

complaint

Mr A - who has conducted all correspondence throughout – considers Hastings Insurance Services Ltd (“the business”) delay in confirming he had cover under a legal expenses policy, for costs he was incurring in pursuing a neighbour dispute, prejudiced his eventual insurance claim. Mrs A, as Mr A's spouse, is also entitled to the benefit of the policy.

In August 2013, I issued a Provisional Decision in the following terms:

background

From March or April 2009 onwards, Mr and Mrs A had various disputes with their neighbour, which they thought amounted to harassment. They instructed solicitors and incurred legal costs privately. It was not until the following February that they were advised to check whether they had insurance cover. On 2 March 2010, the solicitors wrote to the business to obtain this information; Mr A says he had already asked the business in February. On 11 March, the business telephoned the solicitors and advised no cover was in place. The solicitors challenged this by letter on 19 March and wrote the business a reminder on 7 April.

On 19 April, the business telephoned the solicitors and suggested Mr A should check his policy schedule. On 26 April the solicitors sent the business a letter it wrote the previous year confirming Mr and Mrs A had legal cover. On 13 May 2010, following more correspondence, the business finally confirmed that cover had been in place for one year from 2 March 2009, with an insurer (“F”), to whom Mr and Mrs A's solicitors submitted a claim.

Two weeks later, F rejected the claim, as the policy excluded “any dispute which starts within three months of the date this policy started (this does not apply if you have had this cover under another policy up to the date this policy started)” but indicated it would reconsider on receipt of details of any previous policy cover. Mr and Mrs A's solicitors replied a few days later, saying they would be in further contact if the need arose.

In the event, Mr and Mrs A made a claim under a later policy which had started on 2 March 2010. I upheld a complaint they made to this Service about the rejection of that claim, directing the insurer concerned (“R”) to pay the legal costs they had incurred from 13 July 2010 onwards.

Mr and Mrs A seek to recover the legal costs they incurred before 13 July 2010 from the business, F, or a combination of both. They have complained about both to this Service. I am also considering the complaint about F.

our initial conclusions

Two of our adjudicators considered the complaint. Both were satisfied the business had provided Mr and Mrs A with a poor level of service by taking so long to confirm they held insurance cover. In recognition of that, and the number of times Mr and Mrs A and their solicitors had to chase up the business, the business agreed to pay compensation of £250. The second adjudicator, unlike the first, did not consider the business should pay or contribute towards Mr and Mrs A's costs, given it was always open for them to make a claim under their policy with R, as they eventually did, and the business' shortcomings did not prevent them from doing so.

Mr A did not agree. He considered the compensation did not adequately reflect the distress and inconvenience he had suffered. He continued to maintain that the business' delay prevented the solicitors from claiming under his policy with F sooner than they did. He confirmed he was looking for his costs to be reimbursed from when he first contacted the business in February 2010, and considered the business should do so to the extent we did not hold F responsible.

Accordingly, the matter has been referred to me for determination.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have provisionally decided that F should consider a claim for Mr and Mrs A's costs for the period from 1 June to 13 July 2010.

So the critical issues for me to consider in this case are:

- whether the business should pay or contribute to any of the costs Mr and Mrs A incurred before then, and*
- the adequacy of the compensation the business has offered*

Whilst I note Mr and Mrs A made an ultimately successful claim under their policy with R, I do not share the second adjudicator's view that was a course of action they could always have pursued. I say this because the dispute with their neighbours started in the period they were covered with F, so a possible claim under that policy quite rightly took priority.

Having said that, I cannot accept the business should be held wholly responsible for the delay in making the claim until the middle of May 2010. Mr A tells us he started paying costs the previous December. They were not completely reliant on the business for the information about this policy – it was Mr and Mrs A that had the evidence that they had a policy, which was not sent to the business until 26 April 2010.

I would however have expected the business to supply the correct information to Mr and Mrs A or their solicitors within a reasonable timescale. However, I am not persuaded that an earlier response from the business would have meant that their claim would have been met earlier and therefore I do not consider that it would be fair or reasonable to require the business to pay any of Mr and Mrs A's legal costs.

I do however, agree that some compensation for the distress and inconvenience caused by the delay in providing the correct information is warranted. In assessing compensation for distress and inconvenience, I follow the courts, which generally make only modest awards. So I am minded to conclude that £250 is an appropriate level of compensation in all the circumstances.

my provisional decision

For these reasons, I propose to uphold Mr and Mrs A's complaint in part, requiring Hastings Insurance Services Ltd to pay them compensation of £250 for distress and inconvenience.

I invited both parties to let me have any further submissions they wished to make in response to my provisional decision.

Mr A has accepted my findings. The business has not responded. Accordingly, my final decision confirms my provisional findings.

my final decision

I uphold Mr and Mrs A's complaint in part, and require Hastings Insurance Services Ltd to pay them compensation of £250 for distress and inconvenience.

Harriet McCarthy
ombudsman