

The complaint

C is complaining that Riverdale Business Solutions Limited (Riverdale) didn't present all the relevant information to the insurer of a commercial property insurance policy it arranged on C's behalf.

C has been represented by a legal representative throughout this complaint. But for ease of reference, I refer to anything C's representative has said to be said by C.

What happened

In 2017 C – a limited company – bought a commercial warehouse. It approached Riverdale to arrange a commercial property insurance policy to insure the warehouse. Riverdale spoke with C's director to gather all relevant information and arranged an insurance policy. The policy renewed the next year. In 2020, I understand C arranged a policy through a different broker. But, in 2021, C took out another policy through Riverdale again, but this policy was provided by a different insurer to the previous policy.

In June 2021, the warehouse was damaged through a fire so C claimed for the damage through the insurance policy Riverdale arranged. However, the insurer avoided the insurance policy and declined the claim because it said C didn't disclose the roof was constructed with the use of asbestos. C's director – Mr S – holds Riverdale responsible for this for the following reasons:

- He maintains that he told Riverdale, when it first sold the policy, that the roof was built with the use of asbestos. He also says there was a further telephone conversation with Riverdale in 2018 where he set out construction work that C was doing to the warehouse. He highlighted that C had obtained an asbestos survey in January 2018 and he said this was discussed as part of the works discussions.
- He says the insurers had different definitions of "non-standard" construction of the roof. He said the first insurer considered asbestos to be standard construction, but the latest insurer said it wasn't. He thinks Riverdale should have highlighted this when it arranged the new policy
- He acknowledge the new policy document made reference to the property construction not contained asbestos, but he thinks it was buried within the document.
- He also said that C was underinsured on the insurance policy. He thinks Riverdale should have made it clearer what he needed to take out as a sum insured.

Riverdale didn't agree it was at fault as it said Mr S had never said the policy was constructed with asbestos.

Our investigator didn't uphold this complaint as she said Riverdale had shown the sale process it goes through and she was satisfied that it would have asked whether the roof was built with non-standard materials. She also thought it was for C to check the policy documents whether the information Riverdale had presented to the insurer on its behalf. And she was satisfied that the documentation was sufficiently clear that C needed to tell the insurer that the roof was built with asbestos.

C didn't agree with the investigator for the following reasons:

- Mr S maintains that he told Riverdale that the roof consisted of asbestos sheets.
- The statement of fact in 2017 says "*the Premises are built of brick, stone or concrete with slate, tiles, concrete, metal or asbestos roof.*" So C maintains this shows the asbestos was disclosed.
- When discussing the claim with the insurer, Riverdale's managing director has said he considered the use of asbestos in these types of buildings to be standard construction. So C didn't agree with the investigator that Riverdale would have recorded the asbestos as non-standard construction based on the fact that the managing director didn't consider asbestos to be non-standard.

As C didn't agree with the investigator, the complaint's been passed to me to decide.

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've decided to not uphold this complaint and I'll now explain why.

I should first set out that I acknowledge I've summarised C's complaint in a lot less detail than it's presented it. C has raised a number of reasons about why it's unhappy with the way Riverdale has handled this matter. I've not commented on each and every point it's raised but, instead I've focussed on what I consider to be the key points I need to think about. I don't mean any discourtesy about this, but it simply reflects the informal nature of this service. I assure C, however, that I have read and considered everything it's provided.

The relevant law in this case is the Insurance Act 2015. This required C to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms. The insurer doesn't believe C did so, so it avoided the insurance policy.

As C's broker, Riverdale was required to make this presentation on C's behalf. So it needed to carry out a sufficient fact find to ensure it had all the relevant information to give a fair presentation of the risk.

The relevant issue here is that the insurer wasn't told that the warehouse it was insuring was constructed with asbestos.

I'm conscious that Riverdale first arranged the insurance policy in 2017, but each insurance policy is a new contract with a new responsibility to carry out a fair presentation of the risk. Further to this, and most importantly, there was a break in cover for one year as C used a different broker to insure the policy. In 2020, C returned to Riverdale and a new insurance policy was arranged. So, while I have considered what happened in 2017, I've particularly focussed on the policy sale in 2020 and subsequent renewal in 2021.

Riverdale has provided a fact find that was carried out on 10 June 2020 which says the risk details were taken over the telephone. So it seems Riverdale spoke with Mr S when C took out the policy again. In the fact find it asks details of the roof construction and asks to include details of any lining. And this says "*pitched*" and "*tiled*". I understand that there isn't a recording of the telephone call available, so I have to go on the basis of what's *most* likely to have been discussed.

I think it's *most* likely that Riverdale would have gone through the relevant questions on the

fact find with Mr S to gather the relevant information. So I think it would have asked him what the warehouse's roof construction was. I note Mr S is adamant that he told Riverdale that the roof was constructed with asbestos, but I haven't seen anything to support this. I have thought about and taken into account what he's said, but I don't have enough for me to conclude that he did give Riverdale a true reflection of the roof's construction.

I note C's comment that Riverdale's managing director wrote to the insurer querying why it didn't think the use of asbestos was standard construction as he said he considered it to be standard with that type of property. But I'm not persuaded that this means that Riverdale didn't pass on that Mr S had said the roof was constructed with asbestos. It seems that this was said in a way to assist C with its dispute with the insurer. I don't think it can reasonably follow from this that it wouldn't have included in the fact find document that the roof was constructed with asbestos sheeting if this had been disclosed.

In addition to this, I cannot ignore the paperwork that was sent to C in 2020 and 2021. Regarding the policy that was avoided – which is the representation in question – C was asked to confirm whether:

“The property is of non-standard construction [walls not built only of brick, stone or concrete or roofed only with slates, tiles or concrete].”

C was asked to check this documentation, but it hasn't corrected any incorrect information. I have also considered C's comment that it thinks Riverdale should have clearly set out the difference between the two insurers' definition of standard construction. But, even if I thought it needed to do this, which I don't, it needs to be remembered that this was a new business application – i.e. it wasn't a renewal – as C had taken out an insurance policy through a different business before this. So it's not a situation where there was a change in insurer and cover at renewal. Riverdale's role was to carry out a full fact find so it could carry out a fair presentation of the risk on C's behalf and to arrange a suitable policy.

I recognise that C has lost out significantly as a result of the policy's avoidance, but I can't reasonably say that Riverdale is responsible for this.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 25 November 2023.

Guy Mitchell
Ombudsman