

The complaint

Mrs K's complaint is about a claim she made on her equine insurance policy underwritten by The Equine and Livestock Insurance Company Limited trading as www.horseinsurance.co.uk ('ELI'), which was declined.

Mrs K says ELI treated her unfairly.

What happened

Mrs K made a claim on her ELI equine insurance policy following an incident during which her horse escaped from the fields on which it was kept and was subsequently injured by a motor vehicle, then sadly had to be put down. The claim was for her the horse's vet bills and to cover the costs of a claim against Mrs K by the owner of the motor vehicle who collided with the horse. That claim was subsequently litigated and concluded in the third party's favour.

ELI initially accepted the claim but after investigating the matter further, determined that Mrs K hadn't taken all reasonable precautions to keep her horse fenced into the field in which it was being kept. As such they declined her claims.

Our investigator considered Mrs K's complaint and thought that it should be upheld. She said that it was unfair for ELI to decline her claim in the way that they had and that they should now reconsider it in line with the remaining policy terms and pay her £500 for the distress and inconvenience caused. ELI didn't agree so the matter has been passed to me to determine.

What I've decided – and why

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 uphold Mrs K's complaint for broadly the same reasons set out by the investigator. I'll explain why.

The starting point is the policy terms. The conditions ELI are relying on are:

"8. You must not misstate or omit or conceal a material fact from the proposal for this insurance or when renewing or claiming against it otherwise the policy is void and we will not return the premium.

12. You must at all times take reasonable precautions to prevent accidents, illness, loss and damage...

13. You must check the fences, barriers, paddock boundaries and enclosures regularly and maintain them in good order".

ELI say that Mrs K misstated, omitted or concealed the fact that an electric fence that was placed in one part of the field in which the horse was kept was turned off at one point.

Looking at the evidence in the case and Mrs K's testimony, I'm not satisfied that Mrs K did conceal or misstate this fact. Indeed, when put to her, she accepted that the electric fence was turned off but made clear that this was on a date prior to her horse escaping the field and that it was turned back on again before that happened. I don't see the relevance in the electricity being turned off given it wasn't on the date of the incident and from what Mrs K has said, neither does she. It makes little or no difference to her claim because based on Mrs K's case, it had no impact on the events which took place on the day of the incident. Because of this I don't think ELI have proved that Mrs K misstated, omitted or concealed the fence being turned off. Rather she didn't consider it to be relevant to the claim, which I agree has little or nothing to do with the events on the day of the incident.

ELI's case is essentially that Mrs K didn't take reasonable precautions to prevent her horse from escaping. They rely on statements of the owner of the land at which the horse was kept and his contractor to support this. The landowner's evidence is that they thought the electric fence was turned off at the time of the incident and that was how the horse was able to escape. The landowner has also produced a letter from the contractor that was working on the fence that formed the boundary behind the electric fence to say that when he was working on the fencing he noticed that the electric generator for the fence had not been maintained and was out of commission.

It's well known that Mrs K holds the landowner responsible for her horse escaping. She maintains that she only put the electric fence in place because the landowner was asked to replace the boundary fence as it had rotted. The landowner had not done this in one day as agreed so she says was reliant on the electric fence only to keep her horse in, which she felt was a reasonable precaution. Mrs K says she made it clear to the landowner that she held them responsible for the loss she had suffered as a result of her horse escaping, so like the investigator, I'm satisfied that any evidence ELI obtained from the landowner was likely to be subject to them protecting their own position. It was in their interests after all to blame Mrs K for the escape of her horse and assert that this was down to the electric fencing not being turned on to escape any potential liability which Mrs K made clear could follow. Turning now to the evidence of the landowner's contractor, likewise, I think there is potential for the contractor to be culpable also for Mrs K's losses for not completing the job he was commissioned to do in one go, so his evidence also needs to be taken with caution. That said, Mrs K's case is that the electric generator had nothing to do with the electric fence being active anyway as it was battery powered and the fence was turned on at the time of the incident. She's also supplied evidence from the person who bought the fence from her after the incident which states the fence was in working order when it was sold and therefore that an electric generator was not necessary. There are inconsistencies around the evidence given by the landowner's contractor with this evidence, who describes the electric fencing as being out of commission and not therefore in working order, which is quite different to the evidence of the buyer of the fencing shortly after the incident.

Mrs K has also provided a credible description for how her horse escaped through the fencing whilst the electricity was turned on. She says it was wearing a coat at the time so this would likely have protected it from the impact of the electricity when going through it. I don't think ELI took any of this into account when reaching their conclusions or gave sufficient weight to the evidence they looked at to decline Mrs K's claims. Had they done so, I think it would have been clear that the evidence they were relying on was both questionable and inconsistent. I also don't think they gave the right weight to the evidence provided by Mrs K and the new owner of the fence when determining the outcome of Mrs K's claims. In light of that I don't think it was fair for them to rely on the policy conditions they've quoted.

ELI have said they don't think it's feasible that the electric fence was in operation on the date of the incident. They've quoted from extracts of emails Mrs K sent them. Looking at those

extracts, I don't think Mrs K was saying the electric fence was turned off on the day of the incident but rather refers to it being turned off on the day the landowner was supposed to be carrying out repairs to the fencing. It's well known that this was before the day of the incident. Further Mrs K's reference to the generator being an energiser doesn't in my view change the fact that neither the landowner or his contractor could give evidence to either support or deny that the electric fence was turned off on the day of the incident because neither of them appeared to have inspected it on that day.

ELI also say that as Mrs K is laying blame on the landowner for failing to maintain the fencing, she should be approaching them for her losses. The purpose of Mrs K's insurance policy with ELI is to protect her in the circumstances she finds herself. If as in this case, it's clear that cover should have engaged, then the question for ELI is not whether someone else should be responsible for a policyholder's losses, but rather whether they should reasonably be paying a claim in line with their policy terms. In this case I'm satisfied that ELI have not been able to establish, on balance, that the policy conditions have been breached in the way that they claim, so it's down to them to pay the claim in accordance with the remaining policy claims. If they consider another party to be responsible for the losses being claimed, then they are of course entitled to seek an indemnity from them, but not before discharging their obligations to their policyholder.

Finally, ELI say Mrs K has not provided any evidence to show the electric fencing was operational at the time of the incident. I think it's unlikely a policyholder would be able to document this given the incident was not something that would have been known to her before it arose. I wouldn't expect a policyholder to routinely photograph their fencing and I've seen a reasonable explanation for why it wasn't possible to provide photographic evidence of the fields after the incident.

Explain D&I award and impact. Direct pay the claim in line with the remaining policy terms.

Putting things right

ELI should pay:

- Mrs K's claims in line with the remaining policy terms including the Court Order against her by the owner of the vehicle which collided with her horse;
- interest on those claims from one month from the date they were made until they are discharged;
- £500 in compensation for the considerable trouble and upset caused to Mrs K in her circumstances as a result of the declinature of her claims. This takes account of the considerable stress Mrs K would have been under following the incident and the loss of her horse as well as the fact that she had to defend the proceedings against her from the driver of the vehicle that hit her horse without any financial support.

My final decision

I uphold Mrs K's complaint against The Equine and Livestock Insurance Company Limited trading as www.horse-insurance.co.uk and direct them to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 29 July 2024.

Lale Hussein-Venn
Ombudsman