

The complaint

Mrs L has complained about her property insurance broker, Alan Boswell Insurance Brokers Limited (ABIB). In short, when it arranged an insurance policy for Mrs L, it misrepresented the risk she presented and the insurer later avoided her policy (treated it as though it had never existed) and, by association, declined her claim made following a fire. ABIB accepts it failed Mrs L but she wants it to do more to put things right than it has said it's prepared to do.

What happened

Mrs L owned a dwelling, which, for a time, she rented out. She then decided to sell the property. She obtained planning permission to aide on the sale so buyers would know the existing property could be demolished and re-built. But the property wasn't put on the market. ABIB knew about this but didn't tell the insurer when it arranged cover for Mrs L. There was then a fire at the property and the insurer said it would never have offered cover if it had known about the planning permission. And ABIB admitted to making an error when applying for the cover.

Mrs L made a complaint to this service as she felt she had done nothing wrong, but somewhere, between the insurer and ABIB, she was the one losing out. I initially considered a complaint against the insurer. But given ABIB's admittance and the criteria for risk which the insurer was working to, I was satisfied the insurer had done nothing wrong. Our investigator then looked at Mrs L's complaint as against ABIB.

ABIB had said it would pay Mrs L £10,000 in settlement of her property claim. It said if it hadn't made the mistake, it would only ever have been able to agree cover for Mrs L based on the cost of debris removal. It said this was also likely all it could have found given what it referred to as the poor condition of the property at the time Mrs L was looking for cover. It said that it didn't think Mrs L would be affected by the avoidance in future, or that her premiums likely wouldn't be increased. But it said if she was, and she sought consent from it before arranging cover/payment, it would look to reimburse any extra costs clearly evidenced as being charged in relation to the avoidance. Finally, ABIB said it would offer £1,000 in recognition of the inconvenience its error had caused Mrs L.

Mrs L said she was prepared to accept the £1,000 for inconvenience. But she wasn't happy with the other two remedies suggested by ABIB. She was particularly displeased with the claim settlement offer. She said, if ABIB hadn't made its mistake, she would have been offered cover, or been able to find cover, based on the reinstatement of the property. Based on an estimate for works she said the reinstatement would cost £123,000, so ABIB's offer of £10,000 was unreasonable.

Our investigator said it seemed unlikely that Mrs L would have found reinstatement cover. And he said he'd seen no evidence to suggests ABIB's offer was unfair. Regarding premiums he said it wasn't possible to compensate Mrs L for future, hypothetical losses.

Mrs L was unhappy with the findings. The complaint was passed for an ombudsman's decision to be made.

Mrs L's complaint then came to me for assessment. I noted ABIB hadn't provided any proof to show it would have been unable to find cover for Mrs L. I also noted Mrs L said she had previously had proof that she could have attained cover. I asked the parties to submit any evidence they had to support their respective positions about what cover most likely, could or couldn't have been found.

ABIB said it had no proof – but surely logic dictates that as the property was in poor condition, it's unlikely cover could have been found. And it had struggled to find cover for Mrs L anyway. It also said that if there had been cover, any insurer, given the condition of the building, would likely have opted to settle Mrs L's claim based on the loss of market value for the property. It felt that would have been a negligible value, probably less than the £10,000 it had offered for debris removal.

Mrs L presented a report from an insurance specialist. He concluded, based on the property having been in a good condition but with planning permission in place to demolish, that Mrs L would have been able to find cover. He noted that cover would likely have been restricted to that known as FLEA (Fire, Lightning, Explosion and impact by Aircraft), but he was confident that type of cover would have been available to her.

Mrs L also explained that she is withdrawing her request for ABIB to compensate her in respect of future premiums. She provided an update on the property – it remains unsold and hasn't been repaired following the fire.

I issued a provisional decision as I felt ABIB's offer didn't go far enough to put Mrs L back in the position she would have been in but for its admitted failure. I said that it would have to pay her to reinstate the building, with what was necessary to do that and what that would cost being determined by a jointly appointed surveyor.

Mrs L said she accepted my findings. But asked that I state a chartered building surveyor must be appointed. ABIB said it was disappointed with my findings and disagreed with them. Its detailed response was provided by a representative, which asked that I provide various clarification and evidence to it on a number of points, as well as a second provisional decision, before making a final decision. I've detailed and responded on the points made in reply below. But I am satisfied I can fairly and reasonably issue a final decision at this time.

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 said provisionally:

"I note ABIB accepted its error. And that Mrs L is not complaining about future premiums, or asking for compensation for the upset she was caused. The first issue has resolved itself and regarding compensation the parties have reached an agreement which I trust has been settled. So my findings won't refer to those issues. But I don't think, having considered the evidence regarding what cover would or wouldn't have been available to Mrs L, that ABIB's offer to pay her £10,000 in settlement of her claim goes far enough to put her back in the position she always would have been in but for its error. However, that doesn't mean I'm going to require ABIB to pay Mrs L the £123,000 set out as the cost of reinstatement in the submitted estimate. I've set out my views and recommended redress below. The parties will have a chance to consider my findings before I make a final decision on the complaint.

The evidence submitted by Mrs L, and the comments from ABIB about cover each come to a different conclusion. The turning point seeming to be whether or not the property was in

good condition when the policy was arranged. I think it's fair to say that if the property was in good condition its likely Mrs L could have attained FLEA cover. I say that because she has provided expert evidence which confirms this is the case, and ABIB's argument that cover couldn't have been found is predicated on the property being in poor condition. So, I've considered the available evidence about the state of the property.

I first note that ABIB searched for a policy for Mrs L, agreeing one with the insurer that later voided her cover, on the basis the property was in a good condition. It certainly didn't suggest to Mrs L that it wouldn't be able to help her with cover because it was unlikely any insurer would offer cover for a property in a bad condition and with planning permission to demolish. Although that is the position that, at this time, it would have me believe was always the case.

I then also took note of the photos available of the property. One, provided by Mrs L, from 2011 shows, what I would describe as, a pretty home, albeit one built with non-standard materials. But this is quite a long time before the policy year in question. A photo provided by ABIB taken after the fire in autumn 2018, shows a property in a fair state of dilapidation. But it's far from clear, from this photo how the property was immediately before the fire – and importantly, several months before that when the policy was arranged. Both parties have presented internet street view photos of the property from 2016. They both say these same photos support their opposing opinions. ABIB particularly noting the grass (to the front door) is overgrown and shows no 'path' through it, such as might indicate the property was in use. But it isn't disputed that the property was unoccupied. And the property not being occupied doesn't mean it was not in good condition.

The most relevant evidence about the property's condition though, in my view, comes from the local council. It is most relevant in terms of time, completed in November 2017, following a visit that September – so it predates the policy arrangement by just a few months. And equates to what I consider to be expert evidence. It is the report on the property by the planning officer, completed after he had actually viewed the premises in 2017 for purpose of considering the planning application that had been made. Part of the planning officer's assessment was to consider whether or not the property had been 'abandoned'. I think it's fair to say that when a property has been 'abandoned' it often falls into a state of disrepair because, following the everyday definition of 'abandoned', no-one is caring for it.

The officer felt the property had not been abandoned. In stating his view in this respect he indicated the lack of occupancy was not an issue. And, importantly, he said he was satisfied the building "is in fairly good condition with the garden appearing well maintained". I bear in mind that his report was made following a visit in September 2017, and it was February 2018 when Mrs L, via ABIB at the time, was looking to arrange cover. It's possible the state of the property deteriorated during those two points in time. Meaning that by February 2018 it was not still "in fairly good condition". But I haven't seen anything which makes me think that is most likely the case.

I accept that many insurers, even if a property is in good condition, might not want to offer cover where the property is unoccupied and there is planning permission in place to allow demolition. But ABIB hasn't showed me that cover like this couldn't be found. And even if I accept that it struggled to find Mrs L the cover it did – which might mean it couldn't have found cover if it had declared the planning permission – Mrs L has an expert who says cover could have been found. So if ABIB had searched for cover for Mrs L, giving the insurers it had access to all the relevant details, and had been unable to find cover that suited Mrs L's needs – she'd have been free to go elsewhere and find cover for herself. Which she's satisfied me it would have been possible for her to do.

So I'm not persuaded that ABIB's liability to Mrs L is reasonably limited to it only paying her to remove the debris of the property. Rather I think that but for its error, Mrs L would have had insurance in place to cover her for reinstatement of her property in the event of a fire occurring, which of course it did. Which leads me to conclude that ABIB should compensate Mrs L based on what it will cost to reinstate/rebuild the property – as that is what she'd have likely been able to get, ABIB's error notwithstanding.

I say that bearing in mind that whilst we don't know what policy Mrs L would have found, there are a few basic concepts that I think it's reasonable to rely on here. And I think it's necessary to do so in order for me to set out redress which is workable in practice. There's no point in me telling the parties to base settlement on the policy Mrs L could have found – because it isn't possible to now know for sure, down to the specifics of the relevant policy terms, what that would have been. So I've thought about what any cover Mrs L would likely have been able to find, would likely have afforded her in the event of this claim.

Some insurers might include an option in their policies to allow settlement for a claim to be based on the loss of market value of a property like this (i.e. how much value it has lost due to the damage). But not all do. And where loss of market value clauses are included the terms of them can vary. For example I'm aware of ones that only give the insurer the right to settle in this way where it and the policyholder aren't intending to repair. And everything I've seen here, points to Mrs L's intent to repair. And I say that not least bearing in mind that the damaged property, since the fire, has not been put on the sale market. So it's far from clear to me that Mrs L would have been restricted in any settlement to the property's loss of market value.

Where a property is to be reinstated/rebuilt, it is often the case that an insurer will want to complete the work itself. However, where insured properties are built to non-standard construction, an insurer will often prefer to settle any claim in cash. But, in line with this service's approach, the sum of that cash settlement would usually be based on the reasonable cost to the policyholder of reinstating/rebuilding the property on a like basis. That is what I think ABIB is liable for to Mrs L here. And as the property was unoccupied and isn't Mrs L's home there's no need for ABIB's liability to extend to loss of rent or alternative accommodation. That's because as Mrs L has had no loss in these respects, she couldn't have gained from any policy in place in respect of them.

Mrs L has said that for reinstatement/rebuilding the settlement sum she is looking for is £123,000. That is the sum given by a contractor who quoted for replacement of the building on a "like-for-like" basis. However, I'm not satisfied that this sum represents the cost of reinstating or rebuilding the property as it was before the fire. I note, for example, that the contractor refers to installing a tiled roof – but the roof of the damaged property was felt. It wasn't tiled. So despite the quote stating it has been made on a like-for-like basis, I don't think that I can trust that it, and the related cost figure, are most likely representative of a what is needed to reinstate/rebuild Mrs L's property as it was before. As such, I'm satisfied that £123,000 is not most likely what an insurer (found, as I say, in the circumstances where ABIB's error was avoided) would have paid Mrs L in settlement of this claim.

I think the only reasonable way forwards in the circumstances is to have ABIB present Mrs L with a list of three surveyors to choose one from. The chosen surveyor will then be appointed by ABIB, but on a joint basis with Mrs L, although paid for by ABIB, to assess the property with a view to determining what is needed to reinstate/rebuild it, and what that will cost. That will be based on reinstatement/rebuilding the property like it was before but with allowances made so the work can meet any current building regulations. If Mrs L accepts this decision, she will be consenting to agreeing to the surveyor's findings and ABIB will be bound, in line with our usual rules, to follow them. But as the surveyor will be pricing the work necessary to reinstate/rebuild the property at current rates, I won't require interest is

automatically added to the sum he determines is required. However, and whilst his report will be sent to both parties, once the report is submitted to ABIB, it should pay the reinstatement/rebuild sum to Mrs L within 14 days. If payment is made later, interest will become due on the reinstatement/rebuild sum from the date of the surveyor's report until payment is made. Nor will I require ABIB to pay VAT, if charged, upfront. If the reinstatement/rebuild cost, or any part of it, attracts VAT, ABIB will only have to pay the VAT sum to Mrs L once she submits an invoice for work completed showing VAT is due."*

I'll now consider the parties' responses.

the avoided policy

ABIB's response to my provisional findings mainly considered how the avoided policy, in terms of claim assessment and settlement, would have responded to the claim if the avoidance hadn't occurred. It was said this policy should be considered as it is the only good example of what specific terms Mrs L's claim might likely have been subject to. The representative, assessing the claim against the avoided policy wanted to know that I had done the same and gathered evidence to satisfy myself that a claim under the avoided policy, but for the avoidance, would otherwise have been met. They felt any such evidence must be shared and this issue fully discussed before a final decision is made as they feel my provisional decision was silent on it.

I can confirm that I have not considered the claim against the avoided policy, nor gathered evidence in support of the same. That is because my provisional decision explained that, but for ABIB's error, the avoided policy would never have been put in place. So it isn't fair for Mrs L's claim to be considered against the terms of a policy she would never have had. Instead Mrs L would have found a FLEA policy. And, given my experience of different types of insurance cover, it isn't fair to say, as ABIB's has in reply, that it's likely any terms of a FLEA policy Mrs L found would broadly reflect those of the avoided cover (which was not a FLEA policy). And my provisional decision gives consideration to the fact that we don't know what the specific terms of any cover Mrs L did find would have been, setting out how, allowing for that, I think a fair and reasonable settlement for the claim can be determined. I'm satisfied by what I've said in this respect.

condition of the property

In its response ABIB said that my provisional decision "*assumes*" the property would have been in good condition.

In my view "*assumes*" is not a fair assessment of the findings I set out. In this respect I'd draw ABIB's attention to the several paragraphs of findings which discuss the evidence available in respect of the property's condition and explain why, based on all of that, I think it's *most likely* that the property was in good condition.

financial loss

In reply ABIB said it is far from clear whether the fire has actually resulted in a financial loss to Mrs L. It said that, as noted in its report of 2018, it's possible the damage to the building hasn't negatively affected the market value for the property as a whole. It feels a financial loss must first be fairly established.

I think this concern of ABIB misses the point. If ABIB hadn't failed Mrs L when arranging cover for her in 2017, Mrs L would have had a buildings insurance policy in place at the time of the fire which would have offered her cover against damage caused to the buildings by

fire. And I explained provisionally why I felt that would have resulted in her receiving a cash settlement for the necessary like-for-like reinstatement work. I stand by those findings.

Mrs L's September 2021 quote

ABIB said it is concerned that the quote is not representative of reinstating the building as it was before.

I agree. And explained as much in my provisional decision. Which is why I said a surveyor is needed to determine what work is required and at what cost.

the surveyor

Mrs L said I should specify that this must be a chartered building surveyor. ABIB said my findings didn't set out that the parties must agree the instruction for the expert, or what would happen if agreement can't be reached.

I know Mrs L wants assurances of the type of surveyor to be appointed. But as I am not looking at the pool of available specialists, I can't reasonably say only one particular type can be used. Rather it will be up to ABIB to put forward a list of suitably qualified and experienced surveyors who can assess what work is needed to reinstate the building on a like-for-like basis, and what that will cost. How the chosen and appointed surveyor does that will be a matter for them. Because the surveyor is to be appointed on a joint basis the parties will, of course, have to agree the instructions. It's quite possible there might be some debate between them about this but they will have to work together to get it resolved. I can't say what should happen if agreement can't be reached because that hasn't happened yet and the circumstances of that hypothetical situation aren't known. But, in any event, this appointment is what I find to be the fair and reasonable outcome for this complaint. If Mrs L accepts my final decision within the deadline given, she will be, in effect, consenting to the remedy awarded, and ABIB will be bound to provide the same.

staged payments and interest

ABIB said that if any insurer was cash settling this claim, it is likely they'd do so by making staged payments to Mrs L, as and when work is done. It feels I should make an allowance for that here. ABIB also said that as Mrs L hasn't reinstated the property, there has been no outlay for interest to be awarded against. So payment of the same would seem to put her in a better position than she would otherwise have been in.

It is sometimes the case that an insurer will settle a claim by making staged payments. But it isn't fair to say that is always how cash settlements are made. Many, as I've said this one should be, are paid upfront. Often that is without VAT, with VAT being paid later. That is because VAT is not always incurred.

On the point of interest, this service can award interest to account for any unreasonable delay in settlement – we aren't restricted to applying it just in situations where a financial outlay has already been incurred. I'm satisfied that, following the surveyor making their report, a period of 14 days for ABIB to make the recommended settlement is reasonable. Any delay past this point will, therefore, be unreasonable and will cause interest to start accruing on the recommended and unreasonably delayed settlement amount.

in summary

Having shared my views on the complaint with both parties provisionally, I've now considered their replies. In short, they haven't given me cause to think a further provisional

decision needs to be issued or to change my mind in any way about the findings and outcome provisionally stated. I remain of the view that ABIB failed Mrs L and that, if it hadn't, she would likely have had a policy offering the benefit of cover for fire to her in place at the time the property was damaged by a fire. And I also remain of the view that my recommended redress is, in all the circumstances, a fair and reasonable outcome for the complaint. As such my provisional findings, along with my responses to the parties' replies, now form the findings of this, my final decision.

Putting things right

I require ABIB, as set out in detail above, to appoint, on a joint basis with Mrs L, a surveyor to determine what it will cost to reinstate/rebuild the property. ABIB will then have to pay that sum to Mrs L (less VAT initially as explained above) in settlement of her fire claim (with any VAT element to be paid once a VAT invoice is submitted showing work has been done and VAT has become due). If it takes more than 14 days, from the date the report is submitted to it, to pay the sum determined by the surveyor (initially less any VAT sum), ABIB will have to pay interest* on the reinstatement/rebuild sum, from the date of the surveyor's report until payment is made.

If Mrs L submits a VAT invoice to ABIB, it will have to reimburse her the VAT sum due for work the surveyor found necessary, to the amount he attributed for that work. Payment will have to be made to Mrs L within 14 days, or the VAT sum due will attract interest*.

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If ABIB considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mrs L, it should tell her how much it's taken off. It should also give Mrs L a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold this complaint. I require Alan Boswell Insurance Brokers Limited to provide the redress as a set out above at "*putting things right*".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 April 2022.

Fiona Robinson

Ombudsman