

complaint

L has complained about the decision made by Hiscox Insurance Company Limited (Hiscox) to refuse to insure its property.

background

The circumstances leading to this complaint were set out in my provisional decision of 4 March 2015. A copy of that decision is attached and forms part of this final decision.

Briefly, L owns the freehold to a property that has been split into three flats. Hiscox has refused to provide L with buildings insurance. Although it had provided cover to the previous freeholder ("Z"), it did so because Z owned the property for commercial reasons. Whilst L is also a commercial company, it was formed by the residential owners of the property specifically to purchase the freehold. Hiscox has said that it doesn't provide commercial buildings insurance to residential owners.

L was unhappy about Hiscox's refusal to provide cover, and said it couldn't obtain cover with another insurer. This was because of a subsidence claim made by Z. The adjudicator upheld the complaint and said that Hiscox should find a suitable policy for L from the marketplace. But I disagreed. I thought that Hiscox was under no obligation to either continue to provide cover to L, or to find an alternative policy for L from the marketplace. I thought Hiscox was entitled to refuse to offer cover.

I asked both parties to provide me with their comments.

Hiscox said that it accepts my provisional decision.

L responded and made the following points:

- It has arranged a structural survey which says there is no evidence of recent foundation movement. But the survey did identify other movement and it was recommended that remedial work be done.
- L spoke with the engineer who carried out the survey as it didn't understand why insurers wouldn't cover subsidence when the movement in the property isn't connected to the foundations. The engineer told L that insurers will be naturally cautious about taking on the property given the current issues.
- L says the engineer also told it that the past foundation movement could have caused, or contributed to, the current movement. He has told L to talk to Hiscox about this.
- L thinks that given the circumstances, Hiscox should continue to provide subsidence only cover to give it time to investigate the issues identified in the structural survey. L wants to find out to what extent the current issues are related to the past foundation movement, for which Hiscox may be liable.
- L has contacted a number of insurance brokers to try and obtain cover elsewhere, but has been told by one broker that it couldn't obtain cover for L until 12 months had passed following the remedial works carried out. This means L wouldn't be able to

get subsidence cover until September 2015. Another broker has offered buildings insurance cover but has excluded subsidence.

- L says that whilst it is a limited company, it was formed purely to hold the freehold. It thinks good industry practice for insurers to continue to provide buildings insurance cover after a subsidence claim has been made should apply to them. This is on the basis that L is made up of residential domestic flat owners.

my findings

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

In order to help Z sell the freehold, Hiscox agreed to provide subsidence only cover to L for one year. I understand this cover is due to end shortly.

If L thinks that the current movement noted in the recent structural survey has been caused by the previous subsidence, then it should speak to Hiscox about this. If it's found that Hiscox is responsible for any of the remedial work needed, then Hiscox should still deal with this, even if the subsidence cover has ended.

I do sympathise that L is having problems obtaining insurance cover elsewhere. But I don't think Hiscox can be held responsible for this. Hiscox has explained that it doesn't offer commercial buildings insurance cover to residential owners of properties, even if those owners have formed a limited company. It only offers this type of cover to companies who own property for commercial reasons.

Hiscox provided cover to Z under a commercial policy, as Z owned the freehold for commercial reasons. In L's case, the limited company wasn't created for commercial purposes - it was created simply to purchase the freehold. Therefore whilst I understand L will be disappointed with my decision, I remain of the opinion that Hiscox shouldn't have to provide L with insurance cover after the renewal date if it doesn't want to.

It's good industry practice for an insurer to continue to provide buildings insurance cover after a subsidence claim has been made. But this would usually only apply to cover held by residential policyholders. I appreciate L's argument that it's a company made up of residential owners. But the original buildings insurance that was in place when the subsidence happened was a commercial policy and the policyholder was a commercial company. I don't think Hiscox was obliged to continue to provide insurance cover after the freehold was sold by that commercial company.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask L to accept or reject my decision before 5 June 2015.

Chantelle Hurn
ombudsman

COPY OF PROVISIONAL DECISION

complaint

L has complained about the decision made by Hiscox Insurance Company Limited ("Hiscox") to refuse to insure its property.

background

L now owns the freehold to a property that has been split into three flats. The previous freeholder ("Z") had buildings insurance cover for the property through Hiscox. A subsidence claim was made by Z and Hiscox met the claim. Whilst the subsidence claim was being dealt with, Z arranged to sell the freehold to L.

L wanted Hiscox to provide it with buildings insurance as the new freeholder. Hiscox said that it could not do so as it did not offer an appropriate standalone product - and that the existing policy it had agreed to provide to Z as part of a wider agreement could not be transferred. However, Hiscox said that as an open subsidence claim was being dealt with under Z's policy, it would provide L with subsidence only cover for one year. This was to assist Z with the sale of the freehold.

Unhappy with this, L brought a complaint to this service. It explained that it was concerned it would not be able to obtain subsidence cover with another insurer once the cover with Hiscox ended.

Our adjudicator recommended that the complaint be upheld. He thought that Hiscox should provide L with insurance cover in line with good industry practice. He also recommended that Hiscox pay L £150 for the inconvenience caused by its decision.

Hiscox responded and explained that it did not offer buildings insurance cover to residential owners of domestic properties. The adjudicator therefore instead recommended that Hiscox source a suitable alternative policy from the marketplace for L.

Hiscox did not agree with the adjudicator's recommendations and so the matter has been passed to me to consider afresh.

provisional findings

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

The issue for me to determine is whether Hiscox has acted reasonably in refusing to provide insurance cover to L.

I understand that the buildings insurance cover Z held with Hiscox was a 'block' type policy. This was a commercial policy covering a block of flats. The residential owners of the flats in question formed a company (L) in order to purchase the freehold from Z. Therefore L is *also* a commercial entity.

When the adjudicator made Hiscox aware that the residential owners of the flats had formed a company, I am pleased that it did consider whether it could provide a commercial policy to L. Unfortunately its underwriters said the risk fell outside its underwriting appetite. It explained it would only be willing to provide buildings insurance cover for commercial properties, rather than insurance for residential property owners.

The adjudicator was correct that it is usually considered good industry practice for an insurer to continue to provide buildings insurance cover after a subsidence claim has been made. However, this would usually apply to cover held by residential policyholders and would not be the case when a commercial policy is held by a company and the ownership of the property (i.e. the freehold) is then sold to a different company.

Overall, it seems to me that in refusing to provide L with buildings insurance cover (or even subsidence only cover), Hiscox has legitimately exercised its commercial judgement. It does not have an appropriate policy that it could offer L and it seems to me that it would be unfair to require it to transfer the cover it provided under Z's commercial policy to L, when it would not normally provide cover directly to residential owners of domestic properties (even if they have formed a company).

I do acknowledge L's concerns that it may have difficulty in arranging subsidence cover when its cover with Hiscox ends. I understand that it previously attempted to find cover through a commercial broker, but was unable to obtain a suitable policy. However this does not seem surprising, given that a commercial broker does not specialise in obtaining insurance cover for residential owners of domestic property. L therefore may wish to contact an insurance broker who specialises in obtaining cover for residential owners.

Whilst I recognise L will be disappointed with my decision, I am minded to find that Hiscox did not act unreasonably in refusing to provide it with insurance cover.

my provisional decision

For the reasons set out above, my provisional decision is that I do not intend to uphold this complaint or make any award against Hiscox Insurance Company Limited.

Chantelle Hurn
ombudsman