

## **complaint**

Mrs S complains about the decision made by Assicurazioni Generali SpA ("Generali") to withdraw cover under her public liability insurance policy.

## **background**

A legal action was brought against Mrs S (and others) by a third-party. Mrs S made a claim under her policy to defend against the legal action, and although Generali made no formal acceptance of the claim, it acted as if it had accepted it.

Some years later, Generali realised that Mrs S didn't have cover under the policy for the circumstances that had arisen. Mrs S was only covered for certain activities under the policy, and the situation that had led to the legal action and claim didn't fall under one of those activities. So Generali withdrew the legal assistance it had been providing Mrs S and told her she had never been covered by the policy. The legal action against Mrs S was dropped when it became apparent she wasn't covered by insurance. Unhappy with Generali's handling of the matter Mrs S brought a complaint to this service.

Our adjudicator upheld the complaint. He agreed with Generali that Mrs S' claim wasn't covered under the policy, but he thought Generali's failure to notice this earlier had caused Mrs S significant inconvenience. He recommended that Generali pay Mrs S £5,000 compensation, and said that if Mrs S had suffered a financial loss for legal costs as a result of Generali's delay in telling her she wasn't covered by the policy, then it should be responsible for those costs.

Generali agreed to pay Mrs S £5,000 compensation, but didn't think it should cover any additional legal costs incurred by Mrs S.

Mrs S didn't accept the adjudicator's recommendations. She thinks Generali should continue to offer legal assistance under the policy, as another third-party may make a counter-claim against her.

## **my findings**

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

Although Generali says it has never formally accepted liability for the claim, I think it was reasonable for Mrs S to think the claim had been accepted, given that Generali's lawyers were defending the legal action on Mrs S' behalf between 2009 and 2014.

It's apparent that Mrs S' claim isn't actually covered by the policy, and this seems to now be accepted. But Mrs S says that as Generali accepted it was liable for the claim for such a long period of time, then it should continue to provide cover.

There is an argument here that Generali may have waived its contractual right to refuse the claim by way of its actions, and therefore should continue to provide cover to Mrs S. But I don't think I need to consider this here, given that the legal action by the third-party has now been dropped against Mrs S and there is no longer a claim to defend.

I understand another third-party may include Mrs S in a counter-claim, but that is a separate matter. I don't think Generali's actions in accepting liability under this policy for so long can reasonably mean that it should provide cover for another potential legal action - even if that legal action does arise from the same situation that led to the first one.

But I've thought about the consequences that Generali's actions in accepting the claim for so long have had upon Mrs S.

As I understand it, Mrs S was initially added to the legal action brought by the third-party in 2009. Given that the legal action against Mrs S was later dropped when the other party found out she didn't have insurance, it seems probable the same thing would have happened in 2009, if it had been known at that time that Mrs S didn't have insurance. But because Generali acted as though Mrs S was covered under the policy between 2009 and 2014, it seems to me that Mrs S has had the stress and upset of legal action hanging over her for six years, when this may have been unnecessary.

This would have been a very worrying and upsetting time for Mrs S. Because of this, I agree with the adjudicator that a substantial amount of compensation should be paid to Mrs S, to reflect the level of distress and inconvenience that its handling of the matter caused to her. I think a reasonable amount in the circumstances would be £5,000.

Mrs S says she has also incurred financial loss as she had to pay for her own legal defence costs after Generali withdrew its legal assistance in 2014. I understand that soon after Generali withdrew its assistance, the legal action against Mrs S was dropped (because she didn't have insurance). So it seems Mrs S didn't have to incur her own legal costs for very long in respect of that particular legal action.

Generali says that if it had told Mrs S from the outset that she hadn't been covered by the policy, she would have been liable for her own legal fees. So it doesn't think it should pay for any further legal costs that Mrs S may have incurred.

I appreciate that Mrs S has received legal assistance from Generali when she wasn't actually entitled to it. But I don't think Mrs S would have even been added to the legal action in 2009, if the other party had known that she didn't have insurance. I understand that another person who was involved in the matter wasn't included in the legal action by the third-party, because that person didn't have insurance. So this supports that Mrs S probably wouldn't have been included in the legal action if Generali had made it clear from the outset that the claim wasn't covered by the policy.

Because of this, I think Generali should compensate Mrs S for any legal costs she's incurred up to the date the legal action was dropped.

Although another third-party may include Mrs S in a counter-claim, I think this would have happened regardless of Generali's actions in accepting liability under the policy for the time that it did. So I don't require Generali to continue to cover Mrs S' legal costs after the date the initial legal action was dropped.

### **my final decision**

For the reasons set out above, my final decision is that I uphold this complaint. I require Assicurazioni Generali SpA to pay Mrs S compensation of £5,000.

I also require Generali to reimburse Mrs S for the legal costs she has incurred up to the date the initial legal action was dropped. Interest should be added at the rate of 8% simple per annum (less tax if properly deductible) from the date she paid the legal costs to the date of settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs S to let me know whether she accepts or rejects my decision before 13 November 2015.

Chantelle Hurn-Ryan  
**ombudsman**