DRN-4959140

The complaint

Mr and Mrs M have complained about their commercial property insurer Hadron UK Insurance Company Limited. They feel it acted unfairly by avoiding their cover (treating it as though it never existed) for one of their let properties, and by association declining their claim for smoke and water damage caused to that property by a fire next door.

What happened

Mr and Mrs M own two neighbouring commercial retail premises. Property "1" was empty and seriously damaged by a fire. The fire caused smoke and water damage in property "2". Following the fire Hadron said it was avoiding cover because it hadn't been told 1 was empty and Mr and Mrs M made a complaint to the Financial Ombudsman Service. Under that complaint the avoidance of 1 was considered and my Ombudsman colleague found Hadron had acted fairly. We then set up another complaint – this complaint – to deal with Mr and Mrs M's concerns about 2.

Regarding 2, Mr and Mrs M felt Hadron had acted unfairly because 2 had never been empty. They said Hadron would never have asked them, regarding 2, about the occupancy status of neighbouring properties. They didn't believe Hadron, or any insurer, would have that within any underwriting criteria (which sets out which risks an insurer will and won't cover). Mr and Mrs M said that if any insurer did consider that, it would be almost impossible to get cover for a 'town-based' retail premises. They said Hadron's position was implausible and to prove otherwise it should have to show a relevant question on a proposal form and give examples of when it's refused cover on that basis.

Our Investigator felt that given the findings on the complaint about 1, and the detail received from Hadron's underwriters, it had likely acted fairly regarding 2. But she also noted that, with this being a commercial policy, Hadron had not had to ask questions. Rather it had been Mr and Mrs M's duty to make a fair presentation to it by telling it of anything which might likely affect its decision on whether or not to offer cover. So she didn't uphold the complaint.

Mr and Mrs M disagreed with the outcome. They felt our Investigator hadn't completed a proper investigation. That rather she had just asked Hadron for an opinion from its underwriter which was clearly coloured by hindsight. Mr and Mrs M explained again the evidence they expected to see and, therefore, expected us to ask for.

Mr and Mrs M said that regarding 1, they could accept that Hadron wouldn't have offered cover – because its standard industry practice for insurers to want to know about unoccupied properties. But they said Hadron's alleged approach regarding neighbouring unoccupied properties was non-standard. So they feel that Hadron, to support its claim that cover wouldn't have been offered, should be required to show that it has refused cover in similar situations before and/or underwriting detail from the time the risk was accepted. They absolutely do not believe that Hadron would either have asked about, or expected them to provide detail regarding, neighbouring properties.

The complaint was referred for an Ombudsman's decision.

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 find my view on the complaint is the same as that expressed by our Investigator. I've set out my findings explaining my view below.

I appreciate that Mr and Mrs M have certain views about what evidence they expect to see regarding Hadron's position. However, it is up to those within this Service, considering the complaint, to consider any evidence provided by the parties, and form a view on that evidence – its persuasiveness and what we think it shows. Whilst we'll take account of anything the parties say about what they'd like to see, we do not take direction from either one. If we think additional detail and/or evidence is required to help us reach a fair and reasonable outcome on a complaint, we'll ask for it.

I fully appreciate that, from Mr and Mrs M's point of view, it seems logical that the reasoning provided by Hadron's underwriters has been 'constructed' to suit the situation and to generate the best outcome for Hadron. I've taken that view into account but I'd add here that there is no 'standard' set of underwriting issues across the industry. Certainly there are some issues which will most likely affect all insurer's appetite for risk to one degree or another. But that is not to say that an insurer which chooses to apply something different, just because of that difference, has to bring stronger evidence to support its choice in that respect.

I think it's worth clarifying here; our Investigator did not ask Hadron, during her assessment of the complaint, for a current opinion about its underwriting position, or for its underwriter to offer comment about what would have happened. Rather Hadron, as part of its complaint submission, had provided its internal activity/contact file. Within there, from the time of the claim assessment, there was an email exchange between underwriters considering the underwriting position regarding both property 1 and 2. The reasoning for Hadron's view, which forms part of that chain, has been shared with Mr and Mrs M. The chain though also shows that that position and the underlying reasoning for it were reviewed and agreed by both a senior underwriter and Hadron's Chief Underwriting Officer.

I'm aware that Mr and Mrs M will disagree with my view in this respect. But evidence like that – which comes from senior people within the business, who carry out an expert role, applying their expertise and knowledge regularly to determine complex issues of risk – holds weight. It is the type of evidence that this Service generally finds to be persuasive.

That said I can, and do, wear a 'reasonable thinking cap' when assessing evidence like this. I look, for example, at when the opinion was given, how it was put forward and the content of what was said. I ask myself; 'do I think that what was said was reasonable', and is there anything in it that might make me think it shouldn't reasonably be trusted on this occasion. In this case there's nothing that gives me cause for concern here about the reasoning or decision reached by the underwriters.

The policies that were in place for 1 and 2 are clearly linked. Whilst they have different reference numbers they are detailed together on the same schedule. So I think it's fair to say that any consideration Hadron made about the policies would be linked too – they would be considered in the round, not as entirely separate pieces of cover. It's already been decided by my colleague that a qualifying misrepresentation occurred for 1. I think it's entirely reasonable to think that if that had not occurred, and Hadron had reviewed its cover for 1 in light of its unoccupancy, that would also have triggered it to review its position regarding 2.

The underwriting evidence I've referenced above shows that Hadron, if that type of review had been undertaken, would have viewed the risk for 2 as too high. That was on the basis that the risks presented by 1 would increase the chances of harm occurring to 2. I note that the properties are attached and I think, even setting aside the fire which occurred, it's reasonable to think the unoccupancy of one would be likely to affect the other. I think that reasoning speaks to a caution of exposure to additional, uncontrollable risks – which it is exactly the role of the underwriter to assess. So the reasoning, to me, makes sense and I also think it's the type of reasoning I'd expect from any underwriter reviewing a similar situation – whether pre or post damage. Nothing within Hadron's review of the risk makes me think this reasoning has been unfairly constructed, or that a different conclusion would likely have been reached if a fair presentation of 1 had been made and Hadron had been given the chance, before the loss, to consider the risk for 2.

I appreciate that Mr and Mrs M weren't asked questions about the neighbouring property when cover was arranged for 2. I've commented about the linked nature of the covers above. However, if I'm wrong in that respect, I've look at the 'sale' for 2 as an isolated policy, and I still think Hadron's acted fairly and reasonably to avoid cover for 2. I say that because under the relevant legislation, the Insurance Act 2015, Mr and Mrs M had a duty to make a fair presentation in respect of 2. That means they weren't only required to answer any questions put to them by Hadron – they had to volunteer any relevant information to it, whether asked about that detail or not.

In terms of 'relevant information', Mr and Mrs M would have had to tell Hadron about anything which might affect its risk for cover, or at the least, sufficient detail to allow a 'prudent insurer' to know that it needs to make further enquiries regarding detail which would affect its risk decision. In choosing what to tell Hadron, it isn't sufficient for Mr and Mrs M to have assumed what they thought Hadron might want to know. So whilst I know they believe Hadron never wanted to know detail about the neighbouring property, meaning they would never have told it about that, I'm satisfied that was indeed a relevant factor in Hadron's considerations. Which means that, as Mr and Mrs M did not tell Hadron, when arranging or renewing cover for 2, that the neighbouring property (1) (also covered by Hadron) was vacant and had been for some time, they did not make a fair presentation of the risk for 2. I'm satisfied that Hadron's decision to offer cover was based on that unfair presentation, and that if it had been advised of the full picture, given the underwriting detail discussed above, cover for 2 wouldn't have been offered. It follows that I find Hadron's decision, to avoid cover for 2 thereby also declining the claim, was fair and reasonable.

I understand that this is a difficult and frustrating position for Mr and Mrs M to be in. They had two properties which they felt they had full cover for and which have both been damaged by a fire. Since the fire they've found that Hadron has revoked cover for both properties and neither claim will be considered. I appreciate that will have an impact on Mr and Mrs M, both personally and in their role as landlords of the two properties. I also appreciate that they'd have hoped for better outcomes for their complaints about Hadron's actions. However, via two complaints at this Service, considered by two different Ombudsmen, Hadron's actions have been considered, with respective decisions issued. I'm satisfied, in respect of the complaint I have considered, for the reasons set out above, that Hadron has acted fairly and reasonably regarding 2. As such, I'm not upholding the complaint or requiring Hadron to do anything more.

My final decision

I don't uphold this complaint. I don't make any award against Hadron UK Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to

accept or reject my decision before 28 November 2024.

Fiona Robinson
Ombudsman