

The complaint

Ms H and Mr T are unhappy with what Ecclesiastical Insurance Office Plc did after they made a claim on their legal expenses insurance policy.

What happened

Ms H and Mr T have home insurance with Ecclesiastical which includes legal expenses insurance. In April 2017 Ms H contacted it about a trespass claim relating to a neighbour who had moved in the previous year. Ecclesiastical said it would need to assess whether the claim had reasonable prospects of success (a requirement of the policy).

Ms H didn't contact Ecclesiastical again until June 2018. Matters had progressed and she wanted to know if she could use her own solicitor to pursue the claim. An update was provided from those solicitors. Ecclesiastical didn't respond until the end of October when it requested the completion of a claims management report (CMR) which included an assessment of whether the claim had reasonable prospects of success. It emailed the relevant form. It sent this again in January 2019 though initially to an incorrect address.

In July 2019 Ms H said she'd secured an injunction against her neighbour in March and wanted to know what assistance Ecclesiastical could provide with the next steps. Ecclesiastical said it was still waiting for the CMR to be returned and queried what the outstanding issues were. At the end of September Ms H's solicitors returned the CMR which said the claim did have reasonable prospects of success and that a trial date was set for December. Ecclesiastical sent terms of appointment to those solicitors and chased for the return of these in December.

The next contact from Ms H was in August 2020. Matters had again moved on and settlement of her costs had been agreed of £115,000 (less the amount she'd paid for these to be negotiated plus interest). Charging orders were being applied for on the neighbours property. Her solicitors queried whether cover was available for this enforcement action.

After further discussion Ecclesiastical agreed to backdate cover to when the claim was first reported (April 2017). It also agreed an hourly rate with Ms H's solicitors (with her topping up the outstanding amount). The following year Ms H said her neighbours had left their property which was subsequently sold. Her solicitors confirmed in June the case had concluded on 31 March 2021 when the costs and interest were paid by the defendants; they apologised for not reporting this to Ecclesiastical earlier.

Ms H was unhappy she remained out of pocket for legal costs she'd incurred which she hadn't recovered from the other side (for example the amount paid for the costs assessment). Ecclesiastical said she wasn't covered for any shortfall in costs recovered from the other side. And in addition the policy only covered reasonable and necessary costs. It didn't think any costs Ms H hadn't recovered would meet that definition.

Following discussion with both sides I set out my initial thoughts on the complaint last month. In summary I said:

- In line with other legal expenses policies Mrs H's only covers reasonable and necessary costs. In this case a costs assessment had been carried out and it was agreed £115,000 was the amount that could be recovered. That suggested to me this was the amount considered reasonable and necessary.
- But there were other costs that Mrs H had highlighted (for example relating to the costs assessment itself and subsequent enforcement action). If these were reasonably and necessarily incurred (and couldn't have been recovered from the other side) it's possible they were ones the policy should also cover.
- In order to resolve matters Ecclesiastical agreed to instruct an external costs draftsman to review these elements of the claim and see whether they were ones the policy could cover. That process will include considering whether these costs were reasonable and necessary and haven't (and couldn't) have been recovered from the other side. It wouldn't cover the top up costs Mrs H paid to her solicitor which it's agreed aren't covered by the policy.
- I also considered whether Ecclesiastical should make a payment for distress and inconvenience. I acknowledged the problems with her neighbour had been extremely upsetting for Mrs H and had a significant impact on her enjoyment of her home. And I accepted there were occasions where Ecclesiastical could have responded more quickly. I also acknowledged the frustration Mrs H was caused by having to contact different people to chase for a response while dealing with a difficult and at times fast moving legal situation.
- However, I also took into account that there were some significant gaps in contact between Mrs H's representatives and Ecclesiastical. For example although the claim was logged in April 2017 there doesn't appear to have been significant further contact with Ecclesiastical until June the following year. And while Ecclesiastical sent a Claims Management Report to Mrs H's solicitors in November 2018 (and a further copy at the end of January 2019) this wasn't returned until September 2019.
- Terms of appointment weren't then signed by Mrs H's solicitors until October 2020. I recognised there might well have been very good reasons for all of that but I thought that would have made it more difficult for Ecclesiastical to respond when further contact was made.
- Ecclesiastical subsequently agreed to backdate cover to the date Mrs H notified it of the claim (April 2017) and has now agreed to appoint (and pay) for a costs draftsman to review the elements of the claim I've referenced. Given that I didn't think there was more Ecclesiastical needed to do to put things right here.

Ecclesiastical confirmed its agreement to what I'd said. Mrs H didn't agree. She reiterated the original complaint points she'd made and in summary said:

- The amount she recovered from the other side was the settlement amount she was recommended to accept. She did so because of the stress she was under and as a result of other health problems. And that meant she didn't go back to court to seek a higher payment.
- She didn't accept that any issues with her solicitors providing information to Ecclesiastical would have made it more difficult for it to respond as she always quoted a claim reference number. And she drew attention to an email from her solicitors flagging the difficulties they were having in communicating with Ecclesiastical.

- She acknowledged that appointing a costs draftsman would be helpful but this didn't provide any recompense for the customer care failings she believed Ecclesiastical was responsible 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.

First, Mrs H has given some further background to the case and the impact on her of what happened. I don't doubt the difficulties she faced and I'm very sorry to hear about them. She's also suggested I review the 1000 pages of court papers relating to her case. But I don't think that's something I need to do. The issue I need to consider isn't her underlying legal case but what Ecclesiastical did in relation to it. And I'm satisfied I have enough information to reach a decision on that.

Turning first to the amount she was able to recover from the other side I appreciate the reasons why Mrs H decided to accept that figure. But I understand that amount was recommended by the professional advisers who assessed her costs. Based on the evidence I've seen to date I think it's reasonable to say if they thought a higher figure could have been recovered (which reflected the reasonable and necessary costs incurred) that's what would have been recommended. However, if Mrs H has evidence to show that isn't the case that's something she should provide to Ecclesiastical so it can be considered as part of the review it's already agreed to carry out.

In relation to the customer service issues she's highlighted I agree there were points where Ecclesiastical should have done more to respond to her. I think the email she's flagged from her solicitor (which I'd already seen) is an example of that. But I continue to feel that, even with the inclusion of a claim reference number, the significant gaps in contact from Mrs H and her representatives will have made it more difficult for Ecclesiastical to respond promptly to the points she was raising.

However, as I've said there were times when it could nevertheless have responded more quickly and I'm sure that not getting earlier responses will have added to Mrs H's distress at what was already a difficult time. The question is whether there's more Ecclesiastical now needs to do to put things right. And I think it's reasonable to consider in that context the steps it's already agreed to take which, as I've said, are to backdate cover to the date Mrs H notified it of the claim (April 2017) and to appoint (and pay) for a costs draftsman to review the elements of the claim I've referenced. Taking that into account, and on balance, I don't think there is more it needs to do here.

Putting things right

Ecclesiastical will need to appoint and pay for a costs draftsman to assess fees Mrs H incurred in relation to the costs assessment along with costs associated with the subsequent enforcement action. It should then review whether these are costs that are payable in line with the terms and conditions of her policy. If she's also able to provide further evidence showing she hasn't recovered all of her reasonable and necessary costs from the other side Ecclesiastical should also consider whether her policy would cover these.

My final decision

I've decided to uphold this complaint. Ecclesiastical Insurance Office Plc will need to put things right by doing what I've said in this decision. Under the rules of the Financial

Ombudsman Service, I'm required to ask Ms H and Mr T to accept or reject my decision before 17 November 2022.

James Park
Ombudsman