

complaint

Mr K's complaint is that he believes that Lloyd Latchford Insurance Consultants Ltd failed in its duty of care toward him when it helped him arrange a commercial property insurance policy. The sum insured under the policy was too low and so the insurer only paid part of a claim he made.

background

In late 2012 Mr K sought assistance from Lloyd Latchford, who was his existing commercial insurance broker. He wanted to arrange a new insurance policy as he had recently purchased a property, which was to be used for semi-commercial purposes. He needed buildings and contents cover, along with public and employer's liability cover. The request for insurance was made in a telephone call.

Lloyd Latchford has provided a copy of its notes of that call, but a recording isn't available. The notes detail what the property was originally used for, its then current and future use. It also confirmed how often it was used and how much income it generated from its current use. There is a section about the cover needed for the property. Included is:

'Value £35K (Rebuild?)'.

Lloyd Latchford says that it asked Mr K whether this was the rebuild cost and he said it was the amount he paid and also what he wanted to insure it for.

When the policy was arranged, the buildings sum assured was wrong – it was set for the amount that Mr K had paid for the property, rather than the amount that it would cost to re-build.

Following this, Mr K renovated the property. There were some alterations included in the works to make it suitable for its new purpose. However, the surveyor who oversaw the works confirmed that most were repairs. The cost was around £100,000.

In early 2015 Mr K made a claim for storm damage. The insurer decided that the property hadn't been insured for enough. It offered to consider the claim if Mr K paid the premium for the correct re-build value going forward. However, it said that it would limit the pay-out on the claim to 10% of the loss because of the underinsurance.

Mr K agreed to the proposed action. However, he wants Lloyd Latchford to compensate him. He wants it to pay the additional premium, the remainder of the claim and the costs he incurred because of the need to complain.

I sent the parties my provisional decision on 12 January 2016. In it I explained my conclusions and the reasons for reaching them.

I believed that the outcome of this complaint came down to whether Mr K:

- a) had the knowledge to know that he should be insuring the property for the amount it would cost to rebuild and chose not to; or
- b) was unaware of the need to insure the property for the rebuild cost and Lloyd Latchford failed in its duty by not making him aware that this was the case.

Lloyd Latchford considered that Mr K was a commercial customer who was knowledgeable about insurance matters. It based this assessment on its experience with Mr K since it started helping him with his insurance arrangements in 1986. It also said that it questioned the amount Mr K wanted to insure the property for and he understood what he was doing.

Lloyd Latchford provided copy correspondence from Mr K about the insurance for his existing business. This included detailed instructions about changes Mr K wanted to make to that policy. Having carefully considered this, it seemed to me that Mr K had a good understanding of how insurance policies work. It also indicated that he understood the type of information that would be important to an insurer. On this basis, I was satisfied that Mr K did have a good knowledge of insurance policies and arrangements. I thought it was more likely than not that he was aware that he needed to insure the new property for the amount it would cost to rebuild it. I was also satisfied that given he spent tens of thousands of pounds on repairing the property, that he would have known that the re-build cost would be significantly more than what he bought it for.

As I found that Mr K was most likely aware of that he should have insured his new property for more than he did, I couldn't find that Lloyd Latchford was responsible for it being underinsured. On that basis, I also couldn't ask it to pay the unpaid portion of the claim.

Mr K had asked that Lloyd Latchford pay the additional premium it had to pay to insure his property after the underinsurance was discovered. This was the amount that Mr K would always have had to pay to insure the property. On that basis, even had Lloyd Latchford made a mistake, which I wasn't persuaded it did, I couldn't ask it to contribute to this cost.

Lloyd Latchford accepted my findings. Mr K didn't.

Mr K said that he isn't an experienced businessman, but rather a musician and entertainer. He commented that he had the impression that Lloyd Latchford considered that professional businessmen could receive a reduced 'duty of care' than a consumer. He feels that the same 'duty of care' should be given to all customers, irrespective of their experience.

In addition, Mr K reiterated that he didn't understand that the sum assured on his policy had to be the rebuild value and that Lloyd Latchford didn't tell him that it did. Nor did it question the low value he selected. He said that if he had been told this, he would have arranged a valuation to be done and insured the property for the correct amount.

Mr K also explained that during the period that his other property was being used for business purposes, his wife had taken care of the business and money side of things. She was very experienced in such matters. Mr K had been responsible for the entertainment and social matters.

He said that he had never taken a close interest in insurance matters as his late father had been an insurance broker and had arranged everything that he needed until he retired. Providing for his insurance needs was then passed to a predecessor of Lloyd Latchford.

He said that he had only ever bought two properties before the one in question. Both of these were bought as private houses. Mr K regarded the cost as 'what they owed' him, which is why he gave such a low figure for the sum assured. Mr K went on to comment on what he thought of the service he had received from Lloyd Latchford over the years. He still feels that it should make some contribution to the costs and worry he has had to endure.

Mr K also explained that most of the money spent on the property was spent on soundproofing the new property and the restoration of a musical instrument.

my findings

I have considered all the available evidence and arguments, including Mr K's recent submissions, to decide what's fair and reasonable in the circumstances of this complaint.

Mr K has explained that he didn't understand insurance and didn't know that he had to insure the property for the amount it would cost to rebuild. Rather, he believed that he could insure it for a figure that he believed 'it owed him'. Yet the instructions he gave to Lloyd Latchford, which I referred to in my provisional decision, do not support this. When confirming what he wanted to insure the building for, he said that the figure he was putting forward was based on a recent valuation he'd had done.

I have reassessed the correspondence from Lloyd Latchford's files. Unfortunately, I can't reconcile Mr K's stated lack of understanding of insurance with his very detailed instructions about his insurance policy. The information he asked to be passed on to the insurer implies a clear understanding of the information that an insurer would want to know and would affect its consideration of risk. Whilst I have carefully considered everything that Mr K has said, I remain satisfied that the evidence indicates that he understood that he needed to insure the property for its rebuild cost, rather than the amount he bought it for.

Mr K asked about the duty of care that an insurance broker owes its customers. There is a duty of care, but there is a difference between what is expected of a broker when dealing with a consumer and a commercial customer. Where a consumer is involved, it is expected that they have little or no knowledge of what an insurer will want to know. Therefore, the broker would be expected to ask clear questions of the consumer to obtain the information that the insurer wants to know. However, a commercial customer is considered to have a greater level of knowledge and so is expected to volunteer any relevant information, whether prompted for it or not.

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 Mr K to accept or reject my decision before 14 March 2016.

Derry Baxter
ombudsman