

## **The complaint**

G, a limited company represented by its director Mr B, has complained about its commercial property broker, Butterworth Spengler Commercial Limited.

## **What happened**

Mr B used broker A to arrange cover for a building G owned, which comprised let residential flats and commercial office space. In 2021 an existing policy for G with insurer N was coming up for renewal. Broker A had been able to obtain cover via N previously due to a link it had with another business. But the other business withdrew from the market, meaning broker A no longer had access to N.

Broker A told Mr B that it was having trouble finding competitive cover – referencing the lowest priced quote it had found to be about 50% more than what G had paid the year before. Broker A said it could introduce Mr B to Butterworth, with Butterworth having access to a wider market. Mr B understood that Butterworth would find him a policy with “no less a degree of cover”.

Butterworth received some details from broker A. It used those details to search for a quote for G. It then emailed a quote to broker A and Mr B stating this was the “best quote” it could find. Mr B replied directly to Butterworth directing it to go ahead with the policy. The policy arranged via Butterworth began in autumn 2021. That same policy renewed a year later in 2022.

In March 2023 there was a fire at the building. Mr G has reported that all the residential flats were affected and became immediately uninhabitable. He’s said that his insurer wouldn’t pay any loss of rent for the flats because none was included in the policy. He noted that the policy with N would have covered G and felt Butterworth had failed G by providing a policy with less cover than it had before. Butterworth wasn’t persuaded it had done anything wrong – it said it had relied upon the detail provided by broker A, and Mr B had been sent a copy of the proposed cover which he’d agreed to.

Mr B complained to the Financial Ombudsman Service. He said he had now lost out with no rent having been paid since the fire, and with the insured repairs not expected to conclude until January 2025. Meaning his loss would continue in the meantime as the flats would not be re-let until work was done.

Our Investigator noted that Butterworth, in arranging this policy, had undertaken an advised sale. She felt that, in doing that it should have made sure to speak to Mr B, that because it had not it had provided a policy which didn’t meet G’s needs. She felt it should step in to compensate G for lost rental income.

Butterworth said it did not think this was fair, it said it had acted based upon information received and it had sent its best quote to Mr B and broker A for consideration. It said neither broker A nor Mr B had raised any concern about the content and nor had Mr B asked it to assist in checking the cover met his needs. Butterworth said it had never told Mr B it was providing a quote for cover like that G had before.

The complaint was referred to me for an Ombudsman's consideration. I wasn't minded to uphold it. So I issued a provisional decision, my findings of which were:

*"Ideally Butterworth would have spoken directly to Mr B – but, in this specific situation, I'm not convinced that its failure to do so amounted to it breaching its duty to make sure it was offering cover that met G's needs. And I bear in mind that whilst this was an advised sale by Butterworth, it was in respect of a commercial customer, utilising a broker as a representative and where both of which had a chance to check that the cover did meet G's needs. So I'm issuing this provisional decision to share my views with both parties.*

*The certificate of cover for the policy G had with N showed the following cover was provided: "Commercial loss of rent (12 months) Alternative Accommodation – 33.3% of Sum Insured (36 months)".*

*The policy booklet explains that there is a policy extension available regarding residential properties. That is to say that whilst the general cover for loss of rent is restricted to twelve months, if a residential property is uninhabitable due to damage there will be cover for any rent lost for a period of up to 36 months, to a value up to 33.3% of the sum insured. With it also being possible to use this extension to cover the cost of alternative accommodation for the residential tenants.*

*Mr B says he was given to believe that this was the extent of cover Butterworth was arranging for him. I haven't seen anything to make me think Butterworth specifically agreed with Mr B that it would be looking for cover exactly like that which he had before. Nor have I seen that it told broker A it would do this. What I have seen is an email from broker A to Butterworth which says broker A is looking for the best quote available, with its "presentation below" as to what cover is needed.*

*In this situation broker A is acting for G/Mr B. So anything broker A put forward was, effectively, what G/Mr B was putting forwards. This email then, effectively, contained the detail of what G needed in terms of cover.*

*The email said that 12 months loss of rent cover was required. But no detail was shared about any need for alternative accommodation cover as provided by the extension to cover on N's policy from the year before.*

*I understand that Butterworth then used the detail in that email to search the market available to it to find the best quote for G. I can see that Butterworth then emailed both broker A and Mr B, attaching policy details, stating the detail attached was the "best quote" found. I also see that Mr B replied directly to Butterworth accepting the cover.*

*I've not seen anything to make me think Butterworth reasonably needed to do more to ascertain G's needs, such as talk directly with Mr B. Nor have I seen that it was ever given any detail which should reasonably have put it on notice that the cover it was proposing was not suitable for G. I am aware that after Mr B had accepted the cover proposed, Butterworth did have the opportunity to consider the exact policy cover offered by N. I know it did not consider that detail. However, I note that, by the time it received that detail, it had presented a quote for cover to Mr B and broker A, which Mr B had considered and accepted as being suitable for G in terms of price and coverage. I wouldn't have expected Butterworth to actively second guess that decision.*

*As noted above, the policy proposed by Butterworth, was considered and accepted with no question from Mr B. With it also renewing the following year. With broker A also seeing the quote before the policy inception and being involved again at renewal. But it was only when*

*an issue arose with the insurer following the fire that Mr B became concerned that Butterworth had not arranged suitable cover for G.*

*I note Mr B has said the current insurer won't provide any loss of rent cover at all. Whilst I'm not considering the insurer's actions here, I'm not sure why it might have said that because the policy does appear to contain cover for twelve months of lost rent. Which, as I've noted, was what Butterworth was asked to find.*

*Having considered everything, I don't think Butterworth failed G here – it was told what G wanted in a policy, and it sought cover which met those needs. And even if Butterworth should have spoken to Mr B direct, to ask him more questions, I'm not persuaded that would have materially changed anything.*

*I say that not least because it's far from clear whether Mr B could have obtained a comparable policy at a price acceptable to him. The only option of cover which was even similar to what G had before was found by broker A before it reverted to Butterworth to find a competitive quote. That option was at a far increased price and only offered 20% of the sum insured for lost rent/alternative accommodation for residential tenants. I know broker A has said if it was aware Butterworth was providing a policy without any cover in that respect at all, it would have gone back to the insurer which had provided that quote in order to negotiate a higher level of cover. Or it may have sourced other cover elsewhere. But I think if those had been likely viable courses of action for finding G cover, broker A would have done that without reverting to Butterworth in the first place. And I know Butterworth has said it struggled to find even the level of cover it did due to a limited interest from insurers.*

*In all of the circumstances here then, I think Butterworth acted reasonably and in line with the detail forwarded to it by G's representative – broker A. I'm not persuaded then that Butterworth failed G when searching for cover, proposing a policy to it, or then by arranging that policy when Mr B instructed it to go ahead."*

Butterworth did not respond to my provisional decision. Mr B did, sharing an email chain showing a response to my findings from broker A.

Within the email chain Mr B said that he had not received any renewal documents – the only time he received documents for 2022 was after the fire, he just thought his policy from 2021 had continued. Broker A said that documents should have been sent with a full review occurring at renewal – the fact this hadn't happened must have been some oversight on the part of Butterworth. Broker A said it didn't feel Butterworth had been entirely transparent during the complaint process and set out detail explaining this view.

Broker A explained:

- It had been able to offer cover, but at a higher premium, so it sought to resolve that by seeing if cover at a lower premium could be obtained elsewhere.
- There are strict rules and contractual terms, including confidentiality clauses which apply to broker to broker dealings like this – two brokers cannot advise the client. Broker A said the contract between it and Butterworth prevented it (broker A) from advising Mr B and Butterworth hadn't made this clear in its submissions.
- It had set up a contract with Butterworth specifically to deal with G's policy. As well as email correspondence, phone conversations took place – the residential flats and receipt of rental income were discussed. The need for residential cover was obvious and Butterworth should have made further enquiries with Mr B.
- Butterworth had seen N's policy before it expired – before G was moved to the policy Butterworth arranged. So broker A said Butterworth should have checked everything.

- Butterworth should have completed a full review of G's needs at renewal in 2022 – it is meant to work to earn the commission it gets from insurers.

### **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 note that Mr B has now said he did not receive any renewal documents – that he thought the policy just continued. But I note that in September 2022 Mr B was involved in conversations about whether there would be a policy provided via Butterworth for the coming year. I'm aware there had been a risk assessment visit to the property and that amendments to the cover had been proposed. I've seen an email from Mr B where he says he is happy to "go back on cover". So I'm not persuaded that Mr B, at that time, believed there was an entirely seamless and simple continuation of the initial contract. And I'm not persuaded Mr B, who has said he carefully considered his policy documents in 2021, would have agreed to cover being placed without having been given the chance to see all the relevant details.

I've considered broker A's explanations. I note that no evidence was provided in support of the explanation – no call recordings or notes for example. I appreciate that there was likely a contractual relationship between the two brokers, and G, even as a commercial customer, shouldn't reasonably find itself stuck in the middle of any complications that creates. But, as a commercial customer, even a commercial customer choosing to use a broker, G has some responsibility for ensuring the policy agreed meets its needs. In that respect Mr B, acting on G's behalf, had the opportunity to consider the cover when it was first arranged and to query it again when it renewed.

Having considered the matter again, taking into account Mr B's reply, including the explanation provided by broker A, my view on the complaint hasn't changed. I'm satisfied that Butterworth acted reasonably to arrange a policy for G, in line with the detail forwarded to it by broker A. I'm also satisfied that Butterworth did not fail G when searching for cover, proposing a policy to it, or then by arranging that policy when Mr B instructed it to go ahead.

### **My final decision**

I don't uphold this complaint. I don't make any award against Butterworth Spengler Commercial Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 3 May 2024.

Fiona Robinson

**Ombudsman**