

complaint

Mrs V complains about the way Advantage Insurance Company Limited (trading as Hastings Direct) has handled a claim under her motor insurance policy.

background

Mrs V's car was written off when the retractable barriers at a school entrance rose up unexpectedly. She reported the incident to Hastings Direct and it paid her the pre-accident value of her car less the policy excess.

Hastings Direct also advised Mrs V that her excess and other uninsured losses could be claimed back from the third party through her legal expenses insurance. Solicitors were appointed and proceedings were issued against the local authority responsible for the school. But these proceedings were dismissed by the court as the local authority could not be held liable for the defective bollards. A second set of proceedings was subsequently issued against the security firm that installed and operated the bollards. But that action was also dismissed by the court as it could not be proved that the bollards were installed negligently or were defective.

Mrs V is unhappy with the situation and her legal representation. She holds Hastings Direct responsible and says it should reimburse her uninsured losses.

Hastings Direct says that it has indemnified Mrs V correctly under the terms of her policy. It is not responsible for recovering her uninsured losses, any delays or the outcome of the court proceedings. If Mrs V is unhappy with her legal representation she should contact her solicitors. Nevertheless, as a gesture of goodwill and without accepting any responsibility for any shortcomings on the part of her solicitors, it has offered to refund her £200 excess.

Mrs V was not happy with the offer. She said had been involved in other no fault claims where her excess had been paid back without any quibbles. She feels she is entitled to reimbursement by Hastings Direct of her uninsured losses including the excess, car hire and interest. She also wants compensating for her time dealing with matters and for spending two days in court. She also says she has been treated discourteously.

Our adjudicator recommended that the complaint should not be upheld. In summary she considered that:

- Hastings Direct had met its obligations under Mrs V's motor policy contract. Her £200 excess is an uninsured loss as are the car hire costs. Hastings Direct was not responsible for recovering them. Mrs V would not have been given a guarantee that the car hire costs would be reimbursed just told that they could be recovered if the third party was found liable. In this case the court did not find a third party liable. No guarantee could be given about the outcome of proceedings as liability is decided by a judge.
- The motor legal expenses insurance is designed to fund the cost of taking legal action which can be a long and complex process. In it the parties are restricted by the court's timetable.

- It appears the claim was pursued by the solicitors and two sets of proceedings were issued. But the claim was not unduly delayed by Hastings Direct which only asked regularly for updates.
- We do not consider the quality of legal service. If Mrs V is unhappy with this she may be able to take her complaint to the Legal Ombudsman.
- Hastings Direct's offer to reimburse the £200 excess is fair and reasonable.

Mrs V did not agree and has asked for an ombudsman review. In summary she has repeated her submissions and remains unhappy with the way Hastings Direct has handled her claim and that after some five years she still did not recover her uninsured losses. She wants it to reimburse her uninsured losses. She was told that an insurer would only go to court if it is confident of winning.

Hastings Direct has also confirmed that the claim was closed as a fault claim as it has an unrecovered loss.

my findings

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

Having done so, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

Although I recognise Mrs V's frustration the simple fact remains that Hastings Direct has met its obligations to her under the policy. It was, and is, not responsible for recovering or reimbursing any uninsured losses she incurred such as car hire and payment of her excess.

Insurers may well go to court to recover outlay if they consider they have a reasonable prospect of success. But even if an insurer says it is confident of winning there is no absolute guarantee that this will be the outcome of any court action. The ultimate decision about liability rests with the judge. In this case two court actions were started against the local authority responsible for the school and the security company that installed the bollards. But the court dismissed both actions as neither third party was considered to be liable. Although I recognise that these outcomes were disappointing for Mrs V I do not think that Hastings Direct is responsible for the time it took for the cases to reach a conclusion or for their outcomes.

Overall, I do not think Hastings direct has done anything wrong and I see no compelling reason to change the proposed outcome in this case.

As the adjudicator has repeatedly said if Mrs V is unhappy with the legal services provided by her legal representatives she should take matters up with them in the first instance. If they are not resolved to her satisfaction she may wish to contact the Legal Ombudsman to take matters further.

my final decision

My decision is that I do not uphold this complaint. I simply leave it to Mrs V to decide if she now wishes to accept Hastings Direct's offer to reimburse her £200 for her excess.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs V to accept or reject my decision before 27 April 2015.

Stephen Cooper
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