

The complaint

Mrs C has complained that BISL Limited (BISL) mis-sold her a home insurance policy.

What happened

Mrs C looked for a new insurance policy on a price comparison website. She selected a policy and was directed to BISL's website to complete the purchase. Mrs C later had a fire in her home. Her insurer said she was significantly underinsured and that it would therefore only pay a proportion of her claim. So, Mrs C complained to BISL as she said it mis-sold her the policy when she first took it out and at the more recent renewal.

When BISL replied to the complaint, it said the rebuild value was based on the figure Mrs C had provided and it was her responsibility to check the details were correct. It said it didn't receive any contact from Mrs C until she made her insurance claim. It also said when the policy had more recently renewed, the rebuild cost had been recalculated and increased. BISL had provided Mrs C with adequate time to check the details were correct before the policy renewed.

So, Mrs C complained to this service. Our investigator upheld the complaint. He said Mrs C had provided a rebuild value based on a previous insurance document and this was one of the sources BISL said the amount might be drawn from. So, he said Mrs C had acted reasonably based on the information provided by BISL when she first took out the policy. He said BISL should pay Mrs C the equivalent of the reduction in the insurance claim and pay interest on that amount. He also said BISL should pay £1,250 compensation for the significant impact this had on Mrs C and her family over several months. However, he said he thought the details in the renewal notice were fair, as Mrs C would have known the rebuild value was inaccurate because of what happened during her insurance claim. So, it was reasonable to expect her to check this information and provide BISL with an up-to-date figure.

As BISL didn't agree, the complaint was referred to me.

I issued a provisional decision saying that I didn't intend to uphold the complaint, I said I didn't think BISL was responsible for Mrs C being underinsured based on the evidence I had seen, as the rebuild figure Mrs C provided didn't seem to be drawn from a source BISL had suggested it could be obtained from. I invited both parties to provide further comments or evidence.

BISL agreed with my decision. Mrs C provided information from a broker that showed the document she had used to obtain the rebuild figure was from an insurance renewal notice. I was aware Mrs C also tried to obtain details of other, older, policies but had difficulties in doing so. I looked at my decision again and I issued a second provisional decision on 7 December 2023. In my provisional decision, I explained the reasons why I had changed my view and was planning to uphold the complaint. I said:

When Mrs C made an insurance claim her insurer said she was significantly underinsured. Mrs C had given the rebuild value as £250,000, but the insurer said the property was worth £510,000. So, it would only pay a proportion of the claim.

Mrs C complained to BISL, who sold her the policy. She said the rebuild value was provided based on the information given on BISL's website. The website guidance said:

"Please note that this is the Rebuild Cost of the property, not the Market Value, and should not include the value of any land.

The property Rebuild Cost can be obtained from one of the following:

- The renewal notice or current Buildings insurance schedule of the existing insurer*
- The mortgage provider*
- A mortgage valuation report if the property was bought in the last 2 years*
- Refer to the ABI website at www.abi.org.uk under Consumer Information"*

It's my understanding that Mrs C didn't have insurance in the months before she took out the policy through BISL. However, Mrs C checked the Statement of Facts from another policy she had considered taking out a few months earlier, which gave a rebuild value of £238,211. She said she rounded this up to £250,000 when she took the policy out through BISL, as she assumed the figure might have increased.

When I issued my provisional decision, I invited both parties to provide any further evidence or comments. Mrs C's response to that decision has changed my understanding of the policy document she got the rebuild figure from. It was previously my understanding that the document was a quote that Mrs C then hadn't taken out. In response to my provisional decision, Mrs C contacted a broker who provided evidence that it was a renewal document and it also provided other documents that showed this. It remains my understanding that Mrs C didn't then renew the policy. A few months later, she then took out a different policy which was the one under which she made a claim and was found to be underinsured. Nonetheless, from what I've seen, the £250,000 figure was drawn from a renewal document. BISL had said this was an acceptable source to get the rebuild value from.

I'm aware there was a few months' gap between the date of the renewal document, on a policy that wasn't then taken out, and the date on which the policy was taken out through BISL. So, I've thought about whether that makes a material difference. Based on what I've seen, I'm not currently persuaded that it does. Mrs C took the rebuild value from a renewal notice. I accept it wasn't from "the existing insurer". But I've thought about whether the policy having lapsed a few months before was likely to have had a bearing on the rebuild value of the house. I can't see that those few months made a difference. I currently think it was reasonable for Mrs C to rely on that document as being what BISL had asked for, or the closest thing Mrs C had to it. This remains my view despite it now being clear that the rebuild value was wrong. I'm not aware of Mrs C being asked anything further to validate the sum, explain how it was come up with or the history of it.

I'm also aware the renewal document inaccurately described the property as detached when it was terraced. But, I haven't currently seen anything that showed this was material to the questions BISL asked when the policy was taken out.

In my view, it was for BISL to ensure it asked the right questions when the policy was taken out. I think Mrs C answered reasonably in light of the question asked and the guidance she was given.

As a result, I currently intend to uphold this complaint, as I think BISL mis-sold the policy. I currently intend to say BISL should pay Mrs C the equivalent to the reduction in the cash settlement she received from the insurer when it dealt with the claim under the policy. It should also pay interest on that amount because Mrs C lost use of the money.

I've also thought about compensation. I think Mrs C has been caused substantial distress and inconvenience over a sustained period of time. Mrs C's finances were significantly impacted, as was her ability to move forward with her day-to-day life. I also think she was caused substantial worry and distress. As a result, I intend to say BISL should pay £1,250 compensation to recognise the impact on Mrs C.

I asked both parties to send me any more information or evidence they wanted me to look at by 4 January 2024.

Mrs C provided a range of comments which, in summary, were:

- The rebuild value for the property was calculated about eight months after the policy was taken out. She thought the rebuild figure wouldn't have been quite so high when the policy was taken out. She thought there had been a huge increase in the price of construction materials in that eight-month period.
- She said that as a layperson she didn't know about terms such as "*proportionate payout*" and "*average clauses*". It was only when she was found to be underinsured that she realised what this meant and that she wouldn't be paid up to the amount insured, but instead would be paid a proportion. She said she wouldn't deliberately do something that might lead to her being left homeless or having to find the extra money to cover the repairs herself.
- She didn't know why the renewal document listed the property as detached when it was terraced and couldn't assume why it had happened. When she took out the new policy, the premium went up a little, so she had thought she might have overestimated the rebuild value.
- She hadn't intended to complain about the inaccurate rebuild value in BISL's renewal quote. She explained the premium increases and that while the property remained awaiting repair, she wouldn't have known how to calculate a rebuild value anyway.
- She said she had now tried an online calculator and it didn't work for her.
- She said that when she received the renewal quote from her previous insurer that she had been taken aback by the increase and started to look elsewhere. She had been with a previous company for a long time and had been insured since buying the house in 2009. At that time, she had used figures from the mortgage document.
- She said that the information the loss adjuster gave her about the purchase of the property was wrong, including the year she had bought the property, and had been found online.
- When she made the insurance claim, the insurer told her it believed she had acted in good faith, but that the insured amounts were wrong. It offered a reduced settlement. It took months for the insurer to complete a survey, assess the works and offer a settlement figure. These delays made it difficult to start any work.

BISL responded and provided a range of comments which, in summary, were:

- My change of decision was largely based upon the subsequent production of a renewal notice and my opinion that the age of the renewal document and the fact it contained a misdescription of the property didn't make a material difference to the rebuild value.
- BISL's set questions and guidance presented to Mrs C were representative of the industry and didn't deviate from those provided by most insurers, brokers and aggregators.
- The use of a current renewal document was important to ensure rebuild costs remained in line with inflation, cost of labour, materials etc.
- It provided the inflation rate at the time of the renewal document and the date of purchase of the BISL policy.
- The question and guidance wording had been preapproved by the insurer and deemed clear, fair and not misleading.
- It quoted the wording from its website and said it should therefore be a relatively simple decision as to whether or not Mrs C followed the guidance. It said it was a statement of fact whether she did or didn't.
- In my decision, I had accepted the renewal notice was several months old. BISL said it was five months old and not from a current insurer.
- It said my acceptance of two material differences compared to the guidance should have led me to conclude Mrs C didn't follow the BISL guidance. However, in direct conflict with my own findings, I intended to conclude that Mrs C had followed BISL's guidance. It said it didn't believe it was open for me to decide that Mrs C mainly complied and that was good enough or to measure her against a slightly relaxed version of the actual guidance. A decision ignoring the facts couldn't be anything other than perverse and irrational. It invited me to reconsider it.
- It described the provisions under section 2 of the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). It said there was a very clear obligation on Mrs C to ensure the information sourced and submitted for the purpose of obtaining insurance is accurate and reflective of her specific insurance needs. It was reasonable to expect she would exercise reasonable care to ensure the information she sourced was correct and that the rebuild cost was an accurate reflection of the property she wished to insure.
- It said Mrs C had told this service that she didn't populate the £238,000 figure but that the previous insurer had auto populated the figure. It said it had carried out several investigations to substantiate this, but had concluded that any property with more than six bedrooms would not elicit a pre-populated rebuild value. It required manual entry, which was also the case on BISL's website.
- Online house build calculators could also only accept six bedrooms as a maximum to calculate a rebuild cost, so further investigations were required to obtain the true figure.
- BISL had investigated the rebuild cost based on information in the loss adjuster's report and this generated a value of £578,000, which was close to the accurate rebuild cost.
- BISL considered it would have been reasonable for Mrs C to have been asked to evidence the actual source of the rebuild value she initially used, when all the evidence suggested this was a careless answer to the rebuild question, which was agreed and supported for another complaint with this service about the Mrs C's insurance claim.
- It said the insurance claim complaint was borne out of exactly the same facts as the BISL complaint and concluded that Mrs C was careless in her answer and that it was a qualifying misrepresentation under CIDRA. It was deemed fair for the insurer to proportionately reduce the claim monies paid to Mrs C.
- It said this service's conclusions on complaint about the insurer and about BISL were at odds with each other and resulted in direct conflict. It questioned how I could rationalise BISL to account on the basis of reasonable behaviour but found the insurer not to be accountable. It suggested that I couldn't rationalise these two conflicting decisions and that must therefore lead to an obvious perverse and irrational decision against BISL.
- The insurer had said it would have taken on Mrs C's policy with an additional premium. In line with previous decisions by this service, the more rational, appropriate and fair

decision based on the findings of careless misrepresentation would have been for Mrs C to be asked to pay the difference between the premium she paid and the premium she would have been charged and for the insurer to settle Mrs C's claim in full. This was an outcome supported by CIDRA. This wasn't an outcome that had been given any consideration by this service in this case.

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 uphold this complaint. I will explain why.

I've considered both BISL's and Mrs C's comments. These don't change my view about how this complaint should be resolved. If I don't comment on something either party has said, it isn't because I haven't considered it. It's because I've focussed on the issues I think are key to making a fair and reasonable decision.

BISL has highlighted issues such as inflation, labour and materials. It also said inflation had increased by 1.9% in the period between the renewal notice being issued and the new policy being taken out. Before I made my second provisional decision, I was aware of the reasons why it was important for the rebuild cost to be as accurate as possible. Mrs C increased the rebuild value from the £238,000 figure in the renewal notice to £250,000 when she took out the policy through BISL. So, this was a fairly sizeable increase for the few months between the renewal notice and the new policy being taken out. I also note that it would have accepted a mortgage valuation from within the last two years, which was a considerably longer period than the period between the renewal notice and Mrs C taking out the policy with BISL.

BISL has also said that £578,000 is close to the correct rebuild value. I take this to mean the value calculated at the time of the claim, which was £510,000. I'm not sure I would describe that as close, but it is closer than £250,000. However, as Mrs C has pointed out, the £510,000 figure doesn't show what the rebuild value was at the time the policy was taken out. So, I'm not sure BISL is making an entirely fair comparison anyway.

BISL also explained the investigations it had carried out, including on how figures were auto-populated. But from what I can see BISL is describing different circumstances to what happened here. Mrs C got the figure from a renewal notice that was emailed to her. I haven't seen evidence that she went online to obtain that figure or needed to carry out the actions BISL described. So, I'm not persuaded that what BISL said is relevant to Mrs C's circumstances.

BISL has also described its understanding of how online calculators work. But I also haven't seen evidence that Mrs C used an online calculator or that she was required to do so. BISL's guidance said the rebuild information could be obtained from "one" of the sources. Mrs C got the figure from a renewal notice, which was one of the suggested sources.

BISL also said it would have been reasonable to evidence the source of the initial rebuild figure. I did consider this before I issued my second provisional decision and explained my views on this. BISL's guidance didn't say there was a requirement for a consumer to further explain the rebuild figure given in a renewal notice. The figure being drawn from a renewal notice was sufficient.

BISL has also said that what it asked and its guidance was representative of the industry. I accept that insurers normally want to know the rebuild value of a property for this type of

policy, but I think there is variation in how insurers request that information and the questions they ask. Although BISL might have agreed the wording with the insurer, BISL was still responsible for what it asked when it sold the policy.

BISL has also referred to CIDRA, what happened with the claim itself and what this service said about a related complaint about the insurer and the claim. It is difficult for me to comment on this in too much detail. The insurer and the claim, including the settlement and any relevance of CIDRA in that context, are separate considerations to BISL's involvement. I also think BISL has mis-stated what happened with the other complaint. I should also note that I think BISL has misunderstood our normal approach on misrepresentation and/ or underinsurance. But as BISL isn't the insurer and I couldn't impose a new outcome on the insurer as part of this complaint decision anyway, I won't comment on this any further.

However, I was aware about what had happened with the other complaint. I also thought about what relevance the other complaint, and how it was resolved, had to this complaint. This included thinking carefully about what impact it would have on BISL if I upheld this complaint. Having done so, I still thought it was fair to issue my second provisional decision upholding this complaint. I remain of the view that the outcome is fair, albeit not one that BISL would want.

So, having thought about this complaint again in detail, I remain of the view that Mrs C using the renewal document was reasonable and that BISL mis-sold her the policy. So, I require BISL to pay Mrs C the equivalent to the reduction in the cash settlement she received from the insurer when it dealt with the claim under the policy. It should also pay interest on that amount because Mrs C lost use of the money. I also think BISL should pay £1,250 compensation to recognise the impact on Mrs C because she has been caused substantial distress and inconvenience over a sustained period of time.

Putting things right

BISL should pay Mrs C the equivalent to the reduction in the cash settlement she received from the insurer when it dealt with the claim under the policy and pay interest on that amount. It should also pay £1,250 compensation

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint. I require BISL Limited to:

- pay Mrs C the equivalent to the reduction in the cash settlement she received from the insurer when it dealt with the claim under the policy.
- pay 8% simple interest on that amount from the date on which the insurer made its payment to Mrs C to the date on which BISL Limited makes the payment to her.
- pay £1,250 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 6 February 2024.

Louise O'Sullivan
Ombudsman