

The complaint

A limited company, that I'll refer to as N, has complained that it was mis-sold a business insurance policy by Simpson and Parsons (Insurance Consultants) Limited.

Mrs T, as one of the directors of N, has brought the complaint on its behalf.

What happened

N is a guest house and events venue. It consists of an old farm building. One room in the building, now used for catering was previously the cow byre. Mrs T says it has the original stone flooring, with a step down into each of the cow stalls. N's policy includes cover for public liability, including legal costs, among other things.

Mrs T says she responded to marketing from Simpson and Parson and asked them to provide a quote for its business insurance. Mrs T says she sent Simpson and Parsons a copy of N's existing insurance schedule and asked it to provide a quote for a policy on the same terms. Simpson and Parsons recommended a policy, which Mrs T accepted. However, Simpson and Parsons say that when the policy was due for renewal in 2020, the insurer did not offer to renew the policy and it had to seek alternative recommendations.

Mrs T says Simpson and Parsons sent a quote for a different policy with a different insurer with only a very short time (she says less than 24 hours) to confirm renewal. Mrs T says no information was given that the cover under the policy was changed in any way and so she assumed it was the same as previous years. Mrs T also says she had little option but to agree the new terms with the new insurer, otherwise N would have been uninsured. The same cover was taken with the new insurer again in 2021 and 2022.

In 2022, during an event at the premises, a guest fell and injured themselves. The guest pursued a legal claim against N for damages. A letter from N's solicitors provided by Mrs T says this has now been concluded on the basis that N pays the claimant a total of just over £17,000 (for their legal costs and damages). N also incurred its own legal costs of almost £8,000.

Mrs T notified the insurer of the claim (under the 2021-2022 policy) but it refused cover. The insurer said the policy required any areas of the building with a change in floor level be suitably marked or have other safety measures in place, such as a handrail, and no such measures were in place in the former cow byre where the accident in question happened. Mrs T says she was not made aware of this condition on the policy and previous policies did not have this condition.

Mrs T says this was significant change in the cover and Simpson and Parsons should have made her aware of this. She says that if Simpson and Parsons had done their job properly, she would not have been left to deal with the legal claim and incurred legal costs, which involved incredible stress and fear of bankruptcy.

Simpson and Parsons say that the previous insurer would not offer renewal in 2020 (due to the nature of the risk and the claims history), so it notified Mrs T in July 2020 that it was

trying to find alternative cover but that she should also seek other cover, in case it was unable to do so before the insurance ran out on 31 July 2020. Simpson and Parsons say that N chose to go uninsured for ten days.

Simpson and Parsons say they managed to find alternative cover suitable for N's insurance needs and provided the quote for this cover to Mrs T in early August 2020. Simpson and Parsons say its covering letter to Mrs T advised her that there were conditions precedent to the cover that she would need to comply with for cover to apply and that it was vital she therefore read the details carefully and tell it immediately if she could not comply with any of them. They say the insurance schedule provided set out the condition regarding flooring and as such terms are not unusual, Simpson and Parsons does not consider it needed to specifically highlight this to Mrs T further than it did.

Simpson and Parsons say that Mrs T accepted the recommended insurance in August 2020 and the insurer surveyed the premises in early September 2020 and would have discussed with N any issues and conditions or breaches of conditions precedent to cover during that survey. Simpson and Parsons say the insurer raised issues with a deep fat frying condition, electrical inspection condition and glass collection condition by email in October 2020 and these were discussed with N. They say that the insurer did not inform them of any issue about the flooring.

The policy then renewed again in 2021 with Mrs T confirming that N could comply with the policy conditions.

Simpson and Parsons stresses that it did not survey N's premises; it was surveyed by the insurer prior to confirming the cover, and the insurer checked with N that it understood the conditions of cover and could comply with them.

Simpson and Parsons therefore do not accept that it did anything wrong in recommending this policy in 2020 and 2021. Simpson and Parsons also say they made Mrs T aware several times of the conditions on the policy before the date of the loss and she confirmed that she felt the conditions had been met.

One of our Investigators looked into the matter. She recommended the complaint be upheld and Simpson and Parsons reimburse N the legal costs incurred. She said this was an advised sale and as such Simpson and Parsons had a duty to point out any changes in the cover N previously held and the new one it was recommending. The investigator therefore thought that they should have told N about the condition about the flooring and if they had, it is likely N would have looked for another alternative policy that did not have such a condition.

Simpson and Parsons do not accept the Investigator's assessment. They say they made Mrs T aware of the policy conditions a number of times before the date of the loss and it seemed, perhaps understandably given the insurer had surveyed the property, that she thought the conditions were met. Mrs T was also aware of the difficulty getting cover, it gave her clear and not misleading information about the cover proposed and she was able to make an informed decision about whether to take the cover or continue uninsured.

Simpson and Parsons also say that the flooring condition was highlighted and present in August 2020 and 2021 renewal documents. It was not changed. Ms T confirmed to the insurer that she was aware of all policy conditions, including the flooring condition. They stressed that the surveyor was an agent of the insurer, not Simpson and Parsons, and they question why the surveyor did not find an issue with the flooring.

As the Investigator was unable to resolve the complaint, it was passed to me. I issued a

provisional decision on the matter in February 2024. I did not agree that the policy had been mis-sold. I also considered that, even if Simpson and Parsons should have done more to highlight the flooring condition, this was not the main cause of the loss incurred by N. I have copied my provisional findings below:

“The Insurance Conduct of Business Sourcebook and other relevant regulations says that those selling insurance have a responsibility to provide clear, fair and not misleading information about the cover being provided, in order to put the customer in a position where they can make an informed choice about the insurance they are buying. This includes providing clear information about the main cover and any significant terms.

If the seller is also making a recommendation or advising a customer to take a particular policy, then they should specify the customer's demands and needs and propose a policy that's consistent with them as far as is reasonably possible and take reasonable care to ensure the suitability of its advice.

I am only considering the sale of the policy in August 2021 (as that is the one in force at the time of the claim) but have also taken account of the information given regarding the previous sales by Simpson and Parsons.

Simpson and Parsons have confirmed this was an advised sale so it therefore needed to give N clear information about the policy and ensure the suitability of its advice to take the policy.

I have considered the demands and needs statement, which was completed as part of the sale process. It sets out N's main insurance needs. I cannot see anything in that to suggest that the policy was unsuitable for N, in terms of the cover provided and the levels of cover.

The demands and needs statement confirmed that N wanted public liability cover and this was provided with this recommendation.

What N is saying made the recommendation unsuitable was that Simpsons and Parsons did not make clear that it was a condition of the public liability cover that it take safety measures regarding flooring in one part of the property.

In July 2020, Simpson and Parsons were recommending a different policy from previous years. They sent the relevant renewal documents to N in July 2020. As set out above, Simpson and Parsons had an obligation to highlight any significant or unusual terms of the policy it was recommending and any significant changes to the cover from previous years, so that N could make an informed decision about whether to take the policy. I do not think this means that it had to necessarily specifically highlight every change from the previous policies. In addition, Simpson and Parsons could only reasonably be expected to highlight changes or terms that it was reasonably aware, or should have been reasonably aware, might impact on N's decision about whether the cover was suitable or not.

The renewal documents sent to N in July 2020 said: *“The insurance provided under Your policy is subject to the completion of a satisfactory survey and the implementation of any risk improvements to the Insurers satisfaction within agreed timescales.”*

Simpson and Parsons covering letter to N also said:

"All insurance policies contain Conditions and Conditions Precedent with which you must comply for cover to apply, and may also include Warranties which are very strict requirements that insurers have attached to your policy, based upon the risk details supplied. As such, failure to continually meet the terms of a policy Condition, Warranty, or Condition Precedent throughout the policy period could leave you without any insurance protection in the event of a claim, and may give underwriters the right to void the policy in its entirety.

It is, therefore, vital that you read and understand the cover restrictions applicable to this insurance, which are contained in full within the policy document issued by your insurers, and notify us immediately if you cannot comply with them.

All such terms can restrict policy cover, however, from our assessment of your risk details we would particularly draw your attention to the following, which apply to your policy.

After reading the full wording of the warranties/conditions please contact us if there are any terms or conditions that you have not fully understood, or with which you will be unable to comply."

The letter then set out a condition about the occupancy of the premises and then says in bold ***"Please see Quotation for all Endorsements"***.

The quotation document that was sent with the above letter included a page headed ***"ADDITIONAL CONDITIONS APPLICABLE TO THE POLICY"***, which listed several policy conditions under bold headed subtitles. Included in the listed conditions is the following condition about the flooring:

"Flooring condition

It is a condition precedent to the Insurers liability under Insured Section 8 Public Liability that all steps and/or slopes which form different floor levels are fitted or painted with high visibility material, paint markings or adequate warning signs and adequate handrails are provided."

The policy condition about flooring is clearly written and set out in the policy quotation.

Simpson and Parsons cover letter also clearly pointed out that there were conditions in the quotation that Mrs T should read carefully.

I agree the flooring condition was potentially significant, given the nature of the insured premises, however, I would only expect Simpson and Parsons to specifically highlight conditions or features of the cover that it would know, or should reasonably have known, would be of particular significance or importance to N's decision about the policy. I do not consider that there is any persuasive evidence that Simpson and Parsons would, or should, have been aware that there were steps within N's property that might not meet the policy condition relating to flooring.

Mrs T accepted the offer on 11 August 2020 and the survey was carried out by the insurer (not Simpson and Parsons) in early September 2020. The insurer apparently raised issues with a deep fat frying condition, an electrical inspection condition and a glass collection condition. These issues were notified to Simpson and Parsons by email in October 2020 to discuss with N. The insurer did not apparently raise any issue with the flooring during that survey.

When the policy was coming up for renewal in 2021, Simpson and Parsons sent Mrs T the renewal quotation, which again asked her to consider the conditions listed in the quotation, which again included the flooring condition.

Simpson and Parsons's cover letter in July 2021 says: "*Significant changes to your policy cover are shown in the important notes below*".

The Investigator said the flooring condition was a change to previous cover and so should have been highlighted in the letter but wasn't. However, the policy renewal in 2021 was renewal of the policy in 2020, which did have the flooring condition, so I do not think it needed to highlight this as a change in terms in 2021.

The cover letter also contained the same advice as set out above from the 2020 letter about seeing the attached quotation for the full details of all policy endorsement and conditions. [And the attached quotation that was sent with the letter included the same page headed "*ADDITIONAL CONDITIONS APPLICABLE TO THE POLICY*" and listed the flooring condition in the same way as in 2020.]

Simpson and Parsons letter in August 2021 said they had put N on cover but "*the insurers won't do this until they have confirmation that all risks that has been pointed out in the document attached that was sent to you back in October 2020 have been completed, please could you confirm this*". These were the survey risk improvements identified following the survey in 2020 and Mrs T responded the same day to "*confirm these have been completed*".

Having considered the documentation provided to Mrs T in 2021, I consider that Simpson and Parsons provided clear and fair information to allow Mrs T to make an informed decision about the policy. It provided the documents setting out the conditions, including the flooring condition, and advised her to consider that documentation carefully. I do not think it needed to specifically highlight in the covering letter the flooring condition.

Mrs T has evidenced that she has obtained alternative insurance without a flooring condition and the previous policies apparently did not have such a condition either. However, I do not consider that the policy was unsuitable and should not have been recommended. I say this because I do not think there is any persuasive evidence that Simpson and Parsons should reasonably have been aware that there was a particular business insurance need for insurance without any condition on safety around flooring. I say this because there is no evidence that the condition to mark the drops in floor level, or take other measures, could not have been easily complied with. So, it is not a restriction on cover such that would make the policy unsuitable. In my opinion, the fact this condition was in the policy does not mean the policy was unsuitable and should not have been recommended to N.

In addition, even if I thought Simpson and Parsons should have highlighted the flooring condition specifically in the cover letter to Mrs T in July 2021, rather than advising Mrs T to read the conditions set out in the attached to the cover letter (which I don't, for the reasons given above) I do not think that Simpson and Parsons is responsible for the flooring condition not being met and therefore for N's claim under the public liability section of the policy not being settled by the insurer. I will explain why.

The insurers surveyed the property in 2020 and did not raise any concerns about the flooring condition not being met. So even if Simpson and Parsons had specifically highlighted the flooring condition in its cover letter, there is no reason to believe that the outcome of the survey would have been any different; and N's position would therefore be the same.

Having considered everything carefully, I do not think the policy was mis-sold to N. I am satisfied that Simpson and Parsons provided sufficiently clear information to N about the policy it was recommending and the policy was not an unsuitable recommendation.

I fully understand how disappointing it will be for Mrs T to discover that – unlike our Investigator – I am not minded to find in N's favour. I also acknowledge how stressful the legal proceedings against N would have been. But I hope Mrs T will appreciate that it is an essential characteristic of our two-stage process that if either party – complainant or business – is unhappy with an Investigator's conclusions, they have the right to ask for an ombudsman to review the case. It is an equally essential characteristic of an ombudsman's position and independence that he or she will not necessarily be bound to follow an Investigator's findings; and that, having reviewed a case from a fresh perspective without any prior involvement; he or she may consider a different outcome to be fair and reasonable in all the circumstances."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further evidence or arguments they want considered.

Simpson and Parsons has confirmed it accepts my provisional decision and has not added anything further.

N does not accept my provisional decision. Mrs T has made a number of submissions in response. I have considered everything she has said but have summarised the main points below:

- Simpson and Parsons touted for N's business and did attend the premises itself. Simpson and Parsons looked at the rooms in question and Mrs T says she explained the use of them to them while they were at the premises.
- She agreed to move N's insurance business to Simpson and Parsons on the express understanding that the cover matched previous cover.
- She was contacted late when the policy was due for renewal in 2020. She did not choose to go uninsured for any period of time, as she believed Simpson and Parsons had it all in hand. There was little time to find alternative cover and she was assured the policy they found gave the same level of cover.
- Simpson and Parsons showed a lack of professionalism in seeking to renew the policy late and in not providing for N's best interests.

- The flooring was never discussed as an issue by the insurer or Simpson and Parsons.
- If any issue with the flooring had been raised, she would have explained again the purpose of the rooms in question and that railings of any sort would have rendered the room unusable, other than as a passageway.
- Simpson and Parsons failed to mention any requirement for railings and when she informed them of the claim they said it would be covered, so they can't have read the policy conditions, which is why they did not point it out to her.
- It is untrue to say that Ms T confirmed to the insurer that she was aware of all the policy conditions, including the flooring condition. Simpson and Parsons asked her to confirm she had implemented the list of conditions provided but the list did not include the flooring condition.
- She does not accept that the flooring condition is common. It has never been imposed by any other insurer over the 35 years of the business, and the previous broker easily found a policy without a flooring condition.
- This was a renewal quote and two other large brokers have told her that in offering a renewal quote with a condition precedent that removes a whole section of cover, then that is a significant condition that should absolutely be pointed out by the broker. Therefore Simpson and Parsons has failed in its duties and she wants the outcome reviewed.

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.

Ms T also says again that the arrangements for renewal of the policy in 2020 were late and she was not given much time to consider the policy recommended. As stated in my provisional decision, I am only considering the sale in 2021.

Ms T is correct that any significant and onerous conditions should be highlighted and the more significant and unusual a term the more should be done to bring it to the customer's attention. However, I am still satisfied that Simpson and Parsons did take reasonable steps to inform N of the condition and took reasonable care to ensure the suitability of its advice. I will explain why.

As set out in my provisional decision, N's demands and needs statement, completed as part of the sale process, confirmed that N wanted public liability cover (as well as a number of other sections of cover) and this was provided with this recommendation.

The issue is whether the flooring condition, which applies to the cow byre, should have been specifically highlighted to N by Simpson and Parsons in their cover letter when sending the renewal quotation to N in 2021.

Ms T says Simpson and Parsons visited her premises, so would have known about the flooring and that this condition would be significant and potentially negate all public liability cover.

However, the flooring condition doesn't wipe out all public liability cover, only public liability claims arising due to a breach of the flooring condition. I am not therefore persuaded it was such a significant, unusual or onerous condition that it means Simpson and Parsons should have specifically highlighted it in their cover letter.

Ms T also says that Simpson and Parsons visited N's premises and so should have known this would be significant to its needs. I am not persuaded that any visit to N's premises by Simpson and Parsons in or around 2019 changes matters. I set out in my provisional decision that the renewal letter to N in 2020 and at renewal of the same policy in 2021, made clear there were conditions applicable to the policy and the quotation provided set out the conditions that would apply, including the flooring condition. The wording of the flooring condition was also clear and unambiguous. Simpson and Parsons highlighted the need for Ms T to read the document that listed the conditions.

I set out in the background section of my provisional decision that Simpson and Parsons said Ms T had confirmed to the insurer that she was aware of all the policy conditions, including the flooring condition. Ms T disputes this, as she was not aware of the flooring condition. Simpson and Parsons were referring to confirmation from Ms T to the insurer that she had read all the policy conditions listed in the quotation documents and these documents included the flooring condition.

I also commented in my provisional decision that there was no evidence the condition could not have been easily complied with. Ms T has said in response that railings could not be put in place, as it would make the space unusable. The condition says "*adequate*" railings should be in place and other markings and warnings. I note that the insurer's final response letter rejecting the claim and giving its reasons why only says that "*there were no high visibility markings on the area where the claimant fell*". I therefore still remain of the opinion that there is no convincing evidence that the flooring condition could not have been complied with.

In any case, even if I am wrong and Simpson and Parsons should have specifically highlighted the flooring condition in its cover letter in 2021 (and 2020), I do not think it follows that it is responsible for the loss incurred by N. I say this because, even if the condition had been highlighted and N was aware of the condition, the insurer had already surveyed the property specifically to check the property and business complied with the insurance policy terms and conditions. The insurer did not raise any issue about the flooring in that survey. I am not therefore persuaded that N would likely have made any different decision, either to take action to comply with the condition, or to arrange other insurance, even if it had been aware of the flooring condition in August 2021 (or August 2020). Given this, it follows that I am not persuaded that the fact N's claim was not covered, because it was in breach of the flooring condition, is due to any failure by Simpson and Parsons to highlight this condition more than it did.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 16 April 2025.

Harriet McCarthy
Ombudsman