

complaint

Mr T's complaint is about the handling of his legal expenses insurance claim by Inter Partner Assistance SA ("IPA").

All references to IPA include its claims handlers.

background

I issued a provisional decision on this matter in December 2015, part of which is copied below:

"Mr T made a claim on his legal expenses insurance policy for cover to bring a claim against a company who supplied and installed a solar panel system at his home. The claim Mr T intended to bring was in respect of a fire that broke out at his property in January 2014, causing extensive damage to the building and contents. Mr T obtained an expert's report which suggested the cause of the fire was the installation of the solar panels.

IPA accepted the claim and agreed to cover Mr T's claim for uninsured losses against the solar panel company. IPA initially said it wanted its panel solicitors to act for Mr T when Mr T wanted to use his own to pursue the claim. Matters were resolved when IPA agreed to appoint Mr T's own solicitors to act for him under its terms of appointment.

A short time later IPA discovered that Mr T had underinsured his property with his buildings and contents insurers. In July 2015 it concluded that Mr T's failure to insure his building and property to their full value had prejudiced its position and withdrew funding.

Mr T was unhappy with this. He said that IPA had accepted the claim for uninsured losses and that the exclusion it was seeking to rely on didn't apply to his claim. He also thought that IPA hadn't treated him fairly, had delayed in responding to correspondence and caused him a great deal of trouble and upset at an already difficult time.

Our adjudicator came to the conclusion that it should be upheld and that IPA should continue to deal with Mr T's claim under the remaining policy terms. IPA didn't agree so the matter has been passed to me to determine.

my provisional 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'm currently minded to uphold Mr T's complaint.

IPA says it withdrew funding because the policy terms say that there is no cover where:

"Something You do or fail to do prejudices Your position or the position of the Insurance Providers in connection with the Legal Action".

"Legal Action" is defined as "The pursuit or defence of civil legal cases for damages or injunction, or the defence of motor prosecutions."

IPA also says that Mr T did something which prejudiced its position by failing to advise his insurance company of the substantial value of his property both at the time of extending it and at renewal, when he was specifically asked for the value of his property.

I have considered what IPA has said and I'm not persuaded that it was entitled to withdraw funding on reliance of the clause above. I say so because I don't think that what Mr T did, or didn't do in relation to his buildings or contents insurance policy is something which prejudiced their position, or that the clause is intended to cover the circumstances that IPA has referred to. The policy covers claims for uninsured losses. It is important to note that Mr T has recovered around £200,000 from his insurers. He is currently seeking to claim roughly £300,000 against the solar panel company.

The policy does offer cover for claims of this nature, and doesn't exclude situations in which a consumer might have no buildings or contents insurance policies in place. I appreciate that it might be sold alongside a buildings or contents insurance policy, but I haven't seen anything to suggest that such insurance must be in place or that a consumer must be correctly insured to the value of their property before they can make a claim.

IPA says that if this service interprets the term it's relying on in favour of Mr T, this means that a customer could, in theory, underinsure their property by 50% then seek to rely on a legal expenses insurance policy at a reduced premium to that of his buildings insurance premium. But I don't think that means that I shouldn't uphold Mr T's complaint.

It might be right that IPA had intended to exclude circumstances in which a consumer had underinsured their property and relied on their legal expenses insurance policy to help them recover the rest from another party, but the policy terms don't express that. Nor is there any provision within the policy which suggests that a consumer must not do anything that gives rise to a claim. If there had been such a provision, I might have been more persuaded by what IPA has said. But on a strict interpretation of the policy terms, I don't think that Mr T has done anything to prejudice IPA's position. He has simply made a claim for uninsured losses. Whether those losses are uninsured because Mr T failed to properly insure them to their full value is not something the policy terms cover, so I don't think it's fair to interpret them in this way.

This view seems to be echoed by one of IPA's claims handlers, who recorded the following in a file note "once could say his failure to correctly insure his property has prejudiced the Insurance Providers position, but I am not of the mind this is the intention of this exclusion". IPA says the claims handler wasn't familiar with household legal expenses insurance claims and the implications of failures by a consumer to provide appropriate information to ensure he is paying the correct premiums to protect his policy for the underwriter. But I don't think that's significant. The claims handler was a manager for teams that deal with other insurance claims and to my mind his comments are correct. So even if IPA had wanted to exclude cover for claims such as Mr T's, that's not what I would expect this exclusion to cover or that it's applicable to Mr T's claim.

Mr T says that IPA should pay his own solicitor's costs since IPA withdrew funding in July 2015. I think that's fair. I say so because I don't think IPA should've withdrawn funding on reliance of the exclusion mentioned above, so it should put him back in the position he would've been in had it not done this. If IPA hadn't withdrawn funding when it did, it would've continued to pay Mr T's reasonable costs in accordance with the terms of appointment it agreed with his solicitors and subject to the remaining policy terms. So I think it's fair that

IPA reimburses Mr T for these and continues to fund his claim going forward in accordance with the remaining policy terms.

Mr T has also said that IPA should pay him compensation for the delays it caused in dealing with his claim, and the stress and inconvenience its decision to withdraw funding had on him at an already difficult time. I have considered the correspondence between IPA and Mr T's solicitors. Having done so, I don't think that IPA caused any unreasonable delays in declining the claim. IPA asked Mr T's solicitors for clarity on the value of Mr T's uninsured losses as against his insured losses in February 2015. The solicitors confirmed the relevant figures that same day. In June 2015 IPA asked Mr T's solicitors for clarity about whether Mr T might've underinsured his property. The solicitors set out the correct position three days later. IPA declined the claim a short time after that. I appreciate that IPA knew about the value of Mr T's insured and uninsured losses in February 2015, but it didn't suspect the reason for this until some months later. And when the correct position was confirmed by Mr T's solicitors, IPA declined the claim without delay.

I am however minded to agree that IPA's decision itself to decline the claim was likely to have caused Mr T unnecessary trouble and upset at an already difficult time. He had lost his home and belongings and was looking to pursue the solar panel company for this. IPA had already agreed to fund his solicitors' costs in issuing the claim at court. So I imagine its decision to then withdraw cover must've been quite a shock to Mr T when all previous indications were that cover was being afforded. So I agree that IPA should compensate Mr T for this. I have set out what I consider to be an appropriate sum below.

fair compensation

IPA should:

- *Pay Mr T's solicitors' reasonable costs incurred in his claim since it withdrew funding in accordance with the remaining policy terms. If Mr T has paid those costs himself, IPA should reimburse him and pay him interest at 8% per year simple[†] from the time he paid them until they are paid.*
- *Pay Mr T £350 for the trouble and upset it has caused him.*

[†] I understand that IPA is required to deduct basic rate tax from this part of the compensation. Whether Mr T needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website."

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I asked both parties to provide any other comments or information they wanted considered in response to my provisional decision. Both IPA and Mr T have responded to say they accept my findings. In light of that and in the absence of any further submissions from either party I remain of the view that Mr T's complaint should be upheld.

fair compensation

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- Pay Mr T £350 for the trouble and upset it has caused him.

[†] I understand that IPA is required to deduct basic rate tax from this part of the compensation. Whether Mr T needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

my final decision

I uphold Mr T's complaint and direct that Inter Partner Assistance SA complies with the award I have made above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 February 2016.

Lâle Hussein-Doru
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