complaint

Mr and Mrs H are unhappy with the handling of their claim by The Society of Lloyd's ("SOL") for theft from their home and, in particular, the settlement sum offered.

background

Mr and Mrs H suffered a burglary at their home. A large amount of jewellery and cash, as well as some electronic items, were stolen. SOL's investigations took some 15 months to conclude before an offer was made to settle the contents claim.

During the course of SOL's investigations, it became clear that Mr and Mrs H were significantly underinsured for the valuables kept in the premises. Mr and Mrs H had contents cover limited to £40,000 of which valuables were to amount to no more than £8,500. SOL's experts have estimated the value of Mr and Mrs H's jewellery to be in the region of £52,000 and the total contents to have had a value of around £86,000. However, in calculating their settlement offer, SOL have used the loss adjuster's initial estimated contents figure of £60,000 to calculate that Mr and Mrs H had only 67% of the insurance that they required.

Given that the items stolen were all valuables, money and a mobile phone, SOL applied the relevant limits of £8,500 for valuables, £500 for money and the value of the mobile phone, resulting in a total claim of approximately £9,000. This they then discounted by 33% to reflect the underinsurance. They, therefore, offered to pay Mr and Mrs H just over £6,000. This may be subject to a further deduction of the policy excess, depending on whether Mr and Mrs H choose to deduct the excess from the contents or buildings settlement.

Mr and Mrs H have told us that they did not know the value of their jewellery and that they had assumed that the contents cover of £40,000 that they had taken out applied to all of their contents. They did not realise that there were individual limits for certain types of property or that they were underinsured.

Mr and Mrs H took out their policy through a broker. Unfortunately there is no record of the telephone call whereby the policy was taken out. The broker's notes indicate that Mr and Mrs H required £15,000 contents cover. Their notes also indicate that there were no valuables as a £0 figure has been entered in the appropriate column of the form. In recommending SOL's policy, the standard cover for a four bedroom home was £40,000 of contents and this is what Mr and Mrs H took out.

During SOL's investigation of the claim, it transpired that Mr and Mrs H had not disclosed two relatively small claims that they had made at their previous property. As a result of this, Mr and Mrs H had received a no claims discount over and above that to which they were entitled. SOL agreed to continue cover on the basis that Mr and Mrs H paid the additional premium that would otherwise have been payable.

Our adjudicator considered that Mr and Mrs H's complaint should be upheld and recommended that SOL treat the total sum insured as £40,000, disregarding the cash and valuables limits and not applying any discount for underinsurance. SOL did not agree and requested an ombudsman's review of the complaint.

Having reviewed the case, I issued a provisional decision in which, subject to any further comments or evidence that I was to receive from the parties, I made the following provisional findings.

In considering whether the approach taken by SOL was fair and reasonable, I sought to determine whether or not the terms and limitations of the policy were brought sufficiently to Mr and Mrs H's attention. If I found that they were, then I considered that I must decide whether SOL's calculation of their settlement offer was correct.

Mr and Mrs H used the services of a broker to help them in deciding what policy would be suitable for their needs. The broker's actions were not part of this complaint and, as such, I could not make any comment on them, although Mr and Mrs H have since provided me with additional information on the circumstances surrounding the arrangement of the policy, to which I shall refer below.

The broker's notes, when the policy was taken out, indicate that Mr and Mrs H considered they had total contents amounting to £15,000. They also stated that they had no valuables of note. I found this strange, as other evidence indicated that Mr and Mrs H knew that they had at least £12,000 of jewellery at acquisition prices. At the time of the theft, they also appear to have believed that they had in the region of £30,000 or more of jewellery (as this is the figure that they gave to SOL when reporting the theft: although we have since been told that they were pressured by the loss adjuster to guess this figure).

In the absence of evidence of what questions were actually asked by the broker, I had to rely on the other documentation that Mr and Mrs H were sent at the start of the policy. This included a personal quotation on which the following statement was included:

"*Please make sure that your sums insured are adequate…..for contents the sum should be high enough to replace everything at today's prices….*"

It was my provisional finding that this statement was sufficient notice to Mr and Mrs H that they needed to ensure that the total sum of £40,000 contents cover was sufficient, although there is no mention on this document of the valuables limit of £8,500, or money limit of £500. That information was included on the "keyfacts" policy summary, which I also understood to have been sent to Mr and Mrs H prior to them applying for the policy (although I now understand that it was given to them following the verbal recommendation for the policy and their agreement to accept it). The limits are clearly set out on that document and it was my finding that the combination of documents should have given Mr and Mrs H sufficient notice that they could not expect the entire £40,000 of cover to be available for the loss of any one type of property, or all insured risks.

Other than the policy itself, which is not something that consumers will generally read, particularly where they have previously been provided with a policy summary (as here), the other document that Mr and Mrs H received was the policy schedule. This clearly sets out the maximum sum insured as £40,000. The rest of the document was, however, a little confusing, as it indicated that personal items (including unspecified valuables) and money were "*Not Covered*".

Upon investigating this further, these were additional covers that could be added to the basic cover taken out by Mr and Mrs H; although they did not select them, and it was these that were "*Not Covered*". I considered that, to a lay consumer, it may not necessarily have been totally clear what this meant, particularly if they were not to have reviewed the terms of the policy itself. Mr and Mrs H have since told me that they did not ignore this, but understood that it was for cover outside of the home that they did not require.

At the time of my provisional decision, I had seen no evidence that Mr and Mrs H ever questioned this, although in my view at that time, this did not help their contention that they did not know there were limits on the valuables and money cover. If they had read this, I would have expected them to question why they had no cover. As they did not question it, then I provisionally found that it was more likely than not that the earlier documentation had made it clear to them what was covered and what was not. In the absence of compelling evidence to the contrary, it was, therefore, my provisional finding that the terms of the policy were sufficiently brought to the attention of Mr and Mrs H and were accordingly effective in limiting cover to the maximum sums stated.

In considering whether or not SOL had correctly calculated their settlement offer, the approach of this service is to first establish whether the insurer is able to 'average' the claim. To be able to do so, an insurer will need to include within the terms and conditions of the policy an averaging clause. Having reviewed the terms and conditions, I confirmed that the following clause was detailed under the 'settling claims' section of the contents provisions of the policy:

"***Under-insurance***

If at the time of loss or damage the full cost of replacing ***your contents*** *in a new condition similar in size, form and style is more than the* ***contents*** *limit,* ***we*** *will only pay part of the claim. For example, if the* ***contents*** *limit only covers two-thirds of the replacement value of* ***your contents****,* ***we*** *will only pay two-thirds of the claim.*"

As such, I considered that SOL could make a deduction from the claim settlement due to Mr and Mrs H being underinsured. In this case, SOL accepted the lower valuation first suggested by the loss adjuster and accordingly calculated that a 33% discount could be made. I did not consider that to be an unreasonable approach.

The loss of jewellery and other valuables was clearly well in excess of the total valuables and money limits of £8,500 and £500 respectively. As such, I considered that the settlement offer made by SOL in October 2012 to apply the discount to those total valuables and money limits, together with the value of the other insured items (*i.e.* the mobile phone), less the excess, was fair and reasonable.

Mr and Mrs H indicated that they considered the policy to provide new for old cover and that SOL should have replaced any items lost. I reviewed the terms of the policy relating to the settlement of a claim. These provided for SOL to settle the cost of replacing a lost item with a new one. The policy did not require SOL to source a replacement item and, in particular, where there had been underinsurance resulting in a reduced settlement, it would not have been appropriate for it to replace all the lost items.

Finally, I considered the journey that Mr and Mrs H had been on throughout this claim. The claim originally took some 15 months prior to a settlement offer being made. Mr and Mrs H had to continually chase up progress of their claim and it would appear that they were subjected to additional processes to determine whether or not fraud was involved (which concerns were ultimately unfounded). These took an excessive period of time, during which I am told that Mr and Mrs H found it difficult to obtain alternative insurance. Although some of the conflicting statements, and Mr and Mrs H's failure to declare their past claims (even if not totally their fault) and the true value of their contents, contributed to their treatment, I considered that this was a case where there had been clear distress and inconvenience to Mr and Mrs H. In that regard, I intended to require that SOL pay £250 in compensation.

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 response to my provisional decision, SOL agreed with its contents. Mr and Mrs H did not and have provided me with further details of the circumstances in which their policy was taken out. Whilst I do have sympathy with their plight, this complaint has been brought against the underwriters of the policy and not the broker. Mr and Mrs H believe that it is the broker who did not advise them correctly when the policy was taken out and that the insurer should take some responsibility for that. I am afraid that I do not agree and the broker's actions are not something that I am able to consider as part of this complaint. Should they be so minded, Mr and Mrs H will need to take the alleged insufficient advice up with the broker, through a new complaint if necessary.

Mr and Mrs H have told me that they did not understand the policy documentation provided to them and have provided me with a number of examples of other insurers' policy summaries. I have already considered in my provisional decision whether or not Mr and Mrs H were provided with sufficient information to make a decision on whether the cover provided was suitable for them. Any advice that they received over the telephone from the broker was followed up by the documentation that I have seen and it was my finding that this did set out the policy limits. I, therefore, still consider the documentation provided to have been sufficient.

Mr and Mrs H have also now told me that they had not understood the new for old cover when they took out the policy, although as I have found that the policy limits were brought sufficiently to their attention, I am not persuaded that this affects the outcome of this complaint.

Confusion may well have entered the whole process as a result of Mr and Mrs H originally taking out another policy which was then replaced within a few days by this one on the advice of the broker. This is what apparently led to the non-disclosure of prior claims and may also have had a part in the transposing of incorrect information on to the statement of facts for this policy. This is not something for which the insurer was responsible.

Mr and Mrs H have told me that they believe that they were sent the wrong version of the statement of facts by their broker and have provided me with another version on which the relevant value questions are clearer. I am not persuaded that this new version was the one in place at the time, as it has a reference on the bottom of "*CPROP0613*". This reference usually indicates the date on which the form comes into effect, which here would be June 2013, clearly some considerable time after the incident complained of. This is not, therefore, something for which the insurer can be said to be responsible or which I find changes the outcome of this complaint.

Mr and Mrs H have explained to me how they came to value their jewellery when the policy was taken out at £12,000, and then £30,000 to the loss adjuster after the claim. However, the fact remains that, on both valuations, they were underinsured and, given the policy limits (which they contend they had been misled about), they would never have had sufficient cover if either of the values had been correct. Again, I do not consider that this affects my findings.

I have considered Mr and Mrs H's submission that they did appreciate the meaning of both the schedule and policy wording providing cover for valuables outside of the home, which they had purposefully chosen not to take. Now that I am aware that Mr and Mrs H did understand the meaning of this wording, I am not persuaded that they would also not have understood the other terms of the policy with respect to the limitations on cover. If they were misled by the broker as they say, that remains something that I am unable to consider in this complaint against the insurer. Therefore, my findings have not changed in this regard.

Finally, Mr and Mrs H are concerned that I have come to a different conclusion to that of our adjudicator. This service operates a two stage process for assessing complaints. My review is completely independent of that done by our adjudicator. I have considered each of Mr and Mrs H's arguments and the evidence provided in detail, as I have that provided by SOL. My assessment of the evidence is that it was not SOL that did anything wrong in this case, other than those matters that I have set out above relating to their handling of the claim, and for which I have awarded compensation. If Mr and Mrs H remain unhappy with my decision, then they do not have to accept it and will accordingly not be bound by it. However, in those circumstances, SOL will not be bound either.

my final decision

My final decision is that I partially uphold this complaint. I require that The Society of Lloyd's settle Mr and Mrs H's claim as suggested in their October 2012 settlement offer. The Society of Lloyd's should also pay interest at 8% simple per annum (less tax if properly deductible) on the sum paid from the date of the loss to the date of payment.

I also direct that The Society of Lloyd's pay to Mr and Mrs H the sum of £250 as compensation for the distress and inconvenience caused to them during this claim.

James Kennard
ombudsman