

The complaint

Mr and Mrs O complain that Highworth Insurance Limited (Highworth) arranged inadequate cover when they took out their home contents insurance policy.

Mr and Mrs O are represented by a solicitor. I will refer to Mr and Mrs O in my decision for ease of reading.

What happened

Mr and Mrs O arranged their home contents insurance through Highworth acting as their broker. When on holiday in August 2020 two diamond rings and a gold watch were stolen from their accommodation. Their insurer offered £2,000 for their loss, when the actual value of the items was much higher. Mr and Mrs O believe Highworth is responsible for the inadequate insurance cover they had in place.

Mr and Mrs O want Highworth to pay the full value of the loss they incurred, which amounts to £12,068.27, plus interest. In addition, they are seeking a contribution toward their legal fees amounting to £2,500 plus vat. As well as a refund of the insurance premium they paid and the commission Highworth received.

Highworth says it arranged cover based on the information provided by Mr and Mrs O. It had arranged insurance for them in previous years and sent renewal documents for them to review at the beginning of May 2020. It says they were instructed to ensure the cover still met their needs and to contact it if not. As no contact was made the policy renewed based on this information.

Highworth says contents cover was arranged for Mr and Mrs O's valuables. The policy had a total contents sum insured of £60,573. With a sum insured for personal possessions and valuables of £29,918. It says their loss claim was limited to £2,000 by the insurer as the terms say this is the limit for theft of jewellery from a hotel room. Highworth didn't think it had done anything wrong. So, it didn't agree to cover Mr and Mrs O's loss, their legal fees or to refund the cost of their premium plus its commission.

Mr and Mrs O didn't think this was fair and referred their complaint to our service. Our investigator didn't uphold their complaint. She thought the terms were set out clearly in the policy documents. She said Highworth had made it clear they should review this information to ensure suitable cover was in place. She didn't think it had mis-sold the policy and so didn't think it was fair for Highworth to have to cover Mr and Mrs O's loss or refund the premium along with its commission payment.

Our investigator didn't think Mr and Mrs O were required to appoint legal representation in order to complain to Highworth or to use our service. And she didn't think it was reasonable that it should pay these costs.

Mr and Mrs O disagreed with this outcome and asked for an ombudsman to review their complaint.

It has been passed to me to decide.

I issued a provisional decision in July 2022 explaining that I was intending to uphold Mr and Mrs O's complaint. Here's what I said:

provisional findings

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

Mr and Mrs O say Highworth arranged inadequate cover because although it covers theft of valuables anywhere in the world, any claim involving theft from a hotel is limited to £2,000. They say they relied on Highworth to give them appropriate advice and had used its services to arrange insurance since around 2013. They say they trusted it to have a good understanding of their insurance needs, but it failed to ensure adequate cover was provided.

I've read the policy schedule, statement of fact and terms and conditions relating to Mr and Mrs O's policy to understand what information Highworth was given and the cover provided by the policy. The loss claim was made in August 2020, so it's the policy year that runs from May 2020 to May 2021 that is relevant here.

The policy schedule details the "Standard" contents sum insured is £60,573. A sum insured of £29,918 is detailed under, "Personal Possessions and Valuables". In this section there are specified items of jewellery and one specified item described as, "Personal Effects".

Highworth's statement of fact includes a section on contents cover. It has a section entitled, "Specified Items (Away From Home)". This sets out several items including the diamond rings and gold watch included in the theft claim. The total value of the specified items also comes to £29,918.

Mr and Mrs O's understanding is that they were covered in full for the loss of their items. But the policy terms set out further conditions relating to the circumstances of their loss. The terms under section three, "Personal Possessions and Valuables" say:

"What your policy does not cover:

more than £2,000 in respect of theft or disappearance of jewellery from hotel or other temporary accommodation during Your absence from such rooms"

I have thought about Mr and Mrs O's view that this policy term wasn't brought to their attention. As well as their view that it was clear by including specified items with valuations, that this was the level of cover the insurance policy was intended to provide.

When Highworth sent Mr and Mrs O's renewal invitation in May 2020 it included a document entitled, "Terms of Business/Customer Charter – Advised Sale". This sets out the following:

"Awareness of policy terms. When a policy is issued, you are strongly advised to read it carefully, as it is that document, the schedule and any certificate of insurance that is the basis of the insurance contract you have purchased. If you are in doubt over any of the policy terms and conditions, please seek our advice promptly."

Having read the policy terms, these do limit cover to £2,000 for loss or theft from a hotel room. However, this term isn't mentioned until page 32 of the 46-page policy document.

Highworth infers it's reasonable that Mr and Mrs O should have identified this term themselves.

The statement of fact provided by Highworth shows the items claimed for were listed under the heading, "Specified Items (Away from Home)". Mr and Mrs O's understanding was that this meant their items were covered whilst they were on holiday abroad.

Highworth says it's reasonable for Mr and Mrs O to have noticed the term on page 32 of the policy terms and conditions and contacted it if they had concerns. But I don't agree that this was reasonable. This was an advised sale, meaning Highworth recommended to Mr and Mrs O that they should buy this policy. In doing so it had a duty to ensure it recommended cover suitable for their needs.

The statement of fact confirms Mr and Mrs O wanted cover for their items whilst they were away from home. I think a reasonable person would expect this to provide cover whilst they were on holiday. Mr and Mrs O's policy did provide this cover but only for a fraction of the value of the items they had specified in the statement of fact.

Given the restrictive nature of this term, I think Highworth should've clearly highlighted it to Mr and Mrs O. I can't see that this was done. The term significantly limits the cover provided for their specified items and so required a greater emphasis than inclusion on page 32 of the policy booklet. Particularly when considering Mr and Mrs O had specified items approaching £30,000 for away from home cover – when in reality the policy limits this cover to £2,000.

Highworth says it relies on the consumer to disclose their intentions in order to ensure adequate cover is provided. It says it wasn't approached in relation to Mr and Mrs O's travel plans and as such it wasn't a stated demand or need. It says Mr and Mrs O didn't specify taking a large sum of jewellery on holiday and leaving it unattended as a need. Had this been specified it says an alternative insurance solution would've been sourced. Highworth says the policy wording is written in as simple language as possible to ensure it is understood by anyone who reads it.

Mr and Mrs O say they relied on Highworth in previous years and it had provided adequate cover. They say they weren't notified that the 2020 policy would provide substantially different terms to previous policies they had that were suitable.

We asked Highworth for its comments. It says it doesn't believe the level of cover has been reduced. It says its arguable the cover has increased as the 2020 policy covered the theft event even though there were no signs of forcible entry. It says its interpretation is the loss wouldn't have been covered under Mr and Mrs O's previous policy for this reason.

Highworth says Mr and Mrs O refer to a previous policy that would have provided a higher level of cover for the same items when away from home. It says this requires reading the policy documentation. But it points out that they have said it wasn't reasonable to expect them to read the terms for the 2020 policy, which is why they say they weren't aware of the £2,000 limit for items stolen from a hotel room.

I acknowledge Highworth's comments about the previous cover, the policy information it provided, and its view Mr and Mrs O hadn't made their intentions known to take a large sum of jewellery on holiday with them. But it's clear Mr and Mrs O had told it cover was needed away from home. Cover was provided within the policy for their loss from the theft whilst abroad. But Highworth didn't clearly highlight the restrictive term on page 32 of the policy booklet limiting cover to £2,000.

I can't see that this term was detailed anywhere else. Because of this I don't think Mr and Mrs O were in an informed position when agreeing to buy this policy. Highworth should have made sure to emphasise this term and what it meant for cover away from home, which it didn't do.

Having considered all of this, I don't think Highworth treated Mr and Mrs O fairly by not clearly highlighting the term limiting cover to £2,000. Because of this it should cover the remaining sum from the loss they incurred.

I have thought about Mr and Mrs O's view that Highworth should cover their legal costs in bringing this claim. As well as a refund of premiums and the commission the business received from selling their policy.

There is no requirement for legal representation to pursue a complaint with Highworth or when referring a complaint to our service. I acknowledge Mr and Mrs O have incurred costs from instructing a solicitor. But I don't think it's fair that Highworth should pay these costs. The premium was paid to the insurer for the cover provided. Mr and Mrs O benefitted from the cover in place and Highworth arranged this. So, although I understand they are unhappy with the outcome of this claim, I don't think it's reasonable for Highworth to refund the premium or its commission.

In summary I don't think Highworth treated Mr and Mrs O fairly. It should provide a payment to cover the remaining part of their loss plus 8% simple interest from the date of the loss until payment is provided.

I said I was intending to uphold Mr and Mrs O's complaint and Highworth Insurance Limited should:

- Make a payment to Mr and Mrs O to cover the remaining part of their loss from the theft claim, plus 8% simple interest from the date of the loss until payment is provided. *If Highworth considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs O how much it's taken off. It should also give Mr and Mrs O a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

I asked both parties to send me any further comments and information they might want me to consider before I reached a final decision.

Highworth responded to say it is disappointed that my provisional decision reverses the decision made by our investigator. It also highlights the time taken to reach this decision.

With reference to the items Mr and Mrs O claimed for, Highworth says that a requirement or limit relating to unattended items is not unusual or onerous. And highlights a "safe" clause relating to theft from home and a "reasonable precautions" clause. Highworth also points to the policy information it provided that set out the clause limiting a loss to £2,000. And says the documentation instructed them to review this information.

Highworth queries the point of sending information to a customer and asking them to review it - if they do not do so. It says the policy term was clearly explained and highlighted in the documentation Mr and Mrs O received.

Highworth also comments on the time taken for our service to reach this decision. It says the interest payment it is being asked to pay is for a longer period because of delays created by this service. It also says that 8% is very high bearing in mind interest rates over the period in question.

Mr and Mrs O responded to say they are relieved that my provisional decision upheld their complaint. But they still feel it's fair that Highworth contributes to the fees they paid to be represented by a solicitor in this matter. They say representation was essential given the obstructive conduct demonstrated by Highworth in addressing their complaint. Mr and Mrs O say they were unaware of the process and didn't feel confident navigating it themselves without this support.

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 acknowledge Highworth's disappointment with my findings and that this is different to our investigators view. However, our process gives the opportunity for either party to request an ombudsman's review if they do not accept our investigators findings. My provisional decision was based on careful consideration of all the evidence and testimony. Both parties were given the opportunity to comment and provide further information, which I have now considered. Although I understand Highworth's disappointment – our process has been followed correctly.

In my provisional decision I said the policy term Highworth relied on to limit the claim to £2,000 was restrictive. This was an advised sale and Highworth had recommended this cover to Mr and Mrs O. In doing so it had a duty to ensure it recommended cover suitable for their needs. The statement of fact it provided included the items claimed for under the heading "Specified Items (Away from Home)" and set out the value of these items. I said a reasonable person would expect the policy to provide cover for these items whilst on holiday. I didn't think the clause on page 32 of the 46-page policy document sufficiently highlighted that the cover only provided for a fraction of the loss Mr and Mrs O would go on to incur.

I note Highworth's reference to terms relating to cover provided at home. But I don't think this is of relevance here. If specific requirements were intended to apply away from home, this should be clearly set out in the policy documentation. I don't think it was.

I acknowledge Highworth's point about a policyholder being sent information and being expected to read it. I don't dispute this point. But if Highworth recommends a policy to a customer, which includes a term significantly limiting the cover provided, it should ensure this term is made very clear to the customer upfront. Mr and Mrs O wanted their valuables to be covered by the policy. The policy documentation confirmed the full value of these items and that they were covered away from home. I don't think by relying solely on the term on page 32 of the policy terms and conditions – that Highworth sufficiently highlighted upfront the significant limitation this would have on a loss away from home.

Highworth comments on the interest payment it is being asked to pay, which it thinks is high. The interest payment set out in my provisional decision is to reflect the cost to Mr and Mrs O of being without a significant sum of money because of Highworth's failure to highlight the term limiting cover to £2,000. Our service expects that for most individuals a rate at 8% simple interest per year is appropriate to reflect the cost of being deprived of a sum of money. It is a rate we commonly apply in circumstances such as this, which I think is fair here.

I note Highworth's view that delays caused by our service mean it is paying interest for a longer period. I acknowledge the point it is making, but the key point here is that it is responsible for Mr and Mrs O's claim not being paid at the time it was reported. So, Highworth is responsible for the claim not being paid and the associated costs.

In my provisional decision I said that there is no requirement to appoint a solicitor when pursuing a complaint against Highworth or referring a complaint to our service. I acknowledge Mr and Mrs O's point about not being familiar with the process and the obstructive conduct from Highworth. But I'm not persuaded that Mr and Mrs O couldn't have referred their complaint to our service unaided. So, I don't think it's reasonable for Highworth to pay their solicitor's fees.

Having considered all of this I'm not persuaded that a change to my decision is required. So, my provisional decision now becomes my final decision for the reasons I have explained.

My final decision

For the reasons I've explained above, and in my provisional decision, I uphold Mr and Mrs O's complaint. Highworth Insurance Limited should:

- make a payment to Mr and Mrs O to cover the remaining part of their loss from the theft claim, plus 8% simple interest from the date of the loss until payment is provided. *If Highworth considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs O how much it's taken off. It should also give Mr and Mrs O a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 16 September 2022.

Mike Waldron
Ombudsman