

complaint

Mr and Mrs M are unhappy that the claim made on their home insurance policy bought through Swinton Group Limited was reduced because they were underinsured.

background

Mr and Mrs M took out a home insurance policy with a third party insurer ("the insurer") via Swinton. Their property was damaged by water in 2016. When they tried to claim on the policy they found they were underinsured. That's because the rebuilding cost as detailed on the policy was deemed to be too low. So the claim was only partially paid by the insurer. Mr and Mrs M say Swinton should've done more to ensure they weren't underinsured.

Our investigator upheld Mr and Mrs M's complaint. She thought Swinton should've given Mr and Mrs M guidance around the cost of rebuilding their home so that they weren't underinsured. Swinton disagrees. So this complaint was passed to me to decide.

I issued my provisional decision on 9 May 2017 explaining why I was thinking of upholding this complaint. But I asked Swinton to do something a bit different to our investigator to put things right. I said I'd consider anything else sent to me before making a final decision in this case. Mr and Mrs M and Swinton responded with further comments.

my findings

I've reconsidered all the available evidence and arguments – including what's been sent to me since the date of my provisional decision - to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I uphold it.

Before I explain why I want to address a point Swinton has made in response to my provisional decision. I've looked at this particular complaint on its individual facts and circumstances to see whether Swinton has acted fairly and reasonably. Whether it wishes to review its internal procedures in light of my findings is a matter for them.

Swinton says Mr and Mrs M obtained a quote on a comparison website before calling it in July 2012 to take out home insurance. It says they would've been asked to confirm the cost of rebuilding their home when answering the questions through the comparison website. But I haven't seen anything to say that happened.

Swinton has given us a screenshot of that particular comparison website's online process from March 2017. This shows what's provided when the question about the property's rebuild cost is asked. An estimated rebuild value is given (as well as a range of rebuild costs) based on the answers about the property - such as its location, construction and age. But Swinton hasn't been able to give me screenshots of what Mr and Mrs M would've seen in July 2012 when they went through that online process. So I don't know if this information was given to them then.

Swinton also hasn't been able to give us a recording of the call it had with Mr and Mrs M around that time either. That's not surprising given how long ago this took place. But it does mean that I don't know what information was given about the rebuild cost, if anything, during the call.

It says the old quotation system it used at the time would've just asked ask its representative to 'enter the cost of rebuilding the home'. It also says if they'd already had a quote online, Swinton's representative would just reconfirm the information given online. So the rebuild cost given in the online process would've just been reiterated. But the fact remains that I just don't know what they would've seen about the rebuild cost – or how the question would've been put about the rebuild cost.

Swinton says it didn't advise Mr and Mrs M to take out this policy so didn't have to give them any guidance on a rebuild figure. Even if I accepted that no advice was given, Swinton would still need to ask clear questions and give clear, fair and not misleading information about the main terms of the policy – including information about the rebuild cost. This is a particularly onerous term and if the rebuild value isn't right, it can have significant impact if a claim is made on the policy later on.

I would've expected Mr and Mrs M to be told about the consequences of being underinsured for any future claim. And generally it's difficult for a consumer to estimate the cost of rebuilding a property unless some level of detail is given to them at the time to explain how they should calculate that amount. It could've done this by referring them to guidance such as the RICS House Rebuilding Cost Index for example - to help them accurately estimate the rebuild value of their home.

I don't have any evidence to say Swinton gave Mr and Mrs M that sort of information clearly at the time of applying for the insurance. And indeed in response to my provisional decision, Swinton accept it wouldn't have done. Without that I accept Mr and Mrs M didn't know what was meant by the rebuild cost at the time they took out the policy in 2012.

I can see in the statement of detail that came after the call that there's a section on "your home" and Mr and Mrs M's property details are listed. On the next page it says the rebuild cost is £100,000. But if they hadn't been given enough information about how to calculate that before then when they decided to take out the policy with Swinton, I don't think they would've picked up that this figure was too low.

Mr and Mrs M's home insurance was renewed year on year after that through Swinton – including in July 2016. But I've seen nothing to say they were given clearer – or more - information about the rebuild cost than that given in 2012.

Importantly the policy that was renewed in July 2016 covers the period during which the claim was made. I understand that policy was an automatic renewal of the policy taken out in July 2015. The rebuild sum is about £109,000. This is confirmed on the insurance schedule and statement of detail sent to Mr and Mrs M.

I've also looked at the buildings section of the policy. That says the sum insured must be enough to pay for the full cost of rebuilding the whole of the building in a new or similar form. It also says if the rebuild cost that's been declared isn't sufficient to pay for the full cost of rebuilding any claim payment will be reduced in proportion to what the actual rebuild cost should've been.

But I also note the endorsements section of the insurance schedule says "*deletion of proportionate reduction in claim payment*". So even if Mr and Mrs M had read all the documents sent to them after the policy was renewed in July 2016 I don't think it's clear – or that they would've known - that the re-build cost was too low. Nor that any claim could be reduced in future because of that.

Had Swinton given Mr and Mrs M better information about the rebuild cost before they took out the July 2016 policy, they probably would've researched the rebuild cost - and would've likely given an accurate figure. If they'd realised the consequences of not giving the right rebuild cost I've seen no reason in this particular case why they wouldn't have done that.

I've taken into account that Swinton says Mr and Mrs M never asked for guidance about the rebuild cost. Even if that's the case it was still under a duty to give them clear, fair and not misleading information about the rebuild cost – and the importance of why this should be accurate. For the reasons set out above I can't say it did that.

putting things right

From the invoices, bank statements and credit card statements Mr and Mrs M have given me, it looks like they ended up spending about £10,600 more than they actually got from the insurer to repair their property (because it paid less than 50% of their claim).

I've seen evidence that considerable amounts were withdrawn from Mr M's ISA earlier this year. They say this was to help with the cost of repairs. Looking at how much everything cost, I think some of that would've been used for repairs. I've also seen current account and credit card statements showing payments made to the sort of suppliers / retailers I'd expect materials to be bought from.

To keep costs down, Mr M also says he had to carry out some of the repair work himself. I accept that – considering the shortfall between the quote agreed on by the loss adjusters and what the insurer ending up paying them was significant.

I'm satisfied that there is some outstanding work to complete on their house. Mr M has given me two invoices from two decorators. Both detail similar work that needs completing. Although the quote initially approved by the loss adjusters when considering the water damage doesn't contain a comprehensive breakdown of the work needed, it looks like the work which remains outstanding is consistent with the sort of repair work which was identified as being required. So I think it would be reasonable for Swinton to pay Mr and Mrs M the lower of these two quotes so that the work can now be finished. That totals £1,520.

When considering what I should ask Swinton to do to put things right, I've taken into account that Mr M says the amount Swinton is being asked to pay is less than the difference between what the insurer actually paid and what its loss adjusters agreed it would cost to repair the damage. I don't think it would be fair for me to ask Swinton to pay the entire difference to Mr and Mrs M now that most of the work has been completed – albeit some of it by Mr M. They had a duty to mitigate their loss. And they've done that. It wouldn't be fair for them to profit financially from what Swinton did wrong.

But I'm satisfied Mr and Mrs M have suffered substantial trouble and upset by what Swinton did wrong. This includes:

- the initial shock, stress and worry caused by finding out they were under-insured, and the insurer not covering the majority of the costs;
- Mr M doing some of the repair work himself and having to source materials and labourers to do the work he couldn't do;
- the extra delay this is likely to have caused to the property being repaired; and

- the inconvenience and worry caused by them having to use their accounts to pay for the repairs and materials.

So all in all Swinton should pay:

- A. Mr and Mrs M £10,600. I think that's a fair amount to reflect the difference between what they actually received from the insurer for the water damage – in line with any other terms of the policy - and what they ended up paying for the repairs and materials;
- B. Mr and Mrs M £1520 so that they can pay for the outstanding work to be completed by somebody else;
- C. simple interest at a rate of 8%* per year on the amount detailed in A. above - from 6 April 2017 to the date Swinton pays them back. I think it's fair to use 6 April 2017 as the date when interest should be payable from. Looking at everything that's the date around which Mr and Mrs M are likely to have had to start using their own money to pay for repairs and materials;
- D. £1,000 for the trouble and upset; and
- E. the amounts set out in B. and D. above within 28 days from the date on which we tell it Mr and Mrs M accept my final decision. If it pays later than that it must also pay interest on that amount from the date of my final decision until the date of payment at 8% per year simple*.

As I explained in my provisional decision, I've only looked at whether Swinton has done anything wrong when selling the policy to Mr and Mrs M in this case. I haven't looked at whether the rebuild valuation made by the loss adjuster on behalf of the insurer was reasonable, or whether the insurer did anything wrong by not paying the claim in full.

my final decision

I uphold Mr and Mrs M's complaint. Swinton Group Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 14 August 2017.

David Curtis-Johnson
ombudsman

*If Swinton Group Limited considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mr and Mrs M how much it's taken off. It should also give them a certificate showing this if they ask for one. That way they can reclaim the tax from HM Revenue & Customs if appropriate.