

## **The complaint**

Mr A complains on behalf of the partners of C, a partnership, about C being overcharged commission by Marsh Ltd trading as Marsh Commercial ("Marsh Ltd") when renewing its commercial property insurance.

The complaint was referred by Mr A, on behalf of C. So, for ease of reference, I will refer to any actions taken, or comments made, by any of the partners as "Mr A" throughout the decision.

## **What happened**

Mr A says C has taken out insurance for a commercial building owned by C from 2003 to 2021, with Marsh Ltd acting as broker. Mr A says, initially Marsh Ltd claimed their commission was between 10-12% of the insurance premium charged by the insurer. Mr A says, in 2015, during a meeting with a representative from Marsh Ltd, they explained their commission would now be 14%. Mr A says, it then came to light in 2021 that Marsh Ltd's commission was significantly higher than what he'd been told - and was in the region of 40%. So, C complained.

Marsh Ltd responded and explained they sent C renewal terms in 2015, and this was agreed by C. They noted C had since been sent details of the commission paid and understand Mr A is concerned the commission charged by Marsh Ltd was higher than the 14% he was informed about during the meeting in 2015. Marsh Ltd said there's no minutes for the meeting in 2015 so they've been unable to establish what was discussed. Marsh Ltd said, they accept though that Mr A recalls being told they earned 14% commission. They said the 14% commission amount is incorrect and they apologised Mr A was given inaccurate information. Marsh Ltd explained they note C has since been provided with their commission earnings – and from 2021 a broker fee applied rather than commission.

Our investigator looked into things for C. She thought Marsh Ltd hadn't treated C unfairly in charging the level of commission they did, and there was no evidence they'd agreed to charge 14% commission. C disagreed so the matter has come to me for a 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.

Having done so, I've decided not to uphold the complaint. I understand the partners at C will be disappointed by this but I'll explain why I have made this decision.

The role of this service when looking at complaints about commission charges isn't to tell a business what they should charge or to determine a commission level for the services they offer. This is a commercial judgement and will generally be agreed between a broker and the insurer. But we can look to see whether we agree a consumer has been treated fairly – so is there anything which demonstrates they've been treated differently or less favourably. If we think a consumer has been treated unfairly, we can set out what we think is right to address this unfairness.

The first point I've considered is what Marsh Ltd were required to do when selling the policy. I've looked at renewal quotation reports provided by Marsh Ltd to C in advance of the renewal date – and I've taken the 2015 report as an example. This sets out a 'capacity and services' section and says Marsh Ltd will act as C's agent in sourcing a suitable policy and placing the insurance. The policy was sold on an advised basis – that means Marsh Ltd are recommending (or advising) that C buy a particular policy. The report includes a 'Statement of demands and needs' – together with a recommendation from Marsh Ltd.

Looking at the report, I've matched this to the corresponding policy schedule, and I'm satisfied the policy covers the listed demands and needs. Marsh Ltd have also set out their reasons for recommending the particular insurer. The report says C has been with this insurer since 2003 and there's a strong willingness to retain C with no rates increase being implemented. Marsh Ltd say, wherever possible, they believe that maintaining a relationship with an insurer is important and should benefit C in the long term. The report also sets out how Marsh Ltd made their selection, and says, they decided to approach one insurer for this specific type of insurance – but C is able to ask them for a list of insurers they use. Taking this into account, I think Marsh Ltd have acted in line with the requirements and agreements set out in the report.

Turning now to the specific issue in relation to the commission charged. My starting point is Marsh Ltd's terms of business agreement, this sets out their contractual relationship with C. Under a section headed 'Our remuneration and other income' it says, "*We are usually remunerated by commission from your insurer(s) for our insurance broking services*" and "*You are entitled, at any time, to request information regarding any commission which we may have received as a result of placing your insurance business.*" There's no dispute here between the parties around Marsh Ltd charging commission – instead the dispute relates to the amount they've charged, and more specifically, this being more than what Mr A says he was led to believe.

I've started by considering whether there was a requirement for Marsh Ltd to disclose the details of their commission. I note Mr A says C was only given disclosure of Marsh Ltd's commission in 2021 after a complaint was raised. Mr A says this is unfair as brokers and insurers are required to be more transparent regarding their charges. The Insurance Conduct of Business Sourcebook ("ICOBS") covers commission disclosure for commercial customers. ICOBS 4.4.1 R sets out the commission disclosure rule and says, "*An insurance intermediary must, on a commercial customer's request, promptly disclose the commission that it and any associate receives in connection with a policy.*" So, this doesn't require a broker to disclose the amount of commission unless they're asked.

Marsh Ltd confirm they have no evidence C requested any details of their commission in 2015, or any point prior to this. And I've seen, when requested by C in 2021, Marsh Ltd sent C details of their commission. So, I can't say Marsh Ltd have acted unfairly here. There was no requirement for them to disclose their commission rate unless requested by C – and once this was requested, Marsh Ltd acted in line with the rules in disclosing details of their commission.

The next point I've looked into is C's concern about the amount charged. Our service doesn't have the power to set a commission rate for all brokers to follow, but we can look to see whether a consumer has been treated fairly – and if they haven't, we can direct them to put things right. In this case, Mr A believes C hasn't been treated fairly as he claims Marsh Ltd originally claimed their commission was between 10-12%, and then during a meeting in 2015, Marsh Ltd claimed it was now 14%. Marsh Ltd have provided details of the commission they received from the insurer between 2003 to 2020 – and details of the broker fee they received in 2021. Marsh Ltd explain the commission is usually calculated as a

percentage of the insurance premium and the percentage will have been contractually agreed with the insurer.

Looking at the premiums paid by C and applying the commission paid to Marsh Ltd, it's clear the commission percentage was greater than the range of 10-14% Mr A says he was led to believe. For example, in 2012, and at the point Mr A says he believed the commission was 10-12%, the commission earned by Marsh Ltd was £2,549.97. From the calculations provided by Mr A, it appears this represents 39% of the premium. And in 2015, when Mr A says he was led to believe the commission was 14%, the commission earned was £2,625.49. From the calculations provided by Mr A, it appears this represents 43%. I can see Marsh Ltd explain the commission set by the insurer was always 30% of the net premium, and they believe the reason C's calculation of percentages seem higher is because C isn't applying the net premium when doing the calculation. Looking at the calculations provided by C, I think that is the case.

For 2012, C are using a premium of £6,530.17 but the net premium for that year was £8,519. And for 2015, C are using a premium of £6,129.51 but the net premium was £8,755. I've calculated the commission amount against the net premium and for both 2012 and 2015, the commission is 30%. That said, while this is lower than the percentage amounts calculated by C, it's still higher than what Mr A says he was led to believe, so I've looked into whether C has been treated unfairly here.

I've looked at this in two parts, firstly, whether I'm satisfied Marsh Ltd's commission of 30% is broadly proportionate to the work carried out. And secondly, whether Mr A was led to believe the commission was lower than 30%.

I've already mentioned, above, the work which Marsh Ltd carried out as set out in the 'capacity and services' section of the report. In addition to this, I can see they negotiate with the insurer on behalf of C. For example, in 2015 they negotiated with the insurer to secure level terms and rates, and again in 2019 they negotiated a reduction in the price initially offered by the insurer. And, from reports and emails I've seen, Marsh Ltd also search the market to find the most competitive policy for C which meets its demands and needs. So, Marsh Ltd have demonstrated they've carried out work for the commission - and from the information I've seen, I can't say this wasn't proportionate to the 30% they received.

I've also considered whether Marsh Ltd were treating C unfairly by recommending a particular insurer based on the commission rates they could achieve. I haven't seen any evidence Marsh Ltd's recommendations were based on the commission rates or of them placing their own interests above that of C's. I've seen information which shows Marsh Ltd made it clear what their market search involved and what their recommendation was based on. I've referred to a few examples here. In 2014, they searched the market and found their recommended insurer to be most competitive and they explain why other insurers wouldn't match this. In 2015, Marsh Ltd managed to secure level rates to the previous year and it remained competitive.

In 2019, their recommended insurer offered the lowest price. And, Marsh Ltd also explain they tried to obtain quotes from other insurers, but they weren't happy with there being unoccupied units in the building. They also explain the risks associated with another insurer potentially carrying out a survey and requesting additional risk improvements to the ones already in place with the existing insurer. In 2021, they've listed nine insurers who declined to offer a policy and one which was uncompetitive. Given the information I've seen, I can't say Marsh Ltd have treated C unfairly here.

Turning to the next point, I haven't seen any evidence, other than Mr A's and another partner's comments, that Marsh Ltd informed C their commission was 10-12%. So, I can't say Marsh Ltd have treated C unfairly in relation to the commission earned prior to 2015. In their complaint response, and response to our service, Marsh Ltd say the 14% commission percentage is incorrect and they have no evidence of this being discussed with Mr A in 2015. Given there's no evidence, I've looked at the information I do have to decide what I believe, more likely than not, has happened here.

There's no dispute that a meeting took place between C and Marsh Ltd in September 2015. The information shows an exchange of emails to arrange a meeting for Marsh Ltd to check with C whether the renewal terms are accurate. Following the meeting, Marsh Ltd email C with an updated renewal questionnaire setting out changes they agreed. A renewal quotation report is then sent to C and is followed by an email exchange with C agreeing to renew based on Marsh Ltd securing agreement from the insurer to charge the same price as the previous year. The policy is then renewed.

There's no reference here to there being any discussion around commission, or 14% being communicated as the agreed level of commission. I note Mr A says, while the meeting in 2015 was to discuss renewal terms, it's obvious this would've included how Marsh Ltd are paid and their commission level. Mr A says he trusted the information given to him and, had he been made aware of the actual commission percentage, he would've asked Marsh Ltd to change to a broker fee charge instead of commission – something which was arranged after C complained in 2021.

I can see Mr A has also provided a statement from each of the other partners. One partner who attended the meeting says, when asked by Mr A about their commission, the representative from Marsh Ltd said it was 14%. The other partner says, he met with the other two partners a few days after the meeting, and they confirmed to him they'd been informed by Marsh Ltd their commission was 14%. I accept these two statements corroborate Mr A's own statement and testimony on what was discussed at the meeting, but I think it's important to weigh up all the information I have.

I note Mr A says it was obvious the meeting would include a discussion around Marsh Ltd's commission. From this, I'm taking it that Mr A suggests this formed an important part of the discussion. Following the meeting, Marsh Ltd sent a renewal quotation report which sets out a breakdown of the premium and all information relevant to the policy. There's no mention of the commission percentage in this report or in the email which attached the report. Even after this, Mr A calls Marsh Ltd and also sends an email, but he makes no reference to the commission he says was discussed at the meeting. In the email, Mr A confirms he accepts the renewal terms subject to Marsh Ltd securing the same premium as the previous year. I think it's fair to conclude, had the commission discussion formed an important part of the meeting – as Mr A says it did – I think it's reasonable to expect Mr A would've confirmed at some point in the post-meeting communication that he understands, and has been informed, the commission being charged is 14%. I believe it's reasonable to expect this would've been mentioned by Mr A in his communication which followed the meeting, particularly as it isn't mentioned in the report or emails sent by Marsh Ltd.

Looking beyond the contemporaneous evidence around the meeting in 2015, I've also thought carefully about the policy years which followed. The renewals between 2016 to 2020 followed a similar pattern. Although it's not clear whether there was a meeting for each of these years, I've seen information which shows a renewal quotation report was sent each year with no mention of what the commission level was. I can't see Mr A queried the commission level at any point or even asked Marsh Ltd to confirm whether the commission was still 14%. I think it's fair and safe to conclude, had Mr A been informed in 2015 the

commission level was 14%, I believe it's reasonable to expect he would've at some point between 2016 to 2020 queried whether the commission was still 14%.

In order to decide this complaint, I've weighed up the evidence to determine what I find most persuasive. On the one hand, while I accept the partners have provided a consistent account of events, I can't disregard the fact that the statements are a recollection of an event which occurred nearly seven years before. On the other hand, there's contemporaneous evidence which shows communication between C and Marsh Ltd before, and more importantly, after the meeting where there's no reference to 14% commission being discussed. And, as mentioned above, given that it's not mentioned by Marsh Ltd, on the basis Mr A says it was an important factor, I would've expected this to have been mentioned by him in the communication that followed the meeting – even if it was to confirm what he says he was told by the representative. So, in weighing up all the information I've seen which includes both parties' testimony, and basing this on the balance of probabilities, I believe it's more likely than not, Marsh Ltd didn't inform C that the commission was 14%.

I acknowledge Mr A's point that Marsh Ltd have partially upheld C's complaint about the inaccurate information given – and I note Mr A says this means they agree the partners at C had been misled. The complaint response says *"Unfortunately there are no minutes on our records in respect of the meeting in 2015, and therefore I have been unable to establish precisely what was discussed. However, I accept that you recall being advised by [representative] that we earned 14% commission on the policy at that time. The commission amount of 14% is clearly incorrect and I can only sincerely apologise that you were given inaccurate information."* I do acknowledge why Mr A believes this suggests Marsh Ltd accept they'd made an error, but I'm not persuaded this is an unequivocal acceptance that they provided misleading information about the commission.

I say this for two reasons. Firstly, in the complaint response, and in their response to our service, Marsh Ltd say they haven't been able to establish with any certainty what was discussed. This suggests they can't say for definite that Mr A was informed the commission would be 14%. Secondly, I can see our investigator has specifically asked Marsh Ltd whether they've seen any information to suggest 14% commission was discussed. Marsh Ltd have responded to say they haven't been able to trace any records which suggest the commission rate was discussed in 2015. So, while I agree Marsh Ltd have partially upheld the complaint, this appears to be worded in a way which suggests they accept Mr A recalls being told the commission was 14% but, in their response to our service, they say there's no evidence this discussion took place.

I understand the partners at C will be disappointed with my decision. I do wish to reassure them I've read and carefully considered everything they've sent in, but if I haven't mentioned a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

### **My final decision**

For the reasons I have given, it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 12 September 2023.

Paviter Dhaddy  
**Ombudsman**