

## **The complaint**

Mrs F and Ms S complain that when they bought a buildings and contents insurance policy, Brunsdon Insurance Brokers Limited ('Brunsdon') didn't tell their insurer about their treehouse, and didn't tell Mrs F and Ms S that the tree it was built around wasn't itself covered by the policy.

Most of our contact has been with Mrs F, so to keep things simple I'll refer only to her in my decision.

## **What happened**

The history of this complaint is detailed and well known to all parties, so here I'll set out only what I think is the relevant background to the crux of Mrs F's complaint about Brunsdon.

In 2019 Mrs F bought a non-standard buildings and contents insurance policy through Brunsdon. Although Mrs F says she's used Brunsdon for many years, this was a new annual policy.

In 2020, Mrs F claimed under the policy, as a storm had blown down one of her trees and damaged the treehouse built around it. The insurer accepted the claim for the treehouse, as an outbuilding. But there was a dispute about what a fair settlement amount should be. Mrs F complained to the insurer and ultimately brought that complaint to our Service. In a separate final decision, I set out what the insurer must pay Mrs F for the removal of the damaged tree and treehouse, and for reinstating the treehouse. But I said the policy didn't cover replacement of the damaged tree itself.

While communicating with Mrs F and our Service, the insurer said Brunsdon hadn't told it about the treehouse. As a result, Mrs F complained to our Service about Brunsdon. She said it didn't tell the insurer about the treehouse, and didn't tell her the tree itself wasn't covered under the policy.

Brunsdon said Mrs F's complaint was really about the insurer's settlement of her claim, and Brunsdon wasn't responsible for the position she was in. And in any case, the insurer had agreed to pay for reinstating the treehouse. Brunsdon also said Mrs F hadn't asked for the tree to be covered under the policy, that cover for a mature tree wasn't available, and that it wasn't possible for a mature tree to be replanted.

Our Investigator said there wasn't enough evidence to fairly conclude Brunsdon hadn't told the insurer about the treehouse, and noted the insurer had accepted Mrs F's claim for the treehouse in any case. She said there wasn't a clear conversation between Mrs F and Brunsdon about whether the tree was covered as part of the treehouse, but it wouldn't have changed Mrs F's position as it wasn't likely Mrs F would have been able to get cover for replacing a mature tree.

Mrs F agreed there hadn't been any discussion about the tree, as she'd assumed it was covered as part of the treehouse. Mrs F said Brunsdon was the professional and advertised itself as such, so it should have started a conversation to make clear the tree wasn't covered

and ask Mrs F whether she wanted it to be, as it did with other things such as motorcycles and quad bikes. And Brunsdon had visited the property and knew it was insuring a listed property, so it should have known the tree was integral to planning permission for the treehouse. Mrs F said that if she'd known the tree itself wasn't covered, she'd have got a different policy that covered it. Mrs F provided our Service with evidence to support her argument that such a policy was available, as well as evidence that mature trees can be bought and replanted.

Our Investigator didn't change her view. She thought Mrs F was now able to find a policy that covered a mature tree because she'd asked a broker specifically about that, which wasn't the case when she was buying this policy through Brunsdon.

As agreement couldn't be reached, this complaint was passed to me for a decision. At my request, Brunsdon provided further evidence about the sale of this policy. After considering this, I contacted Mrs F and Brunsdon to say I thought that during the sale of this policy, Brunsdon had provided Mrs F with a reasonable opportunity to ask for this tree to be covered if she'd wanted it to be.

Brunsdon confirmed it had nothing further to add. Mrs F provided further comments and evidence, which I've summarised:

- Mrs F clarified Brunsdon visited in 2005 after she bought the property, and in 2012 after major building works, including the treehouse. Brunsdon would then call each year and ask if anything had changed. Mrs F accepted Brunsdon perhaps hadn't visited more recently.
- Up to 2017, Brunsdon placed their annual home insurance policies with an insurer I'll call 'insurer P'. Mrs F provided documents that she thought showed insurer P's policies covered the tree in question, and said she'd have been mindful of this when the treehouse was built.
- During the sale of the 2018 policy, the year before the storm damage, Brunsdon moved them to a new insurer whose annual policy didn't provide tree cover. Brunsdon didn't properly assess the risk of changing insurer in the 2018 sale, and its own records would have shown previous policies covered the tree. Brunsdon should have noticed the tree was no longer covered and addressed that. If it had told Mrs F the tree wasn't covered, she'd have got a policy to cover it, as she'd shown she could.
- After discussing the treehouse with Brunsdon during the 2019 sale, Mrs F believed both the treehouse and the tree were covered. Brunsdon hadn't provided quality advice in 2019.

I'm now in a position to make my final decision.

### **What I've decided – and why**

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

I'd firstly like to be clear that in this decision, I'm not making any findings about the sale of the 2018 policy, in which Mrs F says Brunsdon sold her a policy that no longer included cover for the tree. That's because Mrs F would need to raise a complaint with Brunsdon about the 2018 sale in the first instance, so that it has the opportunity to respond to that complaint. If Mrs F was unhappy with its response she could then bring that new complaint to our Service for an impartial investigation. Instead, this decision will only address the sale of the 2019 policy, as this was the policy Mrs F later claimed under for the treehouse and tree, which Brunsdon has had the opportunity to respond to.

Ultimately, the policy Brunsdon sold to Mrs F in 2019 covered the treehouse she claimed for, under the 'buildings' part of the policy. I say that because the insurer accepted the claim, and while it disputed the settlement amount, I made a separate decision about that which set out how much the insurer should pay for reinstating the treehouse. So I don't think it's necessary for me to consider whether or not Brunsdon told the insurer about the treehouse.

However, the 2019 policy didn't cover replacement of the tree itself. Mrs F feels very strongly that Brunsdon should have told her this when she was buying the policy. Mrs F and Brunsdon both agree the tree wasn't discussed during the sale process. Brunsdon says Mrs F never asked for the tree to be covered. And Mrs F says she assumed the tree was covered as part of the treehouse, as any reasonable person would. To think about whether Brunsdon has made an error here, I've considered what Brunsdon and Mrs F did discuss during the 2019 policy sale.

Brunsdon said it didn't visit the property for this sale and didn't have a record of visiting recently. Mrs F has clarified that Brunsdon visited in 2005 and 2012, and accepts it perhaps didn't visit later. Regardless, Mrs F says Brunsdon walked around the property over the years and was aware of the treehouse and other features including a woodshed, fire pit, and chicken house. And that in later years, it would call to ask if anything had changed, and Mrs F would confirm it hadn't. During the 2019 sale, Mrs F says Brunsdon told her she needed outbuilding insurance as well as house insurance, and Mrs F agreed. That Brunsdon said she needed to specify she wanted outbuilding contents insurance, and Mrs F agreed. And Mrs F said Brunsdon didn't tell her the tree was excluded from the policy, although Brunsdon explained the policy's other exclusions and made clear that motorcycles and quad bikes weren't covered.

Brunsdon has confirmed this was an advised sale. Brunsdon provided our Service with copies of sale documents, emails and call notes. Brunsdon hasn't been able to provide any call recordings, as it doesn't record its calls.

Brunsdon's note of a call with Mrs F on 8 July 2019 says "*Contents amount not enough and PH [policyholder] also made me aware of a large outbuilding/stable which is also on the property. They use this for a spa and different types of appointments eg: reflexology. Will need to re check buildings/contents amount as well as what insurance is in place at the moment.*"

Brunsdon emailed Mrs F on 10 July 2019 to say "*I do need to speak to you in regards to the building and contents policy for [your property]. From our previous conversation, it seems the property is under-insured and we will need to review certain parts of the policy.*" Brunsdon's file note dated 12 July 2019 said "*No other insurance for buildings so will want all out buildings covered*".

Brunsdon sent Mrs F an email on 17 July 2019 in which I think it's fair to say Brunsdon set out it's understanding at that time of Mrs F's outbuildings. It said "*Still looking into different providers who can help with your circumstances but I do need a few more bits of detail. Please answer and return ASAP.*" It then asked a series of questions, including "*Do you want cover for the two outbuildings contents. Eg: Yoga equipment and horse equipment*".

I've not been provided with any documentary evidence showing that Brunsdon and Mrs F discussed the treehouse during the sale of the policy. However, neither Brunsdon nor Mrs F dispute that the treehouse was discussed. Brunsdon has provided a later statement from its agent, who says Mrs F mentioned the treehouse in a call on 30 July 2019, although the agent couldn't remember what was said and Brunsdon isn't able to provide any record of this call. In that statement, the agent says they then mentioned the treehouse when they called the insurer later the same day, and the insurer advised the treehouse would be covered

under the policy's buildings sum insured. Mrs F says she didn't record this call either, but afterwards genuinely believed both the treehouse and the tree were covered.

So during the sale of this policy, Brunsdon and Mrs F discussed the outbuildings and the treehouse, although I can't be certain what was said when the treehouse was discussed. It's important to note that policies don't provide cover for everything. Instead, they should provide cover for the customer's stated wants and needs at the time they buy the policy, depending on the customer's budget. It's also important to note that Mrs F took out a new policy each year.

Mrs F suggests that during the 2019 sale, she thought the tree was already covered because her previous policies with insurer P up to 2017 included cover for the tree. Mrs F says Brunsdon should have noticed the new policy with a new insurer in 2018 didn't cover it. As I say, I'm not considering the 2018 sale here, as Mrs F would firstly need to complain to Brunsdon about that. However, I see the pages from the previous policy terms and conditions Mrs F has provided say:

*"Garden landscaping*

*Up to 5% of the building sum assured for garden re-landscaping following damage caused by fire, lightning, explosion, theft, impact by vehicles and aircraft, civil disturbance, acts of vandalism or by malicious persons*

*but not:*

- i) more than £500 for any one tree, plant or shrub*
- ii) damage to paddocks and woods*
- iii) costs relating to any undamaged parts of the garden"*

So this suggests a previous policy provided landscaping cover of up to £500 for one tree. However, that policy's terms also specify this will be paid if the damage was caused by *"fire, lightning, explosion, theft, impact by vehicles and aircraft, civil disturbance, acts of vandalism or by malicious persons"*. In this case, Mrs F's tree wasn't damaged by one of the specified causes, but was instead blown down during a storm. Given this, I'm not persuaded Mrs F would have had a successful claim for her tree even if the landscaping cover was carried forward to her new policies from 2018 onwards, as Mrs F suggests it should have been.

In an advised sale like this one in 2019, I'd expect Brunsdon to take reasonable steps to establish Mrs F's wants and needs for that policy at that time. But I think it's fair to say that cover for a mature tree is very unusual and not something many customers would want or need. So even though this was an advised sale of an already non-standard policy, I don't think it's reasonable to expect Brunsdon to have prompted a conversation about tree cover with Mrs F. Instead, I think it's more reasonable to expect that if Mrs F specifically wanted or needed the tree to be covered when she bought this policy, she would raise this requirement when she was talking to Brunsdon about the treehouse during the 2019 sale. But she didn't.

I appreciate Mrs F's strength of feeling now that the tree has been damaged and needs to be replaced. And I acknowledge Mrs F has more recently provided evidence to show she could have got a policy that covered the tree, as well as evidence to show that mature trees can be bought and replanted. But Mrs F has been able to show this because it is something she's now specifically sought cover for - it's not something Mrs F asked Brunsdon to arrange cover for when they discussed the treehouse as part of the sale of Mrs F's 2019 policy.

Taking everything into account, I think Brunsdon provided Mrs F with a reasonable opportunity to ask for this tree to be covered, if she wanted, during the sale of the 2019 policy. Therefore, I'm not asking Brunsdon to do anything further here, though I realise this will be a very great disappointment to Mrs F.

**My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Ms S to accept or reject my decision before 28 April 2022.

Ailsa Wiltshire  
**Ombudsman**