

## **The complaint**

A, a private limited company, says Exchequer Risk Management Ltd (ERM) mis-sold them an insurance policy to cover their club. Ms M is a director of A, and as she has brought the complaint I will refer to her for ease of reading.

## **What happened**

Ms M took a policy out with ERM, an insurance intermediary (or broker). She says she told them A was a leaseholder of the premises being insured and that they arranged insurance cover for her.

Unfortunately, Ms M had to claim on the policy. Ms M's claims were initially rejected by the insurer (a different company from ERM) on the basis that she had no insurable interest in the premises, i.e. that was the responsibility of the freeholder, not the leaseholder.

Ms M felt that was unfair because she'd told them she was the leaseholder, so she doesn't think the policy should've been sold to her. She asked for a refund of premiums.

It isn't clear why, but the insurer later paid the claims. However, Ms M still felt the policy had been mis-sold to her and still sought a refund of premiums.

An investigator here felt that, as the claims had been paid, there was no case for ERM to answer. Because in the end, the policy had done what Ms M had wanted it to.

Ms M didn't agree, so the case has been passed to me to decide.

## **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 can understand why Ms M was aggrieved at A's claims being declined, she took out a policy which she expected to provide the cover required. But when she tried to claim on it she was told she had no insurable interest.

But the insurer later agreed to cover the losses incurred by A. So, the policy did end up providing the cover Ms M expected. I also understand that the value of the claims exceeded the cost of the policy.

The reason that is important in a case like this is because we generally look to put customers back in the position they'd have been in, had nothing gone wrong. I don't know what was discussed during the sale of the policy as full records no longer exist. But, and I'm not saying it was, but even if the policy had been mis-sold A has benefitted from that. That's because, even if I were to conclude it had been mis-sold, the remedy would be for the policy to be deemed as having never existed.

That means any claim payments received would be due to be paid back to the insurer. So, as claims have been paid, and those claims exceed the cost of the policy, a finding of mis-

sale would be of less benefit to Ms M than has already been received.

Overall, Ms M has not lost out as a result of any alleged mis-sale of the policy. And has instead benefitted from the policy that ERM arranged for A.

### **My final decision**

It is my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 18 August 2023.

Will Weston  
**Ombudsman**