

complaint

Mr B complains that Swinton Group Ltd advised him to take out building insurance with a sum insured of £100,000 and told him that this was sufficient. He later made a claim on his insurance and discovered that the cover was insufficient.

background

In 2010, Mr B took out household insurance with a third party insurer through Swinton. He says that Swinton told him that the rebuilding costs were £100,000. Mr B says that he queried that and told Swinton that the house was valued at £160,000 six years before and that he did not wish to underinsure. He says that he was assured that the recommended amount was sufficient.

The policy was renewed once with the same insurer and once with a different insurer. On both occasions, the sum insured increased slightly. When Mr B made a claim in 2013, he discovered that he was underinsured and I understand that the insurer did not meet the claim in full.

Swinton says that it does not give customers advice and that its sales process is to ask a prospective customer what the rebuilding costs of their home would be and then use the figure provided by the customer in the quote. It says that, at the relevant time, it did not record calls and there are no branch notes to indicate that Mr B was unsure about the level of cover he required.

the adjudicator's view

The adjudicator recommended that the complaint should succeed. He said, in summary:

- Swinton had a duty as broker to ensure that the policy is set up correctly which included asking clear questions and providing clear explanations.
- The issue of the sum insured did not seem to have been adequately explained to Mr B either when he initially engaged with Swinton, or on renewal.
- If Mr B had received sufficient information he would have insured his property for a more reasonable amount.
- Swinton should pay Mr B any reduction in settlement caused by underinsurance and £100 in relation to his distress and inconvenience.

Swinton did not agree with the adjudicator's view and responded to say that:

- It asks customers for the rebuild sum for the property.
- It does not give advice.
- There is no indication of the level of cover Mr B had before 2010.
- The documentation did explain that the sum insured was the cost of rebuilding.
- Swinton provided a copy of its sales script which shows the questions it would have asked Mr B about the sum insured.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr B and Swinton in March 2014, which is reproduced below:

"I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

This provisional decision deals with Mr B's complaint about Swinton's setting up of the policy. Mr B has previously been informed that if he wishes to complain about the insurer's handling of the claim or the settlement, he should take that up with the insurer.

The first issue for me to decide is whether Swinton provided advice to Mr B about the amount of the sum insured. Swinton's terms of business provide that the customer will not receive advice or a recommendation but that it will ask questions to narrow down the selection of products and the customer will choose how to proceed. Therefore, the starting point is that there was no contract between Mr B and Swinton for the provision of insurance advice or expertise. That is not the end of the matter as I need to decide whether Swinton did, in fact, provide advice in this case, despite what its terms of business say.

I have considered this matter carefully. My provisional view is that there is insufficient evidence to enable me to safely conclude that Mr B was advised as he suggests. Mr B is recalling details of a conversation he had almost three years before. I am not persuaded his memory of it is accurate. Swinton had no incentive to advise Mr B to underinsure and giving advice in relation to this matter is contrary to the specific and detailed instructions it gives to its staff. In the particular circumstances here, I am not presently persuaded that Swinton advised Mr B to insure the buildings for £100,000.

Swinton's terms of business provide that it acts as agent of the relevant insurer. The insurers that Swinton chose should, as a matter of good industry practice, take steps to ensure, as far as possible, that its policy was suitable for Mr B's needs and resources. As the insurer selected by Mr B in 2010 acted through Swinton, I consider that Swinton should have done this for the insurer at the point the insurer's offer of cover was made.

In addition, when an insurer offers to provide insurance there is a duty to provide all material facts to the potential policyholder. If facts known to the insurer or its agent cause the insurer to realise that certain terms of the insurance would not be appropriate, I consider that it is reasonable that those terms are made known to the potential policyholder.

I accept that Mr B told Swinton that his property had been valued at £160,000 some years earlier. Mr B has been able to provide a copy of the valuation from 2004 which recommended an asking price of £159,950. That is the sort of information a home owner would recall and is a natural part of any discussion about reinstatement costs. Therefore, when the offer of cover was made, the insurer's agent knew that the sum insured was substantially less than an earlier valuation of the property.

I have considered whether this should have alerted Swinton to inform Mr B that the sum insured may be inadequate. I have provisionally concluded that it should not. The sum insured is very often less than a valuation for sale and in the particular circumstances here, I do not presently consider that the difference was such that Mr B should have been alerted to this matter.

In Swinton's "Demands and Needs Statement", it set out that Mr B's requirements were for buildings cover of £100,000. In the insurance schedule, the sum insured was stated as £100,000 over the word "Reinstatement". On balance, my provisional view is that there was

sufficient information provided to Mr B about the level of the sum insured.

In addition, Mr B's household insurance was renewed once with the same insurer and once with a different insurer. Each year's cover was a separate contract. During those renewal processes, I consider that Mr B was provided with sufficient information about the sum insured to enable him to increase the amount if he wished to do so.

my provisional decision

I am sorry to disappoint Mr B but for the reasons set out above, my provisional decision is that I do not uphold this complaint."

Swinton accepted my provisional decision. Mr B said that he had nothing further to add.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Neither party has provided any fresh information or evidence in response to my provisional decision. I therefore find no basis to depart from my earlier conclusions.

my final decision

For the reasons set out in my provisional decision, my final decision is that I do not uphold this complaint.

Louise Povey
ombudsman