

## **The complaint**

Mr T and Miss K have complained about their car insurer Covea Insurance plc in respect of its actions in handling a claim they made after they were involved in an accident which was not their fault.

## **What happened**

Mr T and Miss K were involved in an accident in 2018. Mr T, a named driver on Miss K's policy with Covea, was driving. They spoke to Covea and it gave them the number for a solicitor which Covea said would handle their personal injury claims under their policy. Covea later agreed to a 50/50 liability settlement with the insurer for the other driver, and the solicitor took note of this in respect of Mr T's personal injury claim (with Miss K's claim being handled by a different solicitor).

Covea later accepted that it had made an error in agreeing to split liability. It accepted that Mr T had not been at fault for the accident. It said it would cover any short-fall arising for Mr T's personal injury claim, caused by the 50/50 agreement. It also said it would mark the claim as no fault, allow the no claims discount and recalculate the premium charged on that basis. Covea said it would also pay £100 compensation.

Mr T and Miss K were pleased by this. But they were concerned about issues that they'd been having with Mr T's solicitor. Covea advised that whilst it underwrites the legal protection cover Mr T and Miss K have access to under their car insurance policy, Mr T's solicitor had not been instructed under the legal protection cover. Mr T and Miss K were shocked to hear this, they believed Mr T's solicitor had been appointed under their policy. They were concerned about everything and asked Covea if it would help them change solicitor. Covea said it would not. However, Covea accepted it had misled Mr T and Miss K about the nature of the solicitor and to resolve that it would pay them £150 compensation and refund the £30.00 cost for the legal protection cover. Mr T and Miss K thought that was wholly insufficient as they were now faced with having to either keep using a solicitor they had no faith in, or pay from their own pocket for alternative legal representation.

Mr T and Miss K complained to us. Our Investigator felt that Covea's resolutions put forward in respect of its error in agreeing split liability for the claim were fair and reasonable. She felt it should implement them. But she felt its suggested compensation and reimbursement of the legal protection fee did not go far enough to mitigate the consequences of it having misled Mr T and Miss K. So she felt Covea should, in effect, be arranging to assist Mr T as if the legal protection cover was in place and paying £350 compensation, as well as still returning the £30.00 fee.

Mr T and Miss K felt the compensation was still insufficient. Miss K told our Investigator that her job had been affected by all of this. They said Covea and the solicitor had worked hand-in-hand and it had been impossible to get straight answers out of either of them – which had made it very difficult to complain. They said the cost of the work the solicitor had done already on Mr T's claim shouldn't be taken into account under the legal protection cover (which has a limit). Our Investigator explained that where Miss K had been acting as Mr T's representative, we couldn't take her upset into account. She also said that she

couldn't fairly direct Covea to not take the solicitor's costs already occurred into account – if Mr T and Miss K felt costs had been applied unfairly, they'd need to challenge them in the usual way.

Covea was also unhappy about the findings. It said it had followed procedures when arranging contact between Mr T and the solicitor in question. And its policy wording is clear about how the legal protection cover works. Covea said Miss K always knew there was legal protection cover on the policy and she could have contacted the administrator for that cover at anytime had she wanted to pursue a claim in that respect. It said if the solicitor hadn't followed procedure or had failed Mr T in some way, that was not for it to answer for.

### **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 agree with our Investigator. In short I think Covea let Mr T and Miss K down, that it has admitted it let them down, and has not done enough to make up for the consequences of the admitted failures.

In saying that I note that during the course of our complaint Covea has sought to change its position somewhat on whether or not, in respect of Mr T and Miss K having been misled about the solicitor they were put in contact with, a failure actually occurred. But on that note, I also agree with our Investigator, I think it's most likely Covea did fail them.

For the avoidance of doubt I do think Covea should do everything it has already agreed to do. It has clearly, and without any later prevarication, accepted that it shouldn't have agreed to split liability of this claim. So it must, as closely as reasonably possible, put Mr T and Miss K back in the position they would have been in but for that error. The actions Covea has agreed to take, in my view, fairly and reasonably do that. And the compensation it has offered is, I think, fair and reasonable too. So I'll be making awards in all those respects.

And returning to the issue of the solicitor, Miss K was told during her initial call with Covea that the solicitor she was being given the details of would be acting in respect of the personal injury claim under the policy. Therefore, all along Miss K has believed that was the case. And that solicitor is named in the legal protection cover which Miss K could have benefitted, and indeed thought she was benefitting, from. However, Covea then told Mr T and Miss K that the solicitor was not acting under that policy. And the administrator for the policy said it would no longer accept a claim due to late notification. This left Mr T and Miss K at an impasse – unhappy with their solicitor but unable to change without incurring significant costs. A position they would not have been in if Miss K had been given correct information about the solicitor at the outset.

I have to note here that Covea, during our involvement, has argued that the solicitor is acting under the legal protection policy. But I'm not persuaded that is the case. The evidence on Covea's file doesn't suggest that and Covea itself has previously accepted, on more than one occasion, including within a final response, that it misled Mr T and Miss K in this respect. And if the legal protection were in place the administrator would not have responded as it did and Covea could have agreed to funding the cost of Mr T and Miss K's own solicitor. So it either failed them in refusing to do that, or it refused because the solicitor was not acting under the legal protection cover.

Which only serves to bring me back to the issue of why was the legal protection cover not being utilised. Covea said Miss K could have activated that if she had wanted to. Miss K says that is all she wanted – and this is reflected by the conversation that took place with

Covea to notify it of the accident. But as a result of that conversation Miss K was left with the understanding by Covea that she was going to be contacting the solicitor which was named in the legal protection cover, which would be acting for her under that cover. She had no reason to question that. I'm satisfied that Covea's failure to be clear with Miss K in 2018, caused Mr T's personal injury claim to be progressed by a solicitor outside of the legal protection cover available on the policy. And that has directly led to Mr T being in a worse position than he otherwise should have been in.

So I'll be requiring Covea to act as though the legal protection cover were in place as that is what is fairly and reasonably required to correct that prejudiced position. If Mr T and Miss K accept my decision then it will have to do that, and how it chooses to manage that, will be up to it. And I can't fairly direct it to ignore costs already incurred, although some of course may be met or recovered from the other party as a result of the court claim. Work has been done by the solicitor on Mr T's claim and I'm not in a position to judge the worth or efficacy of that work. There are ways that Mr T and Miss K can challenge the costs charged if they wish to.

I will also be requiring Covea to pay a further £350 compensation. This to make up for the upset caused to Mr T. He has had worry and concern because of the position Covea's failure left him in. Not least as he's had to keep dealing with a solicitor he has lost faith in.

I appreciate Miss K has been caused worry too, but I can't take that into account in respect of mistakes Covea made that affected Mr T's claim. I know they are also both worried about how all of this will ultimately affect Mr T's injury claim. But that hasn't yet progressed to court, so it isn't clear it will be negatively affected. I know Covea failed Mr T and Miss K – but I can't comment about how the solicitor acted. Whilst I know Mr T and Miss K believe they had bad service from both of them, that doesn't mean they were working together. And I'm satisfied that whilst there is clearly some connection between Covea and the solicitor, this does not amount to the solicitor working for Covea under its authority. So I can't consider the solicitor's actions, including any failures that may have occurred, as being those of Covea. I'm satisfied that £350 compensation is fair and reasonable in the circumstances for the distress and inconvenience Covea has caused by its failings.

### **Putting things right**

I require Covea to:

- Pay 50% of Mr T's personal injury claim that would've been paid by the other driver's insurer if the claim had been 100% non-fault.
- Mark the claim as non-fault.
- Allow the no claims bonus on the basis that it's a non-fault claim.
- Once the claim has closed, recalculate the premiums charged on the policy from September 2019 based on a non-fault claim having occurred and the no claims bonus applying, refunding any over-payment Miss K has paid.
- Act as though the legal protection cover on the policy is in place, with all of its terms, condition and rights applying – if it wishes to do that by actually implementing the cover that is up to it but, regardless of how this is done, Mr T should be afforded everything he is entitled to under the policy (as was in place in 2018 at the time of the accident), including the option of changing the solicitor representing him. It should make any necessary arrangements without delay, as I understand this is a time sensitive situation with a crucial court date set for November 2022.
- Pay £30.00 as reimbursement of the legal expenses fee.
- Pay a total of £450 compensation.

**My final decision**

I uphold this complaint. I require Covea Insurance plc to provide the redress set out above at "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K and Mr T to accept or reject my decision before 8 September 2022.

Fiona Robinson

**Ombudsman**