

Ombudsman determination**CIFO Reference Number: 16-001166****Complainants: [The complainants]****Respondent: [Company X]**

It is the policy of the Channel Islands Financial Ombudsman (CIFO) not to name or identify complainants in any published documents. Any copy of this determination made available in any way to any person other than the complainant or the respondent must not include the identity of the complainant or any information that might reveal their identity.¹

[The complainants] complained that an insurance policy brokered by [Company X] for a [commercial property] which they owned was not for the correct amount and they were underinsured. They are now in a position where the insurers will not meet the full cost of the repair or reinstatement works needed following a [claims event].

Background

In 2010 a [commercial property] entered administration and was purchased by [a family member] of [complainant 1], who was also [a family member] of [complainant 2]. After [the family member] passed away, [the complainants] assumed responsibility for the property. Between 2010 and 2013, [the complainants] insured the [commercial property] through a different provider; however, when the policy came up for renewal in October 2013, the complainants decided to look for a new insurer.

On 24 October 2013, [the complainants] met with a representative of [Company X] at the [commercial property]. It was agreed the policy would be placed through [Company X] if they could receive the same quote provided by another insurer that same day to [the complainants]. A *Property Owners' Proposal Form* was completed in relation to the new insurance policy, brokered by [Company X]. This form was signed by the complainants on 29 October 2013.

The *Notes* section of the form reads as follows:

"1. The building sum insured should represent the full rebuilding cost plus an allowance for inflation and professional fees, removal of debris and States of [jurisdiction 2] or local authority costs."

On 2 October 2015, [Company X] wrote to the complainants to inform them that the insurance policy was due for renewal. The letter contained the following provision:

¹ Financial Services Ombudsman (Jersey) Law 2014 Article 16(11) and Financial Services Ombudsman (Bailiwick of Guernsey) Law 2014 Section 16(10)

“Index Linking of 5% has been applied to the buildings and contents sums insured, however, please ensure that this represents the total reinstatement cost of the property and advise if this figure needs adjusting.”

In February 2016, a [claims event] caused substantial damage to the [commercial property]. The complainants submitted their insurance claim in relation to this damage and the underinsurance was revealed. An email of 14 April 2016 from the appointed loss adjuster to the complainants confirmed the level of underinsurance as follows:

“The sum insured at the time of the damage occurring was £2,661,130.

We have received the attached report from [redacted for anonymisation purposes] independent quantity surveyors, that details their opinion for the rebuilding cost to be £5,719,464.37.

On this basis, the sum insured is only 46.5% adequate...

Therefore, the amount payable by insurers in terms of the repair work will be based upon a 46.5% contribution of the agreed lower tender submission.”

On 15 April 2016, [Company X] sent an email to the complainants. The email contained the following information:

“As you are aware, the policy’s underinsurance provision will operate in the event that the policy’s sum insured is less than the rebuilding cost and this is why that figure is so important to determine correctly.

Being insurance brokers, we cannot advise you on the correct sum insured. A qualified surveyor can and the process can be quite subjective, especially in [jurisdiction 2].”

The sum of £113,461 was offered to the complainants but, as a fair and reasonable resolution to their complaint, they sought a further £119,113 to cover the full cost of repairing the damage caused by the [claims event].

The complainants suggested to CIFO that [Company X] owed them a duty of care to advise on the adequacy of the sum for which the property should have been insured and, if [Company X] had advised them to obtain a professional valuation, they would have done so.

The case handler concluded that [Company X] was not responsible for offering advice on whether the sum insured was adequate. The case handler did not, therefore, uphold the complaint.

Subsequent submissions

On 8 June 2017, [the complainants] responded by email to the case handler’s conclusions. They rejected his conclusions and made the following assertions:

1. They did not complete the *Property Owners' Proposal Form* and it was only passed to them for signature upon completion.
2. The *Notes* section of the form was not brought to their attention.
3. Given that no issues had been raised at the inception of the 2013 policy, they did not consider the sum needed adjusting in response to the letter of 2 October 2015.
4. The reason they had placed the new insurance policy through an insurance broker was so they could obtain professional advice, in order to feel they were acting correctly regarding the placement of the new policy. They wanted professional advice at the inception of a new policy and felt they had exercised caution instead of placing it directly with an insurance company.
5. With the above in mind, they do not consider that the broker provided them with sufficiently robust advice that they should calculate the correct sum insured and, if they were unable to accurately calculate this, to obtain professional advice. Had they been told to take such advice they suggest they would have, as they clearly have no knowledge of the re-building costs for a [commercial property] of this type. They were further never advised - either at the time of the inception of the policy, or subsequently - to specifically seek clarification, or confirmation regarding the sum insured.
6. Their complaint is that they did not receive sufficiently robust advice, either at the inception of the 2013 policy or subsequent renewals, to ensure that the building was insured for the correct amount, particularly bearing in mind the complex nature of the property.

Findings

I will address these points in the order set out above.

1-3: The Property Owners' Proposal Form

[Complainant 2] suggested that she had signed the *Property Owners' Proposal Form* but had not reviewed the contents beforehand. As a general practice, documents requiring signature should be carefully reviewed by customers before they sign. This allows the customer to raise questions if they do not understand any provisions and means they are fully aware of the implications of providing their signature. In these circumstances, it would not be reasonable for me to suggest that [Company X] had committed an error because the complainants had not read the form before they signed it. The complainants were informed by this document, and by the renewal notice of 2 October 2015, of the need to ensure the insurance was adequate. There was no evidence in the documents provided to CIFO of [Company X] offering any advice or opinion in this regard until after the loss occurred.

4-6: Expectation of professional advice after placing new insurance policy through an insurance broker

I have heard from [complainant 2] about how she wanted advice on the adequacy of the sum insured and would not have used a broker otherwise, and how she is extra cautious in financial matters such as this. I have also considered email correspondence between [Company X] and the loss adjuster regarding the property, and I acknowledge that the email discussion between them after the loss occurred suggested that the rebuild costs quoted were very high.

I acknowledge these further representations made by [the complainants], but they do not demonstrate that [Company X] undertook to advise on the adequacy of the sum insured. I consider this the central matter at issue and, in the absence of any positive representation made orally or in writing by [Company X] to the contrary, I cannot conclude that [Company X] owed a duty of care to advise them of the required sum to be insured.

Following usual business practice, an insurance broker will survey the market to seek insurance coverage options and pricing for their customer. The advice element offered by insurance brokers therefore relates to the range of policies on offer, rather than on whether the amount insured is adequate. Unless an insurance broker actively assumes responsibility by advising on this subject, this aspect would ordinarily be the responsibility of a surveyor completing a valuation for the property manager or for the owner of the property. [The complainants] acknowledge they were not experienced in commercial real estate, and yet chose not to employ a property manager. In this case, the amount insured appears to have been a continuation of the previous insurance policy purchased by [the deceased] in 2010. I cannot see any evidence that [Company X] provided advice on the amount of insurance required and they were under no duty of care to have done so. Furthermore, the underinsurance was not a new situation but rather appears to have arisen when the initial policy was placed in 2010 by [the deceased].

I recognise that handling the [commercial property] has been very difficult for [the complainants] after the passing of [the family member], and I acknowledge the stated intention of the complainants for obtaining the policy via a broker was for the purpose of receiving advice. However, I cannot see any evidence that the complainants actively sought any advice specifically about the value of the property. Furthermore, it does not appear that, when the policy was renewed in October 2015, there were any questions raised with [Company X] or evidence of discussions about how this replacement value would be ascertained. Therefore, it would not be reasonable for me to suggest [Company X] have made an error.

While I acknowledge that [the complainant's] decision to place the insurance through a broker may have been to avail themselves of advice to compensate for their own lack of experience with commercial real estate, their choice does not, in the absence of any evidence of such advice having been offered, create an obligation on the part of the broker to do anything more than would normally be done by an insurance broker.

Final decision

My final decision is that I do not uphold this complaint.

[The complainants] must confirm whether they accept this determination either by email to ombudsman@ci-fo.org, or letter to Channel Islands Financial Ombudsman, PO Box 114, Jersey, Channel Islands JE4 9QG, by **4 September 2017**. The determination will become binding on [the complainants] and [Company X] if it is accepted by this date. If we do not receive an email or letter by the deadline, the determination is not binding. At this point [the complainants] would be free to pursue their legal rights through other means.

If there are any particular circumstances which prevent [the complainants] confirming their acceptance before the deadline of 4 September 2017, they should contact me with details. I may be able to take these into account, after inviting views from [Company X], and in these circumstances the determination may become binding after the deadline. I will advise both parties of the status of the determination once the deadline has passed.

Please note there is no appeal against a binding determination, and neither party may begin or continue legal proceedings in respect of the subject matter of a binding determination.

Douglas Melville
Principal Ombudsman and Chief Executive

Date: _____