

The complaint

Mr and Mrs K complain that Fairmead Insurance Limited unfairly declined a claim under their legal expenses insurance policy.

Where I refer to Fairmead, this includes its agents and claims handlers.

What happened

Mr and Mrs K made a claim on their policy seeking cover to take legal action against their neighbours. The dispute concerned ownership of a path at the rear of their property. Fairmead referred the claim to solicitors to assess, who said there wasn't a reasonable chance of the claim being successful. So Fairmead said it wouldn't continue to provide cover.

Whilst in the process of pursuing that claim against their neighbours, Mr and Mrs K became aware that the neighbours may have provided misleading information to the Land Registry.

They contacted Fairmead to raise a second claim, but it was declined on the basis that the misleading information was provided to the Land Registry back in 2011, which was before the policy started.

Mr and Mrs K were unhappy with this decision, so they raised a complaint which they brought to our service. They've told us they held a policy back in 2011 but, despite having the policy documents, the insurer is unable to locate the details on its system due to the time that's passed. They don't think it's likely the insurer will provide cover for the claim when the policy can't be located.

Our investigator upheld the complaint. She said whilst the event occurred before the policy started, Mr and Mrs K had no knowledge of it until this year when the policy was in place. She asked Fairmead to cover the claim.

Fairmead didn't accept our investigator's findings, so the complaint has been passed to me for a final decision.

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.

The terms and conditions of Mr and Mrs K's legal expenses insurance policy say:

"We agree to provide the insurance described in this section, subject to the terms, conditions, exclusions and limitations set out below, provided that...the date of occurrence of the insured incident is during the period of insurance."

The policy defines the "date of occurrence" as:

“For civil cases, the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first of these events. (This is the date the event happened, which may be before the date you first became aware of it.)

As the event leading to the claim occurred in 2011 and the policy didn't start until 2019, on a strict interpretation of the policy terms, the claim doesn't meet the policy criteria for cover.

However, my role is not only to determine whether Fairmead's decision was in line with the policy terms, but also whether or not it was fair. And I don't think it is. I'll explain why.

Like all insurance policies, legal expenses insurance is meant to cover uncertain risks – not inevitable or existing events. So it's not uncommon – nor unreasonable – for these policies to exclude claims for events that had already occurred or that the policyholder was likely to have known would occur before the policy was taken out. This is to prevent policyholders from taking out insurance cover specifically to make a claim for a known imminent dispute.

But I'm not persuaded that is what's happened here. It's clear Mr and Mrs K only became aware of this potential event when Fairmead's solicitors were assessing another claim and brought it to their attention. And Mr and Mrs K logged their claim as soon as they were notified.

When Mr and Mrs K first claimed on their policy, Fairmead said the claim would be covered, provided it had a reasonable chance of success (as required under the policy terms). The solicitors who assessed this concluded it didn't have a reasonable chance of success, based on the evidence available.

What's happened since is that Mr and Mrs K became aware of further information – namely that the neighbour may have provided misleading information to the Land Registry – which would affect the chances of succeeding with their case. Where new information comes to light, I'd expect the insurer to refer that to the solicitors to review but Fairmead has refused to do this.

Whilst I acknowledge that Fairmead's policy makes it clear that the event must occur within the policy period regardless of the date of knowledge, I'm not satisfied this term is a fair one in the circumstances of this case. The information is relevant to the assessment of whether they are likely to succeed in their claim against the neighbours. I appreciate the information they have now discovered concerns something that is alleged to have happened in the past. But their dispute only arose after they had taken out this policy. Mr and Mrs K had no way of bringing their claim any sooner than they have, and it's extremely unlikely that an insurer from eleven years ago will honour this claim. So it wouldn't be fair to leave Mr and Mrs K without cover for an event that they only became aware of recently and within Fairmead's policy period.

As such, I'm directing Fairmead to reconsider this claim in line with the remaining terms and conditions on the basis that the date of occurrence is within the policy period. For clarity to Mr and Mrs K, Fairmead are still entitled to assess the claim to ensure it satisfies all other policy conditions, such as prospects of success. Mr and Mrs K have highlighted to our service that they believe the claim to be a criminal case, rather than a civil one – and, if that's the case, it may be that the policy doesn't extend to criminal matters in these circumstances.

My final decision

For the reasons I've explained, I'm upholding this complaint and directing Fairmead Insurance Limited to reconsider this claim in line with the remaining terms and conditions on the basis that the date of occurrence is within the policy period.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 21 November 2022.

Sheryl Sibley
Ombudsman