

## **The complaint**

A company, which I'll refer to as V, complains that BCR Group Limited was responsible for mis-selling it latent defect building warranties.

Mr B, who is a director of V, brings the complaint on V's behalf. Another director has also been involved at times but, for simplicity, I'll refer to both directors as Mr B.

## **What happened**

V is a property development company. It was developing a block of nine flats and wanted to take out latent defect warranties for them. In 2014, Mr B got in touch with a company, C, an appointed representative of BCR, to arrange the warranties.

C provided Mr B with a quote for the warranties with an insurer, A.

Mr B later got in touch with C to say that changes to the development V was carrying out meant the sum insured would need to increase by around £500,000. C provided an updated quote. Because of the increase in sum insured, the quote came from a different insurer, G, and at a higher premium.

Mr B accepted the updated quote, paid for it, and received the warranty certificates in 2016.

In 2018, A went out of business and its warranties became void. Mr B noticed the certificates received from C reflected the first quote – the insurer was A and the sum insured hadn't been increased. This meant the warranties were void. Mr B complained to C. He thought the warranties had been mis-sold and asked it to put that right.

BCR said the warranties had been setup with A and the premium passed to A. And it was in discussion with various parties to find a new insurer to take over the voided policies and fulfil the cover they were supposed to provide. A new insurer couldn't be found, so Mr B paid to take out replacement warranties with another company, O.

Mr B referred V's complaint to this service and asked to be compensated for its losses. In the meantime, he received a refund from the Financial Services Compensation Scheme (FSCS) of some of the money he paid for the warranty with A.

Our investigator thought the complaint should be upheld. He said BCR was responsible for C when it arranged a warranty with A – and that's what had caused Mr B to complain. And arranging an insurance policy is an activity this service can consider complaints about. He thought C had made a mistake by arranging the policy with A rather than G. And that had ultimately led to financial losses and inconvenience. He asked BCR to pay Mr B for those losses, plus interest, and compensation of £500.

Mr B agreed with our investigator. BCR didn't. I'll summarise the key points it made:

- V hadn't raised concerns about having warranties provided by A between receiving them in 2016 and A going out of business in 2018. BCR thought that meant V had accepted the warranties with A.
- BCR can't be held responsible for A going out of business.
- V increasing the sum insured caused C to generate two quote references and this caused problems.
- V had sold six of the flats prior to A going out of business. So there was no need for V to pay to replace those six warranties. BCR shouldn't be held responsible for any costs V chose to incur for replacing those six warranties for other owners.
- V had received refunds from the FSCS for the three remaining flats it owned. These refunds should be taken into account.
- It's unfair to expect BCR to pay for the 'non-insurance' costs as well as the insurance premiums V has paid to obtain new warranties.

An agreement couldn't be reached, so the complaint has been passed to me.

### **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.

This service has previously found BCR responsible for the acts and omissions of C when arranging warranties with A. And that the activity of arranging such a warranty is one we have jurisdiction to consider.

V's complaint is essentially that C arranged a warranty for it with A – and that wasn't the warranty it needed, asked for, or paid for.

So I'm satisfied it's appropriate for our service to consider this complaint. And that BCR is responsible for C's acts and omissions when it arranged warranties with A. So if I find C acted unfairly, BCR is responsible for putting that right.

#### *Did C act unfairly?*

BCR, and C itself, has at times accepted C made a mistake by arranging the warranty with A, rather than G. But more recently BCR has suggested the way Mr B acted caused problems. I don't agree with that and I'll explain why.

Mr B initially asked C for warranties at the lower sum insured. C provided A's quote and he paid for it. Mr B later asked to increase the sum insured. C provided G's quote, which was at a higher price. He paid the additional amount. So I think it ought to have been clear to C that Mr B needed, asked for, and paid for, the warranty with G.

I'm satisfied C made a mistake when it arranged the policy with A, at the lower sum insured, rather than with G, at the higher sum insured.

BCR said the certificates provided to Mr B in 2016 all clearly showed A was the insurer – not G. This isn't in dispute and I think Mr B accepts he could have noticed this sooner. However, because the second quote showed the insurer was G, and that's what he paid for, he

understood that's what he would receive. As C didn't tell him anything different to this, he says he wasn't prompted to check.

As Mr B had needed, asked for, and paid for, a warranty with G, at a higher sum insured, I can understand that's what he was expecting to receive. If, despite that, C had placed the warranties with A, and at the lower sum insured, I would have expected it to highlight such an important piece of information to Mr B. But C didn't do this, so I can understand why Mr B says he wasn't prompted to check the certificates.

I don't think this means he 'accepted' the warranty with A, as BCR has suggested. Doing so would have meant accepting a sum insured around £500,000 less than Mr B needed, asked for, and paid for. I think Mr B trusted C to provide him with the warranties he'd needed, asked for, and paid for.

It would have been preferable if Mr B had noticed C's mistake sooner. But it's not Mr B's responsibility to correct C's mistakes – it's C's responsibility not to make them. And it doesn't change the fact that C made the mistake – which means it treated Mr B unfairly.

Overall, I'm satisfied C has made a mistake – and BCR is responsible for putting that right. So the question for me is what loss, if any, this mistake caused V.

*What loss did C's mistake cause V?*

To recap, Mr B paid C to arrange the warranties with G. He didn't receive those warranties. He received warranties with another insurer, A, based on the wrong sum insured. A later going out of business highlighted the problem. But even if it had remained in business, that wouldn't have put V in the position it should have been in. It would still have had warranties with a sum insured around £500,000 less than it needed, asked for, and paid for.

That means C, and by extension BCR, would have been responsible for resolving the problem with the wrong warranties regardless of what happened to A. So BCR isn't being held responsible for A going out of business. It's being held responsible for the mistake its appointed representative, C, made long before A went out of business.

BCR offered to help transfer A's warranties to another insurer but this eventually failed. So Mr B was left to seek warranties with a suitable sum insured. He paid O to do that. I'm satisfied that was a reasonable course of action to take to ensure latent defect cover remained in place for the flats.

Mr B originally paid C around £6,500 for all nine warranties, based on the quote from A. The quote from G was for around £10,500. He paid the balance to C. If C had then arranged the warranties with G, that would have treated Mr B fairly. He would have received the warranties he needed, asked for, and paid for. So, I don't think it would be fair to tell BCR to refund any of this amount.

But Mr B shouldn't have had to pay anything further. So any loss beyond this, which he's reasonably suffered obtaining suitable warranties, is a loss which in my view stems from C's mistake.

Consequential losses such as this need not amount to a regulated activity in their own right. I'm simply considering the financial impact of the mistake C made when it was carrying out a regulated activity. So I don't think it's relevant whether the loss is made up solely of insurance premiums or also 'non-insurance' costs, such as any surveys required by O in order to provide the warranties.

All the costs necessarily incurred in obtaining the new warranties were a result of C's mistake. BCR tried to find a more cost-effective method of providing alternative warranties but it was unable to. So I don't think it was unreasonable for Mr B to pay what was required in order to obtain new warranties.

I agree with BCR that any amount awarded to Mr B should reflect the loss he necessarily suffered. Losses suffered by other parties can't be awarded to him. I also agree it's fair to take into account any amounts already received towards his loss from the FSCS.

Mr B sold six of the flats and the warranties for each of them were transferred to the new owners. I haven't seen anything to show that he retained a responsibility for the warranties for those six flats after that point. I understand he met the costs of providing new warranties for those flats. I can appreciate why he may have felt a moral obligation to do so. But I'm not persuaded this was something he was required to do – or these were losses he necessarily suffered. So, I don't think it would be fair to tell BCR to refund these costs.

That leaves the three remaining flats, which Mr B has continued to own and hold three corresponding warranties for. I think he necessarily suffered a loss when obtaining suitable warranties for these three flats as he needed to maintain cover for any latent defects whilst he owned them – and to ensure warranties were in place if he were to sell them.

I've seen evidence to show Mr B paid O £5,316.66 for these three warranties. I've also seen evidence to show Mr B received £423.75 from the FSCS towards the cost of his three warranties held with A. Because of that, I'm satisfied he's lost £4,892.92 as a result of C's mistake. So BCR should pay that amount. And he's been without that money unfairly, so I consider BCR should add interest to that payment.

As well as financial losses, Mr B has also described other problems V has faced, including:

- The inconvenience of dealing with this problem for many years – including numerous emails and phone calls with various parties as a result of C's mistake.
- The time cost to V of arranging new warranties for its three flats.
- V still manages the six flats it sold to other owners, so it has had to deal with a lot of correspondence with the new owners.

Mr B has noted other concerns, including the distress and inconvenience of the other owners. Whilst I've read and understand them, I'm limited to awarding compensation for the avoidable inconvenience V has been caused as a limited company. So I can't take into account the impact on Mr B personally, nor other owners.

Having thought about the impact on V, I'm satisfied it's suffered avoidable inconvenience over the years whilst dealing with the result of C's mistake. As a result, I'm satisfied £500 compensation is reasonable and proportionate in the circumstances.

### **My final decision**

My final decision is to uphold this complaint.

I require BCR Group Limited to:

- Pay V £4,892.92.
- Add interest to that amount, at 8% per year simple, from the date Mr B paid for the new warranties until the date BCR makes the payment.
- Pay V £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 19 April 2022.

James Neville  
**Ombudsman**