

## **complaint**

A New Homes Warranty was cancelled without MD Insurance Services Ltd ("MDIS") contacting Mr B first and the refund that was offered was too little.

## **background**

I issued a provisional decision in March 2015. An extract is attached and forms part of this final decision.

In reply, MDIS said it agreed with the provisional decision, and Mr B said he'll accept it.

## **my findings**

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

In his reply to the provisional decision, Mr B said the person who bought the flat isn't aware of the cancellation of the insurance.

He supplied two letters from his solicitor, one to the buyer's solicitor and one to him. The letter to the buyer's solicitor said a letter from a trading name of MDIS was enclosed – I haven't seen a letter from MDIS bearing the date mentioned. The solicitor's letter also said a buildings insurance certificate was enclosed. I don't know whether that was a reference to the New Homes Warranty insurance or a standard buildings insurance.

The solicitor's letter to Mr B mentioned an email from MDIS's trading name – I haven't seen an email from MDIS on the date mentioned.

If Mr B is concerned the buyer could hold him responsible for the cancellation of the New Homes Warranty insurance, he could seek advice about this from a Citizens Advice Bureau or solicitor. If he is held responsible for it, he should submit details of the complaint made against him to MDIS for it to consider. If, having done that and having completed its complaint procedure on that point, Mr B remains dissatisfied with MDIS's response, he could submit another complaint to us.

The insurance was cancelled on the basis that only the cover against Mr B becoming insolvent or committing fraud had been provided. He said no cover had been provided as no deposit was taken and there was no risk of insolvency or fraud. If no deposit was paid, I presume the cover for loss of a deposit wouldn't be of value to the buyer. I don't think Mr B's view that there was no risk that he would become insolvent or commit fraud is enough to show that the cover for these things couldn't have been used by the buyer.

If Mr B has evidence that shows this cover could never have been used by the buyer, he should submit it to MDIS for it to consider. If, having done that and having completed its complaint procedure on that point, Mr B remains dissatisfied with MDIS's response, he could submit another complaint to us.

In his reply to the provisional decision, Mr B said he agreed the inspections were necessary. He questioned whether the registration fee mentioned in the letter from MDIS that, in effect, told him the insurance had been cancelled was for an inspection. I think a later letter from MDIS in respect of the complaint that had been sent to us answers this – it referred to the sum in question as an *“Initial Inspection Fee”*.

Finally, Mr B asked what administration work had been carried out. I think the work involved in responding to a request for insurance cover would qualify as administration work.

**my final decision**

The deduction from the payment made by Mr B that related to the cost of the insurance cover that was in force (and the insurance premium tax on it) should be reduced by five-sixths and MD Insurance Services Ltd should provide the relevant refund (or credit) to Mr B.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 20 May 2015.

S Lilley  
**ombudsman**

## **provisional decision**

### **background**

Mr B converted a property into flats and arranged the New Homes Warranty insurance through MDIS. The insurance would cover buyers of the flats.

MDIS acted on behalf of the insurer in carrying out a number of tasks, including underwriting the insurance, collecting premiums, and settling claims.

The insurance was cancelled. MDIS said this was because Mr B hadn't answered letters and emails and the conversion project wasn't a standard risk. The payment Mr B had made was refunded (or a refund was offered), but only after certain sums had been deducted. The deductions included part of the premium and fees for inspections of the property.

Mr B says MDIS hadn't given him any warning that the insurance would be cancelled. He says MDIS's emails were sent to an address that wasn't his, and he hadn't received any letters.

Our adjudicator thought the cancellation of the insurance wasn't unfair but no part of the premium paid should have been deducted when the refund was calculated. This was because the cover hadn't started.

MDIS disagreed and said some cover had started.

### **my provisional findings**

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

I agree that it's fair to provide a warning that insurance cover could be cancelled. In this case, MDIS said it sent two emails before the insurance was cancelled. Neither mentioned cancellation, although they did ask whether Mr B wanted to proceed with the Warranty. Mr B says he didn't get these as the address used didn't belong to him.

We've asked MDIS about the email address it used, but it's been unable to explain how it got it.

MDIS said the insurer's surveyor had tried to contact Mr B several times. I've seen copies of letters from the surveyor, but some aren't dated, they don't show the address to which they were sent, and they don't mention cancellation of the insurance. The final letter said that if no reply was received it would be assumed the Warranty was no longer required. It also said the Warranty hadn't been issued.

Even if Mr B did receive the final letter, I don't think telling him once that it would be assumed he didn't want the Warranty made the position clear enough. It wasn't made clear that MDIS would cancel the Warranty and wouldn't return all of the payment he had made.

In view of all this, I don't think fair warning was given to Mr B.

Turning to the deductions, these were: part of the premium; insurance premium tax; and inspection fees. Inspection fees had been part of the quotation that was given to Mr B at the start. I agree that it was reasonable for the fees for the inspections that were carried out to be kept by MDIS on behalf of the insurer.

MDIS told us the part of the insurance premium that was kept back from Mr B was only partly to pay for insurance cover that was provided. The rest was to pay MDIS's costs in administering Mr B's application for the Warranty and in marketing and selling it. It said it was acting for the insurer when doing these things.

Dealing with the insurance cover first, MDIS says the insurer did provide the cover for the owners of the flats in case of Mr B becoming insolvent or committing fraud and causing them to suffer losses. The losses that were covered were loss of a deposit that had been paid and the cost of completing the conversion work.

That cover would come into force only if contracts had been entered into for the sale of one or more flats. I see that Mr B told us one flat had been sold. If MDIS thinks more have been sold, it should supply some evidence of this with its response to this provisional decision.

Assuming only one of the six flats had been sold, I think only one sixth of the premium for the cover in respect of insolvency and fraud should have been kept back for the insurer.

I've taken into account the surveyor's final letter that said the Warranty hadn't been issued. In the end, though, I don't think this makes any difference. One flat had been sold and the indications are that some cover was provided for it.

If fair warning of cancellation of the insurance had been given to Mr B, it's possible he would have taken steps to keep it in force. It's not clear whether the cancellation of most of the insurance cover for the buyer who has been mentioned has caused issues between that person and Mr B. If Mr B says it has, he should provide details (and, if possible, supporting evidence) with his response to this provisional decision.

Turning to MDIS's costs, MDIS is the "*scheme administrator*" and acts mainly on behalf of the insurer. The quotation that was sent to Mr B at the beginning didn't mention a charge being made for administrative costs, other than where he wanted to cancel the insurance. Despite that, I can see that the premium required by the insurer might well have been calculated to make allowance for administrative costs involved in providing the cover. It also seems likely that most of those costs would relate to the period around the time the insurance starts.

On balance, I consider keeping back that part of the insurance premium from Mr B was fair.

Mr B told us he thought compensation should be paid for the stress he'd suffered. I don't think an award for this is justified in all the circumstances.

### **my provisional decision**

As things stand, the deduction from the payment made by Mr B that related to the cost of the insurance cover that was in force (and the insurance premium tax on it) should be reduced by five-sixths and MD Insurance Services Ltd should provide the relevant refund (or credit) to Mr B.