

The complaint

Mrs M says Swinton Group Ltd gave her incorrect information about a legal expenses insurance policy in 2014 and wrongly told her the following year a claim she wanted to make under that policy wouldn't be covered.

What happened

Swinton acted as an insurance broker and says it dealt with Mrs M on a non-advised basis. Mrs M has bought her household insurance through Swinton over many years. She held its separate Household Legal Protection ("HLP") policy from 2010.

In August 2014 the policies renewed; her home contents policy schedule from the time shows legal expenses insurance was included with that. Following that Swinton contacted Mrs M as there was an issue with her address. During those calls Mrs M queried the cost of her home contents policy and agreed to take out a cheaper policy with a different provider. That policy didn't include legal expenses insurance but Mrs M continued with the HLP policy. The adviser confirmed she still had legal cover "so that's the same".

The following year Mrs M contacted Swinton as she'd sold a horse and the buyer was taking legal action against her for misrepresentation. Mrs M wanted to use her legal expenses policy to defend that claim. Swinton said her HLP policy didn't cover the defence of claims arising from the sale of private goods. Mrs M accepted this advice and instructed her own solicitors.

Having later reviewed matters Mrs M complained to Swinton. She said the advice she'd been given in 2015 was wrong as she now believed her policy would cover the defence of this claim. She also raised concerns about what she was told at and following the 2014 renewal. She said the policy she held as part of her home contents insurance would have covered the defence of a claim.

I set out my initial thoughts on the complaint in a number of emails to Mrs M. I then set out a provisional decision to both parties. In summary I said:

I'm satisfied Swinton didn't provide advice to Mrs M about these policies. That means it didn't need to assess whether they were suitable for her. But it did need to ensure she was provided with clear, fair and not misleading information so she could make an informed choice about whether they were right for her.

As I've already said, I don't think Swinton did give Mrs M clear information about the policies when she discussed them with her in 2014. The adviser told her the legal cover under the new policy was "the same". But she should have made clear that was a reference to the cover provided under the HLP policy not the legal expenses policy that was included as part of Mrs M's home contents insurance.

However, having established that a business got something wrong I do then need to consider what the impact of that has been – and whether Mrs M would have acted differently but for that failing. And the test we apply here is that used in the civil court; based on the

available evidence is the occurrence of an event more likely than not. I explained in my emails to Mrs M why, while I accepted it was possible she'd have acted differently, I didn't think it was likely.

I've thought about whether the further evidence she's provided makes a difference here. I do accept Mrs M appears to have had legal expenses cover through her home contents provider since 2010. So that wasn't simply something that was included at renewal. It's disappointing Swinton provided inaccurate information to me about this. But that doesn't change the fact that Mrs M had cover in place through the HLP policy for a number of years. And she would have been aware from the documentation she was provided with what this covered. She didn't raise any concerns about that.

I recognise that contact about the renewal of her policy in 2014 was initiated by Swinton but Mrs M raised the issue of cost in response to that. So I think it's reasonable to conclude this was something that was important to her. And while I appreciate what Mrs M says about the difference in cost of these policies, the new policy nevertheless offered a reasonably significant annual saving.

To conclude she'd have retained her existing cover I'd need to be satisfied that she'd have paid more for an element of that cover she didn't have any specific reason to think she'd need. And while I accept Mrs M was interested in general terms in legal expenses insurance the main reason she was taking out this policy was for the protection it offered her home contents. So I don't see there are grounds on which I could reach that conclusion.

I think it's most likely that even if she'd been given clearer information (or had been directed to look herself at the policy terms) she'd still have gone ahead with the new policy and the HLP cover offered by Swinton. As a result she wouldn't have had cover in place for the claim that was subsequently made against her.

But I do think Swinton should have realised when selling Mrs M the HLP policy in the first place that she already had legal expenses cover in place through her home contents insurance. I accept it wasn't providing her with advice but given it arranged the home contents policy I think it should have been aware of what it provided and taken that into account prior to offering the HLP policy to Mrs M.

And the HLP policy says "We will not pay any claim covered by any other policy of insurance or by trade union membership or any claim that would have been covered by any other policy of insurance or by trade union membership if this HLP did not exist". If Swinton had made the position clear to Mrs M I don't see why she'd have chosen to take out the HLP policy given its unlikely she could have claimed on this while she also had insurance through her home contents policy.

I don't think that makes a difference to the conclusion I've already reached about what happened in 2014; even if Mrs M didn't have the HLP policy in place at that time she'd then have needed to take it out to ensure she had legal expenses cover going forward. And for the reasons I've explained I think it's most likely that's what she'd have done. But I think Swinton should refund her the cost of the HLP policy between 2010 and 2014 (the period when she also had legal expenses cover through her home insurance). It will also need to pay simple interest at 8% on those payments to reflect Mrs M's loss of use of that money.

Finally. Mrs M has questioned the wording of her HLP policy. However, I remain satisfied that Swinton didn't give her incorrect advice about what this covered when she contacted it in 2015. I agree the term "pursue" isn't defined in the document and I understand why she had to take action when proceedings were taken against her. But there's no suggestion in the terms that the policy covers the defence of a claim and I don't see how the wording "to pursue a civil claim" could reasonably be said to cover a claim that had been made against the policyholder.

Swinton will need to refund the payments Mrs M made for her HLP policy from 2010 until she took out home contents insurance that didn't include legal expenses cover in November 2014. It will also need to pay interest at 8% simple on those amounts from the date of payment until the date of settlement.

Responses to my provisional decision

Swinton said it wasn't responsible for covering Mrs M's legal costs and noted her policy would have provided cover for a number of legal issues. So it queried whether the cost of this should be refunded.

Mrs M provided detailed comments. In summary she said:

- She disputed that cost was a key driver in her decision making and said at renewal she initially accepted the higher quote that was offered her. And she hadn't previously sought cheaper quotes for her insurance;
- During her subsequent call with the adviser the difference in cover wasn't drawn to her attention and that should mean Swinton were liable for what then happened. And she disputed that during the recording she'd queried the cost of her home insurance and said her focus was on whether there was any significant difference in cover;
- She had an interest in every aspect of the cover being provided including legal expenses and if the differences had been made clear to her she'd have known the HLP policy was of no use and wouldn't have gone ahead;
- She said she'd have retained her existing policy (and the legal expenses cover it provided) and only went ahead with the change following the reassurance that this cover was 'like for like'
- It was unfair to base a decision on a presumption as to what she'd have done and in any case, on the balance of probabilities, she would have acted differently if given clearer information.

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.

Mrs M is of course right that at renewal she accepted the higher quote offered by Swinton. And I recognise the subsequent contact with Swinton was initiated by it (because of a query over her address). I've already concluded in that call the adviser should have given her clearer information about the legal expenses cover provided alongside her existing policy.

But that doesn't in itself mean Swinton is liable for the legal costs she subsequently incurred. To conclude that I'd need to be satisfied that, if given correct information, Mrs M would have had a policy in place that would have covered the claim she subsequently needed to make. So rather than taking out cover with the alternative provider (with the HLP policy covering her legal expenses) she'd have retained her existing cover.

Mrs M says she would have done. I accept that's possible but I don't think it's likely. I do think cost was something that mattered to her. During the conversation with the adviser (and after the address issue had been resolved) it was Mrs M who raised the issue of cost, saying at renewal one of the quotes she'd been sent was "*significantly cheaper*" than the other and querying the reasons for this. It was in response to that the adviser offered to look at matters again and see if she could find a cheaper quote. Mrs M agreed to that.

I appreciate that was on the basis the cover would be the same and I accept Mrs M was interested in the different aspects of cover the policy provided including legal expenses. But the HLP policy did provide legal expenses cover. So, in general terms, it met her need for that. I appreciate the specific terms of this policy didn't cover the claim she subsequently wanted to make but that isn't something which could have influenced Mrs M's decision making at the time she took it out (as it hadn't happened at that point).

As I said in my provisional decision, to conclude Mrs M would have retained her existing cover I'd need to be satisfied she'd have paid a reasonably significant amount more to obtain an element of legal expenses cover she didn't, at that point, have any specific reason to think she'd need. As Mrs M has said the test here is the balance of probabilities. For the reasons I've explained here and in my provisional decision I don't think it likely she would have done that. So I agree Swinton doesn't need to cover the legal costs she subsequently incurred.

But I do think Swinton should refund the cost of the HLP policy between 2010 and 2014. I appreciate this policy did provide cover for a number of legal issues but during this time Mrs M also had legal expenses cover in place through her home insurance. I think that's something Swinton should have explained to her and, if it had done, I think it unlikely she'd have taken the HLP policy during that period.

Putting things right

Swinton will need to refund the payments Mrs M made for her HLP policy from 2010 until she took out home contents insurance that didn't include legal expenses cover in November 2014. It will also need to pay interest at 8% simple on those amounts from the date of payment until the date of settlement.

My final decision

I've decided to uphold this complaint in part. Swinton Group Ltd will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 August 2021.

James Park
Ombudsman