

The complaint

Mrs M has complained about Kingsway Insurance Services Ltd (KIS). She isn't happy about the way it sold her a commercial property insurance policy.

What happened

I looked at this case and provided my initial thoughts in my provisional decision as follows;

Mrs M reinsured through KIS (her broker) after Mrs M's partner had sadly passed away and the property hadn't been insured for a while. When she made a claim under the policy she was sold by KIS after a fire the insurer explained that she was underinsured. And so, it only paid a proportion of the claim in line with the amount of premium she paid. The insurer accepted the claim was covered by the policy but thought Mrs M wasn't insured for as much as she should be. As a result, the insurer reduced the amount it paid for the claim and Mrs M had to make up the difference. As Mrs M wasn't happy about this she complained to her insurer and KIS.

This complaint is solely about KIS and the sale of the policy, not the insurer. When Mrs M complained KIS said that Mrs M was aware that she was underinsured and so it didn't feel it had done anything wrong. But when our investigator looked into Mrs M's complaint she thought it should be upheld. This was because she didn't think KIS had done enough to obtain information from Mrs M in relation to the rebuild costs and this failure in the way the policy was set up led to her being underinsured. As such, she felt that KIS should step in and cover the shortfall Mrs M incurred when her insurer only paid a proportion of the claim.

As KIS didn't agree, maintaining that Mrs M knew she was underinsured and chose the rebuild value, the matter has been passed to me for review.

What I've provisionally 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.

Having done so I think the complaint should be upheld. I'll explain why and give both sides the opportunity to comment before finalising my decision.

In this instance KIS doesn't feel that it has done anything wrong. It says it was Mrs M's responsibility to ensure that she had the correct level of cover and says that Mrs M decided to reduce her rebuild insurance cover. It said Mrs M had reduced the level of cover as she couldn't afford the premium before cover lapsed and when she took out cover again after a short period of being uninsured she decided to proceed on the same basis as before. Ordinarily when a broker arranges a policy, its duty is broadly to find out what the insurer would like to know about the risk it is taking on and gather that information from the policyholder. That includes asking clear and relevant questions and providing additional guidance and support where necessary.

At a renewal, where the information may already have been gathered before, it's duty may reasonably be fulfilled by reminding the policyholder of the information required, the information previously given, and asking them to check it remains correct. And if any new information is required, asking clear and relevant questions and providing additional guidance and support where necessary.

When Mrs M looked to take out insurance through KIS it could have fulfilled the duty I've described above by keeping the sum insured as it was previously (when her husband took out the policy) and asking Mrs M to check that remained correct. But it was also bound to ask her to estimate what it should be, providing guidance on how to do that. However, I have no evidence that KIS did any of this. KIS has simply said that it was aware Mrs M was looking to underinsure as she needed to keep her premiums down. But it hasn't shown, from the time she reduced the amount insured or at renewal, that it asked her clear questions about this and guided her to an appropriate way to do this (perhaps by getting this undertaken professionally). Plus, KIS hasn't shown it asked Mrs M what the rebuild value of the property was, just what the sum insured should be, and Mrs M wasn't given any information about how she should look to calculate this. And it is of note that KIS has provided some evidence of general discussion about being underinsured on its system notes from after the time of claim but not from the time Mrs M took out the policy and renewed.

Given this it seems to me that KIS haven't fulfilled its obligations here or allowed Mrs M the opportunity to make sure she was fully insured and understood the consequences of not undertaking the process outlined above. Especially as Mrs M was reducing the overall figure by more than half from the time her husband, who generally took control of insuring the property and related finances previously, insured the property. Indeed, Mrs M has told this Service that she simply didn't think the property could be worth what it was insured for previously. This was because it had been left empty and not looked after from the time her husband died. And all this was a substantial change that could clearly have a significant impact on Mrs M in the event of a claim and KIS was aware of this.

I do agree with KIS that the sum insured is shown on the documents it shared with Mrs M. And it did ask Mrs M to check the documents to ensure the information was accurate. But I'm not satisfied this amounts to highlighting such a significant change and the full consequences to her given the potential impact of being underinsured. So, whilst Mrs M did have a responsibility to check the information and change anything she thought was wrong, KIS also had a responsibility to support and guide her to do that – especially when such a significant change had been made.

I know KIS say that it clearly advised Mrs M about the consequences of underinsuring verbally on a number of occasions, but I haven't been provided with any real evidence of this from the time she took out the policy and at renewal. And Mrs M doesn't recall this and says she would have acted differently had she been made aware. Given KIS clearly knew the property was most likely underinsured I would expect to see system notes and detail from that time, and I haven't been provided with any.

In order to put things right I need to consider what would likely have happened had KIS treated Mrs M fairly and look to put her back in that position. KIS should have told Mrs M that the sum insured should be based on the cost of rebuilding the property and provided guidance about how to do that and clearly outlined the consequence of not doing this during its questions when it set up the policy. Had KIS taken this approach and provided the necessary guidance, on balance, I'm satisfied that Mrs M would have provided a correct rebuild value – which means I don't think she should have to make up the shortfall now.

Given all of this, I think the fair and reasonable thing to do, in the particular circumstances of this case, is for KIS to pay compensation up to the cost of the claim, minus the settlement offer made by the insurer.

Replies

Both sides responded. Mrs M mainly repeated how she had acted honestly throughout and that she was made to feel like she had acted dishonestly by KIS. And that she had relied on the professional advice and help of KIS after her husband passed away which had unfortunately left her underinsured and facing potential dire consequences.

While KIS said it felt it had produced evidence, and sent documentation again that it had sent before, in support of its position. It went on to highlight sections of its documentation it felt supported its position. KIS says its internal reporting showed one of its staff highlighted to Mrs M the dangers of underinsurance and average to her. KIS said unfortunately it didn't have calls from that period of time but there was a snapshot of the staff member being in the record at the same time as when the note was created. And it highlighted that this document showed Mrs M *'had a major role in the involvement in the policy'*.

KIS provided its enquiry form that was sent just after the policy inception in 2016 and reiterated the average condition was in the documentation and that the client should be thinking about this when providing their sum insured. Furthermore, KIS said the clients demands and needs from this time referred to the average condition. And says that this was outlined around the time of renewal for other years, including 2018 (the year of the claim).

It went on to say its *'history modules tell us that we did know what the client was previously insured for and every time this figure was reduced that we informed the client of the dangers in doing this, both in written and verbal communication.'* It acknowledged it could have suggested to Mrs M that she got the rebuild survey done professionally but *'we feel that given the clients financial situation that asking Mrs M to get a survey done would have been a pointless exercise, she was already purposefully underinsuring her buildings despite the knowledge of the risks. The client being told what the actual buildings should have been would have made no difference. This was a purely financial decision made by Mrs M. We would of course suggest a building survey for a client that was actually looking to get their correct buildings sum insured.'*

KIS also said it acknowledged its responsibility as a broker *'to go through cover at each renewal'* and feels it met *'this criteria and does so with each and every client we look after.'*

Finally, KIS pointed out *'that the renewal procedure is carried out every year with the clients, this involves going through sums insured, conditions (including average), warranties etc....'* It said it disputes that it has done anything wrong or that the policy was mis-sold. But it asked to hear about any gaps or areas it could improve if it was found at fault.

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.

Having done so I remain of the view that the complaint should be upheld. I know this will come as a disappointment to KIS, but I'll explain why.

I've looked at the additional information provided by KIS and the comments from Mrs M. I can understand Mrs M's concerns and frustrations about the claim and the fact she relied on KIS to provide her with professional advice about her insurance policy. And, in the main, KIS

had already provided the additional information previously so I don't propose to go over the finer detail again now as I've already considered the detail as outlined in my provisional decision.

Ultimately, although I can understand KIS's position, and that it understands its responsibility as a broker to go through cover at each renewal and feels it does this with all its clients. But I don't think I have seen sufficient evidence to support its position in this instance. I say this as it says it was aware of the amount Mrs M was previously insured for through its *'history modules'* and I think this was generally pretty clear from the information it held on file. Indeed, KIS has been very clear in its response that Mrs M knew she was underinsuring.

I know KIS says it informed Mrs M of the dangers of underinsuring but given its position, and understanding of Mrs M's insurance needs, I would expect KIS to be able to clearly evidence this and I don't think it has. There isn't any call recordings to back up its internal notes and I don't think its notes go far enough to explain how clear it made things to Mrs M. And Mrs M is abundantly clear that she wasn't aware she was underinsured or what she would have had to have done to work out the level of cover she required. She just felt the business premises wasn't worth as much as it had been left empty for a period of time and wasn't in a good state of repair. And KIS says it could have suggested to Mrs M that she should get a survey done professionally but felt, given Mrs M's financial situation, that this would have been *'a pointless exercise'*. Saying again that she was purposefully underinsuring - but I haven't seen sufficient evidence of this or that Mrs M understood what was required to ensure the sum insured should be based on the cost of rebuilding the property. Again, I would expect KIS's records to corroborate its position and I think it was duty bound to tell Mrs M to get a rebuild survey and to clearly document this.

KIS has provided documentation showing it was acting as Mrs M's agent in relation to the suitability of the policy alongside the placement of the insurance and in the event of a claim. But I don't think it has showed it acted in line with this. Plus, as I've already outlined KIS had a duty to broadly find out what the insurer would like to know about the risk it is taking on and gather that information from the policyholder. That included asking clear and relevant questions and providing additional guidance and support where necessary. And I don't think KIS has showed it did this either.

It is of note that KIS has said in its response to my provisional decision that *'...We would of course suggest a building survey for a client that was actually looking to get their correct buildings sum insured.'* But I would expect it to advise all its clients to look to ensure that they are fully insured, the consequences of not being and advising how they go about this (recording sufficient evidence on file) no matter what KIS judges their client's circumstances or wishes are. It is then for their clients to ensure they make informed decisions and present an accurate reflection of the risk.

Given all of this I think Mrs M would have acted differently had she been clearly advised that the sum insured should be based on the cost of rebuilding the property and provided guidance about how to do that, especially if KIS clearly outlined the consequence of not doing this during its questions when it set up the policy. Had KIS taken this approach and provided the necessary guidance, on balance, I'm satisfied Mrs M would have provided a correct rebuild value – which means I don't think she should have to make up the shortfall now.

So, I maintain the fair and reasonable thing to do, in the particular circumstances of this case, is for KIS to pay compensation up to the cost of the claim, minus the settlement offer made by the insurer. And it would only be fair to deduct an amount reflecting what the cost of Mrs M's premium should have been for the period in question if she wasn't underinsured.

My final decision

It follows, for the reasons given above, that I uphold this complaint. I require Kingsway Insurance Services Ltd to pay compensation up to the cost of the claim, minus the settlement offer made by the insurer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 3 March 2023.

Colin Keegan
Ombudsman