

complaint

Mr A's complaint is about Elite Insurance Company Limited's handling of a claim made on his after the event (ATE) legal expenses insurance policy.

All references to Elite include its claims handlers.

background

Mr A was involved in a dispute with another driver in relation to a collision he said occurred in which he suffered injury and other losses. His solicitors made an application for ATE cover with Elite on his behalf. Based on the information provided to it, Elite agreed to provide Mr A with the insurance.

When Mr A's claim was heard at court, the judge found that on balance the other party's car hadn't collided with Mr A's and dismissed the claim. An order for costs against Mr A followed.

Mr A made a claim on his ATE policy to cover both his own, and the other side's costs. Elite considered the claim and said it wouldn't be prepared to pay anything in respect of it. It said this was because the judge's finding proved that Mr A's claim for cover wasn't open and honest and that he didn't reveal all relevant facts which might've influenced its own decision to provide the insurance.

Mr A says that Elite unreasonably declined to cover his claim because the policy is intended to cover both his costs and any adverse costs orders made against him.

Our adjudicator assessed Mr C's complaint and concluded that it shouldn't be upheld. Mr A doesn't agree so the matter has been passed to me to determine.

my findings

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've decided not to uphold Mr A's complaint.

The starting point is the policy terms. They say:

"If You or Your Legal Representative do not keep to these terms and conditions. We may cancel this policy with no liability whatsoever for Your Authorised Costs or Insured Costs.

9. You must do the following:

9.3 Make sure that the information You give to Your Legal Representative is accurate, and that You do not do anything which could harm Your Claim."

"19. If You knowingly give Your Legal Representative or Us any false or misleading information We will cancel Your insurance policy from the Commencement Date and recover from You any payments that We have paid on Your behalf."

Elite also relies on condition 7.17 of the policy terms which says it won't cover any disbursements or adverse costs resulting from a fraudulent, exaggerated or dishonest claim. It says that the judgement doesn't support Mr A's claim that he was injured or that he suffered other losses. Elite feels that the judge's finding means it can't be said that a collision

occurred. On the other hand Mr A, through his solicitors, says that this finding doesn't amount to a finding that his evidence was dishonest or exaggerated. He feels that if it had been, it's likely that the judge would've referred him for committal for contempt of court.

I don't think the judge's finding in this case leaves much room for doubt. Mr A's case was based on the premise of a collision and resultant injury and losses. The judge's finding wasn't that the injury and losses weren't proven to the extent claimed. Rather it was that, on balance, no collision had occurred. This finding in itself calls in to question the honesty of the claim from the outset or at the very least the issue of whether it was exaggerated. So I don't think it's right for Mr A (through his solicitors) to suggest that just because the claim wasn't labelled as dishonest, misleading, or exaggerated, it wasn't. The finding is in my view evidence of this. Policyholders have to give truthful and accurate information. So whilst the judge may not have made a formal finding of dishonesty or exaggeration, he simply wasn't satisfied that the collision had happened, as claimed by Mr A.

I take on board what Mr A has said about the issue of contempt, but I don't think the court is obliged to make a finding of dishonesty, exaggeration or fraud in the context of proceedings with another party. So I don't think the issue of committal proceedings is applicable in the circumstances.

Overall I think that Elite was entitled to cancel the policy in the way that it did.

my final decision

For the reasons set out above, I don't uphold Mr A's complaint against Elite Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 February 2016.

Lâle Hussein-Doru
ombudsman