

complaint

T, a manufacturing business, complains that the commercial insurance policy recommended by Cotters Insurance Services LTD (Cotters) was unsuitable because its buildings cover was inadequate.

background

In 2005, T appointed Cotters to arrange insurance on its behalf. Cotters arranged a policy which provided cover for, amongst other things, buildings and contents. The policy has continued on similar terms.

In 2014, a claim was made to the insurer following damage caused by mining subsidence. It was then discovered that T was underinsured for its buildings and the amount paid was reduced by £32,154.76 in line with the “*averaging*” clause whereby the amount paid was reduced in proportion to the amount by which it was underinsured.

T made a complaint to Cotters, saying that it hadn’t advised it how to set the sum insured. It also felt Cotters had failed to verify any of the information it had provided.

In support of its complaint, T referred to the legal case of Café de Lecq Limited v R.A. Rossborough (Insurance Brokers) Limited (2012) which determined that simply giving documentation and asking for it to be read to check it meets requirements isn’t good enough.

In settlement of the complaint, T asked Cotters to make up the shortfall in the amount paid by the insurer plus interest.

Cotters didn’t agree with T. In summary, it said it had met its duties and obligations in advising T on its insurance needs. Unhappy with Cotters’ response, the complaint was referred to our service.

Our investigator reviewed T’s complaint, but he didn’t think it should be upheld. In summary, he said:

- Cotters had provided evidence to show it had discussed T’s requirements with it.
- T had increased the amount of buildings cover required from the previous year. As such, he felt T was aware of what was required.
- He felt Cotters did more than just give T documentation and ask for it to be read to check it met T’s requirements.

T didn’t agree with the investigator and re-iterated its point that it didn’t think Cotters had done enough. As agreement hasn’t been reached, the matter has been referred 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. Having done so, I’ve decided not to uphold T’s complaint. I’ll explain why.

At the time T approached Cotters to source insurance for it, T was an established business with an established insurance record.

I think it would've been preferable for Cotters to have worked with T to calculate the amount required for its buildings cover. However, as T had revised the amounts from the previous year and a very specific figure was given for the buildings cover it required, I can see how this had the appearance of a well thought out assessment.

Cotters has provided us with its records which indicate it spoke to T at each point of renewal to discuss T's requirements. It has also provided us with a copy of its '*Adequate Sums Assured*' document which it says was issued to T in the renewal process in years 2006, 2007 and 2008. This explains:

"It is most important that the sums insured under your insurance policy are maintained at adequate levels at all times. This should prevent under-insurance and the subsequent application of 'average' under which the amount of settlement of any claim is reduced in proportion to the amount of under-insurance."

And under the heading entitled '*Buildings*', it says:

"Buildings are normally insured on a 'reinstatement basis' in which case the sum insured should represent rebuilding cost as new including professional fees and debris removal expenses. Depreciation and the value of the land should not be taken into account".

I can also see that in 2009, Cotters amended its '*Adequate Sums Assured*' document to also explain that setting the level of sums insured was the policyholder's responsibility and establishing accurate sums insured could require specialist knowledge and the policyholder may wish to obtain advice from a surveyor or other professional valuer. This document was also issued at the point of renewal in 2010, 2011 and 2012 and a similarly worded document was issued after that.

Taking everything into account, I think Cotters did enough in the circumstances. It discussed T's requirements with it at each point of renewal and the documentation issued pointed T in the right direction for setting an accurate figure and made it clear that it was T's responsibility to establish accurate sums insured. I've also taken into account that T had a good relationship with Cotters and had it required further support or guidance on calculating a correct figure, it could have asked Cotters for this.

I've also taken into account that Cotters applied index-linking with the aim of keeping the sum insured adequate and in line with inflation.

T has pointed out the legal case of *Café de Lecq Limited v R.A. Rossborough (Insurance Brokers) Limited* (2012). I've taken the determination made in this case into account, but it is clear that Cotters did more than just give T documentation to check.

T has also pointed out a decision by one of my colleagues, but I'm satisfied the circumstances of that complaint are materially different to Mr T's complaint.

I sympathise with T for the position it has found itself in, but I'm satisfied Cotters provided T with enough guidance in the circumstances and I don't think it is responsible for the shortfall in settlement of T's claim for its buildings due to underinsurance.

my final decision

For the reasons I have given I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 22 January 2018.

Michelle Griffiths
ombudsman