

complaint

Mr B complains that Endsleigh Insurance Services Ltd, an insurance intermediary, sold him unsuitable landlord's legal expenses cover, or failed to explain its terms adequately.

background

The policy Endsleigh recommended included not only legal expenses but also rent guarantee cover. This was, subject to a number of requirements, including obtaining a deposit and *"complying with statutory regulation relating to such deposits"* before allowing a new tenant to move in.

Mr B let his property to new tenants. Before doing so, he asked Endsleigh to clarify the rent guarantee requirements. The advice Endsleigh gave him in reply included the following: *"each tenant is only allowed into occupation once a ... deposit payment has been collected."* Although Mr B complied with that requirement, the insurer concerned rejected a later rent guarantee claim he made, on the ground that he did not register the deposit until after the tenants had moved in, even though he did so within 30 days as required by statute.

Unhappy that this requirement was not made clear until after he had made his claim, Mr B asked us to consider complaints against both Endsleigh and the insurer concerned.

our initial conclusions

Both cases were considered by the same adjudicator, who persuaded the insurer to deal with the claim on mutually acceptable terms. He also upheld Mr B's complaint against Endsleigh, even though he did not consider the insurer concerned should have rejected the claim in the first place. Our adjudicator thought the policy requirement was onerous, as it required the insured to go beyond the normal statutory requirements to register the deposit. As such, he agreed with Mr B that Endsleigh should have drawn it to his attention at the point of sale.

Endsleigh rejected our adjudicator's resultant recommendation that it should pay compensation of £100 to reflect the anxiety and hardship Mr B suffered as a result of the insurer's initial rejection of his claim. Endsleigh maintained it was not possible to go over every policy term, which was why Mr B had a cooling-off period to make sure that the cover provided suited his requirements. As far as Endsleigh was concerned, Mr B's real complaint was against the insurer, which was at fault for rejecting a claim it later agreed it should have paid in the first place.

Accordingly, the matter has been referred to me to review afresh.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

According to Endsleigh, it cannot realistically be expected to highlight one policy provision over another, especially one which the insurer would or should not rely on to reject a claim. I do not agree - whilst an explanation of each and every policy term may not be practical, we have long taken the view - in line with current regulations - that an intermediary selling insurance should draw attention to any particularly onerous or unusual terms, so that the

customer can make an informed decision about the suitability of cover. A cooling off period is no substitute for doing this.

I concur with the adjudicator that a policy term is onerous if it goes above and beyond a statutory requirement. In my judgment, the policy requirement for the timing of registration of the deposit can be interpreted in more than one way, to justify a possible rejection of the claim Mr B made. Just because the insurer concerned accepted it should not have done so in his case, it does not necessarily follow – as Endsleigh seemingly assumes - that the insurer would never seek to enforce it, at least as long as the statutory requirement was satisfied.

Critically in my judgment, Endsleigh had another opportunity to explain the meaning of the requirement to register the deposit, when Mr B asked for clarification before his new tenants moved in. On that occasion, whilst Endsleigh told him that he needed to collect the deposit, it added nothing at all about registration.

Had Endsleigh made Mr B aware of the ramifications of the requirement - either at the point of sale or when he sought specific advice - Mr B could either have made sure he complied before allowing his new tenants to move in, or he could have shopped around for less onerous rent guarantee cover. In either event, he would have avoided the anxiety and trouble he tells us he suffered as a result of the insurer's initial rejection of his claim.

Because of this, I am satisfied Endsleigh should pay Mr B the compensation our adjudicator recommended.

my final decision

I uphold Mr B's complaint, and require Endsleigh Insurance Services Ltd to pay him compensation of £100 for distress inconvenience and hardship.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B to accept or reject my decision before 9 April 2015.

Harriet McCarthy
ombudsman