DRN1261462

complaint

Mr and Mrs L's complaint concerns their overseas property. They believe that Intasure paid the insurance consortium, which covers extraordinary risks, such as flood or earthquake, an incorrect tax payment at the time of their claim which meant that they were underinsured at the time of their claim. They also feel that they were sold a policy that did not comply with the law of the country concerned.

background

I have previously issued two provisional decisions. I have summarised the points made in those decisions and set out below what the position is now.

In April 2008, Mr and Mrs L purchased their buildings insurance through Intasure. They subsequently renewed their policy through Intasure in 2009.

In March 2010, Mr and Mrs L notified Intasure that there was damage to their property. In May 2010, Intasure wrote to Mr and Mrs L to advise that their claim would not be accepted as the damage was most likely caused by subsidence and Mr and Mrs L did not have the relevant endorsement under their policy to bring a subsidence claim.

In April 2011, Mr and Mrs L made a formal complaint to both Intasure and their policy underwriter. The investigation of and dealing with the claim itself concerns the underwriter and that has been dealt with as a separate complaint.

Mr and Mrs L also made a claim to the consortium which, as an extension to the policy, gave cover for "Extraordinary Risks", such as extraordinary flooding, earthquake etc. In December 2012 the claim was accepted as extraordinary flooding but only up to the sum insured in accordance with the payment of the tariff, of €118,747 (approx £108,000) for buildings. I understand the claim to be worth between €300,000 and €400,000. Therefore any underpayment of the tariff may result in the claim not being paid in full.

I initially upheld the complaint concerning payment to the consortium and proposed to direct Intasure to pay the difference between the amount Mr and Mrs L are entitled to receive from

the consortium and the amount they would have received from the consortium if the correct tariff had been paid in accordance with the sum insured.

After that decision Mr and Mrs L had confirmation from the consortium (and have sent to us a copy of the agreement) that it will pay a total of €98,734.29 in respect of their claim. This was substantially less than the sum insured (€118,747) even taking into account any compulsory excess. In an e-mail to the adjudicator Mr L advised that he had spoken to the assessor for the consortium who said as follows:

"..[the consortium] *do not cover for damage in the ground; i.e. foundations etc. nor would they compensate for necessary expenses for stabilizing the land such as pilings / underpinning etc.*

….. what they pay is effectively compensation for the loss of goods. For example, if the roof tiles are not damaged; they are not paid for. The fact that they must either be removed at a cost or simply destroyed during demolition is not for them to compensate. Neither do they pay for labour costs, professional fees, alternative accommodation etc.

The consumer is only in fact covered by the consortium for SOME of the losses incurred, not the full cost of removing and replacing a property and the associated expenses."

Intasure said:

- When Mr L took out the policy, he advised that the BSI (Buildings Sum Insured) would have been £100,000. Given the nature of the property, it considers that figure to be accurate.
- In 2009 the BSI was increased to £1 million. This was a decision taken so as to avoid there being any underinsurance on customers' properties.
- The premium paid to the consortium is based on the type of property insured under the policy and not the blanket £1 million. The consortium would expect it to pay the tax based on what the type of Building is, not a blanket BSI.
- It has no evidence of the claim value being between €300,000 and €400,000, nor of Mr L receiving a payment of €118,747 from the consortium.
- In view of the type of property, it considers the figure of €3 to €400,000 to be overstated.
- If it is to accept my decision, it requires the opportunity to review in full the claim by Mr and Mrs L.

Mr L has made the following points:-

- The three reports of two engineers and the loss adjuster all supported a claim to the consortium and that Intasure as his broker should have made the claim and failed to do so.
- Mr and Mrs L have accepted a payment of €98,374.29 from the consortium. Mr L states that had the sum insured been the required £1million he would have rejected the payment as being too low. He understood that the purpose of the policy was to provide for the reinstatement of the property in the event of a covered loss.
- Had Intasure/the underwriter acted appropriately at the time and submitted the case to the consortium he believes the likely outcome would have been some distress and inconvenience while the house was reinstated. The consequences of the inaction have been:-

- They had to move out and rent nearby at their expense.
- They later had to make the difficult decision to move back to the UK because they could not afford to continue renting overseas.
- The two bed terraced house they had previously bought with their savings (for rental purposes) is now their home with the obvious loss of income.
- They still have the worry of the overseas property, together with the constant worry of exposure to uninsurable third party risk since the underwriter declined to renew following their claim.
- They have had to pay for lawyers, interpreters, experts to support their appeals to the consortium
- They have suffered emotional stress and strain during the past three years, most of which would have been avoidable.

my findings

My understanding is that the original BSI was put down by Mr L on the original application for insurance. This was increased in 2009 to £1 million as a blanket figure for all their policies by Intasure and the underwriters in order to avoid any possibility of underinsurance. However, by not paying the increased premium to the consortium as a result of this increase, and by not advising Mr and Mrs L of this, the risk of underinsurance still remained for the extraordinary risks part of the policy. Intasure asserted that the consortium expected to be paid according to the rebuilding cost rather than the sum insured. However, I have seen no evidence of that. Its website and the documents I have seen, link payment to the sums insured. As it stood Mr and Mrs L were unaware that the extraordinary risks part of the policy still might be underinsured. The tariff is 0.08 per 1,000 so the increased premium payable of £80 on £1 million was not onerous.

Mr L has sent to us a document which sets out that it is an amicable agreement, which I have had translated. It essentially says that it:

"..proposes, subject to approval by the management of the ..consortium, compensation of …€98,734.29".

Mr and Mrs L have accepted that payment.

There has not been, as Intasure suggests, a payment of €118,747. As set out in my provisional decision, that was the sum insured and the consortium proposed to make a payment in accordance with that figure:-

"The claim will thus be settled pursuant to the particular policy conditions of the policy underwritten with INTASURE, which established an insured capital for "buildings" of €118,747..."

The consortium has agreed to pay €98,734.29. As set out above that figure appears to have been limited by what it will pay for under the terms of the cover for extraordinary risks. The figure does not represent €118,747 less ten percent (which I understand is the compulsory excess for such claims). I do not know therefore whether Mr and Mrs L's claim has been limited by the sum insured or whether that is the total amount Mr and Mrs L would have been entitled to even if the tariff paid had reflected the £1 million BSI. From the information Mr L has been able to obtain, it may be that Mr and Mrs L have been given their full entitlement. They should understand that it is only appropriate for me to order Intasure to pay the amount they have lost by the incorrect tariff being paid to the consortium.

I have seen a bill of quantities which gives a total cost of €315,474 for rebuilding the property. I understand that Intasure was advised of this by Mr L. Clearly this is substantially more than the amount to be paid by the consortium and could indicate in my view a substantial underinsurance. *If* it transpires that the consortium would have paid more than €98,734.29 and any sum up to €315,474 had it been paid the appropriate tariff, then clearly Intasure should be liable for the difference.

Turning to Mr L's comments about his expenses, and distress and inconvenience, I note that he did make the claim to the consortium himself. He contends that the costs and expenses they have incurred in connection with making the claim and appeals to the consortium, or in having to move back to the UK arose because of the delay in referring it to the consortium. I am not persuaded that, whatever the initial delays in making the claim were, the expenses would not have been incurred in any event. I do not propose to direct or recommend any further compensation

I have seen evidence that the property was underinsured with the consortium, although following the further information provided by Mr L, I cannot say whether that underinsurance has affected the payout. As I understand it the extraordinary risks part of the policy is common in this sort of overseas property insurance. The terms of the cover are dictated by the consortium and I have seen no evidence that Mr and Mrs L were misled about it.

Intasure requires the opportunity to review in full the claim by Mr and Mrs L. I understand that Intasure has been aware of the *amount* of Mr and Mrs L's claim for some time.
I maintain my findings as set above. Intasure will only be required to make a payment in excess of that already accepted by Mr and Mrs L, if the payout has been reduced by the underinsurance. It will therefore have plenty of opportunity to examine the claim.

Mr and Mrs L's argument that the policy did not comply with the law of that country has been overtaken by the circumstances. They stated that the consortium will not / does not accept cover for property that does not comply with the relevant Building Code i.e. "non-standard construction". However as it seems that the consortium has accepted the claim I cannot make any finding in this respect.

my final decision

My final decision is that I uphold this complaint. I require Intasure to pay to Mr and Mrs L compensation equivalent to the amount required to pay the difference between the amount they are entitled to receive from the consortium and the amount they would have received from the consortium if the correct tariff had been paid in accordance with the sum insured subject to any other relevant terms and conditions up to a maximum payment of £100,000.

If Intasure makes a payment to Mr and Mrs L by way of cash settlement I require it to also pay simple interest on this amount at the rate of 8% per annum simple from the date of the claim until the date of actual payment.

recommendation: If the amount payable by Intasure in settlement of Mr and Mrs L' claim exceeds £100,000, I recommend that it pays the balance above this amount. If it pays this in cash I also recommend that it pays simple interest on this additional amount at 8% per annum simple on the balance from the date of the claim until the date of actual payment.

This recommendation is not part of my determination or award. It does not bind Intasure. Whether Mr and Mrs L can accept my decision and go to court to ask for the balance is uncertain. Mr and Mrs L may want to consider getting independent legal advice before deciding whether to accept this decision.

I must emphasise that if the figure that would have been paid by the consortium would have been no different if the correct tariff had been paid, then Mr and Mrs L will not be entitled to any payment from Intasure.

Ray Lawley
ombudsman