DRN-4044977

The complaint

Mr M complains about an error made by Marsh Ltd when setting up his commercial property owners insurance policy.

What happened

Mr M took out the policy through Marsh. He later made a claim to the insurer as he said storm damage had been caused to the front of the property.

The insurer assessed the claim, and noted that when Mr M had taken out the policy, he hadn't declared that the property had a flat roof. It said if it had known this, it wouldn't have been able to offer the policy. It said it would avoid the policy from the start and return the premium Mr M had paid. Though it also said it wouldn't have covered the claim anyway, as it thought the damage was due to wear and tear, rather than the storm.

Mr M said that Marsh, acting as his insurance intermediary, had been aware that the property had a flat roof. Marsh accepted this was correct, and that it should have passed this information onto the insurer when it had arranged the policy for Mr M.

An agreement was reached between Mr M, Marsh, and the insurer, whereby the insurer agreed not to avoid the policy, so long as Mr M took out cover elsewhere and withdrew his claim. The policy was therefore cancelled as of August 2022 (instead of avoided from the start) and Marsh arranged for the property to be covered under a new policy with another insurer.

Mr M complained to Marsh about its failure to tell the insurer that the property had a flat roof. He wanted Marsh to pay the claim.

Marsh issued its final response in February 2023. It apologised for its error. However, it didn't think Mr M had been disadvantaged by this, because the insurer hadn't avoided the policy. Also, the insurer had determined the damage was due to wear and tear rather than a storm. Marsh offered Mr M £150 compensation for any inconvenience he had been caused.

Mr M didn't accept Marsh's offer of compensation, and asked this Service to look into his concerns. Our investigator did so, but didn't uphold his complaint. She didn't think Mr M had been caused any financial loss by Marsh's error.

Mr M has asked for an ombudsman's decision, and so the matter 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.

It's not in dispute that Marsh made an error by failing to tell the insurer about the flat roof. When a business makes an error, the aim of this Service is to place the complainant back in the position they would have been in (as far as possible), if not for the error.

Mr M had only agreed to withdraw the claim from the insurer because of Marsh's error. So, if the claim would have been payable, then Mr M would have been disadvantaged by Marsh's error, and I would require Marsh to pay compensation equivalent to the claim amount.

The insurer had already carried out an investigation into the claim and has provided its confidential report to this Service. So I think there's sufficient evidence for me to make a finding on whether or not a claim would have been payable.

It's not in dispute there was a storm at the time the damage happened, and I'm satisfied that was the case.

Damage was caused to the fascia and signage on the front elevation. The storm tore the light fittings and signage from the fascia (there's some CCTV evidence of this). I'm satisfied the damage claimed for was consistent with damage that a storm typically causes.

The remaining point for me to consider is whether the storm was the main cause of the damage, or if it merely highlighted an existing problem.

I've considered the comments provided by Mr M's contractor. They said the items claimed for were affected by the storm. And whilst they accepted that some of the fascia was in need of decorative attention, they thought there had been significant damage caused by the storm.

The report provided by the insurer explains that Mr M's property occupies the ground floor of the property, and there is a restaurant located on the first floor. The loss adjuster said the property was in a generally poor state of repair at the time of the inspection. They concluded the damage was due to wear and tear to the front of the property, together with a lack of maintenance.

I've looked at the photos of the front elevation before the storm, and it's clear there was some existing wear and tear to the signage. I think the insurer's loss adjuster also made a reasonable point that the restaurant on the first floor would have been more susceptible to the wind (as it was higher), yet there was no damage to the restaurant.

This supports the insurer's view that there was already wear and tear to the signage of Mr M's property and that the storm merely highlighted this. On balance, I think the insurer's findings are more persuasive than Mr M's contractor's opinion, and that the storm wasn't the main cause of the damage. I therefore find that Mr M hasn't suffered a financial loss as a result of Marsh's error.

Marsh offered Mr M £150 compensation for any inconvenience he was caused. Given that the policy wasn't avoided by the insurer as Marsh accepted responsibility for the error (and Marsh arranged cover elsewhere for Mr M), I think Mr M was caused minimal inconvenience by the matter. I find that £150 compensation was reasonable in the circumstances.

My final decision

Marsh Ltd has already made an offer to pay Mr M £150 compensation to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Marsh Ltd should pay Mr M £150 if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 December 2023.

Chantelle Hurn-Ryan
Ombudsman