

## **complaint**

Miss B complains that when she tried to claim on her home insurance in 2013, her claim was rejected and her policy was cancelled because L. P. Dawe. had sold her an inappropriate policy.

## **background**

In 2010, Miss B's mother passed away, leaving her house to Miss B. During the administration of the estate the solicitor told Miss B that she needed to insure the house. They suggested L P Dawe could help her with this and Miss B bought the policy L P Dawe recommended.

Annually, L P Dawe wrote to Miss B with a recommendation for renewal and she continued to insure the house through them. The insurer changed at renewal in 2011 because the first insurer wasn't offering this sort of policy any more.

Miss B then renewed through L P Dawe the next year with the second insurer. In July 2013 there was an escape of water at the property and she tried to claim under her policy. The second insurer refused to consider the claim and told L P Dawe to cancel her policy.

The adjudicator upheld the complaint. He thought that L P Dawe had sold Miss B an unsuitable policy. L P Dawe disagrees and I've been asked to consider the complaint.

## **my findings**

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

For this complaint I'm only looking to see if L P Dawe did something wrong in selling the policy to Miss B. I'm not looking at the insurer's decision not to consider the claim or to cancel the policy.

I have decided to uphold Miss B's complaint; I'll now explain why.

From L P Dawe's terms of business, the policy documents and covering letters at renewal, I'm satisfied that they were advising Miss B about her insurance policies. This means they had to ask the right questions to make sure that any recommendation it made suited her needs.

I think that it's likely that L P Dawe was given the initial set up information by the solicitors acting on Miss B's behalf for the following reasons:

- The solicitors dealing with Miss B's late mother's estate first raised the need to insure the property. They advised Miss B to contact an insurer or insurance broker. They provided L P Dawe's details and offered to liaise with them on her behalf. They also said:

*"If the property is unoccupied for any extended period and unoccupied property insurance is required please let me know as I am able to make arrangements for a specialist Solicitors unoccupied property insurance policy to be put into place, which provides a comprehensive level of cover"*

From this, I think Miss B would have known that the insurance that could be arranged through L P Dawe wasn't what she'd need if the house would need to be empty for a long time.

- The solicitors say they had no '*direct correspondence*' with L P Dawe and haven't shown me any notes of conversations with L P Dawe about setting up the policy. But L P Dawe says the solicitors provided them with the information to set up the first policy in 2010 and has shown me a "*new business*" file note that records phone contact from the solicitors. Also, the solicitors' file shows that L P Dawe's recommendation was sent to them for forwarding to Miss B.

L P Dawe's file notes are the only record of what they were told to set up the policy. A note dated 5 March 2010 says that Miss B would "*eventually be living in*" the house her mother had left her. The note goes on to say:

*"best contract for client due to 60 day unoccupancy clause and client will be selling her own home in Suffolk and moving to mum's house, so property will be unoccupied at times until her move down here is complete"*

From this, I think that when L P Dawe recommended the first policy, it reasonably thought that Miss B intended to sell her own home and make her mother's house her permanent residence in the fairly short future. It took this into account and recommended a policy with a longer than average time that the house could be empty and still be covered to allow time for this to happen.

L P Dawe provided Miss B with potential policy details, through the solicitors. The policy statement of facts listed assumptions about the home that formed the basis for the policy, which included that "*your home is your permanent residence*". Miss B didn't contact L P Dawe when she got these documents to correct this.

So I think L P Dawe sold Miss B a suitable policy in 2010, based on the information it had been given.

But when Miss B's first insurer stopped offering home insurance, L P Dawe recommended a policy with the second insurer, which she bought. From what I've seen, L P Dawe made this recommendation without updating the information it had about Miss B's circumstances and needs. They simply used the information from a year earlier, and assumed that she'd moved to her mother's house as planned. I don't think this was good enough. And because of this, L P Dawe recommended Miss B a policy that didn't suit her. Because of this, when Miss B came to claim on the policy she found that her policy didn't cover her. And I think that this would have been upsetting for Miss B.

It follows that I think Miss B's complaint should succeed and L P Dawe must put her in the position she'd have been in if she been sold a suitable policy. This means that L P Dawe should pay Miss B the amount the insurer would probably have paid if it had sold her a policy that allowed for the house being her second home and for it being empty for significant periods.

Unless Miss B and L P Dawe can agree how much, if anything, the insurer would have paid, I think they should jointly instruct a loss adjuster to consider the evidence and investigate the claim. Then give their professional assessment of what, if anything, would have been paid

under a suitable policy. L P Dawe should pay for the loss adjuster.

**my final decision**

For these reasons, I uphold Miss B's complaint and require L. P. Dawe. to:

- try to agree the amount an insurer would probably have paid if it had sold Miss B a policy that allowed for the house being her second home and for it being empty for significant periods;
- if they can't agree the amount, choose and instruct a loss adjuster with Miss B (at L P Dawe's expense) to investigate the claim and give his professional assessment of how much, if anything, Miss B would have received if she'd had a suitable policy;
- pay Miss B the amount agreed or assessed as set out above;
- contact the insurer and ask it to remove all records of the cancellation of the policy from internal and external databases;
- if the insurer won't delete the records of cancellation, give Miss B a letter clearly stating that the cancellation was because of their error and that she should be treated *'as if the policy was never cancelled'*.
- pay Miss B £200 for the distress and inconvenience that she's suffered.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss B to accept or reject my decision before 10 July 2015.

Mike Foster  
**ombudsman**