

The complaint

Mrs S is unhappy that Ecclesiastical Insurance Office Plc has avoided her home insurance policy and declined a claim she made.

What happened

The circumstances of this complaint aren't in dispute, so I'll summarise the key points:

- Mrs S has been using an independent insurance broker, who I'll refer to as B, to arrange her home insurance policy for many years.
- In 2017, B arranged for the policy to be setup with Ecclesiastical as the insurer. I understand the arrangement was made through an intermediary I'll refer to as H.
- At the times relevant to this complaint, H had access to a panel of insurers, including Ecclesiastical. H was given delegated authority by Ecclesiastical to act on its behalf.
- The policy renewed in 2018 and Ecclesiastical remained the insurer.
- Shortly after, a theft occurred at Mrs S' home. Ecclesiastical looked into the claim. After much discussion, it said it was entitled to avoid the policy back to 2017, refuse to pay the claim and retain the premiums paid. It said Mrs S had made a misrepresentation in relation to the sums insured – the rebuild cost of her home and the replacement value of her contents.
- Mrs S didn't think this was fair and made a number of points. Ecclesiastical wasn't persuaded to change its position. Mrs S referred her complaint to this Service.
- Our investigator thought Ecclesiastical had treated Mrs S unfairly. He wasn't satisfied it had been clear with Mrs S or the brokers about the information it required in relation to the sums insured. In these circumstances, he didn't agree Mrs S had made a misrepresentation. He asked Ecclesiastical to reinstate the policy, reconsider the claim and consider the consequential financial losses Mrs S had noted.
- Ecclesiastical disagreed. It said sufficient consideration hadn't been given to the policy documents and information available to Mrs S.

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 dispute has arisen because Ecclesiastical says Mrs S made a misrepresentation when taking out and renewing the policy.

Ecclesiastical has relied on the Consumer Insurance (Disclosure and Representations) Act 2012 (or "CIDRA") to avoid Mrs S' policy and refuse the claim.

The Act places a duty on the consumer, in this case Mrs S, to '*take reasonable care not to make a misrepresentation*'. In summary, if Mrs S fulfilled that duty, Ecclesiastical can take no action. If she didn't fulfil that duty, CIDRA sets out the remedies available to Ecclesiastical.

The Act provides information about what should be considered when deciding whether a consumer has taken reasonable care not to make a misrepresentation. A key consideration is how clear and specific the questions were.

When an insurer sells a policy directly to the consumer, it's responsible for gathering information from the consumer that it considers relevant. It will use that information to make a decision about whether to offer a policy – and on what terms – based on its view of risk.

When a broker sells the policy, it's responsible for gathering that information from the consumer and passing it to the insurer. How it gathers the information is a matter for the broker – not the insurer. But the insurer must be clear with the broker what information will need to be gathered. And if the insurer is responsible for the policy documentation, it must ensure it's clear – and consistent with the information it asked to be gathered.

That way, all parties are aware of the information the insurer needs in order to setup the policy. The consumer has the chance to fulfil their duty under CIDRA, and the broker can provide the right support to them.

Information gathering

Ecclesiastical has told us that H was authorised to setup policies under its delegated authority. That means H was acting on Ecclesiastical's behalf during the 2017 sale and 2018 renewal of the policy.

Although I understand H was involved in the policy prior to that, Ecclesiastical wasn't, so H would have been acting independently or for another insurer at that time. Either way, I can't consider how it acted prior to 2017 under this complaint.

Ecclesiastical says it thinks Mrs S made a misrepresentation in relation to the sum insured for both the buildings and contents cover. It says the sum insured for buildings should have reflected the rebuild cost of the property in the event of a total loss. And the sum insured for contents should have reflected the full replacement value of her possessions.

There are a number of different ways of setting a sum insured. Ecclesiastical is entitled to set the sums insured this way under its policy. What I first need to consider is whether it made the brokers aware this is how it saw the phrase 'sum insured' – and that this is the information it needed them to gather from Mrs S.

Our investigator asked Ecclesiastical what information it, or H, asked B to gather. It said it had been struggling to find out from B what information it asked Mrs S for. I'm not considering the acts or omissions of B under this complaint. I can see H has reached out to B for more information. But I think this misses the point.

As above, B is responsible for gathering any information H asked for. Whether B did that or not is a matter for B. What's relevant under this complaint is what information, if any, H asked B to gather about the sums insured. As it stands, H and Ecclesiastical haven't shown they asked B to gather any information at all.

Ecclesiastical says Mrs S is a 'sophisticated insured' and was supported by B, an independent broker. As such, H was entitled to rely on the information provided by B.

When deciding whether a consumer has taken reasonable care not to make a misrepresentation, CIDRA says the standard of care is that of a reasonable consumer. It doesn't identify consumers as 'sophisticated' or otherwise. And even if CIDRA didn't apply, I don't think it's reasonable to expect Mrs S, as a consumer, to predict what Ecclesiastical would like to know. All it has to do is ask her clear questions to find out the information it considers relevant.

I agree H was entitled to rely on the information provided by B. As I said above, how a broker gathers the information is a matter for it alone. But that's based on the insurer being clear about what information it needs the broker to gather. Put simply, if the insurer doesn't set out clearly what information it needs to setup the policy, relying on whatever it receives from the broker opens up the possibility the information is unreliable. The insurer is entitled to take that kind of risk if it wishes, but I don't think it's fair to take that risk on Mrs S' behalf.

I understand H received information from B about Mrs S to setup the policy. It seems to be an internal summary printout of the information held on B's system, rather than a policy document. I understand it reflects the information B held for the previous insurer in 2016. It includes the sums insured, which are also referred to as 'cover limits'. No further explanation is given about what the figures represent.

Our investigator asked Ecclesiastical what questions were asked of Mrs S in 2017 and 2018. It provided the printout, noting 'there was no proposal form completed or questions asked of [Mrs S], as far as we are aware, at that time [2017]'. It said it understood B had previously asked Mrs S to check the documents in the printout were correct. That's a matter for B. What's relevant in this complaint is that it remains unclear what, if anything, Ecclesiastical or H told B it needed to know about the sums insured or cover limits. It also provided the policy schedules for those years, which I'll discuss in more detail below.

Taking all of this into account, I think H setup the policy in 2017 on the basis of the information it and B held from a previous policy with a different insurer. Of relevance here, that was on the basis of the 'sum insured' or 'cover limit' given in the printout. There was nothing to suggest the meaning of 'sum insured' used previously by others was the same one Ecclesiastical held. Or that Ecclesiastical or H told B what it needed to know.

In summary, H – and therefore Ecclesiastical – has setup a policy on the assumption that information previously given was relevant and correct. It doesn't seem to have taken any steps to specify what information it wanted to know – or checked that correlated with the information provided. Given the risks involved for Mrs S if any of the information wasn't relevant or correct – such as her policy becoming invalid – I'm not satisfied it was fair or reasonable for Ecclesiastical to rely on information in this way.

In these circumstances, I'm not satisfied Mrs S was asked to make a representation before the policy was taken out in 2017 – so I don't think she can be said to have made a misrepresentation or otherwise acted unreasonably at this point.

After the policy was taken out, she was sent a policy schedule. She was sent another in 2018. At both times, this was a chance for Ecclesiastical to clarify what information it had wanted to know about Mrs S – and what it was told – so she could correct it if need be.

Policy documents

The policy schedule is produced and branded by H. As it's acting on Ecclesiastical's behalf, that means Ecclesiastical is responsible for the schedule.

In 2017 the relevant part of the schedule said:

<i>Buildings</i>	<i>Sum insured</i>	<i>£1,294,000</i>
<i>Contents</i>	<i>Sum insured</i>	<i>£214,572</i>

The numbers changed in the 2018 document, but the rest of schedule remained the same.

The phrase 'sum insured' isn't defined in the schedule and no reference is made to definitions of the phrase that may be found elsewhere. It's not a phrase with one single, commonly understood meaning. Without any further explanation, I think most people would consider it to mean 'the amount I'm choosing to insure something for' or similar.

Ecclesiastical wanted it to mean the full rebuild cost and the full contents replacement cost respectively. But I don't think it clearly conveyed that message in the schedule. Instead, it left it up to Mrs S to interpret the phrase and to select amounts she wanted to insure for. I know it says B, as an independent broker, ought to have supported Mrs S with this. But, as I found above, I'm not satisfied Ecclesiastical or H told B what information it needed to gather about the sums insured.

Ecclesiastical says the meanings are set out in the policy wording. It's pointed to a term called 'underinsurance and inflation protection' found on page 46 of the policy, within the 'general conditions' section.

I agree this term is consistent with the meanings Ecclesiastical would like to give the phrase 'sum insured' – rebuild and replacement costs. But I don't agree it would be fair and reasonable to say Mrs S ought to have known this is what Ecclesiastical meant when she reviewed the policy schedules.

The schedule doesn't ask Mrs S to cross reference words and phrases used within it with the policy wording. So I wouldn't expect her to do so. But even if she did, the policy, through its 'what our words mean' section, contains a number of words in bold type that have particular meanings specified in the policy. 'Sum insured' isn't one of those words.

So in order to find out what Ecclesiastical meant by 'sum insured' in the schedule, Mrs S would have to cross reference the policy wording – despite not being prompted to – put aside the fact the phrase wasn't defined, and find the condition set out on page 46. I'm not satisfied it would be reasonable to expect her to do that. What would be reasonable is for Ecclesiastical to set out the meaning in the schedule to ensure all parties have the same understanding in an easily accessible way.

Amongst other things, the purpose of a policy schedule is to confirm the basis upon which cover has been offered – and to give the policyholder an opportunity to check that basis is correct at the beginning of the policy term. If it's not, the policyholder can make changes before a claim occurs and problems may arise.

Because the policy schedule wasn't clear, Ecclesiastical didn't give Mrs S this opportunity. I don't think this treated her fairly. And I don't think it amounts to a misrepresentation on her part. Effectively, Ecclesiastical's policy schedule asked her what she'd like to insure her buildings and contents for. She gave figures she was happy with. Because of that, I'm not satisfied Ecclesiastical has shown she failed to take reasonable care not to make a misrepresentation or otherwise acted unreasonably at this point.

Overall, this means I haven't been persuaded Mrs S failed in her duty under CIDRA or otherwise acted unreasonably. As a result, I don't think the actions Ecclesiastical took were fair or reasonable or in line with CIDRA.

Putting things right

To put things right, Ecclesiastical should reinstate Mrs S' policy and remove any internal or external reference to her policy having been avoided. It will then need to consider the claim, subject to the terms and conditions of the original policy, now reinstated.

Mrs S has described a wide range of consequences as a result of the policy being avoided. These aren't subject to the policy terms – Mrs S is asking them to be paid as compensation for unfairly avoiding the policy.

I don't think these have been explored by Ecclesiastical before and it may not be aware of them all. The costs involved are significant and I understand they continue to grow as a result of Mrs S having to declare the policy avoidance in a number of different situations.

For these reasons, I think the fairest way forward is for Mrs S to submit her costs and evidence for consequential losses to Ecclesiastical for it to consider. It should let her know which costs, if any, it agrees to and arrange to make those payments. For any it doesn't agree to in full, it should let Mrs S know why.

My final decision

I uphold this complaint and require Ecclesiastical Insurance Office Plc to:

- Reinstatement the policy
- Remove any internal or external reference to the policy avoidance
- Consider the claim subject to the terms and conditions of the policy
- Consider Mrs S' consequential losses

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 15 September 2022.

James Neville
Ombudsman