

complaint

Mr H and Ms B complain J M Glendinning (Insurance Brokers) Limited (JMG) mis-sold them commercial property insurance.

Mr H and Ms B were represented by various individuals when arranging insurance and during this complaint process. For ease of understanding I've referred to any actions as being undertaken by Mr H and Ms B.

background

I issued a provisional decision in March 2019. I've attached a copy. It forms part of this final decision. In it I said why I didn't intend to make JMG pay anything to Mr H and Ms B or do anything differently.

I also asked for any information Mr H and Ms B would like me to consider before I made a final decision. JMG accept my provisional decision. It didn't have anything further to provide. Mr H and Ms B didn't accept what I said in the provisional decision. They provided some additional information. I've considered that. Where I feel it's necessary I've addressed their points below.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not making JMG pay anything to Mr H and Ms B or do anything differently.

I said in my provisional decision there wasn't enough to make me think the 'occupancy' issue probably resulted in a lower settlement offer for Mr H and Ms B. So I didn't consider if JMG, when arranging the policy, recommended a policy that was unsuitable for 'occupancy' reasons.

Mr H and Ms B said in response that JMG knew the property wasn't fully occupied. And they feel this means the policy wasn't suitable and this contributed to the low settlement offered by the insurer. Mr H and Ms B say they were given a legal opinion on this. They say they were told it's far from certain they would be successful in any action against the insurer's use of an 'occupancy' issue to reduce the settlement.

I've asked Mr H and Ms B for further information on the legal opinion. But they haven't provided much – just a very short summary provided in a letter from JMG. I've considered this and everything provided about the occupancy issue. There is very little information about the claim. There is very little detail of the insurer's position or reasons for making the settlement offer it did. That hasn't been considered by this service or similar. Overall, unlike the underinsurance issue, there isn't enough to make me think 'occupancy' probably did result in Mr H and Ms B receiving a lower settlement offer.

I said in my provisional decision that even if JMG hadn't done anything wrong there probably still would have been an underinsurance issue and shortfall. I said, from what I'd seen of the care and attention they had previously given to arranging cover, it was unlikely they would have taken the steps to ensure they had a suitable sum insured.

In response Mr H and Ms B denied a lack of care and attention to their insurance. They said, for example, when the property had been a care home they had insured it fully. I've considered that point and others they have made. But from what I've seen of their approach to arranging cover in the period before the escape of water I still don't think they would have made sure they had adequate sum insured.

I said in my provisional decision that JMG explained, in the policy cover email, to Mr H and Ms B they wouldn't be able to bring a complaint about the insurer to this service. In response they said, not being able to do so, made the policy unsuitable for them.

The insurer is regulated in another European Economic Area country. But its authorised by the Financial Conduct Authority (FCA) to offer insurance in the United Kingdom. So JMG can arrange its policies for its customers.

FCA rules require customers to be told the arrangements for handling complaints concerning policies - including, where appropriate, the existence of a complaints body. As I said JMG explained there was no right to use this service. It didn't tell them about a right to use a different but similar service. But I haven't seen anything that makes me think there is one. So I can't say that JMG failed to provide good enough information about this issue.

I don't agree that not being able to use this service automatically makes a policy unsuitable. And I haven't seen anything that makes me think it made the policy unsuitable for Mr H and Ms B in particular.

Mr H and Ms B say they had personal relationships with JMG employees. They feel that this resulted in it providing a lax or unprofessional service to them. But even if I agreed with this it wouldn't make a difference to the outcome of this complaint. That's because, for the reasons I've already given, I can't say Mr H and Ms B probably lost out because of anything JMG might have done wrong.

my final decision

For the reasons given above and in my provisional decision, I'm not making J M Glendinning (Insurance Brokers) Limited pay anything to Mr H and Ms B or do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Ms B to accept or reject my decision before 26 July 2019.

Daniel Martin
ombudsman

PROVISIONAL DECISION

complaint

Mr H and Ms B complain J M Glendinning (Insurance Brokers) Limited (JMG) mis-sold them commercial property insurance.

Mr H and Ms B were represented by various individuals when arranging insurance and during this complaint process. For ease of understanding I've referred to any actions as being undertaken by Mr H and Ms B.

background

In July 2013 JMG arranged commercial property owners insurance for Mr H and Ms B. This was to cover an ex-care home they planned to convert to a house in multiple occupation (HMO). The policy expired in July 2014. JMG arranged a policy with a different insurer. In October 2014 Mr H and Ms B's insurance needs changed. Tenants were due to move into the property. So JMG arranged a different policy for them.

Later in the same month there was an escape of water in the property. Mr H and Ms B claimed for the damage. But the insurer didn't agree to pay the full claim. It offered £20,000 as a cash settlement. Mr H and Ms B say this was significantly lower than the full cost of the damage.

Mr H and Ms B say the shortfall was because the insurer felt they were underinsured. The property's rebuild sum insured was too low. And because the insurer had concerns about the occupancy levels at the property. The insurer isn't within the jurisdiction of this service. So the claim itself hasn't been considered by this or a similar service. But Mr H and Ms B feel JMG mis-sold the October 2014 policy. They say it didn't do enough to make sure they had an adequate level of cover for the property.

So they feel JMG should cover the shortfall between the insurer's cash settlement and the full cost of the repairs. In response to Mr H and Ms B's complaint JMG refused to cover any of the shortfall. It said it hadn't provided advice and information about sum insured levels and underinsurance. But it said when it had done so before Mr H and Ms B hadn't ensured they had adequate cover. So it didn't see why they would have done so for this policy.

Our investigator felt JMG should have given better advice in October 2014. But she felt Mr H and Ms B had contributed towards being underinsured. So she didn't find JMG fully responsible for the underinsurance shortfall but instead recommended it pay 50%. She suggested that would be about £7,000. Mr H and Ms B didn't accept that. They feel JMG should pay them significantly more. JMG didn't accept it either. They don't feel they should pay what was recommended. Because the complaint wasn't resolved, it's come to me for a final decision.

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. Having done so, I don't intend to make JMG pay anything to Mr H and Ms B. I'm persuaded by JMG's argument that Mr H and Ms B wouldn't have arranged a higher sum insured even if they had been given good enough advice and information.

I've seen very little first-hand information from the insurer about the claim. So it's difficult to know for certain why it offered what it did as a settlement. But it does seem, from a survey of the property, that their sum insured was around about 50% of what it needed to be. The settlement offered was about 50% of an estimate of repair costs.

So it seems underinsurance probably did have an impact on the settlement offer. But for me to say JMG should pay towards any shortfall I'd need to think it did something wrong that caused Mr H and Ms B to lose out.

JMG says, when arranging the October 2014 policy, it didn't advise Mr H and Ms B about sums insured and the implications of underinsurance. I've seen what it sent them by email during the sale. There was some information about sum insured levels. On page two of the policy document it's explained how important it is to make sure the rebuild sum insured is adequate. It said what type of costs it should cover. And it said the broker (JMG) should be contacted immediately if there's any doubt about the levels provided under the policy.

Mr H and Ms B's policy schedule set out the levels of cover, including the rebuild sum insured and uplift. The cover email asked them to look at the policy wording and schedule. So they were provided with some information about the sum insured and asked to consider it. Also JMG, during a previous sale, provided information about this and the risk of underinsurance. So they weren't completely unaware of the issue. I've outlined that previous information in more detail below.

But even if I accept JMG did do something wrong in October 2014 – that it didn't provide given good enough advice and information - I wouldn't say Mr H and Ms B probably lost out as a result. From what I've seen Mr H and Ms B didn't take much care to make sure they had the right cover for the property. So even if JMG hadn't done anything wrong they still wouldn't have taken out cover with a higher sum insured. And there still would have been the underinsurance issue and shortfall. I've explained my reasons for this below.

In 2013 JMG arranged the initial policy. Emails between Mr H and Ms B show a discussion about the building's sum insured. A quote was provided for cover including a rebuild sum insured of £500,000. The emails show JMG had asked if the property had been surveyed to get an accurate sum insured amount. It hadn't been, but Mr H and Ms B asked for a quote with a sum insured of £1,000,000. They felt that should be adequate. That increase almost doubled the cost of the policy. In response Mr H and Ms B said they weren't happy with that. They said the higher sum insured was just a guess. So they went with the lower premium that came with the £500,000 sum insured.

Mr H and Ms B made that choice despite JMG explaining the consequences of being underinsured. It told them what type of costs the sum insured needed to cover. And it twice explained that if, following a claim, they were found to be underinsured the settlement would be affected. JMG provided an example – it said they would only be paid 50% of any claim if the sum insured was found to be only 50% of the required level.

In response to Mr H and Ms B's request to keep the sum insured at £500,000 JMG recommended they arrange for a survey to establish the correct amount required to avoid a future underinsurance issue. Mr H and Ms B didn't do that.

In mid-June 2014 JMG sent Mr H and Ms B a policy renewal quote by email. It seems they didn't reply until 10 July 2014. That was two days after their previous policy had expired. They said they would accept the quote as they hadn't arranged any other insurance. Again they don't seem to have been particularly concerned with ensuring they had adequate cover in place.

Mr H and Ms B's approach to arranging the October 2014 policy showed a similar lack of care. They had tenants lined up to move in the property on a Monday morning. They understood this might require different cover. But they left it until close to midnight on the preceding Saturday to ask JMG about the need to change their cover.

JMG arranged a new policy that started about 10 days later. The escape of water happened about a week after the cover started. I've considered if things would have been different if JMG had provided good enough advice or information. I accept it's possible Mr H and Ms B might have requested a quote, like they did previously, for cover with a higher sum insured. From what I've seen it's likely that would have resulted in a higher premium.

Previously Mr H and Ms B, despite being told of the implications of underinsurance, choose a lower premium over a higher sum insured. I haven't seen anything that makes me think they had

started taking more care with their cover. So I can't see why they would have responded differently this time around. Their response would probably have been similar - that higher rebuild costs were just a guess so they would stick with the lower premium.

It's possible Mr H and Ms B would have arranged for a surveyor to provide a more reliable estimate of rebuild costs. But for that to have made a difference to the outcome of the claim a number of steps would have had to have been taken. They would have had to appoint a surveyor, received the survey results and then told JMG the required sum insured. It would then have had to arrange new quotes, send them to Mr H and Ms B for them to agree.

To make a difference to the claim all that would have had to have happened in the short time before the escape of water. Considering the care and attention Mr H and Ms B previously gave to arranging cover, I think that's unlikely.

The investigator said she felt JMG should pay 50% of the underinsurance shortfall. I don't agree with her. She felt JMG should have double checked the sum insured as it knew the use of the property had changed. She said it had been converted to flats so JMG should have considered its rebuild costs would be higher.

But according to Mr H and Ms B the property didn't change significantly. It became a HMO, but was previously a care home. So it seems it didn't need structural work. Mr H and Ms B say they spent about £30,000 on a new kitchen, plastering and redecoration. I don't think JMG should have thought that would have had a significant impact on rebuild costs. And I don't think the expenditure was so much it would have significantly changed Mr H and Ms B's approach to insuring the property.

Overall I can't say that Mr H and Mrs H probably did lose out as a result of JMG's failure to provide good enough information or advice about the sum insured or underinsurance. So it wouldn't be fair to make it contribute towards any claim shortfall.

It seems the insurer also referred to the property not being fully occupied at the time of the escape of water. It seems to have said if it had known the property was only partially occupied it wouldn't have provided any escape of water cover. As I've said there is very little information directly from the insurer. So it's difficult to know for certain why it offered £20,000 as a settlement. There's enough for me to think the underinsurance probably played a part. But there isn't enough to make me think any occupancy issue resulted in a lower settlement for Mr H and Ms B. So I haven't considered if JMG, when arranging the policy, failed to provide suitable advice or information on this.

Mr H and Ms B say JMG didn't make them aware they wouldn't be able to bring disputes about the insurer to this service. But that was explained to them in the cover email JMG sent them with their policy documents.

Mr H and Ms B also complain JMG knew the insurer didn't pay out on claims. It says JMG admitted this to an unnamed third party. But it seems unlikely it would recommend an insurer it knew that about. So for me to accept that did happen I'd need to see something significant to persuade me it did. But Mr H and Ms B haven't provided that.

my provisional decision

For the reasons given above, I don't intend to make J M Glendinning (Insurance Brokers) Limited pay anything to Mr H and Ms B or do anything differently.

Daniel Martin
ombudsman