

complaint

Mr G says that Swinton Group Ltd set up a Landlord's insurance policy without his consent.

background

I wrote a provisional decision on this case in December 2015. I've attached a copy which forms part of my final decision.

Swinton says it doesn't have anything further to add. Mr G doesn't agree with my provisional decision. And he's sent further information which he says supports his case:

- confirmation from his employer and stamps on his passport that confirm that he was out of the country in January 2006. This is when Swinton's records seem to show he called it to set up the policy.
- two letters dated August and September 2005 – the first asking that Swinton cancel his policy on the property in question unless it could provide him with landlords insurance. The second saying he had spoken to Swinton and the policy needed to be cancelled immediately because he had new insurance. He also said that he'd cancelled the direct debit.

Despite trying, Mr G has been unable to get confirmation of who was the insurer he says was covering the risk address under a landlord's policy in 2005. And his bank can't show who was being paid at that time.

But Mr G insists that he didn't call Swinton in January 2006; that the mobile phone number it has on its records is not one he recognises (his employer also confirms that he used a different number at that time); and that the documentation Swinton got to set up the policy remains inadequate.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The information Mr G has sent me has been helpful but I don't think it shows on balance what Mr G says it does.

Although Mr G was out of the country, it's possible that he spoke to Swinton. The phone notes are very specific to Mr G's circumstances. Someone could have been impersonating Mr G but there's no obvious evidence of who that might have been and why they would want to do that. It seems an odd thing for someone other than Mr G to want to do.

The letters appear to show Mr G trying to cancel the policy. And it's not lost on me that the second one says the direct debit will be cancelled and it's at this point that Swinton's records show that it had problems getting paid.

But Swinton's records – which seem in good order generally – have no record of either letter or the phone call Mr G refers to. If they were sent, I don't think they were received.

The problem I have is that I can't see why Swinton would have contrived the phone notes. And there's no obvious reason why someone would have impersonated Mr G from what he's told me.

And there's still doubt about whether or not a landlord's policy was set up in 2005 as Mr G says it was.

In cases like this, where one party says another did something wrong, it falls on the party that's making the allegation to show that what they're saying is more likely than not. Whilst what Mr G says is possible, I don't think it's the most likely explanation.

As I said in my provisional decision, I think the most likely explanation is a simple one. Mr G made an honest mistake - as he said more recently that he's done before.

This is a very finely balanced case and I can understand why Mr G will be very disappointed with my decision. But I don't think Mr G needs to lose out too much – financially at least.

As I explained in my provisional decision, if Swinton chooses to recover the money for the premiums that Mr G got back from his bank, he can speak to the insurer of the policy arranged by Swinton. That insurer might well decide that it faced limited risk because any claim that was made from 2006 onwards would most likely have been put to the insurer of the landlord's cover. So it might refund the premiums.

Swinton needs to give Mr G all the help that it can to trace the insurer(s) from 2006 onwards so Mr G can explain the problem. As I've said before, I think the company Swinton refers to as the insurer is not actually the underwriter of the initial policy at least – assuming there was more than one underwriter.

my final decision

For the reasons I've explained I don't uphold this complaint. But Swinton should write to Mr G explaining who the insurer of the policies it arranged were and who he can speak to try and resolve this problem.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 April 2016.

Michael McMahon
ombudsman

Copy of provisional decision

complaint

Mr G says that Swinton Group Ltd set up a Landlord's insurance policy without his consent.

background

Mr G insured his home with a residential insurance policy with Swinton. In around May 2005 he got a divorce from his wife and he says both of them moved out of the insured property. Mr G still owned the house and decided to convert it into accommodation for students. He says this was completed, and students moved in from September 2005.

The residential insurance policy continued to run while the property was tenanted.

Swinton has sent us its computer records which show that from around September 2005 they had problems receiving payment for the residential policy. It was eventually cancelled in October 2005.

In January 2006, Swinton has a phone note which says:

"insd rng has split up from his wife but she still lives at this address but he still pays the mortgage has only just rcvd 1fs letter he has paid 20.22 + 1fs charge...I have waived 35.00 canc fee as taking out new pol with us now"

There is a further note from later the same day that says:

"policy is in joint names but insd does not live there his wife lives there but they are both still on the mortgage – if any problems and mrs (G) (who lives there) does not reply please contact insd on xxx his address is xxx. payment are coming from his bank so cr agreement and rcpts pt him at his address – prop has been sent to risk address as he is going to see his wife and will sign the forms when he is there".

Swinton has also provided us with an insurance application form from this date. But Mr G says he didn't complete it. He thinks – from the handwriting – that it was done by a woman.

Swinton called Mr G in January 2015 to renew the policy (a few months before he'd updated his contact details). There are three calls around this time where it becomes apparent that Swinton had been providing a residential policy whereas Mr G thought he had Landlord's insurance.

Mr G thinks that Swinton should return the money he paid for the policy because Swinton, he says, didn't get his permission to set up the new policy and debit his account. Swinton doesn't think it did anything wrong and that Mr G made a mistake by not cancelling the residential policy when he let it to students. It thinks Mr G agreed to set up the residential policy in January 2006.

Our adjudicator looked at the complaint and initially didn't uphold it. But because of further information Mr G sent him, he changed his mind. He thought that, more likely than not, Swinton hadn't got Mr G's permission to set up the policy in 2006 so it should give him back his money, plus interest. He also thought that Swinton should pay Mr G £100 compensation for his distress and inconvenience.

Swinton didn't agree so the complaint has been passed to me.

Finally, I understand that Mr G did get his money back for the premiums he paid under the direct debit guarantee. But Swinton has said that it will pursue Mr G for that money. So this complaint still needs to be resolved.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

What Mr G has told us – and he's been consistent – makes some sense. Why would he insure the property with a residential insurance policy when, according to him, he and his wife had split up, she no longer lived in the house and he was renting it out to students.

And I share Mr G's concerns about the insurance application form. For example, the signature section seems to be – at best – scribbles. And the section for 'Methods of Payment' has Mr G's name and some account details (I don't know if they are Mr G's) but the section has then been scrawled over as if it's being crossed out.

Mr G has also provided us with information from a different insurance broker (who I will call broker A) which shows that he held Landlords insurance from July 2006. That broker has confirmed that when he came to them to insure the new policy, Mr G told it that he had been insured through another broker – and it gave the broker's name – which I will call broker B (and who isn't Swinton).

Mr G has tried to get information from broker B. He says that it has details of a policy from 2005 in his name but when it tries to access the policy, it links to a newer policy Mr G had on a different property.

However, the notes I have transcribed above seems to show that Mr G spoke to Swinton and agreed to take out another insurance policy with it. It contains personal information that I don't think Swinton could have known unless Mr G told them.

Swinton has also made the point that (assuming Mr G can't show he was insured with broker B in 2005) if it wasn't him that took out the Swinton's policy in January 2006, why did he leave the property uninsured until he took out cover with broker A in July 2006?

Also of note are the phone calls Mr G had with Swinton in January 2015. On a couple of occasions Mr G says to the advisor that maybe he was insured twice – he'd made a similar mistake before, he says, when he didn't cancel one policy and took out another one.

There's also been a lot of discussion about the direct debit mandate used to pay for the January 2006 policy. Mr G says that Swinton must have a paper copy of it – as was required at the time. Swinton says that it only had to get permission from Mr G and this must have been obtained during the call(s) I discussed above.

I don't think a paper direct debit mandate is crucial to the outcome of this complaint. Even if Swinton needed to have a paper copy, the passage of time is likely to mean this is no longer available – if it was ever required and obtained in the first place.

I think that the phone note shows on balance that Swinton got Mr G's permission to set up an insurance policy. This means that it falls on Mr G to show, more likely than not, that Swinton did something wrong. Whilst there is a lot of circumstantial evidence around why Mr G wouldn't have needed a residential insurance policy, I think the answer to this case is probably more straightforward.

I think Mr G made a mistake when he set up the residential policy in 2006, as he has said he has done before. I don't think Mr G has shown that, more likely than not, Swinton set up the policy without his permission.

But this doesn't mean that Mr G shouldn't be able to get back all or some of the money (assuming Swinton decides to pursue him for the money he got back from the direct debit guarantee). It's possible that the policy taken out in January 2006 wouldn't have covered him because the property was tenanted. Or part of the cover might not have applied. If he can explain this to the insurer, it might

be prepared to refund all of the money he paid for it, or some of it, depending on how the policy is worded.

For clarity, the insurer that is referred to by Swinton as the underwriter of the January 2006 policy is not, I think, actually an insurer. I think it's likely that it's an insurance intermediary. Swinton should establish with that company who the actual insurer is and tell Mr G.

my provisional decision

For the reasons I've explained I don't intend upholding this complaint.

Mr G and Swinton Group Ltd should write to me by 18 January 2015 with anything further they'd like me to consider, after which I will write my final decision.

Michael McMahon
ombudsman