

The complaint

Mr R complains Drayton Ins. Limited, an insurance broker, provided poor advice when he bought a commercial insurance policy to cover his farm, which led to him being underinsured.

What happened

The background to this complaint is well known to both parties, so I'll provide only a brief summary here, concentrating on the key points which affect the outcome.

Mr R owns a farm property. In 2015 he asked Drayton to advise him on obtaining insurance cover for the various buildings at the property, the fixtures and fittings, and machinery stored there, amongst other things.

Drayton inspected the property, assessed Mr R's insurance needs and assisted him in purchasing a policy provided by an insurer (I'll refer to the insurer as "A").

Mr R made a claim against the policy after a fire at one of the buildings in April 2022.

A accepted the claim and appointed a loss adjuster to assess it. In short, they concluded that Mr R was underinsured. They said the sum insured (the rebuild cost of the property) declared by Mr R represented only 38% of the true cost of rebuilding the property. And on that basis, they advised Mr R that his claim would not be settled in full.

Mr R made a complaint to Drayton. He said Drayton had advised him what the sum insured on the property should be and, in effect, they were to blame for the fact that he was underinsured and would not have his claim fully settled.

Drayton didn't uphold Mr R's complaint. They said they hadn't provided the buildings sum insured on Mr R's behalf and they'd made it clear to him that it was his responsibility to ensure the sum insured was accurate.

Mr R wasn't happy with this and brought his complaint to us. He said the agent from Drayton had in fact told him in 2015 what sum insured to declare for the buildings.

Our investigator looked into it and thought Drayton hadn't acted fairly or reasonably towards Mr R when they sold the policy to him and/or when it was renewed.

She thought they'd misadvised Mr R, causing him to calculate the total sum insured on the policy by reference to only five of the nine buildings on the farm site. And this had led him to be underinsured.

On that basis, she said Drayton should pay Mr R the difference between the full claim value and the amount he'd been offered by A on the basis of the underinsurance. And they should pay Mr R a further £250 to compensate him for his trouble and upset.

Drayton disagreed and asked for a final decision from an ombudsman.

I also disagreed with the outcome proposed by our investigator, so I issued a provisional decision. This allowed both Drayton and Mr R the opportunity to provide further information or evidence and/or to comment on my thinking before I issue my final decision in this case.

My provisional decision

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.

First of all, I should say that Mr R appears not to have made a complaint about A. If he has, he certainly hasn’t brought it to our service.

I mention that because the focus of the complaint I’m dealing with here (against Drayton) is entirely about how the sum insured on the policy came to be as it was – and less than it apparently ought to have been. I’m not looking at whether A acted fairly and reasonably in making the settlement offer they did.

That makes this complaint a relatively simple one. The key question being whether Mr R or Drayton were responsible for the (seemingly inadequate) declared sum insured on the policy at the time of the fire.

Mr R says that when Drayton carried out their inspection and assessment in 2015, their agent, in Mr R’s own words, “*used this assessment to inform the level of cover provided*”. And from that point on, he received assurances that the sums insured remained based, “*on the original property details provided by the representative*”.

In other words, Drayton decided on the rebuild costs for the buildings and then put them to the insurer in order to get the quote for cover.

Drayton say that wouldn’t have happened. They aren’t qualified, able or allowed to value buildings or estimate rebuild costs. And their agents know that it isn’t their business to do so.

It’s clear that some discussions took place between Mr R and Drayton’s agent before Mr R bought the policy. There’s no dispute that this was an advised sale. Their agent was providing advice and guidance to Mr R about suitable policies, based on their assessment of his needs.

No doubt some of those discussions were face to face and not recorded. So, it’s difficult to draw any absolutely definitive conclusions about what was said and/or what was discussed between the agent and Mr R.

If either party has any further evidence about those discussions which they haven’t yet provided to us, I’d suggest they might want to provide it now, in response to this provisional decision.

The upshot of those discussions seems to me to be captured in an email – a copy of which we do have – dated 20 February 2015, from Drayton’s agent to Mr R.

This email says that the agent has obtained quotations for cover and says these are based on:

“...*buildings rebuild value across the site £270,000 (this has not taken into*

account the four smaller outbuildings)."

Drayton have also provided records which show the quotes were for cover for five buildings – a cottage, two outbuildings (rebuild cost £40,000 each), one new build workshop / storage (rebuild cost £45,000) and one new garage / storage (rebuild cost also £45,000).

The rebuild cost for the cottage isn't specified, but the maths (£270,000 total rebuild costs minus the £170,000 combined rebuild costs for the other four buildings) shows that the rebuild cost for the cottage was £100,000.

This is important because A's settlement offer was based on a declared rebuild cost (in the policy) of £107,570 – presumably the original £100,000 for the cottage (which is the building which burnt down) adjusted for inflation - against a true rebuild cost of around £283,000.

As I say, I'm not commenting here on whether the maths underpinning that settlement offer is reasonable – or whether the supposed true rebuild cost is reasonable - because they're matters for A, not Drayton.

So, based on the evidence we currently have, I'm minded to conclude the underinsurance A are referring to when they made their settlement offer results from an underestimation of the rebuild costs of the cottage (alone). And that underinsurance is not the result of Mr R and/or Drayton deciding not to look for cover for the four other outbuildings.

Which brings me back to the key question – in slightly narrowed down form – who is responsible for the fact that the rebuild cost for the cottage appears to be significantly underestimated – Mr R or Drayton?

The email quoted above doesn't give any clues as to where the estimated rebuild costs came from. It simply says those are the estimated costs that have been used to get the quote from A.

So, I can't draw any conclusions from that email about whether Mr R or Drayton estimated the rebuild costs. But to cut to the chase, on the basis of the evidence and information we currently have, I'm minded to say this was Mr R's responsibility. I'll explain why, by reference to the evidence.

In 2015, when he was in the process of buying the policy, Mr R was sent a number of documents by Drayton. Amongst them was a Statement of Fact, which set out the information on the basis of which A were offering cover.

It's worth quoting this directly. It said:

*"This Statement of Fact is a record of the information **you** [my emphasis] provided to (A)... and any assumptions made about you and your business upon which this quotation is based..."*

It went on:

"Read carefully... All mentioned facts must be disclosed, as (A) has relied upon the information in his document to calculate (your) premiums and apply terms and conditions."

The Statement of Fact clearly set out the total buildings sum insured at £270,000. It's clear from the emails quoted above – and other information on file – that Mr R knew that when A were asking for a sum insured, they were asking for the rebuild costs, assuming the building(s) had to be rebuilt from scratch.

As he's a commercial customer, it's not unreasonable or unfair for Drayton (or A) to assume that Mr R knew how to calculate rebuild costs and/or knew how to commission a surveyor (or other professional) to estimate those costs.

The "new business" covering letter which was sent out to Mr R at around the same time says:

"Please can you check all the enclosed documentation to ensure it meets your needs..."

Drayton's Terms of Business document – sent to Mr R on several occasions during his period of insurance with A – says:

"It is the responsibility of the insured to ensure that all sums insured and policy limits are adequate. Whilst we seek to assist in establishing and maintaining insured values and indemnity limits we cannot accept responsibility for their accuracy. It is strongly recommended that the appropriate Professional (e.g. Surveyor/Accountant) be consulted to ensure that the sums insured and limits under the policy are suitable."

A's terms and condition policy documents say:

"It is the responsibility of the Insured to ensure that all sums insured and policy limits are adequate. It is strongly recommended that the appropriate professional (e.g. Surveyor / Accountant) be consulted to ensure that the sums insured and limits under the policy are suitable..."

Drayton sent renewal letters, with policy terms and schedules attached, to Mr R each year from 2016 to 2022. Those renewal letters said:

"Whilst the insurers and ourselves will have checked the documentation for accuracy we would recommend that you read the enclosed documentation to ensure the policy meets your requirements..."

In each case, the sums insured were clearly set out amongst the information that Mr R was asked to check and verify.

The schedules attached with each annual renewal letter said that the buildings sums insured continued to be based on the original information provided by Mr R. And they pointed out that the legal duty of the customer - to disclose relevant and accurate information to the insurer - applied at inception, renewal and when any changes were made to the policy.

There's also evidence on file that in 2021 A asked Drayton to check on the sums insured with Mr R. There are emails from Drayton to Mr R which ask him to contact them for that reason.

There's no detailed record of those discussions, so it's not clear exactly what was being discussed at that time. But it is clear that Drayton asked Mr R to check some of the sums insured on his policy and verify their accuracy.

That may not have been directly related to the sum insured for the cottage or for the insured buildings as a whole. But it does suggest that Mr R would or should have known – before the last renewal before the fire in 2022 - that he was responsible for all of the sums insured on the policy and that Drayton weren't going to estimate them on his behalf.

In summary, I think it's inherently unlikely that Drayton's agent, in 2015, told Mr R what the buildings sum insured should be on his policy – or completed that part of the application without consulting Mr R and taking his own estimation of the rebuild costs.

I realise that conflicts with Mr R's recollection but given the length of time that's passed since those discussions, it wouldn't be entirely surprising if Mr R and/or others involved had imperfect recall as to exactly what happened and what was said.

And given the other evidence – as set out above – I'm minded to conclude, unless I'm given further evidence or information to persuade me otherwise, that Mr R couldn't – or shouldn't – have been under any illusion about the fact that he was responsible for the sums insured / rebuild costs provided to A.

That evidence shows that Mr R appears to have been told – before inception, immediately afterwards and at each renewal since then – that he was responsible for ensuring that the sums insured on the policy were accurate and up-to-date.

And, as I say, as a commercial customer, it's not unreasonable to expect Mr R to know how to obtain a reliable estimate of the rebuild cost of his building(s).

That being the case, I'm currently minded not to uphold this complaint against Drayton."

The responses to my provisional decision

Drayton responded to my provisional decision simply to say they had nothing further to add. That's perhaps unsurprising given what I said in that provisional decision.

Mr R responded to say that he had never valued the property - and wouldn't know how to do so. He says that why he engaged Drayton in 2015. And he says Drayton's agent visited the property and carried out a full inspection.

Mr R also provided a number of documents – his original complaint letter to Drayton, legal advice he's obtained about whether he can make a case in court that Drayton were professionally negligent, and a surveyor's report assessing the rebuild costs for the remaining buildings at the property.

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 know Mr R will be disappointed but nothing he's said or provided in response to my provisional decision has changed my mind about the outcome of this case.

I understand what he says about his intention in engaging Drayton in 2015. However, their terms of business would or should have made it clear to him that they weren't in the business of property valuation or the assessment of rebuild costs.

And the fact that Drayton's agent visited the property and had a good look around doesn't alter that fact.

It is theoretically possible that Drayton's agent attended that meeting and, either there or in later discussions, gave Mr R to believe that he (the agent) was assessing the rebuild costs. But as I said in my provisional decision, that's inherently unlikely. And there's absolutely no evidence to suggest that was the case other than Mr R's recollections some eight or nine years on.

Additionally, all of the evidence we do have about the nature of the communications between Drayton and Mr R – the terms of business letters, the renewal invitations etc. – show that Drayton were quite clear with Mr R that it was his responsibility to set the rebuild costs, not theirs.

The original complaint letter to Drayton, dated 21 July 2023 adds nothing to my understanding of the case. I already knew what Mr R was alleging. I was aware of his arguments in support of his position. And I knew what he wanted Drayton to do to put things right.

Similarly, the surveyor's report, dated 21 February 2023, simply confirms what all parties to the case already knew and accepted - that Mr R was fairly chronically underinsured.

The legal advice, provided in June 2023, is primarily about whether Mr R has a reasonable prospect of making a claim on his legal expenses insurance to pursue a claim against Drayton.

The lawyer concludes that he is likely to be able to persuade his insurer to pay for an expert opinion as to whether or not Drayton acted negligently in their dealings with Mr R.

However, it is fairly clear that Mr R's prospects of making that case against Drayton would rest on that expert opinion – in particular, whether it concluded that Drayton had breached their duty of care to Mr R by acting in a way that no reasonable broker would or should have done.

Mr R hasn't provided a copy of any such expert report. And it's not for me in any case to determine whether professional negligence has taken place.

My decision rests on whether I think Drayton have acted unfairly or unreasonably towards Mr R, in the way he suggests. As I said in my provisional decision, that comes down to whether I think it's more likely than not that Drayton told Mr R – or led him to believe – that they had valued his property and/or were responsible for doing so.

And for the reasons I've already set out above, I think it's unlikely Drayton misled Mr R in that way, bearing in mind the available evidence.

As I've also said previously, Mr R hasn't to my knowledge made a complaint about how the insurer calculated the settlement of his claim. He would of course be entitled to make such a complaint if he wishes to do so - and he'd be entitled to bring that to our service if he's unhappy with the insurer's response.

My final decision

For the reasons set out above and in my provisional decision, I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 5 December 2024.

Neil Marshall
Ombudsman