

complaint

Mr W has complained that MCE Insurance Company Limited failed to act when he told them he'd received notice of forthcoming court proceedings. These proceedings related to a claim MCE were dealing with under his motorcycle insurance policy.

background

Mr W contacted MCE in December 2018 – a year after he was involved in an incident with a third party – to complain about the lack of updates and progress made under his claim.

MCE replied on 19 December 2018 to say that it was dealing with Mr W's claim correctly and in line with the policy. Mr W replied on the same day to complain. He didn't agree that there was no update to give him. He said he'd received a letter from a Court notifying him of an upcoming hearing in January 2019. He asked MCE if it was dealing with the defence of the claim.

In January 2019 MCE didn't uphold Mr W's complaint. MCE said as liability was in dispute, the claim would take longer to settle. It didn't address Mr W's concerns about an upcoming court hearing. But it reassured Mr W that it was dealing with his claim and would let him know when it was settled.

In February 2019 Mr W told MCE he'd received a Judgment against him in his absence for third party claim costs of £8,163.50 to be paid on or before 21 February 2019.

Mr W's parents on his behalf complained to MCE.

MCE said it paid the costs in full on 21 February 2019. In June 2019 MCE told Mr W it was still investigating his concerns and was looking to have the Judgment removed from Mr W's record. For the distress and inconvenience caused, MCE said it would pay Mr W £350. If Mr W provided evidence of financial difficulty as a result of the Judgment made against him; MCE said it would consider the compensation award further.

In June 2019 Mr W asked us to look at his complaint. He was concerned about the impact of the Judgment being recorded against him and of the open claim. Mr W said his insurance premium had gone up at renewal, he'd bought his first car and the choice of insurers available to him was reduced and the price was higher due to the open claim.

Mr W said he lived with his elderly grandparents who he'd had to tell about the Judgment. He said he was anxious about the possibility of bailiffs arriving at his grandparents' home. Mr W said he intended to apply for a mortgage and was concerned about how his credit rating might be affected.

In the meantime MCE provided Mr W with a letter confirming the background to the Judgment for Mr W to provide to any third party when applying for credit in future.

Our investigator asked MCE to provide an opinion from its legal advisors as to the prospect of success for Mr W's claim if MCE had defended the claim in Court.

MCE said as there were no independent witnesses and the damage to both vehicles supported both versions of events, it believed it would have made a 50% 50% liability offer to settle the claim. But it said it couldn't know how the claim would have been settled in Court.

Our investigator thought MCE should increase the compensation it offered to Mr W by a further £150 to £500 for the distress and inconvenience it had caused him by failing to act in time before the Hearing and subsequent Judgment.

MCE accepted it didn't properly handle matters. However, it had asked Mr W to provide evidence of financial loss, but he hadn't provided any. So MCE said its compensation offer of £350 was reasonable.

Mr W reiterated that he found MCE's communication with him about the claim and Judgment to be very poor. He doesn't believe the claim should have gone on for as long as it did – and it therefore took an unreasonably long time before he no longer had to declare an open claim when applying for insurance.

So the case has been passed to me to decide.

my findings

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

The information provided by MCE is very limited in terms of evidence of its communication with the third party representative in relation to the claim and the Judgment. What isn't in dispute is that MCE failed to properly handle matters and didn't act when in December 2018 Mr W alerted them to a court hearing date in January 2019.

Mr W provided a chronology which lists the calls he and his father made and copies of emails which he and his father sent to MCE throughout February 2019. It's clear that Mr W was very upset and concerned about having a Judgment recorded against him for a substantial amount of money. I don't think MCE gave Mr W any confidence that it was correctly dealing with the Judgment which I think was a very understandable request – particularly as MCE had reassured Mr W in January 2019 that it was properly dealing with the claim.

Mr W contacted us in June 2019 after receiving an offer of £350 compensation from MCE. MCE also provided Mr W with a letter from it explaining the background to the Judgment that he could provide to third parties if needed. And it's explained that as it paid the Judgment in full within 28 days, it should not have been registered against Mr W.

I can see that in September 2019 Mr W told MCE that he carried out a credit check which 'appeared clear'. I haven't seen any evidence to show that Mr W has been adversely affected financially by the Judgment.

As the investigator explained, the outcome of the court hearing isn't something we can look to overturn. In any event, we don't decide liability as this is the role of the courts.

We can look at whether an insurer has reached its decision reasonably and in line with the policy. MCE has a term I've seen in most – if not all motor insurance policies. This term allows MCE to take over the conduct and defence of a claim and settle it as it sees fit. We don't disagree with this term in principle provided an insurer shows it's treated its customer fairly when applying it.

MCE – at our request – sought legal opinion as to the chances of success if it had acted properly. MCE’s legal advisor said that it would most likely have advised to make an offer to the third party representative to settle the claim on a 50%50% split liability basis. But there’s no way of knowing whether this offer would have been accepted – and no way of knowing the outcome if the claim had been defended in court.

I think the way MCE handled the Judgment was very poor and it failed to act at what was a significant key stage of the claim. And it’s clear from Mr W’s testimony and his communication with MCE that the worry and upset caused by receiving the Judgment Order was also significant.

So I think a fair and reasonable level of compensation for Mr W is £500. This is in line with similar awards which we make and examples are available on our website.

I understand Mr W is unhappy that he paid a higher premium as a result of the claim being open. It’s standard in the insurance industry to treat an open claim as a ‘fault’ claim until settled. The terms ‘non fault’ and ‘fault’ are used by the industry to record claims on internal and external databases to show whether the costs of the claim were either recoverable or not from the third party. So these terms don’t necessarily mean the consumer was at fault for the incident.

But this means that – as Mr W’s claim was settled as a partial fault claim (it would be recorded as a fault claim even if it was settled on a 50% fault basis) the recording of the claim by insurers would be no different to when it was an open claim. So I can’t say that the length of time MCE took to settle the claim has made a difference to the premium Mr W has had to pay for future insurance.

my final decision

My final decision is that I uphold this complaint. I require MCE Insurance Company Limited to pay Mr W £500 compensation for the distress and inconvenience caused.

MCE Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Mr W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at a simple rate of 8% a year.

If MCE Insurance Company Limited considers that it’s required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr W how much it’s taken off. It should also give Mr W a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 17 May 2020.

Geraldine Newbold
ombudsman