

The complaint

B, a company, complains that Insurance Factory Ltd trading as Insurance Choice ('Insurance Factory') mis-sold a commercial insurance policy.

B is represented by Mr and Mrs S.

What happened

B holds a commercial policy with an insurer that had been arranged by Insurance Factory. The cover started in October 2022, and was arranged with a sum insured of £450,000.

Following an escape of water at the property a few months later, Mr and Mrs S made a claim to the insurer. The insurer calculated the rebuild cost of the property to be £967,953.39 (though this was later reduced to £939,420.86). The insurer concluded that B had only paid 65.7% of the correct premium and therefore would only pay this percentage of the claim settlement.

Mr and Mrs S complained to Insurance Factory. They thought it had been responsible for the underinsurance, and said they hadn't come up with the sum insured. They said they could have obtained the correct sum insured elsewhere for a similar premium. Mr and Mrs S paid 34.3% towards the cost of the repairs that were carried out by the insurer's contractor. The insurer paid 65.7% of some cash settlement payments, such as for business interruption.

Insurance Factory partly accepted Mr and Mrs S's complaint. It said it had been unable to advise on rebuild costs, and had been reliant on what Mr and Mrs S had told it. Insurance Factory thought B had been underinsured since 2017. However, it noted that when it had issued the 2022 renewal invite, the sum insured was listed as £500,000 which Mr and Mrs S had accepted. However, it then reduced this to £450,000 when the policy started. It said it would honour the original quote and would write off the extra premium for the additional £50,000 worth of cover going forwards.

Unhappy with Insurance Factory's response, Mr and Mrs S brought a complaint to the Financial Ombudsman Service on B's behalf.

Our investigator didn't recommend the complaint be upheld. She said Mr and Mrs S had confirmed to Insurance Factory that £500,000 was a sufficient sum insured. Although Insurance Factory had accepted it had made an error by arranging a sum insured of £450,000, our investigator thought it had put matters right by covering the additional premium.

I issued a provisional decision on 5 February 2024. Here's what I said:

'B has a complaint against the insurer, which I'm considering under a different reference. This decision focuses solely on B's complaint about Insurance Factory.'

Mr and Mrs S say that Insurance Factory has never had a discussion with them about the sum insured and what this should be.

As I understand it, Mr and Mrs S purchased the property in 2017 and Insurance Factory has been their broker since that date (though under different trading names). In 2017 the sum insured was £371,935.

I asked Insurance Factory for any phone calls it had with Mr and Mrs S in 2017, to try and establish why the initial sum insured of £371,935 was chosen. Insurance Factory says the 2017 policy cover was confirmed by email, and it doesn't have any calls. So I don't know why the sum insured of £371,935 was selected at this time, and can't conclude that Insurance Factory were at fault for the initial sum insured being this amount.

Following this, Insurance Factory automatically increased the sum insured by around 2-3% each year until 2021, presumably in line with index-linking. That's not unusual, and is usually a requirement by the insurer.

In 2021, the sum insured was £410,527. Then in 2022 there was a change of insurer. Insurance Factory emailed B on 13 October 2022 (then again on 25 October 2022) to advise that the policy was soon due for renewal. It attached a renewal invitation, a quote, the policy wording, and a document outlining B's duty of disclosure and duty to make a fair presentation of risk. The quote said the sum insured for buildings was £500,000.

A phone call then took place between Mr S and Insurance Factory on 28 October 2022. Some changes were made to the details in the quote. The adviser asked, "Are you happy with the rebuild figures and the other sums insured on there?" Mr S answered that these were fine. The adviser noted that they had half a million on the buildings.

As some details were changed, Insurance Factory went back to its panel of insurers to obtain new quotes. The adviser spoke with Mr S later that day and confirmed the same insurer would offer cover, but the premium had increased. The policy went ahead, but the documents sent to B stated the buildings sum insured was £450,000 instead of £500,000. Insurance Factory accepted it had made an error here, and the sum insured ought to have been £500,000 as this was the figure Mr and Mrs S had accepted.

I noticed that Insurance Factory had increased the 2022 sum insured by over 21% compared to the previous year to reach a figure of £500,000. I asked Insurance Factory for more information about this, given that this was significantly higher than the previous 2-3% annual increases. Insurance Factory said its staff member did this based on his experience of inflation at the time. Given the increased costs of building materials at this point due to inflation, that doesn't seem unreasonable.

I also asked Insurance Factory what information the insurer had asked it in 2022 about the sum insured. Insurance Factory confirmed the insurer asked for the sum insured for 'Buildings, including landlords fixtures and fittings'. I'm satisfied Mr and Mrs S were made aware by Insurance Factory this was the information the insurer wanted to know, as it provided them with the quote.

However, Insurance Factory did make an error with the sum insured, as it had intended to put in place £500,000 instead of £450,000. Although it covered the additional premium charged for the extra £50,000 worth of cover going forwards, that doesn't place Mr and Mrs S in the position they would have been in if the error hadn't been made.

Insurance Factory asked the insurer how much of the claim would have been paid if £500,000 of cover had been taken out. The insurer confirmed that the claim settlement would have been 68.9% instead of the 65.7% paid. I therefore intend to find that Insurance Factory should pay 3.2% of the claim, plus interest. It can deduct the additional premium that

would have been charged in the 2022/2023 policy year from this.'

I asked both parties for any further comments they wanted to provide before I made a final decision.

Insurance Factory said it didn't have any further points to add.

Mr and Mrs S responded to say they had actually purchased the property in 2013, and that an adviser from a company that Insurance Factory later took over came to their premises and conversations took place about sums insured. They think they should have been advised to obtain a professional valuation of the property.

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.

Mr and Mrs S have clarified that they purchased the property in 2013. Although I understand they took out the policy with a financial business that was later taken over by Insurance Factory, it seems Insurance Factory only holds information from 2017. So it remains the case that I don't know why the initial sum insured was selected, or what this was based upon. I therefore can't conclude that Insurance Factory made any errors here.

Since it isn't in dispute that Insurance Factory made a small error with the sum insured for the 2022/23 policy year, I remain satisfied that it should pay 3.2% of the claim, plus interest (for the same reasons as set out in my provisional decision).

My final decision

My final decision is that I uphold this complaint. I require Insurance Factory Ltd trading as Insurance Choice to do the following:

- Reimburse Mr and Mrs S 3.2% of the amount they paid the insurer towards the repairs (it can deduct the additional premium that would have been charged in the 2022/2023 policy year for the extra £50,000 of cover from this). Interest should then be added at the rate of 8% simple per annum from the date they made the payment/s to the date of settlement.*
- Pay Mr and Mrs S 3.2% of any cash settlement payments paid by the insurer that were proportionately reduced. Interest should then be added at the rate of 8% simple per annum from the date the payments were made by the insurer to the date of settlement*.

* If Insurance Factory considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr and Mrs S on B's behalf how much it's taken off. It should also give them a certificate showing this if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S on behalf of B to accept or reject my decision before 19 March 2024.

Chantelle Hurn-Ryan
Ombudsman