

## The complaint

B, a sole trader, represented by Mr M, complains that Apex Insurance Brokers Limited ("Apex") has mis-sold it a professional indemnity ("PI") policy.

As Mr M has led this complaint, any reference to him includes B.

## What happened

The background of this complaint is well established, so I've summarised events.

- B has taken out PI policies through Apex (a broker) for many years.
- Apex has provided a proposal form from July 2010 that was titled a "*Professional Indemnity Proposal for Surveyors & Estate Agents NOT undertaking valuations for lending*". And a Company A policy was taken out and renewed for several years.
- In August 2016, Apex sold B another policy (from Company T) which replaced the first, during an advised sale, in which it says it was asked by B to match the terms of its existing policy. This policy remained in place for many years since.
- Mr M says B's work had changed over time. And that in 2016, 80% of its work was now building surveys – including pre-purchase valuation surveys.
- B provided a pre-purchase survey to one of its customers. This third party later took action against B about its work, arguing B had made mistakes within its survey and not included important information. And the third party said if the survey included this information they wouldn't have gone ahead with the purchase, seeking around £47,000 from B.
- B made a claim on its Company T PI policy. Company T referred to an exclusion that said it would not cover any claim arising from any survey or valuation report prepared by or on behalf of the insured, except:
  - A) *"for the purpose of certifying payments due to contractors or measuring quantities; or*
  - B) *for the purpose of establishing a price for the purpose of marketing a property for sale; or*
  - C) *any valuation solely for probate or matrimonial purposes."*
- Company T said the action against B arose from its survey of the property, which was not for any of the purposes listed. So, B's claim was not covered.
- Company T also said the original proposal – dated July 2010 – sent to it in August 2016 by Apex listed various activities under B's work including 20% Building Surveying, 20% Energy Assessments, 60% Assessor for Diplomas for R, but 0% for "*Residential Survey/Valuation/Inspection*" including "*Home Condition Reports*".
- Company T said the 2016 proposal form from Apex amended the type of work listed as 80% "*Building Surveying*". It said the claim B was making wasn't related to building surveying, so no cover was provided.

- B complained to Apex – saying the policy was mis-sold as it wouldn't provide cover for the majority of B's work which is building surveying.
- Apex considered the complaint, and said Company T would've covered a claim about "building surveying" work, which was listed in its proposal form. Apex also said the exclusion was clearly detailed within its policy schedule and that it had highlighted to B that it should check the documentation carefully.
- So, B brought the complaint to this Service. He said upon discovery of the Company T claim being declined he collapsed and was taken to hospital. He said this led to several follow up consultant appointments, monitoring of his heart and considerable stress. Mr M also confirmed the claim against B had gone to formal adjudication. He says he represented B in this matter without any professional support, and the third party had not been successful. He said it seemed the matter was resolved, and he'd incurred adjudication costs of £420.
- Our Investigator looked into things and initially didn't uphold it.
- Mr M disagreed, saying he had asked Apex to sell him a policy to cover his business and taken its advice, and it had instead sold him an unsuitable policy.
- Our Investigator looked again and upheld the complaint. He said Apex had carried out an advised sale in 2016 which meant it had to ensure the policy was suitable for B's needs. And it was evident the policy wasn't suitable as it didn't cover him for the type of work he was carrying out. So he directed Apex to pay for B's adjudication costs of £420 (plus 8% interest), and £2,000 in compensation for the distress and inconvenience the shock of the declined claim had caused him and the ongoing stress caused by managing the dispute himself without professional support.
- Apex disagreed, saying it did not have a copy of its demands and needs document from 2016, but it had clearly set out its level of cover at each renewal, and that his listed work of "building surveys" was distinct from "surveys/valuations" which was supported by the 2010 proposal form. And it said Mr M had never informed Apex he was carrying out valuation surveys which is why this issue had arisen.
- Apex also said the premiums charged for surveys and valuation work would've been considerably larger – so there was a clear incentive for Mr M to have bought this policy. And as a professional surveyor, Mr M would've been aware of the distinction between a building survey and valuation survey. And that whatever it had asked him he would've stated it was building surveying work given he has continued to refer to his workload as this, when it is in fact survey/valuation work.

Our Investigator reviewed this but didn't change his mind. So, the matter has been passed to me for an Ombudsman's final 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'm upholding this complaint. I'll explain why.

- The crux of this complaint is whether Apex mis-sold the policy taken out in 2016. So, I've first looked at the obligations Apex had when selling it.
- Apex had an obligation to present information about the policy in a clear, fair and non-misleading way, as well as highlight any unusual, onerous or restrictive terms.
- But significantly, Apex has said it sold the policy on an advised basis. This means it

had a duty to ensure that the policy it was recommending was suitable for the customer's needs. We would expect a broker to have asked sufficient questions to be able to assess the consumer's needs.

- So, I've thought about the evidence to consider whether this has taken place in 2016.
- There is no dispute that the 2010 sale also took place on an advised basis. Apex provided a pro-forma proposal document that listed many different types of work, under headings including "*Commercial Survey/Valuation*", "*Land Survey/Valuation reports*", "*Quantity Surveying*", and "*Residential Survey/Valuation/Inspection*".
- Each of these headings had further specific breakdowns of types of work below which allowed for input of what percentage of the firm's work took this into account and that was filled in at the time. There is no dispute of the accuracy of the information recorded at this time.
- However, for the 2016 sale, Apex hasn't been able to provide any demands and needs documents or evidence supporting what conversations took place at the time. It has provided a proposal form, however this differs from the 2010 document.
- Under a heading entitled "*Full Description of Activities, with percentage breakdown*" it simply lists "*Building Surveying*" at 80% and "*Assessor for Diplomas...*" at 20%. It doesn't set out what other types of work could be insured.
- Mr M has been consistent that the type of work he was carrying out had changed in 2016 from the 2010 sale, and included residential surveys. He also phrased this as "*building surveys*" to this Service. And in using this phrase, I'm satisfied Mr M's intention for this description is to include residential surveys/pre-purchase valuations.
- Apex disputes that "*building surveys*" is an accurate description of this type of work, and instead has said this is "*survey/valuation*" work. And it has referenced its 2010 document that clearly set out these types of work in different categories as evidence to show this was clear.
- But the 2016 sale includes no such distinction between roles or type of work. And Apex has given this Service nothing beyond this form to support that it asked questions to establish the type of work B was carrying out. So even if Mr M had stated he was carrying out building surveys when asked in 2016, it strikes me that Apex should've asked more questions around this to fully understand this work given the range of different types of surveys that could be carried out and the significance of getting this information right.
- Apex's comments suggest it believes Mr M would've intentionally input an inaccurate descriptor here for the purposes of maintaining lower premiums. It's given no detail to support that Mr M would've been aware of the significance of this in relation to premiums. These comments appear purely speculative to me and unsupported by any evidence. So, these haven't changed my mind.
- For these reasons, I'm satisfied that Apex has failed to demonstrate it met its obligations to ensure the 2016 policy was suitable when it sold this to him. And while any such follow up policy or paperwork may have highlighted the levels of cover, I don't think this outweighs Apex's failure to ensure the policy's suitability for B. Nor would it change anything given Mr M believed the term "*building surveying*" covered the type of work that he was carrying out.
- As a result, I'm satisfied the Company T claim being declined and the impact of this falls to Apex.
- Thankfully for Mr M, the claim from the third party against B was not successful at adjudication. And the financial consequences of Apex's mistake are limited to these

costs. I've been given no evidence to suggest that this claim would've otherwise been declined by Company T, so, I am directing Apex to pay £420 as our Investigator has suggested, alongside 8% simple interest from the date Mr M paid these fees until the date of settlement.

- I've also thought carefully about the impact of the declined claim on Mr M as an individual. I don't doubt that a declined claim with potential costs of £47,000 came as a large shock to him as he reasonably believed he had cover in place to protect his business. And I'm very sympathetic to his hospitalisation soon after and the fears he had around his health that followed. He's described multiple follow up appointments and monitoring over time.
- As well as this, it's clear to me Mr M has suffered the ongoing stress of managing the dispute with the third party without professional support or guidance – which is the purpose he took out the policy in the first place. This matter only reached a conclusion in late 2022 – leaving him with stress and worry far beyond what he would've had, if the policy had been set up correctly and the claim covered.
- As a result, I'm directing Apex to pay B £2,000 in compensation for the distress and inconvenience it has caused Mr M.

### **My final decision**

For the above reasons, I'm upholding this complaint and directing Apex Insurance Brokers Limited to pay B the following:

- £420 to account for the costs he incurred going through adjudication to resolve the dispute with the third party upon receipt from Mr M of such costs being incurred.
- 8% simple interest on the above sum from the date of the payment until the date of settlement.
- £2,000 in compensation for the distress and inconvenience it has caused B/Mr M as a sole trader, accounting for both the impact on his health and wellbeing, as well as the inconvenience of managing a dispute himself without professional support that he would've likely otherwise had in place.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 13 February 2023.

Jack Baldry  
**Ombudsman**