



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 186

APPLICANT EC

RESPONDENT U Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. EC was a customer of U Ltd and among other things had a house insurance policy with U Ltd. EC's house comprises two units, his home and a separately tenanted flat downstairs. In 2022 U Ltd changed the house insurance policy from a single policy into two separate policies. EC says that U Ltd's service in relation to establishing the two new policies was not provided with reasonable care and skill.
2. EC has invoiced U Ltd \$8,550.00 for 57 hours of his time that he says he has spent addressing the issues that arose with his policy, and he says thereby providing coaching and testing of U Ltd's systems. EC also says U Ltd should be liable to pay half of the cost of a report he obtained to estimate the replacement cost of his house. EC seeks an order that U Ltd is liable to pay him damages of \$8,974.00 together with interest.
3. The issues to be resolved are:
 - a. Did U Ltd provide their services to EC with reasonable care and skill; and
 - b. If not, what remedy is appropriate?

Did U Ltd provide their services to EC with reasonable care and skill?

4. I am unable to make a finding that U Ltd failed to provide their services to EC with reasonable care and skill. For this reason, the claim is dismissed.
5. The Consumer Guarantees Act 1993 (CGA) provides that where services are provided to a consumer there is a guarantee that the services will be provided with reasonable care and skill. If services are not provided with reasonable care and skill the consumer may be entitled to a remedy under the CGA.
6. EC owns a property in [City] which was insured with U Ltd. The property is divided into two units. EC lives in one and rents the other out. Until 2022 U Ltd had insured the house under a single insurance policy.
7. In 2022 U Ltd advised EC that they would be changing this and would issue two separate policies for his house. An owner occupier policy for the part of the house EC lives in and a separate landlord policy for the downstairs flat.

8. EC says that during 2022 he faced a number of challenges with U Ltd trying to get two appropriate policies in place for his property. He says U Ltd made a number of mistakes and that their service was awful. EC has provided a detailed timeline of his dealings with U Ltd. Some of the matters that EC complains about in his dealings with U Ltd include:
 - a. Failure by U Ltd to apply an appropriate age discount.
 - b. Failure to update their records regarding a change of legal address of the property.
 - c. Failure to correctly credit air points dollars.
 - d. Failure to apply a multi policy discount.
 - e. Issue about the correct area of the downstairs flat – which may have been an incorrect attribution of a garage to that flat.
 - f. Incorrect calculation of premium by U Ltd.
 - g. Poor communication by U Ltd and a failure to respond to emails.
 - h. U Ltd issued an invoice for additional premium in September 2022 which was payable on the day the invoice was issued and resulted in “missed payment” messages being received from U Ltd.
9. This is not an exhaustive list of the problems EC said he encountered. EC said at the hearing that the cumulative effect of all of the issues he had to deal with was that U Ltd’s service fell below the level required under the CGA, and cannot be described as having been provided with reasonable care and skill.
10. I understand that EC made a complaint to the relevant dispute resolution service, but the complaint was dismissed. EC advised that when his annual policy expired this year he moved to a different insurer.
11. At the hearing U Ltd said that it recognised that there had been shortcomings in the service it provided to EC. There also appear to have been concessions by U Ltd in its dealings with EC directly, that they have made mistakes and communication has been poor at times.
12. U Ltd said that the service provided to EC did not meet the excellent standard that they strive to provide to their customers. They said however that every issue that EC encountered was dealt with and resolved by U Ltd, and that overall, even taken together, they considered that the service provided was reasonable.
13. I have taken all of the information provided by both parties into account and I am unable to make a finding that U Ltd’s service was not provided with reasonable care and skill in this case.
14. I can see that there were a number of issues that EC encountered in the process of confirming his two new house insurance policies with U Ltd in 2022. It appears however that when EC raised issues, U Ltd dealt with them and resolved them.
15. Setting up a new insurance policy, even with an existing provider, is a process which can be expected to take time. Even where everything goes completely smoothly a consumer can expect to spend time ensuring that correct information is provided to an insurer and checking that the insurer has recorded the correct information.
16. The standard of service required of U Ltd by the CGA is that of a reasonable insurance provider. Even a reasonable service provider will have issues that arise from time to time. An insurer will not fail to meet the standard required simply as a result of issues or mistakes that may happen from time to time. A reasonable insurer is not required to provide perfect service all the time.
17. Unfortunately, in this case there were a number of issues which needed to be addressed. I do not consider that any of these issues in isolation is sufficient to constitute a failure by U Ltd to provide its services with reasonable care and skill. Rather I consider they are the type of issue that will occur from time to time even with a reasonable insurer.

18. I have also considered whether the cumulative effect of these issues might enable me to make a finding that the service EC received was not provided with reasonable care and skill. However even looking at the events in a global sense I am unable to make a finding that U Ltd's services fell below the standard required by the CGA.
19. While I accept that EC will have found dealing with the issues that arose frustrating and time consuming, I do not consider that the existence of these issues is sufficient to establish that U Ltd's service was not provided with reasonable care and skill. This is particularly the case given that it seems that U Ltd appears to have addressed each of the issues that arose and resolved them.
20. Finally, I note that while there were issues with establishing the policies and organising administrative things like air points and appropriate discounts, there is no evidence before me which would suggest that EC was not fully insured by U Ltd throughout the relevant year.
21. For these reasons I am unable to make a finding that U Ltd did not provide their services with reasonable care and skill. This means that I am not required to address the second issue and the claim is dismissed.

Referee: L Trevelyan

Date: 13 June 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.