

## **The complaint**

Mr D complains as the liquidator of S, a limited company, about the service provided to S by Swinton Group Ltd trading as Swinton Insurance, in relation to four claims made on S' business protection insurance policies.

Mr D is represented in this complaint by solicitors.

## **What happened**

S took out various insurance policies for S, which were bought through Swinton. Mr P was a director of S. He contacted Swinton about making claims on the policies following four incidents:

- Incident 1 in January 2015 about a theft from premises.
- Incident 2 in February 2015 about a theft from premises.
- Incident 3 in January 2016 about a theft from a vehicle.
- Incident 4 in January 2016 about the theft of a vehicle.

Some payments were made by the insurers, but Mr P was unhappy that the claims weren't all paid in full.

Mr D was appointed liquidator of S in October 2016. In September 2019 the solicitors acting for Mr D made a complaint about Swinton's failure to help S with pursuing the four claims.

Swinton sent a final response to the complaint in November 2019. Swinton said:

- under its terms of business it provides advice and recommendations to customers, including in relation to claims;
- it had passed on details of claims 1, 2 and 3 to the relevant insurers and had some further correspondence with them about the claims;
- the insurers had dealt with the claims and as a broker it wasn't directly involved in the process;
- the insurer dealing with claim 3 had no details about it but confirmed it was still prepared to consider the claim;
- it didn't have a record of claim 4 being referred to it by S.

Mr D was unhappy with the response and the complaint was then referred to this service.

Our investigator didn't think the complaint should be upheld. She said it was an insurer's role to deal with claims and although Swinton provided advice to S, its role was limited. She didn't think Swinton was at fault in relation to claims 1 and 2, which had been passed on to the insurers to deal with. Although she felt Swinton could have done more in relation to claims 3 and 4, it was ultimately for the insurers to deal with the claims and she didn't think any failings by Swinton had made a difference to the outcome of those claims.

The solicitors acting for Mr D have requested an ombudsman's decision. Amongst other things, they have said:

- Swinton were copied into correspondence about claims 1 and 2, knew that these were not being dealt with correctly and so should have intervened, but did nothing;
- with regard to claims 3 and 4, Swinton was asked to refer these on to the insurers but failed to do so;
- although the insurers have indicated they are still willing to deal with the claims, it's too late now as information is no longer available due to the amount of time that has passed;
- Swinton's failing was its failure to notify or pursue the claims, or to intervene when it saw they were not being dealt with correctly, and it's these failings that mean it's no longer possible to complete the claims.

### **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.

S had a number of business protection insurance policies to cover a range of things. Swinton was responsible for the sale of the policies. This meant it was responsible for ensuring the advice it gave to S was suitable; that it gave appropriate information to S about the policies and that the information was clear, fair and not misleading; and that any policies it recommended were suitable for S' needs.

As a broker, Swinton wasn't responsible for dealing with the claims – that's the responsibility of the insurers. An insurer must deal with a claim promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

So the starting point is that Swinton wasn't responsible for dealing with the claims – the insurers were. In addition, the policy documents explain what to do and who to contact in the event of a claim – which should be made to the insurers. I think this information is clear. I'm satisfied S had the information it required if it needed to make a claim

However – as the solicitors have pointed out – Swinton's terms of business do refer to claims. They include the following:

*“Your subsequent requirements or queries on the policy including mid-term adjustments, claims or renewals should be dealt with by contacting us. We will therefore provide advice and a recommendation on all these subsequent transactions with us”*

So I have considered what this means and how it might apply to this complaint, taking into account the respective duties of brokers and insurers as set out above. I think a key point is that, while the terms confirm Swinton will provide advice and recommendations, that's not the same as saying it's responsible for claims handling – its role would be limited to providing some support or advice.

#### *Claims 1 and 2*

I understand the claims were settled, but were not paid in full.

When Mr P called to report these, Swinton provided details of the insurer for claim 1 so S could make a claim. The claim was accepted and loss adjusters were appointed to manage it. Claim 2 was also referred and the loss adjusters managed both claims, corresponding with S about this.

In May 2015 a proposed settlement was sent, with details of contributions from the respective insurers. The loss adjusters advised S to contact one of the insurers directly to pursue that claim but, from the information I have, I can't see that Mr P pursued that at this time.

He didn't contact the loss adjusters again until June 2016. At that point, he said he had been too busy with work but as things had slowed down, he now had more time to deal with it. In July 2016 the loss adjuster said the insurer had closed its file as Mr P hadn't pursued the matter or replied to his "many emails". The loss adjuster suggested Mr P contact the insurer to see if it would re-open the claim.

In correspondence, Mr P has said he wasn't aware of any timescale and the loss adjuster *"never really seemed to want to do anything with it, I think this is part of the reason I didn't do anything with it from my end, as it did seem to be an uphill battle."*

He also said he *"...obviously always had intentions of following up the claim but, due to ongoing work commitments I never seemed to find the time to do anything with it."*

From what I've seen I don't think Swinton acted incorrectly in relation to these claims; they were being dealt with by the insurer and the process was managed by loss adjusters. S was aware of what it needed to do regarding a further claim under its business equipment insurance, and there's nothing to show S asked for further assistance from Swinton.

#### *Claims 3 and 4*

Swinton's notes show Mr P reported incident 3 in January 2016, on the day it happened. Swinton says it passed this on to the insurer, and its notes show a reminder was logged to chase the insurer for a progress update in April.

Swinton has no records of incident 4 being reported at the time. It points out that there were other conversations with Mr P at that time about the insurance so if he was pursuing this, I'd expect to see references to it, but there are none.

However, Mr P did send emails in June and July 2016 saying he wanted to claim (and the emails indicate he hadn't previously lodged a claim). Swinton replied to say this had been referred to insurers, but I haven't seen any evidence of when this was done. On the information I have, I can't be satisfied it did happen. And in May 2017 the insurer advised it hadn't received a claim.

It doesn't seem Swinton did pass on the details of claim 4 to the insurer. And it could have provided further updates to S about these two incidents and what needed to be done. But having said that, I'm not sure any failing here by Swinton caused the losses that are being claimed.

S was aware Swinton had contacted the insurer on claim 3 but there's no evidence that it followed this up when it didn't hear from either Swinton or the insurer. And as I've explained above, Mr P clearly wasn't pursuing any of the claims for a considerable period due to other more pressing issues on his time. Some of the issues with the claims were due to the insurers (or their loss adjusters) not receiving information from Mr P that was needed to assess the claims.

I appreciate Mr P did say he was more able to deal with the claims later in 2016, but I've seen nothing to show he took much action even then. And I note that S went into liquidation soon after. On balance, looking at the evidence I have, I think even if Swinton had been more proactive, Mr P would still have had to take steps himself to provide information and

pursue the claims on behalf of S. And the evidence indicates he wasn't dealing with these issues. On balance, looking at all the circumstances surrounding the claims, I don't think there's enough to show that the fact these claims weren't dealt with was due to any failings by Swinton.

#### *Other insurance*

S also had excess policy cover. The solicitors say payments should have been made on this policy to cover the excess payments made on the claims. There's no information to show S wished to make a claim on this policy or asked Swinton for assistance. Swinton provided details to make a claim in August 2018 and again in its final response, and I can't see this has been done.

#### *Summary*

It's ultimately the insurer's responsibility to deal with claims, not Swinton. That includes not just making the decision on the claim but also providing guidance to help the policyholder with the claim and appropriate information on its progress. I note the liquidator's comments that Mr P didn't have enough insurance knowledge to pursue the claims himself but as I've said, the policy documents show who to contact about making a claim. The insurers appointed loss adjusters to deal with claims 1 and 2 and they managed the claims, corresponding with Mr P about this. From what I've seen, they had problems obtaining information from Mr P which was needed to assess the claims.

I appreciate Mr P did ask Swinton for assistance at certain points and Swinton could have provided more help, particularly in relation to claim 4. But it did provide some assistance and for the reasons set out, even where there was a lack of advice, I don't think that was the cause of any loss suffered by S.

I have to make a judgment on what's fair and reasonable, taking into account all the circumstances of the case. Having considered the policy terms, Swinton's terms of business and the relevant duties of insurers and brokers, it wouldn't in my judgment be fair to hold Swinton responsible for the fact the claims were not all paid in full by the insurers.

#### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 3 August 2021.

Peter Whiteley  
**Ombudsman**