

The complaint

Mr W is a trustee of a trust (H). He says HFIS Limited mis-sold a legal expenses insurance policy covering a property owned by H. This complaint is brought by a representative, Mrs F.

What happened

In October 2021 Mrs F contacted HFIS and asked if it could quote for buildings insurance for H's property which she provided further information about. HFIS obtained a quote which included cover for property damage and legal expenses. Mrs F went ahead with that policy and cover renewed the following year.

Subsequently Mrs F contacted HFIS as she was unhappy with the progress of a claim she'd made under the legal expenses section of cover. That claim was then declined by her insurer because it said a dispute over service charges wasn't covered by the policy. A complaint about that and the service provided by the insurer is being considered as part of a separate complaint to our service.

Mrs F complained to HFIS it had sold a policy that wasn't suitable for H's needs. HFIS didn't agree it had recommended an unsuitable policy. It said it had drawn H's attention to the limitations of the policy prior to cover being arranged. It accepted there had been some administrative errors at the point of sale but said these had been immediately rectified.

Our investigator thought the fact the legal expenses policy didn't cover service charge disputes was something HFIS should have drawn to Mrs F's attention given H was the freeholder of the insured property. And it hadn't done that. He also thought it likely H could have obtained a policy which did cover claims like this. But the evidence suggested the claim it made to its insurer was one where the issue existed prior to the start of this policy. So even if H had taken out an alternative policy it was unlikely that would have covered the service charges claim it subsequently made. He didn't think the decline of that claim was something HFIS should be responsible for. But he said it should pay the trustees £350 in recognition of the distress and inconvenience it caused them.

Mrs F didn't agree although her comments appear more relevant to the separate complaint against the insurer of the policy. HFIS didn't agree either. In summary it said:

- It didn't accept the policy was unsuitable based on the demands and needs of H it had established as part of its initial fact find (and which were based on the information H provided). And it didn't agree it should be responsible for any consequential losses H had incurred as the at the point the policy was taken out the event in question had already taken place.
- It said it had provided details of the policy exclusions and thought its responsibility was to highlight those which differed from the usual market or were significant based on the information which had been identified from the fact find. And, even if H had considered alternative cover for things the legal expenses policy didn't cover, that didn't mean it wouldn't have taken out the core policy through HFIS.

So I need to reach a 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.

HFIS says it recommended this policy. The relevant rules (the Insurance Code of Business Sourcebook - ICOBS) say that *"a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgment."* In doing so it should establish the customer's demands and needs by *"using information readily available and accessible to the firm and by obtaining further relevant information from the customer, including details of existing insurance cover"*. The rules also require it to provide customers with clear, fair and not misleading information about the policy it's selling.

In this case, prior to recommending the policy, HFIS sent Mrs F a set of questions and I understand based its understanding of H's requirements on the responses she provided. I can see HFIS subsequently produced a 'Demands and Needs' statement which identified H required cover including buildings insurance and liability insurance.

I've not seen anything to show any of the significant exclusions and limitations of the property damage policy it recommended meant it was unsuitable for H. But I appreciate the separate legal expenses policy did exclude *"any disputes that arises from or relates to a disagreement with your tenant over payment or non-payment of service charges..."*

I've reviewed the information Mrs F provided and on which I understand HFIS based its recommendation. She explained the property consisted of *"residential self-contained flats"*. And she said these were *"let on assured shorthold tenancies to 8 flats and with 4 long leaseholders"*. She also referenced a historic issue relating to a previous dispute with one of the tenants. Given all that I think it's fair to say the exclusion the legal expenses policy contained for service charge disputes is something that would have been of interest to H.

And HFIS says its policy is to highlight exclusions that were significant based on information gathered from the fact find. So I think it could reasonably have been expected to draw H's attention to the fact the legal expenses cover it was recommending excluded disputes relating to a service charge. I've therefore thought about what H would have done if that had happened and whether, but for what HFIS got wrong, it would have had cover in place for the claim it subsequently made.

I don't think it's in dispute there are policies available H could have obtained which would, in principle, have provided cover for a dispute of this nature. But I'm not persuaded that's something H would have done. From Mrs F's email correspondence with HFIS it seems the cover it was interested in taking out was for the property itself. Mrs F made no specific reference to legal expenses insurance being required in her emails to HFIS and that isn't referenced in its 'Demands and Needs' statement. I think it's therefore likely H would have gone ahead with this policy even if it had known more about the limitations of the legal expenses cover.

Even if H had decided to take out cover elsewhere which would have covered a dispute over a service charge, I think it's unlikely that would have covered the subsequent claim it made about this. I've listened to calls Mrs F made to HFIS and from what she says it seems clear the service charge dispute with the leaseholder which led to the claim was long standing and pre-dated the start of this policy. I think it's unlikely, even if H had sought cover elsewhere, it would have been able to find cover for this pre-existing dispute at a price it was prepared to pay. So I agree with HFIS it doesn't need to take responsibility for the claim H made. And, as I've said the question of whether that's been fairly declined by H's insurer is being separately considered by our service.

Nevertheless, I do appreciate H's trustees will have been caused some distress and inconvenience on realising that a claim they thought their policy would cover had been declined by their insurer on the basis of an exclusion that hadn't been drawn to its attention. And I think that could have been avoided if HFIS has done that during the sales process (and for the reasons I've explained I think it should have done).

I've also taken into account that this was in itself a difficult and stressful time for the trustees as they were also dealing with an underlying legal claim that was incurring significant legal costs. That isn't of course something HFIS is responsible for but I do think it will have exacerbated the impact on the trustees of its error. Taking all of that into account, and on balance, I think the £350 our investigator recommended is a reasonable way of recognising the impact on the trustees of what HFIS got wrong.

My final decision

I've decided to uphold this complaint. HFIS Limited will need to put things right by paying the trustees of H £350.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 1 July 2024.

James Park
Ombudsman