

complaint

Mr S complains that HCC International Insurance Company Plc unfairly declined the claim he made on his travel insurance policy following an accident.

background

Mr S was riding a quad bike round an animal park abroad when it hit a rock and overturned. Mr S had to have surgery on his knee. He says HCC offered to assist at first. It said it was o.k. for him to move to a private hospital. A few days later, whilst he was still abroad, HCC told him it wasn't covering his claim. It said he hadn't taken out the extra insurance needed for quad-biking. Mr S said he wasn't aware he had to do that.

Our adjudicator said the policy set out excluded activities. Quad-biking wasn't one of them. HCC said the policy asked consumers to call if they wanted to take part in a dangerous or hazardous activity that wasn't listed. That was so it could say whether the activity was covered or not. But Mr S didn't think it was hazardous to ride round viewing animals – as opposed to racing - on a quad bike. The adjudicator thought that was a reasonable view.

She also noted the policy said under its *personal liability* section that consumers wouldn't be covered for anything caused by their using motorised leisure vehicles. She thought the inference from that was that consumers *would* be covered using them under other sections of the policy. So that would include *medical and repatriation* cover.

The adjudicator also noted that under "*General Exclusions*" the policy said claims wouldn't be paid for anything caused by a consumer riding (amongst other things) a quad bike in excess of 250cc. But that was only if the consumer didn't wear a crash helmet, didn't have an appropriate licence or hadn't paid any additional premium. She concluded from this also that quad-biking was covered, subject to the conditions set out.

HCC said the policy wording wasn't confusing, as the adjudicator had suggested. It said the *General Exclusions* section supported its view. It had set out the condition that a consumer must have paid an extra premium to be covered for quad-biking.

As there was no agreement, the complaint was passed to me for review.

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 think the starting point should be the General Exclusions section of the policy. I think the section's clear about quad bikes (plus motorcycles, motor vehicles and mechanically assisted cycles) being covered by the policy if certain conditions are met.

To be covered riding these vehicles, a consumer mustn't use one with capacity over 250cc or fail to wear a helmet. HCC hasn't shown that Mr S failed to comply with either of these conditions. A consumer must also have an appropriate licence. HCC hasn't shown that Mr S didn't have one, although in the UK a licence isn't needed to ride a quad bike off-road. It seems very unlikely one would be required where Mr S was on holiday. That leaves one condition, which is that the consumer must have paid '*the appropriate additional premium*'.

I've looked at all the lists of hazardous and dangerous activities set out in the policy. With Category D cover, HCC's prepared to cover activities such as sky diving, horse jumping and parachuting. But quad-biking isn't mentioned anywhere.

I appreciate that Mr S was asked to contact HCC if he planned to engage in a dangerous or hazardous activity that wasn't listed. But he didn't plan to race the quad bike, or even use it on a public highway. It was used to transport him off-road once, through an animal park. I think it was reasonable enough for Mr S to think that wasn't a dangerous activity. I don't think the fact that he had an accident means the activity was inherently hazardous. And in my view what's important is what he thought at the time he got the policy. Mr S says it didn't cross his mind that he'd need to pay an extra premium for a 'sedate' trip out on a quad bike. I think that was reasonable in the circumstances.

I agree with the adjudicator that there's a lack of clarity in the policy. It's confusing that an exclusion for claims due to mechanically propelled vehicles is set out under the *personal liability* section only. And I think it's misleading that quad-biking doesn't appear in any of the activity lists. That's especially the case when HCC then mentions it in *General Exclusions* – but along with motorcycles, which *do* appear in a list of activities requiring an extra premium.

When we don't think a policy's clear, we give the benefit of the doubt to the consumer. I think it was reasonable for Mr S not to understand that HCC required an extra premium from him for the activity he undertook. Because of that, I don't think it was fair to decline the claim.

Mr S was shocked, confused and very upset by HCC's refusal to assist him. He was in dire straits a long way from home. I think it would be fair for it to pay him £200 compensation for the trouble and upset he faced following its decision.

my final decision

My final decision is that I uphold this complaint. I require HCC International Insurance Company Plc to do the following:

- Settle Mr S's claim for medical and travel expenses, subject to other policy terms and conditions
- Add interest at the simple yearly rate of 8%, from the date of payment to the date of settlement
- Pay Mr S £200 compensation for trouble and upset

HM Revenue & Customs requires HCC to take off tax from the interest. It must give Mr S a certificate to show how much is taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 March 2017.

Susan Ewins
ombudsman