

## **The complaint**

A company, which I'll refer to as D, complains that Marsh Ltd trading as Marsh Commercial provided misleading information about the sale of professional indemnity runoff cover.

Mr D, who is a director of D, brings the complaint on D's behalf.

## **What happened**

D had professional indemnity insurance, which it bought through Marsh. When D sold its business, it needed to have run off cover against claims that might be made against it for up to six years. D contacted Marsh in December 2021 but Marsh said the insurer wouldn't give a quote for six years' cover because D had outstanding claims; it would only quote for one year until those claims had been resolved.

Marsh said a one year policy would ensure there was continuous cover and if D wanted to accept the 6 year quote - once that was provided - the six year policy would be put in place, backdated to December 2021. It would then cancel the 12 month policy and the premium D had paid would be put towards the six year policy.

The insurer didn't, however, agree to a six year policy at that point and the 12 month policy remained in place. In December 2022, the insurer again said it would only agree to a further 12 months cover and D paid the premium for that.

In January 2024, Marsh said the insurer had now agreed to offer a six year policy. D asked if it would be backdated to December 2021 and the premium adjusted, but this wasn't agreed.

Mr D complained on behalf of D that it had been misled into paying for temporary cover on the basis the premium would then be deducted once the six year policy was in place and that hadn't happened.

Marsh said the discussion in December 2021 only concerned the arrangements for that year. It hadn't been able to arrange a six year policy during that policy year, so it wasn't possible to deduct the premium paid for that year's cover from the full policy, which was only arranged later on.

Mr D referred the complaint to this Service. Our investigator said Marsh wasn't responsible for the insurer's decision about what cover to offer, but it had given D the impression the policy backdating and refund was something it would do, rather than something it would try to do. This raised D's expectation and D should be compensated for the loss of expectation and inconvenience that was caused.

The investigator asked Marsh to pay compensation of £100. Marsh didn't accept the investigator's recommendation and provided further comments. Mr D also made further comments. The investigator considered the points raised but maintained his view the compensation of £100 was fair.

## 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.

Marsh is an insurance broker. It sold the policies to D but they were underwritten by an insurer. It's for the insurer to decide what risk it wants to accept and they will consider this when deciding whether to offer a policy and if so, how much to charge for it.

Marsh's responsibility was to ensure D was given appropriate information so it could make an informed decision about whether to buy the policy. The information provided should be clear, fair and not misleading.

Marsh says it is not concerned about the amount of compensation recommend, but the basis of the decision, which could set a wider precedent – it's industry practice to discuss the forthcoming year and in the discussion in December 2021, it only advised on options for the coming year. So it shouldn't be bound by that for future years.

I agree the discussions were about that policy year. But in correspondence with D, Marsh said

*"We have accepted the 12 month policy for the time being to ensure there is continuous cover and if you are wanting to accept the 6 year quote, one we have this for you, then we will incept the 6 year policy backdating this to the 31st December 2021 and cancel off the 12 month policy from the same date. Any monies you have paid towards the 12 month policy will be transferred to the 6 year policy."*

So it was presented as something that was going to happen – once the quote for a six year policy came through, the annual policy would be cancelled and the premium would be refunded against the cost of the six year policy. It wasn't presented as something that Marsh would try and arrange, but was more definite than that.

It was for the insurer to decide what to offer and Marsh had no control over that. So it couldn't say a six year policy would be provided within a year and the existing policy would be cancelled. D was led to think this would happen and in those circumstances, I don't think the information was clear.

We consider each case on its own facts and my decision wouldn't set a precedent; I'm simply deciding whether the information given to D in the particular circumstances here was clear enough and I don't think it was.

Mr D is unhappy that D had to take two annual policies before the insurer eventually agreed to offer a six year policy. As I've said, that was something Marsh had no control over.

However, when the insurer did eventually offer a longer policy, Marsh explained to D that *"At this renewal you have the option to renew annually or accept the 6 year block offer the Insurers have now offered, the Insurers can't backdate this."*

So D could have chosen to continue with annual policies or take a longer term policy at that point.

Ultimately, it was for the insurer to decide what insurance to offer, and on what terms, and D could then decide whether to accept what was offered. In the initial discussions, Marsh didn't explain clearly enough to D that there might not be an offer of a longer term and so there might not be any opportunity to refund the premium. It was unfortunate for D that it was only

offered a 12 month policy at that point, but D needed cover and hasn't shown it would have done anything different if it had been given clearer information.

D is a limited company. So it can't suffer any distress (and a loss of expectation is a form of distress). But it was caused some inconvenience as a result of the lack of clarity and the time it then had to spend to deal with things. In the circumstances, I think a payment of £100 is fair to reflect that.

### **My final decision**

I uphold the complaint and direct Marsh Ltd trading as Marsh Commercial to pay compensation to D of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 9 January 2025.

Peter Whiteley  
**Ombudsman**