

GOODHEART LIMITED (in receivership)

Claimant

- and -

HONOUR BRIGHT INSURANCE PLC

Defendant

---

EXPERT'S REPORT OF WALTER MERRICKS

---

1. I am the Chief Ombudsman at the Financial Ombudsman Service ("FOS"), having previously been Ombudsman at the Insurance Ombudsman Bureau ("IOB", now subsumed within FOS). The FOS investigates complaints against providers of financial services, including insurance companies and, where appropriate, awards compensation. The FOS also liaises with the FSA to share information about matters such as trends in complaints and issues which may have regulatory implications.
2. Both IOB and FOS have experience of complaints about insurance companies. These arise both out of consumer/private individual insurances, and out of commercial/business insurances. The rules under which FOS operates state that we will determine a complaint by reference to what we consider to be "*fair and reasonable*" in all the circumstances of the case. In doing this we take into account the relevant law, regulations, regulators' rules, guidance and standards, relevant codes of practice and, where appropriate, what we consider to be good industry practice.
3. In dealing commercial or business insurance, we have regard to the nature of the business; there are many respects in which a small or medium enterprise ("SME") such as a family-owned company is unsophisticated in dealing with insurance issues and in that respect is in the same position as a private individual when it takes out insurance. In the light of this, it does not always seem fair and reasonable to us to ignore matters such as codes of practice or regulatory guidance applicable to private insurances when dealing with insurance of SMEs. For example, we question whether it is fair to say that a self-employed (sole trading) contractor should benefit from protections set out on the 1986 Association of British Insurers' Statement of General Insurance Practice ("the ABI Statement") when he insured his house contents, but not when he insures the tools he uses to carry out his job?

4. The ABI Statement, which purports to set out “*normal insurance practice*” provides in relation to claims that where liability and quantum under the policy have been established and agreed “*payment will be made without unavoidable delay*”. IOB and FOS have awarded compensation in addition to the amount of an insurance claim and interest in appropriate cases where an insured has suffered loss, distress or inconvenience from delays in payment of a claim. Examples of the type of situation in which compensation has been awarded following late payment of an insurance claim include situations where delay has increased the policy holder’s difficulties “*such as having to live in uninhabitable property or cope without transport or essential cooking, heating or washing facilities or ... the imposition of bank charges or other financial losses.*”<sup>1</sup>
5. We see no reason why it is not fair to apply this normal insurance practice to insurances of SMEs. In doing so we start from the proposition that insurance companies often advertise their products as giving peace of mind e.g. inviting the small business person to buy insurance to take care of his needs, leaving him free to concentrate on running the business. In these circumstances, where the very object of the insurance contract is to provide peace of mind, it seems to us that compensation should be awarded if the fruit of the contract is not provided or the contrary result is procured instead.<sup>2</sup> Under the FOS scheme, delays, “cock-ups”, and maladministration can all lead to compensation on top of the requirement to pay the claim. We approach the matter from the point of view of its impact upon the insured, rather than the intention or lack of good faith of the insurer.
6. Since the regulation of insurance companies has come under the umbrella of the FSA we also bear in mind the FSA’s Principles for Business, which include effective and skilful control of organisation of the business, and paying due regard to the interests of customers and treating customers fairly. Over the last two years or so the FSA has placed particular emphasis in its supervisory and regulatory work on ensuring that businesses Treat Customers Fairly. These requirements are not restricted to consumers/private individuals. Furthermore, the Insurance Conduct of Business component of the FSA Handbook of Rules and Guidance sets out Insurers’ obligations when dealing with claims both in relation to private individuals (Rule 7.3) and retail customers (Rule 7.5). These came into force on 14<sup>th</sup> January 2003 and require a prompt response to insurance claims (generally within 5 business days) and prompt settlement of claims.
7. There must therefore be a strong case for the common law to uphold the right of a policy-holder to compensation that recognises the full extent of the damage he may suffer as a result of an insurer’s actions. Failure to do so would leave the courts out of step with the regulatory environment and insurers free to mishandle claims.

WALTER MERRICKS

---

<sup>1</sup> <http://www.theiob.org.uk/bulletins/bulletin22/section5.html>

<sup>2</sup> In adopting this approach the FOS has regard to the line of cases starting with Watts v. Morrow [1991] 1 WLR 1421.