

The complaint

Miss S's complaint is about a claim she made on her legal expenses insurance policy for cover to bring a personal injury claim against a third party.

Soteria Insurance Limited declined the claim. Miss S thinks they acted unfairly in doing so.

What happened

Miss S, through her own solicitors, approached Soteria Insurance Limited for legal expenses insurance cover to bring a personal injury claim against a third party. The incident involving the other party took place in 2018. Her claim on the policy was made in 2021.

The claim was assessed by a panel firm of solicitors appointed by Soteria who also acted as claims handlers in this case. The solicitors asked Miss S's solicitors for further information and after receiving some of that, concluded that Miss S' claim didn't have reasonable prospects of success, as required by the policy, so turned down the claim on Soteria's behalf.

Unhappy, Miss S referred her complaint to this Service. Our investigator considered her complaint and thought it should be upheld. She said Soteria didn't provide Miss S with a detailed explanation about why the panel firm thought her claim didn't have reasonable prospects of success. But beyond she thought that Soteria had acted reasonably in the action it had taken. In response to the investigator's view Soteria has agreed to provide Miss S with a detailed explanation from the panel firm. Miss S doesn't agree with the investigator's findings. She feels she should have the benefit of legal expenses insurance cover, that the panel firm has behaved badly and feels that Soteria is seeking to drop her claim because it's unlikely to benefit the panel firm financially.

Because of this the matter has been passed to me to determine.

What I've decided – and why

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

Having done so I'll be upholding Miss S's complaint for broadly the same reasons as the investigator.

The starting point is the policy terms. Miss S's policy, like virtually all other before the event insurance policies requires there to be reasonable prospects of recovery and success. In addition, cover will only extend if the value of the claim outweighs the costs of pursuing it. We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or that the amount they might recover would be less than the cost of the action itself. We wouldn't expect a legal expenses insurance to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of

the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Soteria did this. The panel firm's advice was that Miss S's claims didn't have reasonable prospects of success. They cited several reasons for this; they said there was no damage to the third party's vehicle and the damage to Miss S's car was unlikely to have been caused by the incident, which seemed to be supported by the expert evidence. They referred to the medical evidence which stated the speed of the impact between the vehicles was stated as "not known". They also referred to CCTV footage which they said showed a very minor low speed collision that wasn't consistent with Miss S's case that she was thrown backwards and forwards. In addition, they asked Miss S's solicitors a number of questions which on the whole, weren't addressed. These included why they hadn't issued a claim so close to limitation on a conditional fee arrangement if they thought Miss S had good prospects of success, to provide details of the previous two personal injury claims Miss S had made in the preceding years and for an explanation around why the request for cover had been made so long after the incident.

Overall, Miss S doesn't agree with the stance the panel firm has taken. But I don't think the questions they asked her solicitors were unreasonable and they've agreed to review things again if they receive further information from Miss S or her solicitors. I haven't seen anything to suggest that Miss S has provided any further information in response to the questions that were asked but should she or her solicitors properly do so, I'd expect Soteria to instruct the panel firm to review things again.

I know Miss S feels the claim has been turned down because there's no benefit to the panel firm. As I mentioned above, the claim needs to be proportionate to pursue in order to attract cover under the policy. I haven't seen anything to suggest that the value of Miss S's claim has been considered at all so whilst it might follow that a low velocity impact claim might not be of high value, that doesn't mean it wouldn't be covered. It would very much depend on the cost of taking that claim forward against the level of damages she might receive. And I think it's likely Soteria would have competitive rates agreed with its panel firm for personal injury claims in general. As long as a claim has reasonable prospects of success and is proportionate to pursue then I'd expect an insurer to offer cover. At present Miss S hasn't shown her claim has reasonable prospects of success, so it has been turned down for this reason. Soteria are entitled to do this in line with the terms of the policy.

I know the investigator thought Soteria hadn't provided Miss S or her solicitors with a proper explanation of their advice setting out the details of her claim and how the panel firm had reached their conclusions on the merits of it. And I'm pleased to see that they've now agreed to do this. If on receipt of that opinion, Miss S receives a properly reasoned legal opinion to the contrary- which addresses the questions that the panel firm originally asked, she can present that to Soteria and request they reconsider things.

Putting things right

Soteria should instruct their panel firm to provide a better and more detailed explanation to Miss S setting out their conclusions on the merits of her claim so that she is in a better position to provide an alternative legal opinion addressing the same issues and the questions originally put to her solicitors by the panel firm.

My final decision

I uphold Miss S' complaint and direct Soteria Insurance Limited to comply with my award of fair compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 19 August 2022.

Lale Hussein-Venn
Ombudsman