

## **The complaint**

Mr M's complaint is about a claim he made on his QIC Europe Ltd legal expenses insurance policy.

Mr M says QIC unreasonably declined his claim and treated him unfairly.

All references to QIC include their claims handlers.

## **What happened**

Mr M made a claim on his QIC legal expenses insurance policy for cover to bring a claim against an airport meet and greet service for damage to his car.

QIC initially said that the value of the claim appeared to fall below £10,000 so they would only fund expert and Court fees in accordance with the policy terms relating to small claims.

Mr M said that the value of his claim was the cost of replacing his car, which amounted to £10,000. Because of this QIC agreed to instruct their panel firm of Solicitors to consider the claim further.

The panel firm concluded the claim didn't have reasonable prospects of success because they didn't have a copy of the contract between Mr M and the meet and greet service and that they needed to consider the repair cost of the car rather than the replacement value to determine quantum. Because of this they said Mr M needed to obtain three quotations to establish this.

Mr M provided QIC with a copy of the contract he had with the meet and greet service and explained the problems he had in obtaining quotations for repair. Initially he didn't know the whereabouts of his car; it was still being held by the meet and greet service. But when he did locate it, he discovered the car wouldn't start so would need to be transported at considerable cost to him, to a garage to diagnose it. Further, he said that at least £4,000 worth of repairs were needed before proper diagnostics could be carried out to establish what other repairs might be necessary. Overall, Mr M explained that it would cost him a disproportionate amount to establish whether the car could be repaired rather than replaced.

Because QIC weren't prepared to help him, Mr M issued a claim against the meet and greet service at Court himself in the small claims track. The meet and greet service didn't respond to the claim so he obtained judgment in default against them. He then asked QIC if they would help him enforce that judgment and reimburse the Court fees he'd spent pursuing the claim.

QIC refused. They said the policy only extends to covering expert and Court fees for small claims and it wasn't clear whether there would be prospects of recovery against the meet and greet service in any event. Mr M didn't agree so referred his complaint to this Service.

Our investigator considered his complaint and concluded it should be upheld. He said that because QIC hadn't disclosed a full copy of the panel firm's legal opinion, they weren't able

to rely on it. And given he couldn't verify whether the person who gave that advice was suitably qualified the investigator felt that he couldn't say that QIC did what we'd expect them to do. He went on to say that even if he had seen the advice, he still didn't think Mr M had been treated fairly. This was because Mr M had already submitted the contract between him and the meet and greet service to QIC when he initially made his claim- so this should have been passed on to the panel firm. And given Mr M had established he had a case to answer, QIC should have agreed to instruct an expert to establish the value of the repairs needed to his car and indeed whether those costs outweighed the value of the car itself. The investigator also concluded that QIC's comments on the prospects of Mr M enforcing his judgment against the meet and greet service weren't based on any sound evidence. To put things right, he directed QIC to:

- pay Mr M's Court costs incurred in pursuing the claim himself.
- reconsider the claim for enforcing judgment against the meet and greet service with the benefit of suitable expert evidence in respect of both the merits and proportionality of doing this, and:
- pay Mr M £500 for the distress and inconvenience caused.

QIC doesn't agree. They've repeated back the submissions they made when they responded to this complaint. Given those submissions are well documented I don't intend to repeat them here. Because of this the matter has been passed to me to decide.

### **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 uphold Mr M's complaint for the same reasons set out by the investigator.

The starting point is the policy terms. Mr M's policy, like virtually all other before the event insurance policies requires there to be reasonable prospects of success. 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. We wouldn't expect a legal expenses insurer 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. It's disappointing that QIC were not prepared to disclose the panel firm's advice in its entirety that we weren't able to establish whether the person that gave that advice was suitably qualified. Because of this, I agree that QIC aren't entitled to rely on the advice of the panel firm in this case.

But even if I thought they were entitled to rely on that advice, I don't think it was reasonable to do so in this case. I say so because the prospects of success were based on the lack of a key document. Mr M provided that document to QIC so it was simple enough for them to revert to the panel firm with this to allow them to consider the content.

I'm also not satisfied that QIC treated Mr M fairly on the issue of obtaining quotations. Mr M gave a credible account of why this wasn't appropriate initially- he didn't know the whereabouts of his car- and then when he had this information, why the likely costs in obtaining these quotations would be similar to or outweigh the cost of the car itself. I

appreciate that QIC might have wanted expert evidence to establish this, but they should have obtained this at their own cost. I say so because Mr M did enough to establish, he had a valid claim. Whilst the policy terms do make it clear that claims require reasonable prospects of success, this doesn't mean that an insurer is entitled to decline every claim that requires expert evidence to support the merits of it or the prospects of recovery, unless this is funded by a policyholder.

Our longstanding approach has been that it's for a policyholder to show that they have a valid claim. Mr M did that. He provided an initial quotation from the meet and greet service's garage showing the initial work that would need to be completed before further damage could be established and he provided photographs of the damage itself. So, I'm satisfied that he's established there's a claim QIC should have considered, even if further evidence was required to conclusively assess prospects of success. I haven't seen anything to suggest that the level of damage to Mr M's car is in dispute so QIC should have instructed an expert to assess the extent of the damage and likely repair costs at their own cost. That would have been part of the evidence gathering process that panel firms are instructed to prepare when a policyholder has demonstrated they have a claim. And it's not something Mr M should have been responsible for obtaining or funding as QIC suggested. And I suspect that if QIC had done what it should have done and faced the obstacles Mr M did in obtaining quotations for repair, they would have simply accepted the value of the claim was likely to be the replacement cost of the car.

In this case Mr M didn't hear back from QIC when he responded to their request for quotations and the contract. Instead, he got on with litigating the claim himself and was successful in obtaining a judgment. I agree that to put things right, QIC should pay the Court fees Mr M incurred in pursuing this.

I also think QIC need to do more to assess Mr M's claim for enforcing the judgment he obtained against the meet and greet service. In doing so I don't think they're entitled to reply on their policy terms- rather they should consider funding this on a fair and reasonable basis given their failure to do what they should have if this claim had unfolded as it should have. That said I think it's only reasonable that the funding of this claim should be subject to there being both reasonable prospects of recovery and that enforcement action is proportionate to pursue. There's nothing to QIC's current position on proportionality that is founded on any proper evidence. So, they'll need to obtain the advice of suitably qualified experts. I suggest that a suitably qualified legal professional is instructed to obtain a report from a tracing agent or other similar service to provide information about the meet and greet service's assets and income. The legal professional will then be able to provide advice in respect of the merits in enforcing the judgment as well as whether this will be proportionate to pursue with reference to its own legal costs or indeed any fixed legal costs that might apply to enforcement action.

Finally, I agree that QIC should pay Mr M £500 in compensation for the distress and inconvenience they caused him in the handling of this claim. Mr M was put to considerable inconvenience in both corresponding with QIC and pursuing his claim himself at Court, which would have been both stressful and time consuming. As I understand it, this would have exacerbated the already difficult circumstances Mr M found himself in- losing a car he depended on for work without any prospect of pursuing the matter through his legal expenses insurance policy when this should have been available to him. My award of compensation is intended to cover the additional stress QIC's actions would have caused to Mr M in his circumstances.

## **Putting things right**

QIC should:

- Reimburse the Court fees Mr M incurred in pursuing the claim against the meet and greet service himself. QIC will be entitled to deduct the policy excess from any payments made in this regard.
- Reconsider Mr M's claim for enforcing the judgment he obtained against the meet and greet service. In doing so QIC will only be entitled to rely on the policy terms that require the claim to have reasonable prospects of success and be proportionate to pursue. To establish this, they should instruct suitable experts. These should be in the form of a suitably qualified legal professional to engage the services a tracing agent or other similar service.
- Pay Mr M £500 for the distress and inconvenience caused.

## **My final decision**

For the reasons set out above, I uphold Mr M's complaint against QIC Europe Ltd and direct them to put things right in the way I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 March 2023.

Lale Hussein-Venn  
**Ombudsman**