

complaint

Mr W complains that Hastings Insurance Services Limited mis-sold him a legal expenses insurance policy. He wants matters put right.

background

In 2012, Mr W took out a motorcycle insurance policy with Hastings. He opted to take out the extra legal expenses insurance policy, which provided cover for uninsured losses and motor prosecution defence. This insurance was insured with another company, but sold through Hastings. Mr W renewed his policy on broadly the same terms each year afterwards.

In 2018, Mr W was involved in an accident and charged with a driving offence. He made a claim on his legal expenses insurance to cover his legal costs of defending the action being pursued against him. This claim was initially accepted and he was given access to a law firm and barrister to represent him. But cover was later withdrawn as the insurers said the policy didn't provide cover if Mr W was entitled to legal aid.

Mr W said that he wasn't made aware of the policy condition when he took out the cover. He said that he was told he'd be covered for motor prosecution defence but the limitations were only available in the small print. He felt that the policy was mis-sold to him by Hastings who should've done more to highlight the full terms and conditions of the policy.

Mr W complained to Hastings. It said that in 2016 when he renewed Mr W told it that he was happy with the explanation of the legal expenses insurance and was given the information he needed to understand it. It denied that it mis-sold the insurance.

Mr W complained to us and the investigator didn't uphold the complaint. He said Mr W took the policy out online and that the online process gave him access to the full policy documentation which set out what the policy did and didn't cover. As this would be considered a non-advised sale, and Hastings didn't provide any advice or guidance on the policy sale, it was for Mr W to ensure he had read all the policy information to ensure it was suitable for his needs. The investigator was satisfied that Hastings had done enough to ensure Mr W had access to the information at both the sale of the policy and at each renewal.

Mr W didn't agree. So the complaint has been passed to me for a final decision.

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'm only dealing with the mis-selling complaint as there was a separate complaint about the handling of Mr W's claim and the decision to withdraw cover by the insurer.

Mr W took out the policy online and renewed it himself each year. He wasn't advised by Hastings about the suitability of the legal expenses insurance policy to meet his needs; it was his choice to take out the policy. This means that I can only find that the policy has been mis-sold if I think the information provided didn't properly set out the terms and conditions of the policy, particularly the point about there being no cover if legal aid or other funding is available.

The terms and conditions of the policy do say that there's no cover if legal aid or other funding's available. The wording of the policy was made available to Mr W when taking it out. And the screenshots available to me show that the full terms and conditions were available if Mr W clicked on the link. It was for Mr W to read this information. Hastings did provide the information to enable Mr W to decide if the policy met his needs. I note that the exclusion is set out clearly under the heading "*What is not insured*", so it wasn't hidden.

Mr W says that it's unfair and unreasonable to expect members of the public to know that this term is likely to apply if the case is sent to the Crown Court, where the legal aid rules are different to magistrate cases. He also says that there's no mention of legal aid thresholds and eligibility, and without this information, members of the public don't know if they might be affected. But it isn't reasonable to expect insurers to provide such detailed information. Legal aid rules change whenever the government decides to make changes, and apply at the time of any prosecution, not when insurance is taken out - the information could easily be out of date if provided. Insurers aren't there to give legal advice about funding options – it's up to the Legal Aid Agency to make decision about legal aid.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 April 2020.

Claire Sharp
ombudsman