

## **The complaint**

Mr G, a sole trader, complains about the actions of Brunel Insurance Brokers Limited ('BIBL') when arranging a commercial property insurance policy for him.

## **What happened**

The background to this complaint is very well known to Mr G and BIBL. Rather than repeat what's already known to both parties, in my decision I'll focus mainly on giving the reasons for reaching the outcome that I have.

Mr G used BIBL to arrange his property insurance. Previously, he'd used a different insurance broker for several years. In August 2022, the policy renewed. In October 2022, unfortunately Mr G suffered a fire at his premises. He raised a claim through BIBL against his insurance policy - underwritten by another business (B2).

B2 considered the claim but ultimately avoided the policy, declined the claim and refunded the premiums paid for that policy year. They said that Mr G hadn't made them aware (through BIBL) that his premises were not of standard construction and instead contained a large amount of timber. They said given the nature of Mr G's business (joinery), this information would've been material to their consideration of the risk they'd been asked to underwrite. And, if they'd been made fully aware of the construction of the premises - they'd not have offered cover.

Mr G raised a complaint about B2 which he ultimately referred to our Service. An Ombudsman considered the complaint and didn't uphold it. She found that Mr G hadn't made a fair presentation of risk when applying for cover or at renewal. Remaining unhappy, Mr G then raised a complaint about BIBL. Our Investigator considered that complaint and recommended that it be partially upheld. As BIBL didn't accept, the complaint was referred to me for a decision.

I recently sent both parties a copy of my provisional, intended findings. As the deadline for responses has now passed, I've considered the complaint for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service. I make this point particularly, as a detailed array of evidence including reports and statements have been provided by both parties in this complaint.

I'm sorry to hear of the impact of this fire on Mr G's livelihood.

*Responses to my provisional decision*

Both parties responded to the provisional decision before the deadline set. I won't address all points raised in detail, but will respond to the key points.

- Mr G has referred to a colleague involved in the separate, earlier complaint against the insurer as being an Ombudsman. But he is an Investigator - not an Ombudsman. In any case, I'm only considering the actions of BIBL here, not the insurer on other complaint. But I note on that other complaint, the Ombudsman overturned the earlier findings the referenced colleague reached. A final decision is our organisation's final position and the end of our involvement in a complaint.
- In my provisional decision I acknowledged the contradictions from BIBL when contrasting how they responded to the claim (representing Mr G) to defending themselves when Mr G raised a complaint against them. I won't comment further on this point.
- Mr G has referred to case law to support his position. Our Service of course does consider relevant case law when establishing our approach to complaints and also when considering a complaint. But it's only one factor (alongside what's fair and reasonable in the overall circumstances of the complaint - DISP 3.6.4). The case law referenced doesn't change the outcome I'd intended to reach. I say this because I've found Mr G didn't disclose material information to BIBL when he had the opportunity to do so and I'm satisfied Mr G was made aware of his duty of making a fair presentation of risk by BIBL.

As no evidence has been provided that materially changes the outcome I'd intended to reach, my earlier findings form the basis of this, my final decision.

### *The scope of my decision*

It's important that both Mr G and BIBL understand what I'll be addressing as part of this complaint. I'm only considering the actions of BIBL in 2021 and at policy renewal in 2022. I'm not considering the actions here of B2 (the underwriter), or the earlier broker that Mr G had used going back to 2011. However, given the nature of this complaint, it's inevitable that I'll need to refer to B2 on occasion - given that Mr G's dissatisfaction about BIBL here has arisen following the decision by B2 to avoid the policy and repudiate the claim.

Each policy renewal is effectively a new contract of insurance. This means I'll be looking at 2021 and then the subsequent renewal in 2022. Both parties will note I've set to one side BIBL's actions when setting up a policy in September 2020 - as 2021 was the first year BIBL were involved in setting up a policy solely to cover Mr W's commercial business.

Our Investigator has gone into great detail about what likely would have happened if Mr G had given accurate information about the construction of his premises and secondly about the policy endorsement B2 say Mr G didn't comply with and would've resulted in a declined claim regardless. However, I'll only go on to consider these points if I find that BIBL did something materially wrong at inception or renewal.

I also won't be making any comment/findings on Mr G's financial history as that was not ultimately the reason B2 said the policy had been set up wrongly.

I won't be considering the actions of BIBL when presenting the claim to B2 on Mr G's behalf. However, I've noted the stark contrast between BIBL's language about the claim when presenting it to B2 (on Mr G's behalf) versus when they were defending a claim themselves. This is something BIBL should reflect on and need to be mindful of - given the issues it's created in this complaint. There are multiple examples of them contradicting themselves in

what they've said and I can imagine this has created uncertainty and mistrust for Mr G. Of course, BIBL are in a difficult position as they're acting in the best interests of their client when presenting a claim on their behalf and want to give it the best chance of succeeding, versus acting in the interests of defending themselves when they're accused of wrongdoing by the same customer.

### *The actions of BIBL in 2021*

Regardless of the terms of any arrangement with the previous broker, BIBL were responsible for the setting up of the commercial policy from 2021. They may or may not have been passed information which the previous broker had used to set up previous policies for Mr G, but the crucial information remains what BIBL obtained prior to the policy being taken out with B2 in 2021.

BIBL have told us:

*"...we did point out to our client that [BIBL] did not inherit any liabilities from [earlier broker name redacted by Ombudsman] We simply agreed to obtain terms from insurers for [earlier broker name redacted by Ombudsman] policies as and when they came up for renewal."*

I've listened to a call recording of a conversation between Mr G and BIBL dated 11 August 2021. In that call, BIBL ask about the construction of Mr G's premises. Below is a summary of the pertinent part of the conversation:

BIBL ask: *"is it... a stone built barn or...?..."*. Mr G replies: *"it's a block work built barn, yeah...2014 it was all redone...slate roof"*.

Mr G didn't volunteer any additional information or his knowledge about the construction of his premises at this point. Later in the call, Mr G talks about the conversion of barns into workshops and getting planning permission. In the specifics of this complaint, I'm satisfied that it would've been reasonable and prudent to expect Mr G to do so – even if BIBL could have asked more open questions to draw out the information.

In another short call with BIBL on 12 August 2021, BIBL called Mr G to enquire about the rebuild value of an outbuilding. Without being prompted, Mr G stated:

*"...it's got to be 100 odd grand....it's only like tiles, concrete blocks and steel..."*

It's important at this juncture to point out that Mr G as a commercial customer, under the Insurance Act, had an obligation to make a fair presentation of risk. This differs to the responsibilities of a non-commercial customer under the relevant legislation (CIDRA), to take reasonable care not to make a misrepresentation. In this case, it means that even if BIBL could or should have asked more questions or even non-leading questions - this doesn't absolve Mr G of his responsibility to volunteer information that is material to the risk he was asking BIBL to find an underwriter for. Or to give information that a prudent underwriter might want to know about and make further enquiries.

BIBL then sourced a policy based on the information Mr G provided. BIBL followed this call with an email on 12 August 2021. In that email they outlined they were recommending a policy with B2 based on the information Mr G had provided. The email had several attachments. The covering email stated:

*"To ensure we are meeting your requirements it is important that you understand the cover provided, warranties, conditions and endorsements, policy excesses and terms*

*and conditions on which we agree to act for you”*

Mr G was also reminded of his duty of disclosure as a commercial customer. In the policy statement of fact document, it is stated [bold added for emphasis by Ombudsman]:

*“Please remember You must make a fair presentation of the risk to us. This means that You must*

***(1) disclose to Us every material circumstance which You know or ought to know or, failing that, sufficient information to alert Us that We need to make further enquiries; and***

*(2) make such disclosure in a reasonably clear and accessible manner; and*

*(3) ensure that, in such disclosure, any material representation as to a:*

*(a) matter of fact is substantially correct; and*

*(b) matter of expectation or belief is made in good faith.....*

***If You fail to make a fair presentation of the risk then this could affect the extent of over provided or could invalidate Your policy. If You are in any doubt as to whether a circumstance is material then You should disclose it ”***

Mr G was asked, in bold, to verify the information provided was accurate. Under ‘premises details’, it was stated:

*“The Buildings are constructed of*

*o brick, stone, concrete*

*o profiled metal on a steel frame*

*o roofed with slate, concrete, tile, metal or asbestos*

*with no more than 25% other materials”*

I’ve then considered the available evidence which shows large amounts of wood/timber in one outbuilding, a timber partition wall, timber wall and separately, timber cladding on another building. On balance, I find the information given by Mr G (and not clarified after the phone calls) taken alongside the nature of his commercial business, doesn’t fairly present the risk he wanted insured.

In his initial complaint to BIBL, Mr G said:

*“A fundamental element of this role being to understand my business and my property and solicit from me all required information that they, in said professional capacity, required to adequately present the risk to the insurer.”*

I agree with Mr G - to a certain extent, about the role of a broker when arranging an insurance policy. As above, I find, on balance, that although BIBL could possibly have asked more probing questions - this didn’t absolve Mr G of his responsibilities under the Insurance Act 2015 to fairly present the risk he was seeking BIBL to find an insurer to underwrite. The construction makeup of his premises was information known to Mr G. And in any case, Mr G was also sent the information that the policy recommendation was based on and given the opportunity to clarify or question anything that wasn’t accurate, or he was unsure about. This was Mr G’s business premises and livelihood he was insuring, and it stands to reason that as a commercial customer, a reasonable level of responsibility still rested with him to ensure

he had given BIBL materially relevant information that they could fairly present to an underwriter.

It's also important that this was the first year BIBL were arranging insurance for Mr G's business premises and he ought to have been reasonably aware that the construction/make-up of his premises was something that would be very important and he needed to share more detailed information on to allow BIBL to make an informed and suitable recommendation – particularly given the nature of his business.

BIBL recommended a policy with B2, and I find in the very specific circumstances of this complaint, this was a suitable recommendation based on the information Mr G provided them with. It's important to state that the phone calls - although not perfect, are one part of the sales process here. I'm satisfied Mr G also had sufficient opportunity afterwards to review the recommendation that BIBL had made based on the information he provided.

#### *2022 renewal*

At the 2022 renewal, BIBL made several attempts to contact Mr G via email (11 August, 19 August, 30 August) and then a phone call on 31 August. The 2022 renewal was largely based on the earlier information provided and in relevant documents, Mr G was reminded of his obligation to check everything was accurate.

The invite dated 19 August 2022 stated:

*"As we have been unable to complete a renewal review, I have attached this year's renewal quote based on the expiring terms. Our recommendation is to remain with your existing insurers"*

It also stated [bold added for emphasis by Ombudsman]:

*"If the attached documents show any **inaccuracies** or if any **amendments** need to **be made** to the quote, please contact us in the office to discuss and review your covers....*

*...Within these documents you will also find attached a copy of your Statement of Fact. **This document forms the basis of your insurance contact, so please look through it carefully to ensure that it is correct.***

*Please be advised that under the Insurance Act 2015 you have a duty to make a fair presentation which includes the knowledge of anyone who is a part of your senior management or who is responsible for your insurance.*

*This fair presentation includes:*

- **disclosing every material circumstance which you know, or you ought to know** (primary duty)
- **providing sufficient information to put an insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances** (secondary duty)
- *disclosing information in a reasonably clear manner which is accessible to an insurer*
- **ensuring every material representation as to a matter of fact is substantially**

***correct and made in good faith***

***The duty of disclosure is a continuing duty and applies to prior to inception and during the life of the contract. The most serious consequence of failing to disclose material information could be the invalidation of your cover....”***

I find that BIBL recommended a suitable policy based on the information available to them at renewal in 2022.

### *Summary*

Both the 2021 and 2022 recommendations were suitable, based on the information Mr G gave BIBL. It follows that I won't go on to determine if BIBL are liable for losses Mr G has incurred as a result of the 2022 policy renewal and subsequent claim for fire damage afterwards. I also don't need to decide whether the policy endorsement was complied with or not and in, any event - that relates to the claim made with B2.

Our investigator recommended that BIBL pay Mr G £400. As I've not found that BIBL have done anything wrong (to the extent that compensation would be appropriate), I won't be directing them to pay this sum. If BIBL have already paid Mr G, I don't seek to interfere with that.

My decision will disappoint Mr G, but it brings to an end our Service's involvement in trying to informally resolve his dispute with BIBL. Mr G retains all other dispute resolution options.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 March 2025.

Daniel O'Shea  
**Ombudsman**