that the above term allowed MD to withdraw its offer to provide the warranties if its surveyor couldn't issue a Certificate of Approval. However, MD hasn't shown that it ever provided the Rule of Registration document to the complainants, or advised them that the contract between the parties was based upon the terms set out in the document. It isn't reasonable to rely on a contract term when the other party has no knowledge of those terms.*

*I've read the other documents that were provided to the complainants, namely the marketing material, the policy terms, the quotation, and the terms of business. Having done so, I agree with our investigator that these don't allow MD to withdraw cover. They explain that a Certificate of Insurance would only be provided once MD's surveyor had signed off the development, but withholding the insurance certificate isn't the same as ending the contract.*

*That means the only document that allowed MD to withdraw its offer to provide the warranties was the Rule of Registration document, but as I've said, MD hasn't shown that the complainants agreed to the terms within it.*

*However, even if MD can show that it provided the Rule of Registration document to the complainants, I would still find that it wasn't appropriate for MD to withdraw its offer to provide the warranties. I'll explain why.*

*In October 2019, MD's structural engineer expressed concerns to MD about several matters with the redevelopment, including that he thought the project wasn't compliant with Building Regulations. Based on those concerns, MD decided to withdraw its offer of the warranties.*

*That doesn't seem fair. MD didn't give the complainants any notice that its surveyor wouldn't be able to issue a Certificate of Approval. I see that MD had requested further structural information from the complainants, which hadn't been forthcoming. However, the complainants explain that their structural engineer had been hospitalised in 2019, which had caused some delays. I understand they made MD aware of that.*

*The complainants eventually obtained further information from their structural engineer in August 2019, and immediately provided that to MD's engineer. The complainants thought that this additional information would resolve any concerns MD's engineer had, and that*

*final sign-off on the development could take place. However, MD's engineer didn't respond to this further information, and so the complainants didn't know that the further information wasn't enough to resolve the engineer's concerns about the build.*

*I think MD ought to have advised the complainants of its engineer's concerns, and told them that a Certificate of Approval wouldn't be issued until the relevant matters had been addressed. If that had happened, then the complainants would at least have had the opportunity to put matters right with the build. If they'd refused to make the necessary changes or provide the further information, then presumably they would have cancelled the cover themselves if they'd known that a Certificate of Approval wouldn't be issued.*

*MD has referred to the development having a low-quality score, but I haven't seen any evidence of that. Also, as our investigator has pointed, the reference to the low-quality assessment score in the Rule of Registration document only refers to other new developments of the complainants, and so isn't relevant here.*

#### *Putting matters right*

*After MD withdrew its offer to provide the warranties, the complainants were able to obtain replacement cover, and for a lower cost. I therefore agree with our investigator that they didn't experience any financial loss in this respect.*

*However, MD retained part of the premium paid as an administration fee. It relied on its terms of business document in doing so.*

*Having read the terms of business, I agree with our investigator that these only set out the administration fees that MD can charge if the complainants had cancelled the cover. It doesn't say that MD could charge those administration fees if it chose to withdraw its offer to provide the warranties.*

*The terms of business document also set out what fees can be charged by MD if the developer went into insolvency/administration, or the site was put on hold for a period of time deemed unacceptable for risk management purposes – but those circumstances don't apply here.*

*If I were persuaded that the complainants would have likely cancelled the cover themselves rather than make the changes and provide the necessary information to MD's engineer, then I may have concluded that it was reasonable for MD to charge the administration fee, as this would be in line with its terms of business.*

*However, I'm not persuaded that the complainants would have cancelled the cover. I say that because they were nearing the end of the build, and had worked with MD for over two years. I think, on balance, they would have wanted to make the necessary changes required by MD's engineer in order for a Certificate of Approval to be issued. The alternative would have been for them to lose a significant amount of money in an administration fee, and then likely experience delays in trying to find another company to provide a new warranty, at a late stage of the development.*

*Consequently, I intend to require MD to reimburse the complainants the administration fee it retained.*

#### *Customer service*

*I think the complainants were caused a great deal of worry as a result of MD*

*withdrawing cover when it did, and without prior notice of this. I also agree with our investigator that the complainants experienced poor customer service when they provided MD's engineer with further information and received no response, despite them chasing this several times. I therefore intend to require MD to pay £350 compensation for this."*

I asked both parties to provide me with any further comments they wished to make before I issued a final decision.

The complainants responded to say they accepted my provisional decision.

MD didn't provide any further comments in respect of my provisional findings. Though it did question why the complaint wasn't set up against the underwriter.

### **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.

As neither party has provided any further comments for me to consider in respect of my provisional findings, I see no reason to alter these.

MD questioned why the complaint wasn't set up against the underwriter. As the investigator has explained, the warranties didn't go into force, and so the complaint was set up against MD as it was MD's decision to withdraw its offer to provide the warranties and to retain part of the premium.

### **My final decision**

My final decision is that I uphold this complaint. I require MD Insurance Services Limited to reimburse the complainants the fees it retained from them. Interest should be added at the rate of 8% simple per annum from the date the rest of the premium was refunded to the date of settlement\*.

\* If MD considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell the complainants how much it's taken off. It should also give the complainants a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

I also require MD to pay the complainants an additional £350 as compensation for the inconvenience and worry they were caused by the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A, Mrs S and Mr S to accept or reject my decision before 4 May 2021.

Chantelle Hurn-Ryan  
**Ombudsman**