

complaint

Mr and Mrs D have complained because they think Deeside Insurance Brokers Ltd mis-sold their home insurance policy.

background

Mr and Mrs D's insurer reduced the settlement of a claim they made on their home and contents insurance because the home was underinsured and items in the garage were only covered up to £1,500. Mr and Mrs D complained to Deeside because they felt their policy had been mis-sold. They said they wouldn't have been underinsured if Deeside had properly advised the rebuild cost and told them it was their responsibility to set the sum insured. They also said Deeside had told them they were fully covered for items in the garage for £20,000.

Deeside didn't think the policy had been mis-sold. It said it was Mr and Mrs D's responsibility to set the sum insured, and it made this clear to them. It couldn't find any record of Mr and Mrs D specifically requesting cover for a large amount of contents in their garage or of its advisor giving incorrect advice about the cover provided by the policy.

I issued a provisional decision which outlined my thoughts on the complaint. I've re-reviewed the complaint following the responses I received from Mr and Mrs D and Deeside.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

advised or non-advised sale

Whether or not Deeside gave Mr and Mrs D advice or recommended the policy to them is fundamental to the outcome of this case. Based on policy documentation from 2009 to 2012 that Mr and Mrs D had provided and a telephone call I had listened to, I concluded that it was an advised sale and that Deeside recommended the policy. My conclusion meant that Deeside had a duty to ensure that the policy was suitable for Mr and Mrs D's needs.

In response to my provisional decision Deeside agreed with me that documents it sent in 2011 and 2012 said that advice/a recommendation had been given. But it said Mr and Mrs D originally bought the policy online through a comparison website. And it was impossible for any advice to have been given at that time because no-one spoke to Mr or Mrs D. It also provided copies of documents it sent Mr and Mrs D in 2009 and 2010, which said that they *wouldn't* receive any advice or recommendation.

The way in which Deeside say the policy was bought is similar to what Mr and Mrs D told us. But there is one fundamental difference. Mr and Mrs D say that after they got quotes through the comparison website someone from Deeside phoned them to secure the business. Unless there is an actual record of the telephone conversation (Deeside has checked its records and can't trace any reference to a call), I can't think of a way to verify which version of events is correct.

I've noted that there's a difference in some of the documents Mr and Mrs D originally provided and the ones Deeside has now provided. Of relevance, in documents titled "About our insurance services" that Mr and Mrs D provided from the 2009 sale and the 2010

renewal, a cross is in the box alongside the words "*We will advise and make a recommendation for you after we have assessed your needs*". In the same documents that Deeside provided the cross is in the box alongside the words "*You will not receive advice or a recommendation from us. We may ask some questions to narrow down the selection of products that we will provide details on. You will then need to make your own choice about how to proceed*".

In addition, in letters dated 25 November 2009 and 2 December 2010 that Mr and Mrs D provided us with, after the words "*Why did we recommend this policy? We have recommended your policy because*" it says it's because having compared over 162 home insurance schemes the policy is the most competitive based on the sums insured. But in the same letters that Deeside provided it's blank, ie it doesn't give any reason.

I've asked Deeside if it knows why there are discrepancies in the documents, and the short answer is that it doesn't.

I think it's most likely that the letters from 2009 and 2010 that Mr and Mrs D provided are the correct ones. This is because if Deeside *didn't* recommend the policy, there wouldn't have been any reason to include the words "*Why did we recommend this policy? We have recommended your policy because*" in the letter. It makes no sense for it to be there. So the fact the words are there suggests to me that the policy was recommended.

I think this is emphasised by the "Terms of Business Agreement" that was also sent to Mr and Mrs D when they bought the policy and at later renewals. All of those documents say things like:

- We are here *to advise*
- Our services include *advising on your insurance needs*, arranging your insurance cover with insurers *to meet your requirements*
- Our *advice* is provided free of charge
- We pride ourselves on giving out professional *advice* before the insurance contract is even purchased.

So despite the discrepancies I've outlined above, I remain of the view that this was most likely an advised sale. At the very least, I think it was purported to be an advised sale. I therefore remain of the view that Deeside needed to ensure that the policy was suitable for Mr and Mrs D. And they were entitled to believe that the policy was suitable for them.

The only document that supports Deeside is the Terms of Business Agreement from 2013 (which is the insurance period the claim fell into). This specifically says that Deeside won't advise or recommend a policy and that Mr and Mrs D would need to make their own choice.

I don't think this helps Deeside. The tone had already been set by the documents sent the previous years. So if Deeside was suddenly going to change from giving advice and/or a recommendation to not doing so, I think it needed to make this abundantly clear to Mr and Mrs D. I don't think telling them in the middle of an 11 page document was sufficient to do this.

buildings policy

I thought the buildings policy had been mis-sold. This was because one of the most important considerations that needed to be made was the sum insured (particularly if a claim

settlement could be reduced because of underinsurance) and I couldn't see that Deeside had considered that sufficiently when it recommended the policy to Mr and Mrs D.

Mr and Mrs D asked for a sum insured of £70,000. I didn't think Deeside had to calculate the rebuild cost for Mr and Mrs D's home, set the sum insured or tell Mr and Mrs D how much they needed to insure their home for. But, as it recommended the policy, I felt there was a duty on it to do more than simply accept the £70,000 figure Mr and Mrs D gave them. I think it had to tell them:

- that it was their responsibility to set the sum insured
- that the sum insured had to represent the full rebuild cost of the home
- that if it wasn't, a claim settlement they receive might be reduced, *and*
- where they could go to get further advice/information on how to calculate the rebuild cost of their home.

I hadn't seen anything which showed me that Deeside did all this. I thought Deeside had simply arranged a policy based on the sum insured Mr and Mrs D asked for. There was no discussion about whether that sum insured was suitable and, more importantly, no discussion about where Mr and Mrs D could go to get further information on that. I thought what Deeside did might have been fine if it was a non-advised sale. But I didn't think Deeside had done enough to ensure that the policy it recommended and arranged was suitable for Mr and Mrs D. And I thought the policy was unsuitable because it didn't provide enough cover for Mr and Mrs D's home.

Having re-reviewed all the documentation provided I'm satisfied that Deeside did enough to tell Mr and Mrs D about the first three points outlined above. But I remain of the view that Deeside didn't do enough to sufficiently consider the sum insured when it recommended the policy or do enough to tell Mr and Mrs D where they could go to get help in calculating the correct rebuild cost of their home.

In response to my provisional decision Deeside provided an opinion from a solicitor to the effect that Deeside wasn't required to help Mr and Mrs D in respect of the fourth point. In essence, he said that unless Mr and Mrs D asked for help or said they weren't sure about the rebuild value Deeside was entitled to accept that the £70,000 figure given by Mr and Mrs D was correct.

I would agree with this opinion if it was a non-advised sale. But it wasn't – at least in my opinion. I repeat that Deeside had to ensure that the policy it recommended was suitable. And to do this it had to give proper consideration to the amount the building was being insured for. And it didn't do this. So it recommended a policy that wasn't suitable for Mr and Mrs D because their home was underinsured.

I therefore conclude that the buildings policy was mis-sold.

contents policy

I didn't think the contents policy had been mis-sold.

This was because Mr and Mrs D's complaint was essentially that Mr D discussed the policy with Deeside, he asked it to confirm the contents within the garage and shed would be covered for up to £20,000, and Deeside confirmed the full value of the contents stored within the garage and shed were covered. I had listened to recordings of two conversations

between Mr D and Deeside about the renewal of the policy and there hadn't been any discussion about cover for contents in the garage and shed. As the contents in the garage and shed weren't discussed in these conversations I thought it was more likely than not that they weren't discussed in other years either. I wasn't therefore persuaded that Deeside gave Mr and Mrs D incorrect advice about the policy cover in respect of contents in the garage and shed.

The *Key Facts/Policy Summary* documents that Deeside sent Mr and Mrs D said that cover was limited for contents stored or kept in detached garages. I thought that was sufficient to tell them about the restriction in cover.

Nothing the parties have said in response to my provisional decision persuades me to change my mind in this respect.

sundry

In response to my provisional decision Deeside provided a copy of a decision recently made by another ombudsman. The circumstances in that complaint (which wasn't against Deeside) were similar, yet the ombudsman didn't uphold it because she felt the warnings given about underinsurance were sufficient.

I've briefly looked at that decision and the complaint. Although my colleagues and I strive to be as consistent as possible when deciding complaints, each complaint is looked at on an individual basis. There may be circumstances in the other complaint that I'm not aware of. Or the other ombudsman might just have a different opinion to me. But, for the reasons outlined above, I'm satisfied that Deeside didn't do enough here to ensure that the buildings policy it recommended was suitable for Mr and Mrs D.

putting things right

Had the buildings policy been sold correctly I thought Mr and Mrs D would have taken action to ensure that the sum insured was sufficient. I thought this was supported by the fact that this is what they did once they found out they were underinsured. This in turn would have meant that their claim settlement wouldn't have been reduced.

I therefore thought the fair resolution to this complaint was for Deeside to compensate Mr and Mrs D for the amount they lost due to their home being underinsured.

my final decision

Nothing I have received since I issued my provisional decision persuades me to change my mind. I therefore uphold this complaint. I require Deeside Insurance Brokers Ltd to pay Mr and Mrs D an amount equal to:

- the full amount their insurer would have settled the buildings claim for had it not reduced the settlement due to the underinsurance
- *less* what the insurer actually paid
- *less* the extra premium Mr and Mrs D would have paid in order to fully insure their home
- *plus* interest at a rate of 8% simple per annum, calculated from the date the insurer settled the claim¹.

¹ If Deeside considers that it's required by HMRC to take off income tax from the interest, it should tell

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs D to accept or reject my decision before 12 October 2016.

Paul Daniel
ombudsman

Mr and Mrs D how much it's taken off. It should also give Mr and Mrs D a certificate showing this if they ask for one, so they can reclaim the tax from HMRC if appropriate.