A broker’s duty of care remains, irrespective of the cost of delivery. GRAEME TRUDGILL examines a recent case which has important implications for brokers

A judge in the Royal Courts of Jersey has awarded damages of £518,000 (exclusive of costs) against a leading insurance broker and has criticised its quote-engine sales process as being “more in the interests of the broker than in the interests of the policyholder.”

Following closely the reasoning of Mr Justice Steel in the Environcom case in 2010, in Café de Lecq Limited v R.A. Rossborough (Insurance Brokers) Limited the court found the broker had negligently failed to draw its client’s attention to the terms of, and the consequences of not complying with, a key warranty.

The claim concerned a fire at the Jersey beach Café de Lecq, caused by an overheating deep fat fryer, which resulted in the cafe being totally destroyed. The policy contained a warranty that stipulated that the fryer must be fitted with a thermostat with an automatic cut-out in the event of overheating.

**Breach of warranty**

The fryer was not so fitted and so insurer Axa rejected the claim for loss of cover by not making it aware of the requirements of the warranty and the consequences of not complying with it.

Rossborough defended the claim on the basis that the person they dealt with was an experienced insurance buyer and in correspondence with him Rossborough made it clear that he had to read the accompanying policy documents where he could have seen the warranty.

The court rejected their plea and the judge said: “…simply telling a client ‘here is the policy documentation: be sure to read it and check that it meets your requirements’ is not good enough, irrespective of the client’s experience in insurance matters.”

This case brought to the attention of the court that: “The process for selling package policies is driven by considerations of speed and economy which may have advantages for all concerned; it may also entail significant risks for the client as was found to be the case here.

(ii) is designed to minimise the time and effort that the broker has to spend on the matter and to transfer responsibility for getting things right to the client, thereby draining the broker’s role of much of its raison d’être.”

The judge went on to say: “…(the automated process) is liable to foster a situation in which the broker becomes more closely allied with the insurer whose policy documentation he is generating than is healthy, to the detriment of the client whose interest he is supposed to be looking after.”

**What is the implication for brokers?**

Alan Eyre, Managing Director of Towergate Professions, comments: “This case illustrates that the Courts have little sympathy for brokers defending their failure to alert lay clients to key aspects of policies by reference to the client’s level of experience and some of the risks associated with using quote engines.”

 Meanwhile Neville Miles, Partner at Lockton, observes: “Brokers who rely too heavily on automated selling processes risk being judged to have failed to exercise reasonable care and skill in dealing with their clients and risk being found to have been negligent.”

Mike Eld, Client Relationship Manager, Howdens says: “There is little doubt, following Environcom and now Café de Lecq, that the courts are regarding insurance brokers as more than just transactional sellers of a commodity.”

Roger Flaxman from Flaxman Partners, concluded: “This case shows that brokers cannot plead that they cannot afford to properly advise their clients; this clearly includes taking reasonable steps to ensure that onerous aspects of policies sold to clients are drawn to their attention.”

Graeme Trudgill is BIBA’s Head of Corporate Affairs