

complaint

Miss A complains that Society of Lloyd's has voided (cancelled) her landlords' buildings insurance policy and declined to meet her claim for fire damage on the grounds that she has no insurable interest in the damaged property.

background

In 2006 Miss A and her sister bought an investment property to let out to tenants as an HMO (house of multiple occupancy). In February 2012 Miss A took out landlord insurance cover for the property which was underwritten by Lloyd's.

In August 2012 the property was transferred to a limited company (F) of which Miss A was a director and shareholder (along with some other family members). The policy remained in Miss A's name throughout 2012 and at each subsequent renewal.

On 17 July 2016 there was a fire at the tenanted property. Miss A made a claim under her policy. In order for Lloyd's to consider liability it conducted several enquiries and investigations into the claim circumstances. This service has already considered certain aspects of the investigations under a separate complaint reference so I'm unable to consider them again here.

In December 2017 the loss adjuster provided an interim report to Lloyd's in which it raised concerns about the property being in the name of F whilst the policy was in Miss A's name. The loss adjuster asked Lloyd's whether it wanted to consider voiding the policy, as it felt Miss A had no insurable interest in it.

Lloyd's referred the matter to solicitors to advise about the insurable interest issue. Solicitors advised that F was a separate legal entity to the individuals who are its directors or shareholders. So, they said Miss A had no insurable interest in the property. In September 2018, Lloyd's solicitors wrote to Miss A to tell her the policy was being voided and her claim wouldn't be considered. They said Miss A should've notified Lloyd's that the property had been transferred at the next renewal after the transfer of ownership at the latest (that renewal being in February 2013) so they said Miss A's premiums would be refunded from that point onwards.

Miss A complained to Lloyd's but it didn't change its mind. Miss A instructed a loss assessor to assist her – Mr C. He said to Lloyd's that he strongly disagreed with its decision to void the policy. He said Miss A and her family took guidance from their accountant to set up a limited company to transfer the property and several others. He says she didn't understand that as director of the company she didn't own the property and because of this she continued to insure the property herself. He also said there was no advantage to Miss A (rather than F) being the policyholder and that she'd now placed the policy in the name of F.

Unhappy with Lloyd's decision Mr C raised a complaint with this service on behalf of Miss A. Our investigator looked into Miss A's complaint. She thought that Miss A didn't have an insurable interest in the property so Lloyd's hadn't unfairly voided her policy. But she also thought Lloyd's hadn't handled the refund of Miss A's premiums fairly. She noted Lloyd's had refunded Miss A's premiums back to the first renewal after the transfer (February 2013) but she thought they should be refunded back to the date the property was transferred to F in August 2012 as this was the point Miss A ceased to have an insurable interest in it. So, our investigator thought Lloyd's should refund the premiums Miss A had paid from August 2012

to February 2013 and pay interest (at this service's usual rate of 8% simple a year) on them from August 2012 onwards.

Lloyd's accepted our investigator's recommendations but Mr C didn't. He said Miss A couldn't be considered to be a sophisticated investor just because she had engaged the services of a broker, accountant and solicitor. He said it would be fairer to treat her as unsophisticated so she could be afforded the normal benefits of a 'consumer'. Mr C also cited a decision from one of my colleagues which he said was similar in fact to Miss A's complaint, in which my colleague found in favour of the complainant. He said Lloyd's was just trying to avoid liability for the claim.

Our investigator wasn't persuaded to change her mind so the complaint was passed to me. I issued a provisional decision on this complain in December 2020 recommending that it was upheld in part. I made the following provisional findings.

"It is a well-established principle of English law that an insured must have an insurable interest in the property in question in order for a contract of insurance to be valid. To have an insurable interest the insured must:

- Be in a position where they will suffer a financial loss as the result of the property's damage or destruction, and*
- Have a legal interest in the property*

It is also a well-established principle of English law that where a limited company owns a property, the shareholders and directors of that company do not have an insurable interest in that property. This is on the basis that they don't have a legal or equitable interest in the property itself. And where the policyholder has no insurable interest in the insured property the contract of insurance will be void and the premium repayable.

When Miss A transferred ownership of the property to F Lloyd's should've been notified about the change. I understand the property was transferred on the advice of an accountant for tax efficiency purposes. And that the transfer of the property at the centre of this claim, along with some others, was carried out through a solicitor on behalf of Miss A. I also understand the services of an insurance broker were engaged to arrange the policy renewal each year. The policy went through several renewals after the property was transferred to F.

It is a pre-requisite of any insurance policy – before any disclosures as to the contract are made – that the proposer must have an insurable interest in the property they are trying to insure. Unfortunately for Miss A, I don't think I can fairly say she had such an interest. The damaged property is an asset belonging to F, a limited company. As a limited company, F is a separate legal entity from those who own/direct it. As such the property should've been insured in F's name. Since the point the property was transferred, Miss A hasn't had the right to insure it. It is F that suffers a financial loss as a result of the property's damage and it is F that has a legal interest in the property.

That the policy wasn't transferred into F's name is no fault of Lloyd's. I note that an insurance broker was engaged to arrange cover. Brokers are typically regarded as acting as the agent of the insured rather than the insurer for the purposes of proposing insurance. Certainly, there has been no suggestion here that the broker was acting on Lloyd's behalf. It's the responsibility of the policyholder and/or their agent/broker to ensure the insurance cover provided is correct. It's reasonable to think that that includes making sure the

policyholder named on the policy is an entity, or individual, who has an insurable interest in that property.

Miss A's representative says we should treat her as an unsophisticated buyer of insurance because she didn't appreciate that as a director of a limited company she didn't own the property. And he says her use of professional advisers doesn't make her automatically business savvy and sophisticated.

This service does, in limited circumstances, accept that certain buyers of commercial insurance should be deemed to be 'unsophisticated' but I don't think that can fairly be applied to Miss A's situation. I say that because Miss A is a director a limited company that owns a portfolio of properties, she's not, for example, a sole trader. And the fact is that she has had the benefit of advice from a number of professionals when carrying out her duties as a company director. I'm not persuaded that she can have been entirely ignorant of the duties associated with being a company director. And if she was, I'm not persuaded that any failure to make sure she knew what was required of her can be excused to the extent that I should then fairly require Lloyd's to retrospectively place the policy in the name of F.

I appreciate that the policy has since been amended so that F is now the policyholder. But that amendment was prospective. I can't fairly make Lloyd's amend the policy retrospectively – which is what would need to happen if the policy was to be deemed valid and for an insurable interest to exist – because it is not to blame for the mistake. And I can't fairly ask it to retrospectively accept a risk that it never contracted for at the time and is no longer just a risk but rather a known loss.

It is fair to say that the policy is void for mistake in that there was no 'meeting of minds' in that Lloyd's thought it was contracting with Miss A, an individual consumer, when in fact the property was owned by a limited company. The remedy for a contract that's void for mistake is to treat it as if it'd never existed and to return the premiums. This is what Lloyd's has done and I can't, in the circumstances, reasonably ask it to do anymore.

Miss A's representative has urged this service not to follow the strict legal principles that apply to the law associated with insurable interest. He says that would be unfair and not in keeping with the Consumer Insurance (Disclosure and Representations Act 2012 ('CIDRA')). CIDRA is relevant to the issue of misrepresentation rather than insurable interest and applies to individual consumers not commercial policyholders. And the failure to notify Lloyd's about the change of ownership of the property pre-dates the date CIDRA came into force in any event.

The law is quite clear on the matter of insurable interest and, should I wish to depart from it I must show there's a valid reason for doing so and explain my reasons. Unfortunately, I can't see any fair and reasonable reason for me depart from the relevant law that permits me to fairly uphold this complaint.

I am also sure that Mr C is aware that here we look at each case on its own facts and aren't bound precedent. I note with interest the copy of a decision Mr C has sent us written by one of my colleagues but I can see there are some factual differences between the two cases. I've looked at all the available evidence relevant to this case in order to reach a fair and reasonable decision.

I can see that there has been some discussion between the parties during the course of the complaint about Miss A misrepresenting the risk to Lloyd's and Lloyd's being able to void the

policy on the basis that the risk had not been honestly presented. I'm not going to consider that issue any further here – or make any finding on it - because I don't have to. That's because the matter of an insurable interest has to be placed before any contract of insurance can be effected. No insurable interest means no contract of insurance. Any subsequent misrepresentation (true or not) is irrelevant because no policy exists.

I can see that Lloyd's has voided the policy from the February 2013 renewal and refunded the premiums from this date onwards. I think that the refund should be backdated to the point Miss A's insurable interest in the property ceased – namely in August 2012. That's because it's from this point onwards that Miss A was unable to make a claim on the policy.

So, I think that Lloyd's should also refund the premiums Miss A paid from August 2012 up to the February 2013 renewal. And I think that interest should be paid on those premiums at this service's usual rate of 8% simple per year from the date Lloyd's refunded the other premiums (which I understand to be around Autumn 2018) to the date it pays my award.*

Our investigator recommended that interest should be paid from August 2012 onwards but I'm unable to agree that would be fair. It is from Autumn 2018 that Miss A has been without this money so that is the date she should be compensated from for being out of pocket. I appreciate that I recently asked our investigator to informally ask both Lloyd's and Mr C if they could agree to this departure from our investigator's findings such that a provisional decision wouldn't be necessary. Mr C replied to our investigator to say that he needed 10 days to do so due to the logistics of contacting Miss A and her father. That being the case, I thought setting out my provisional findings may, after all, be beneficial to the parties."

And I made the following provisional decision:

"My provisional decision is that I intend to uphold this complaint in part. I require Society of Lloyd's to refund the premiums on the policy for the period August 2012 to February 2013. It should also pay interest on the amount refunded at this service's usual rate of 8% simple per year from the date it refunded the rest of the policy premiums to the date it pays this award."

Lloyd's accepted my provisional decision and said it'd worked out what amount it would need to refund to Miss A along with the dates for calculating the interest due. But it said it'd emailed Miss A asking for her bank details but had received no response.

Miss A, through her representative Mr C, replied to say she didn't accept my provisional decision. Mr C made the following points in response:

- He agreed that directors and shareholders don't have insurable interests in property belonging to a limited company.
- At the time of the loss, Miss A possessed no business experience and no qualifications outside of her chosen profession such that she could be considered to be in possession of 'individual' sophistication. Intelligence in another field, income level, status as a sole trader or a director don't automatically signal that an individual should be considered to be a sophisticated buyer of insurance.
- Miss A was so lacking in basic understanding that she didn't appreciate that as a director she was simply an employee that had no legal or insurable interest in any property owned by F. Thus, Miss A cannot be deemed to be individually sophisticated. This is further illustrated by her failure to appreciate the need to alter the name on the insurance policy year after year.
- That my suggestion that Miss A's benefitting from the assistance of professional 'sophisticated' agents implied she, as the insured, could be said to possess her agents' qualities was misplaced.
- The agents – solicitor, accountant and insurance broker – were all sophisticated in business matters but, aside from the broker, they didn't advise Miss A in insurance matters. Insofar as the broker would be expected to have advised Miss A/F on insurance matters, so unsophisticated was Miss A that she didn't provide it with the information necessary to amend the policy.
- It is therefore Miss A's lack of business sophistication that led to the policy being in the wrong name.
- He had obtained the comments of Miss A's accountant and forwarded them to me to consider. The accountant said that he mainly dealt with Miss A's father. He said he found Miss A to be an intelligent, educated woman with a very limited understanding of how business worked. Whilst she is a director she relied heavily on her father in all matters. His experience was that few owners of small businesses had a sophisticated knowledge of business.
- In summary he said that Miss A was unsophisticated but had always been honest and open at inception and renewal. He said that Lloyd's fully understood and accepted the nature of the risk and, had the name of the policyholder been altered to F, the claim would've been paid. Lloyd's was simply relying on a technicality to avoid liability. This was a genuine, honest paperwork error but for which Lloyd's would be dealing with the claim.
- Whilst I must have regard for the law I need not apply it strictly if to do so would be unfair in the individual circumstances. This was one such circumstance.

The complaint was returned to me for a final decision.

my findings

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

I've thought about the points Miss A's representative Mr C made in response to my provisional decision but they have not persuaded me to change my mind. I note that Mr C accepts that directors and shareholders of a company don't have an insurable interest in any property the company owns.

As I said provisionally, it is a pre-requisite of any insurance policy – before any disclosures as to the contract are made – that the proposer must have an insurable interest in the

property they are trying to insure. As I also said provisionally, since the point the property was transferred to F, Miss A hasn't had the right to insure it.

Prior to my provisional decision, it was Mr C who submitted that this service should treat Miss A as an unsophisticated buyer of insurance because she didn't appreciate that as a director of a limited company that she didn't own the property. It was in response to that submission that I commented provisionally that in limited circumstances, this service accepts buyers of commercial insurance should be considered 'unsophisticated' and akin to a consumer.

However, where such a buyer seeks professional assistance, that assistance will usually be considered as compensating for the buyer's own lack of knowledge and experience. In this case, Miss A sought professional advice from a solicitor, an accountant and a broker. If those professionals did not fulfil their obligations, any resultant consequences cannot be seen as Lloyd's responsibility

Furthermore, Lloyd's has voided the contract on the grounds there was no insurable interest not on the basis Miss A had misrepresented the risk. As I said provisionally, the matter of insurable interest has to be placed before any contract of insurance can be effected. No insurable interest – regardless of how 'sophisticated' the purchaser of the policy may or may not be – means no contract of insurance.

The law is clear on the matter of insurable interest. It is true that I must have regard to the law and it's true that I can depart from it. But in order to do so I must give and explain my reasons. And for the reasons I've given both here in my final decision and provisionally I can't see any fair and reasonable reason for me to depart from the relevant law that would permit me – taking all the circumstances into account – to fairly require Lloyd's to retrospectively amend the policy and pay the claim.

my final decision

My final decision is that I uphold this complaint in part. I require Society of Lloyd's to refund the premiums on Miss A's policy for the period August 2012 to February 2013. It should pay interest on the amount refunded at this service's usual rate of 8% simple per year from the date it refunded the rest of the policy premiums to the date it paid this award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 15 February 2021.

Claire Woollerson
ombudsman

**If Society of Lloyd's considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Miss A how much it's taken off. It should also give Miss A a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.*