

The complaint

G complain that MD Insurance Services Limited unfairly withdrew an offer to provide a buildings warranty for a new build property they had developed.

What happened

The background to the complaint is well known to both parties, so I'll provide only a brief summary here.

In short, in 2013, G applied to MDIS for 10 year building warranties for two flats they were building. They gave a timescale for the development to be completed and estimated the value of the flats at a total of £5.2 million.

MDIS accepted the application and G paid the required premium. In 2015, as anticipated, the development was completed and signed off by the surveyor.

G asked MDIS to issue the two certificates of insurance and advised they'd sold one of the flats for £4.7 million.

It appears only one of the certificates was issued at that point – the one relating to the flat that had been sold. G tell us they thought MDIS were waiting for a sale price from them for the other flat. But that flat wasn't sold at the time and was, in fact, rented out.

There appears to have been no communication between the parties about the second flat until 2019, when MDIS sent a letter to G saying that they needed more information (specifically the sale price) to issue the certificate of insurance for the second flat. They said that if they didn't get this information, they'd withdraw the warranty offer.

Unfortunately, this letter was sent to the wrong postal address. MDIS didn't then try to contact G by any other means and went ahead and cancelled the warranty offer.

G were unaware of this until 2022, when they contacted MDIS, advised that they had an offer for purchase of the flat and asked MDIS to issue the Certificate of Insurance. MDIS told them the warranty offer had in fact been cancelled back in 2019.

G complained to MDIS and asked them to reinstate the warranty and issue the Certificate of Insurance.

MDIS didn't uphold the complaint. They apologised for sending the cancellation letter to the wrong address but said it had been G's responsibility to request the Certificate of Insurance in good time after completion of the development.

They said they couldn't now issue a Certificate of Insurance because that would mean the cover would be extended for another 10 years, making 17 years in total, when the policy was designed to cover defects in the building in the first 10 years after completion.

And they said the underwriter was no longer offering cover of this type, so it was impossible

for them to effectively begin a new policy in 2022.

G weren't happy with this response and brought their complaint to us. Our investigator looked into it and didn't think MDIS had treated G fairly and reasonably. He thought MDIS had made an error in sending the cancellation letter to the wrong address and this had led to unfair consequences for G.

He said MDIS should pay for equivalent cover for the property for the three years which would have remained on the policy after 2022. And he thought MDIS should pay G £200 for the inconvenience they'd suffered as a result of MDIS's error.

MDIS disagreed and asked for a final decision from an ombudsman.

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.

My starting point in looking at this case is that G bought and paid for warranties for both flats in 2013. And given the completion date of the build, they had a right to expect that cover would be in place for 10 years after completion in 2015.

There's a complication here in that the premium G paid in 2013 is very likely to have been too low given the value of the two flats in 2015. But I'll come back to that point later.

There was undoubtedly some confusion in 2015 when G asked for the Certificates of Insurance for both flats. G sent an email to MDIS in April 2015 which very clearly asked them to issue both certificates.

MDIS issued only one certificate. G say they assumed that was because the second flat wasn't yet sold. So, they left it until they'd had an offer to purchase the flat – which turned out to be seven years later.

There's an MDIS document entitled "Rules of Registration" which sets out how the warranties work. This (in Section 9) clearly envisages a situation in which a property is completed and signed off but rented out rather than sold. Section 9(d) says that if the home is rented out before being sold:

"... the period of cover shall commence (or be deemed to commence) on the date of the issue of the Certificate of Approval and the balance of cover will be as noted on the Certificate of Insurance..."

On the basis of that text, I'm satisfied that the period of cover for G's second flat – given that it was rented out - should have begun in April 2015, when the flat was completed and approved by the surveyor.

The paragraph also appears to suggest (see particularly the text inside the brackets) that the Certificate of Insurance might nonetheless be issued some time later.

So, I don't think G made an unreasonable assumption in thinking that they'd ask for a Certificate of Insurance (which would run from the date of approval rather than for a further 10 years) only when they were in the process of selling the property.

There's no evidence we've seen to suggest MDIS went back to G in 2015 and asked them whether the flat was to be rented out or asked them for a valuation of the flat. And there's no

evidence MDIS attempted to clarify the situation for G or explain that the Certificate of Insurance should be issued (and the warranty period begun) before the flat had been sold.

So, I don't think much blame can be assigned to G for the failed – or to be more accurate, entirely stalled – communication between the parties in 2015. G clearly requested Certificates of Insurance for both flats – and had paid a premium two years before that to obtain cover for both flats.

I think MDIS should have gone back to G at that point and sought more information – and made G's options clear.

Even if I did think G were at fault in 2015, that wouldn't affect my view of this case, because the much more significant issue is what happened in 2019.

I'll leave aside the question of why MDIS waited for four years after completion of the build to suddenly concern themselves about the lack of a Certificate of Insurance for the second flat. The more significant question is what the 2019 letter actually says.

It begins by noting that four years after completion, the Certificate of Insurance has still not been issued. It asks for the sale price of the second flat – and notes that an additional premium may be required given that the first flat sold for £4.7 million – against a total sum insured of £5.2 million.

It asks for that information within seven days and warns that the warranty offer will be withdrawn if MDIS don't hear from G – with the requested information - by then.

There's no dispute here that MDIS made an error when addressing the letter. And that, as a consequence, G didn't receive the letter. The important question for me in making this decision is what the consequences of that error were.

If MDIS hadn't made that error – and/or had tried to contact G by other means as a safeguard – then G would have received the communication and would have responded within the seven days.

They would either have provided a sale price and/or advised that the property was rented. MDIS have confirmed – as their policy documents quoted above suggest – that the warranty would still have been provided if the property was rented out and not yet sold.

At that point, MDIS would presumably have considered whether the premium needed to be increased – given the sum insured had been mostly taken up by the first flat's sale price. That's what the letter says they will do. And when G had paid any required further premium, the Certificate of Insurance would have been issued.

That Certificate - as the above-quoted policy document makes clear – would have set the period of cover to be deemed to have begun on the date the Certificate or Approval was issued by the surveyor (in April 2015).

I think MDIS entirely miss the point when they say it would be unreasonable to ask them to begin a 10-year warranty in 2022. That's not what G – or our investigator – asked them to do. Their own policy documents are clear that in these kinds of circumstances, the warranty would run from April 2015 – and so end in April 2025 – whenever the Certificate of Insurance might in fact be issued.

So, in summary, I'm satisfied that MDIS's error – in failing to address the 2019 letter properly or try other means to contact G – meant that G had the offer of a policy (that they'd bought

and paid for) unfairly withdrawn.

This leaves them without an extant new build warranty – which affects their ability to sell the property given that many lenders won't provide funds for the purchase of a new build property without a warranty being in place. And it has caused them a degree of additional inconvenience.

That's why I'm going to uphold this complaint – and why I agree with our investigator as to what the outcome should be.

Putting things right

G is a corporate body, rather than an individual person. So, it can't suffer distress or upset. But I agree with our investigator that G has suffered some inconvenience as a result of MDIS's error and so I think it would be fair to ask them to pay the £200 in compensation that our investigator suggested.

MDIS have said the underwriter won't accept new business in this area of cover. I don't have any reason to doubt that and I accept that it makes things difficult to resolve very easily.

Nonetheless, the fact that it's difficult doesn't mean MDIS can or should escape their obligation to put things right for their customer given that their error has caused the problem.

Nothing I say in this decision – which concerns only this complaint about MDIS – can require the underwriter to do anything at all. But I would suggest MDIS ask the underwriter to cover the remaining period of the policy (to April 2025) on the basis that this is not new business but simply the final stage in the fulfilment of an agreement made in 2013.

I assume in all this that whilst the underwriter's book is closed for this type of warranty, they still have customers with warranties agreed before they withdrew from this particular market. But for MDIS's errors, G would be one of those existing customers and could presumably now be treated as such by the underwriter, if they wished to do so.

All of that said, if MDIS can't convince the underwriter to do that, they will have to find an alternative means to put G in the position they would have been in if MDIS hadn't made the error. That would likely mean buying equivalent cover for G over the period to the end of April 2025.

To be clear, MDIS must either cause the warranty originally agreed to be brought into effect and provide cover until April 2025 or they must pay for equivalent cover for G over that same period.

As a final note, I'm satisfied it's very likely that if the Certificate of Insurance had been issued in 2015, or indeed in 2019, MDIS would have asked G for an additional premium payment. The total value insured was £5.2 million. The first flat sold for £4.7 million. That would leave only £0.5 million of cover for the second flat – which had a sale price in 2022 of £3.8m.

G have said they accept that the premium would very likely increase. And I'm not now going to ask MDIS to provide cover without collecting a fair and reasonable premium overall.

So, MDIS may now recalculate the premium based on the value of the two flats in 2015 – when one Certificate of Insurance was issued and when the other likely would have been had communications between the parties been clearer at the time.

It's not entirely clear to me what the original premium was – for £5.2 million of cover. But

suffice to say the second flat appears significantly less valuable than the first, given that it had a price of £0.7m less than the first flat sold for, despite it being on the market seven years later.

I don't intend to do the calculations in detail here, but suffice to say that if the premium increased by much more than 50% of the original price, that might appear very odd given the values of the two flats and the fact that the original sum insured still had £0.5 million left after the first flat was covered.

My final decision

For the reasons set out above, I uphold G's complaint.

MD Insurance Services Limited must:

- ensure G have the original warranty or equivalent cover for the second flat up until the end of April 2025;
- re-calculate the premium based only on the values of the two flats in May 2015;
- pay G £200 compensation for the inconvenience G experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 14 October 2022.

Neil Marshall
Ombudsman