

The complaint

Mrs L complains that Xbridge Limited trading as Simply Business (Simply Business) mis-sold her a landlords property insurance policy.

What happened

Mrs L is a leaseholder of a maisonette which she lets out to tenants. In April 2022, Mrs L looked online for an insurance policy to cover damage to her leasehold property. Following an online quotation with Simply Business (acting as a broker), they contacted her to discuss the quote.

When completing the quote online, Mrs L had selected buildings and contents insurance. Simply Business's agent said the freeholder would insure the building, and instead she would only need landlord fixture and fittings cover, along with contents cover.

The policy was taken out by Mrs L and renewed the following year. In November 2023 Mrs L discovered her previous tenants had fitted a bracket to the wall to use the handheld shower as an upright shower. As the wall wasn't tiled for a wall mounted upright shower, water had got behind the tiles causing damage. Mrs L tried to claim under her policy, but the insurer declined the claim on the basis she didn't have buildings cover.

Mrs L complained to Simply Business that they'd mis-sold the policy. Simply Business didn't agree. They said they had been clear about the cover they could offer, they recognised the claim decline had highlighted a gap between Mrs L's and the freeholder's policies, but they said they wouldn't have been able to offer any other policies with different scopes of cover.

As Mrs L remained unhappy, she approached the Financial Ombudsman Service.

One of our investigators looked into things but she didn't uphold the complaint. She said that Simply Business should have been clearer about what they could and couldn't provide cover for in Mrs L's circumstances, but she noted Simply Business couldn't offer buildings cover to a leaseholder.

The investigator went on to consider what would have happened if Simply Business could have provided buildings cover. She said that even if that was the case, she didn't think what happened would have been covered by the policy as she didn't think that an insured event had occurred. The investigator also said the policy included a reasonable care exclusion and she didn't think reasonable care had been taken, so she said the claim would have been excluded by this too.

Mrs L didn't agree so the case was passed to me to decide.

I reached a slightly different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've reached a slightly different outcome to our investigator, so I'm issuing a provisional decision to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Whilst I recognise the claim has been declined, that is the responsibility of the insurer, rather than Simply Business who is the broker responsible for the sale. If Mrs L is unhappy with the claim decision itself, she'd need to complain about that directly to the insurer. I'm only considering the sale of the policy here in this complaint.

Mrs L had initially obtained a quote with Simply Business for buildings and contents insurance at around £400 for the year. After Simply Business contacted Mrs L, this was reduced to around £130, as buildings cover was removed, and the quote was instead for landlord's fixtures and fittings and contents cover.

Simply Business has said they are a non-advisory broker. Generally, this means they should provide sufficient information for a potential policyholder to decide whether the cover is suitable for their needs, rather than giving advice on suitability or specific cover a policyholder should take.

I've listened to the telephone conversations between Mrs L and Simply Business. Whilst Simply Business says they are non-advisory, in these calls, I think it's clear that they were actually giving Mrs L advice. I say this because Simply Business agent told Mrs L that she didn't need buildings cover, and instead the freeholder would insure the buildings. So, the buildings cover was removed on the basis of the advice Simply Business gave.

This advice came as a surprise to Mrs L, but the agent maintained she wouldn't need to insure the buildings. Mrs L questioned this, but the agent reassured her the freeholder's policy would cover it. And when asking if everything was covered, the agent confirmed it was.

It is often the freeholder that insures the building itself. However, this is determined by the freehold/leasehold arrangements and these arrangements can vary significantly. So, whilst it is often the case that the freeholder will insure the buildings, there are occasions where they might not, and that responsibility is passed on to the leaseholder. This would normally be determined by the written leaseholder/freehold agreement, but without having sight of this, Simply Business agent wouldn't have been aware for certain in Mrs L's specific circumstances what exactly she/the freeholder were responsible for.

Mrs L has said that the freeholder does insure the outside walls of the building, but the inside, the demised premises under her lease, she is responsible for insuring. And this extends to include the internal buildings elements of the property, not just fixtures and fittings and contents.

So, I think Simply Business agent did give advice here, and that advice was based on what they thought and assumed, rather than Mrs L's actual circumstances, and

that advice was incorrect. But that doesn't automatically mean Simply Business is responsible for covering the costs Mrs L incurred in having repairs carried out.

Instead, I need to consider whether that incorrect advice has actually prejudiced Mrs L's position. When doing this, I need to consider what is most likely to have occurred if the incorrect advice hadn't been given.

Simply Business has explained they are only able to provide buildings cover to a freeholder. So, if Simply Business's agent had explored with Mrs L her leasehold/freehold arrangement and insurance needs, and that she did need buildings cover, they wouldn't have been able to offer Mrs L a policy. Mrs L would then have needed to look for cover elsewhere.

The difficulty I have here though is that I can't be sure that even if Mrs L had purchased cover elsewhere, that the event she claimed for would actually have been covered. So overall, it isn't clear that the incorrect advice from Simply Business has actually financially prejudiced Mrs L.

I say this because the damage was caused by Mrs L's tenant changing the location of the shower head, and as the bathroom wasn't designed to have a wall mounted shower head, this then resulted in water getting in behind the tiles causing damage over time. Insurance policies have exclusions, and often for things like gradual damage over time and damage caused due to faulty or poor workmanship.

Our investigator considered whether Mrs L's claim would have been covered if she took buildings cover via Simply Business, but I don't think that's the right approach. This is because Simply Business wouldn't have been able to offer this, so Mrs L would have had to go elsewhere. And other insurers, either directly, or taken via a broker, might possibly have covered this event, but that would depend on their own terms, conditions and exclusions, of which there are a vast array of differences in cover and exclusions across the insurance market.

Therefore, I can't be entirely sure that Mrs L's claim would have been covered if she went elsewhere and did purchase buildings cover, so I'm not persuaded it has been shown at this stage that because of Simply Business's incorrect advice, Mrs L has incurred a financial loss she otherwise wouldn't have. Therefore, unless anything changes as a result of the responses to my provisional decision, I won't be directing Simply Business to either cover in full, or contribute towards, the repair costs Mrs L incurred.

Having said that though, if Mrs L is able to evidence that she would have taken a policy elsewhere, but for Simply Business's incorrect advice, which would have covered what happened, then she should present evidence of that to Simply Business to consider further. And after Simply Business has considered that evidence and whether they have in fact prejudiced Mrs L's position, if Mrs L remains unhappy with whatever decision they reach, she'd be free to bring a new complaint to this service to consider that new information (subject to our usual rules and timescales).

To be clear though, that new evidence would need to be considered as a new, separate complaint, and by Simply Business in the first instance. So, I'm not intending for Mrs L to provide any evidence to support that in response to my provisional decision.

Mrs L has said at the very least, Simply Business should reimburse the premiums she's paid for the policy. However, I do need to take into account that it's most likely that she would have paid more for a policy to include buildings cover, even if the claim itself wasn't covered. Therefore, Mrs L would always have had a cost for insurance either way.

Whilst I can't be certain Mrs L's position has been prejudiced, she has likely benefitted from the reduced premiums since taking out the policy vs if she had gone elsewhere if the incorrect advice hadn't been given. With this in mind, as Mrs L would always have had a cost for insurance, unless anything changes as a result of the responses to my provisional decision, I won't be directing Simply Business to refund the premiums she's paid.

However, the incorrect advice has resulted in a loss of expectation for Mrs L. And I think she should be compensated for this. Therefore, unless anything changes as a result of the responses to my provisional decision, I'll be directing Simply Business to pay Mrs L £100 compensation."

So, I was minded to uphold the complaint in part and to direct Simply Business to pay Mrs L £100 compensation.

The responses to my provisional decision

Simply Business responded to say it was happy to pay the £100 compensation and had nothing further to add.

Mrs L responded but she didn't agree. She said that if Simply Business had sold her buildings insurance, she would have paid the higher premium and that wasn't the issue. Instead, Mrs L said that if she had full cover and paid a higher premium and excess, that would have been lower than the amount she has had to pay for repairs.

In addition, Mrs L has said that she has now obtained full cover elsewhere at a higher premium, and she doesn't think £100 compensation is sufficient.

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.

And I've thought carefully about the provisional decision I reached and the responses to it. Having done so, whilst I appreciate it'll come as a disappointment to Mrs L, my final decision remains the same as my provisional decision, and for the same reasons.

Mrs L said that if Simply Business had sold her buildings cover as well, whilst she would have paid a higher premium and excess, that would still have been less than the cost of repairs she's incurred.

But the fact here is that Simply Business wasn't able to offer Mrs L buildings cover as she is a leaseholder. So, I've considered what would have happened had the incorrect advice not been given by Simply Business. If that had been the case, Mrs L would have needed to obtain cover elsewhere. But even if she had obtained buildings cover elsewhere, whether the damage caused would have been covered under another policy is unknown. As outlined in my provisional decision, policies often have exclusions for poor workmanship and gradual damage, alongside many other exclusions.

So, this is why I said in my provisional decision that if Mrs L is able to evidence that she would have taken a policy elsewhere, but for Simply Business' incorrect advice, which would have covered what happened, then she should present evidence of that to Simply Business to consider further. And after Simply Business has considered that evidence and whether they have in fact prejudiced Mrs L's position, if Mrs L remains unhappy with whatever decision they reach, she'd be free to bring a new complaint to this service to consider that new information (subject to our usual rules and timescales).

I also note Mrs L has said she has now taken 'full cover' elsewhere. I assume Mrs L means buildings and contents insurance, but I think it is highly likely that the policy will also contain terms, conditions and exclusions. But like I say, if Mrs L is able to demonstrate she would have taken an alternative policy which would have covered what happened but for the incorrect advice from Simply Business, she should submit information to support that to Simply Business to consider further in the first instance.

But as outlined in my provisional decision, whether Mrs L took the policy she did with Simply Business, or a different policy elsewhere, she would always have incurred premiums (and likely higher for a policy to include buildings cover too) regardless of a claim being covered, so I won't be directing Simply Business to refund the premiums she's paid.

I recognise Mrs L doesn't think £100 compensation is sufficient, but it's unclear at this stage if Simply Business has actually prejudiced her position for the reasons explained, and I'm satisfied that £100 is fair and reasonable for the loss of expectation and service received.

My final decision

It's my final decision that I uphold this complaint in part and direct Xbridge Limited trading as Simply Business to:

- Pay Mrs L £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 14 August 2024.

Callum Milne
Ombudsman