

The complaint

Mr and Mrs O say Laurie Ross Limited mis-sold them a legal expenses insurance policy.

Although the policy is in joint names as the complaint has been brought by Mr O I'll mainly refer to him in this decision.

What happened

In March 2023 Mr and Mrs O took out home insurance for a new build property they'd purchased off plan. The policy included legal expenses insurance. Later that year they sought funding from the policy to pursue a claim against the developer in relation to unresolved problems at that property. The insurer of the legal expenses policy turned down the claim as it said the relevant contract hadn't been entered into during the period of insurance. We considered that issue as part of a separate complaint and agreed the insurer had acted fairly.

Mr O then complained Laurie Ross had mis-sold the policy to him. He said it hadn't provided him with clear, fair and not misleading information about the policy. He'd asked for details of cover to be sent to his solicitor but that hadn't been done and based on the information that was provided he thought he would have been covered for the claim he subsequently made.

Our investigator said while Mr O had asked Laurie Ross to send policy documents to his solicitor it said it would send the main policy document (for the home insurance) and there had been no reference to the separate legal expenses policy. And even if Mr O had been given clearer information about the legal expenses policy she didn't think it likely that would have caused him to take out a policy that would have included cover for the claim he subsequently made. She noted Laurie Ross had acknowledged the optional nature of the policy wasn't made clear to Mr O but it had already offered to refund the payment he made for it. She didn't uphold the complaint.

Mr O didn't agree. He provided detailed comments and in summary said:

- The calls Laurie Ross had with him shouldn't have been taken into account as his consent to them being recorded hadn't been obtained. This was something the Information Commissioner should be advised of. And it should in any case have provided a quality review of those calls after the policy was taken out which would have given him the opportunity to obtain suitable cover for his needs.
- He drew attention to the Financial Conduct Authority requirements relating to the need for insurers to ensure terms in insurance contracts were written in plain and intelligible language so consumers were clear about what cover was being provided. The documents he'd been provided with had inconsistent references to the policy wording. And the position on contracts entered into prior to the policy being taken out should have been explained to him.
- He also referenced what happened after he made his claim on his policy and why he felt the decision on that was incorrect.

So I need to reach 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.

I don't think it's in dispute Laurie Ross got something wrong here. It's accepted its adviser didn't make the optional nature of the policy clear to Mr O when it discussed cover with him. And that's also apparent from the phone calls I've listened to. Where that's the case we'd normally say a business should refund the premiums the consumer paid for the policy. However, I understand Laurie Ross offered to do that in March 2024 but Mr O didn't accept that offer; if that amount remains outstanding (it's unclear whether it was subsequently offset against the premiums Mr O was paying for his policy) it's open to him to request it from Laurie Ross.

However, I appreciate Mr O's key argument isn't in relation to that but is about the fact the policy didn't cover him for the claim he subsequently made. He's made further comment about the decision his insurer reached on that but that isn't something I'm considering in this decision. That complaint has been separately reviewed by our service and it closed in April last year. I'm only considering in this decision what Laurie Ross did when it sold the policy to Mr O. And while he's suggested the policy information itself was unclear it's the insurer who is responsible for producing the required information about the policy. An insurance intermediary like Laurie Ross is responsible for providing that information to a customer.

In relation to issues it's responsible for it seems clear this was an advised sale; Laurie Ross's terms of business say "*We will make a personal recommendation based on a fair and personal analysis of the market in order to identify a suitable product*". And the relevant rules say "*a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment*". So Laurie Ross should have asked questions to assess what Mr O's needs were before recommending a policy to him. And it was also required to provide him with clear, fair and not misleading information about the policy.

I've listened to the calls between Mr O and Laurie Ross. I appreciate he doesn't feel these should be taken into account as his consent to the recording wasn't obtained. Mr O is free to raise that issue with the Information Commissioner if he wants. But given the calls represent the best available evidence in relation to what was discussed at the point of sale I think it is appropriate I consider these when deciding what's fair and reasonable in all of the circumstances of this complaint.

Laurie Ross did ask questions in the calls relevant to the suitability of the home insurance policy Mr O was taking out. However, it didn't ask any questions to establish whether Mr O had a need for legal expenses cover. So I'm not satisfied it acted correctly here. I'm also not satisfied it met Mr O's information needs given there was no discussion of legal expenses cover during his phone call.

I appreciate Laurie Ross did subsequently send him an Insurance Product Information Document (IPID) relating to the legal expenses policy. The policy schedule said the full wording was available on request. However, the following day Mr O contacted Laurie Ross and asked for policy documents to be sent to his solicitor. But only information about the home insurance policy was sent by Laurie Ross. I appreciate it thought that was all it needed to provide but Mr O didn't limit his request to that. So I think the legal expenses policy should also have been sent. And as it wasn't the full terms of the that policy weren't available to Mr O or his solicitor. I think there have been failings by Laurie Ross here.

However, where I identify a failing by a business I then need to consider what would have happened but for that failing. I do think Mr O had a potential need for legal expenses cover (and he's not suggested otherwise). So I don't think it would be unreasonable in principle for Laurie Ross to recommend this policy to him. And while Mr O has suggested he wasn't eligible to make a claim I've not seen anything in the policy terms which shows he was unable to benefit from the policy at all. The policy included cover for claims relating to personal injury, employment disputes, property protection and contract disputes all of which Mr O could have made use of.

But if any of the significant exclusions or limitation of the policy had prevented Mr O from doing so that might have made it unsuitable for him. And it was a condition for cover to be provided for contract disputes that "*the agreement has been entered into by you and the agreement was made during the period of insurance*". That impacted the claim Mr O subsequently made. But that isn't an unusual term within a legal expenses policy and I don't think that condition (which applied to only one aspect of the cover the policy provided) made it unsuitable for him.

Nor am I persuaded Mr O would have acted differently if he'd been given more information about that or other policy terms. I'm mindful of the fact Mr O didn't contact Laurie Ross in order to take out legal expenses cover; the reason for his contact was to take out home insurance and (as I've already established) there was no discussion of legal expenses cover at the time. So I think it's fair to say he didn't have a particular interest in taking out legal expenses insurance.

And he didn't know at that point he'd have the dispute with the developer of his property which led to his subsequent claim. So that couldn't have influenced his decision making. I think it's most likely that, even if Mr O had understood more about what this policy covered, he'd still have taken it out. As a result I can't conclude the fact his subsequent claim wasn't covered results from what Laurie Ross got wrong.

My final decision

I've decided not to uphold this complaint Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O and Mr O to accept or reject my decision before 19 March 2025.

James Park
Ombudsman