

## **The complaint**

G complains that Jelf Insurance Brokers Limited gave it incorrect information at inception and renewal of its landlords insurance policy that led it to be underpaid by the insurer following a claim.

As a director of G, Mr B brings the complaint on its behalf. He has been represented by a third party throughout the complaint. Jelf has also been represented by a third party. For ease of reading I've referred just to Mr B and Jelf throughout this decision. All references to both include the actions of each party's representative.

## **What happened**

G owns a number of properties that it rents out. Mr B purchases landlords insurance for the properties through a broker – Jelf.

One of the properties consists of a restaurant on the ground floor and residential flats on the floors above. In 2019 there was a fire in the restaurant of this property and Mr B made a claim on the insurance. The claim was accepted however the insurer said the rebuild cost that had been set in the policy for the property was too low. It therefore applied the average clause in the policy to reduce the claim settlement proportionately based on the amount of underinsurance.

Mr B was unhappy with this and initially made a complaint against the insurer of the policy for unfairly reducing the claim settlement. This came to our service and I issued a previous decision that didn't uphold the complaint.

Subsequently Mr B made a complaint about Jelf. He said that Jelf hadn't provided the correct information at the start of the policy or at the 2018 renewal (the policy year of the claim). He said it had told him that if he had a valuation from within three years of when the policy period began, then a 'waiver of average' would apply and the insurer wouldn't be able to apply the average clause in the event of a claim. However it turned out that the valuation was required to be within three years of the claim. Mr B said he had provided Jelf with the valuation and it should have informed him that because it was from 2016, it would only cover part of the policy year and he would need a more recent one to cover the full year.

Jelf didn't uphold Mr B's complaint. It said it had provided Mr B with the information about the waiver of average and it was for him to ensure he had the right valuation. It said Mr B hadn't provided a copy of the valuation until after the claim was made. And at renewal it had advised him to get a cost assessment of all his properties and it had provided details of a company that he could do this through. So it didn't agree it had provided unclear or incorrect information.

Unhappy with this, Mr B asked this service to investigate.

Our investigator considered the issues but didn't recommend the complaint be upheld. She said she thought Jelf had provided clear information about the average waiver in the policy both in writing and during a meeting. And the onus was on Mr B to ensure he met the

requirements of the waiver.

Mr B didn't agree. In summary, he said:

- The renewal documents said that a valuation report was required within 3 years not within three years of any damage.
- The minutes of the renewal meeting were inaccurate, and Jelf had actually said a new valuation wasn't needed.
- Jelf failed to check if he had all the documents he needed to satisfy the average waiver and if it hadn't been for Jelf's negligence then he would have got a full claim payment so Jelf should pay the difference.
- At the point of the claim, Jelf said they would give the insurer the valuation as evidence of an adequate reinstatement sum insured. He felt this suggested Jelf considered the valuation to be sufficient for the waiver to apply.

Mr B asked for the complaint to be reviewed by 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.

Jelf has acted as a broker for Mr B for a number of years and the sale of the policies were on an advised basis. This means, under the Financial Conduct Authority's (FCA) Insurance Conduct of Business regulations (ICOBS), Jelf had a responsibility to recommend insurance policies that are suitable for G's needs. And to provide appropriate information at inception and each renewal that is clear and not misleading. This is to enable Mr B to make an informed choice about the cover he required for G.

There has been some disagreement about whether the valuation from 2016 was provided to Jelf by Mr B or not. However the complaint comes down to whether Jelf met its obligations to recommend a suitable policy and provide sufficient information about the policy at sale and renewal.

As part of these obligations, I wouldn't expect Jelf to check that Mr B had done everything he needed to do to meet the requirements of the terms of the policy. It's laid out why it considers the policy to be suitable for G's needs. And this includes having an average waiver, if certain conditions are met.

I don't consider that Jelf's responsibility extends to checking that Mr B has a valuation that meets the requirements. In the same way it wouldn't be for Jelf to make sure that Mr B was, for example, checking his rental properties every three months in order to fulfil the requirements for cover under other areas of the policy. It's Mr B's responsibility to ensure he is doing this in order to have cover provided for these areas. The same applies to the average waiver in the policy. It's for Jelf to let Mr B know about the average clause and that it can be waived if certain requirements are met. But it's then for Mr B to ensure these are met if he wants to rely on it.

So as I don't consider it Jelf's responsibility to check the requirement is met, I won't consider whether the valuation was provided to Jelf or not. As I don't consider this to be material to the outcome. Instead the key consideration is whether Jelf recommended a suitable policy and provided enough information to make the requirements of the average waiver term clear

to Mr B, and in doing so met its obligations to provide clear information about the policy under ICOBS.

Mr B says that Jelf provided incorrect information about what was required in order for the average waiver to apply. He says that it said a valuation had to be within three years of when the policy inception or renewed. And not within three years of the damage that was claimed for.

I've looked at the information provided by Jelf. The renewal in question here is the one in 2018. And in the summary of the insurance cover, the renewal documents state as follows:

*"Average free" buildings cover where a RICS valuation has been carried out in the last 3 years. Where a buildings policy is subject to an "Average clause", the payout would be calculated with a pro rata reduction in line with the underinsurance'*

While I understand what Mr B has said about 'the last 3 years' seemingly applying to the three years up until the renewal date, I don't consider this a reasonable interpretation of this statement.

A policy is only assessed for underinsurance at the point of a claim. So the average waiver would only be relied upon at this point. Therefore the wording would come into play when a claim was made – so I think it's clear that the wording would apply to this point and that this would mean the valuation was required within three years of a claim, not from the beginning of a policy period. And as a sophisticated customer with a property portfolio I think Mr B should reasonably have had enough information to make this assessment.

Further, from the minutes of the meeting where the 2018 renewal was discussed it notes that Jelf recommended a formal building cost assessment was carried out and that it recommended a specific firm that would be able to assist. I understand Mr B has disputed this account of the discussions during the meeting. However the minutes were produced some time before the issue with the sum insured arose, and I am persuaded that it's most likely Jelf did recommend a cost assessment was carried out as I consider it unlikely this would have been included in the minutes otherwise.

But regardless, the information provided at renewal was clear enough for Mr B to understand the terms of the policy, even without a further reminder at the meeting. I therefore think Jelf has done enough to meet its requirements as a broker to make the policy information clear to Mr B. I therefore won't ask it to do anything further.

### **My final decision**

For the reasons I've given, I don't uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B, on behalf of G, to accept or reject my decision before 5 July 2023.

Sophie Goodyear  
**Ombudsman**