

The complaint

Mr A says Zurich Insurance PLC and its agent provided poor service by not confirming he was covered by one of its group commercial vehicle insurance policies.

What happened

Mr A was involved in an accident with a cyclist in November 2021 when working as an independent contractor for 'firm N'. Firm N had arranged cover with Zurich for its drivers when delivering items on its behalf. Mr A asked firm N for evidence of the policy, but it wouldn't assist him. It said he should contact Zurich. Mr A didn't want to make a claim on the policy, as the damage to his vehicle was so minor, but the cyclist later made a claim. The police then charged Mr A for driving without insurance, as he had nothing to show he was insured for business purposes at the time of the accident. Later, he had to appear in court and incurred legal fees, as well as experiencing significant distress and inconvenience.

Zurich told one of our investigators that Mr A's complaint was against firm N, not Zurich. It said it couldn't assist as it had no access to firm N's shift patterns, so it couldn't have known whether Mr A was delivering for firm N at the time of the accident. The complaint was then passed to me, and I issued a provisional decision saying I was minded to uphold it.

I thought that – had Mr A made a claim on the policy - Zurich would have had to liaise with firm N about his working arrangements. So it could also have done so in terms of his request for proof of his cover with it. I said Mr A had spent months worrying about the prospect of a fine, points on his licence and possible disqualification, when the police had told him they'd drop the charge if he could show he was insured. I thought it was reasonable for Mr A to pay for legal assistance. His lawyer was able to persuade the judge that Mr A was covered by the arrangement between firm N and Zurich. But I thought the impact on Mr A of the charge and its aftermath was still substantial, so I said I was minded to require Zurich to refund his legal fees and pay him £500 for distress and inconvenience.

Mr A accepted my provisional view. Zurich said it had no record of being contacted about the accident at the time or being asked by Mr A for evidence of cover. It said we had notified it of the issue in February 2023. I issued a second provisional decision along the following lines:

- I said my understanding was that Mr A had contacted Zurich in 2022. But if Zurich was only told in February 2023 about his need for evidence of cover, it couldn't have assisted him at the time, as the hearing was in 2022. On the other hand, firm N was given every chance to assist Mr A at the time - and had failed to do so.
- I pointed out that firm N says its role is as an insurance intermediary for Zurich. The *Independent Contractor Terms of Service* provided to Mr A say that it's for a contractor / driver to contact the insurer directly in the event of a claim. But Mr A wasn't making a claim. Firm N should have been able to provide the evidence of cover he needed – and if it couldn't, I thought it should have contacted Zurich.
- In the circumstances, I said I thought it was reasonable to treat firm N as Zurich's agent. Firm N provided very poor service to Mr A, with distressing results for him, so

I was minded to say it would be fair and reasonable for Zurich to refund Mr A's legal costs and pay him £500 for distress and inconvenience.

In response, Mr A said he had contacted Zurich in 2022 by phone (after firm N had refused to help and had directed him to Zurich). He accepted my provisional findings. Zurich said firm N was its policy holder / customer, not an insurance intermediary. So it didn't think it was fair for it to be held responsible for firm N's dealings.

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.

Firm N's documents say its contractors' insurance cover with Zurich has been arranged by it on a non-advised basis and that it's authorised by the Financial Conduct Authority to act as an insurance intermediary. Firm N also says it will make the certificate of insurance and all other policy documents available to its contractors. So I think firm N hold itself out as an insurance intermediary / agent for Zurich and acts in that capacity for its contractors (including Mr A) *partly* by undertaking to provide Zurich's insurance documents to them.

Under the arrangement it has with firm N, Zurich should be aware of the information firm N provides to its contractors about Zurich's cover and about the way it has agreed to operate. I appreciate that there's no evidence - other than Mr A's account - that Zurich was contacted directly for documents. But there's strong evidence that firm N was asked for them and declined to assist. Taking everything into account, I think firm N was acting as Zurich's intermediary / agent, and that it's fair and reasonable to treat it as Zurich's agent. So I remain of the view that it's fair and reasonable to hold Zurich responsible for firm N's failings. Consequently, I think it should refund Mr A's legal charges and pay him £500 compensation.

My final decision

My final decision is that I uphold Mr A's complaint. I require Zurich Insurance PLC to pay him £500 compensation for distress and inconvenience. It should also pay his legal fees (subject to evidence). And it should pay interest on the sums he has paid towards the legal fees to date, at the simple yearly rate of 8%, from the date of each payment to the date of settlement. If Zurich thinks it should deduct tax from the interest, it should tell Mr A how much has been deducted, so he can reclaim it from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 19 October 2023.

Susan Ewins
Ombudsman