

The complaint

Miss C and Mr W complain that QIC Europe Ltd (“QIC”) unfairly declined a claim under their legal expenses insurance (“LEI”) policy.

Any reference to QIC includes respective agents and representatives. I’ll also largely refer to Mr W as he has led this claim.

What happened

The background of this complaint is well known to all parties. So, I’ll summarise events.

- In 2017 Mr W received a cochlear implant (manufactured by Company A). Mr W says around July 2019 issues with the implant began. And on 12 March 2020 Mr W received a letter from Company A notifying him of a potential failure with the device.
- Following this Mr W had various appointments and testing to try to resolve these issues. On 25 January 2021 he says his implant was diagnosed as failed. In May 2021 Mr W underwent a procedure – the recovery he has described as very challenging and which impacted all aspects of his day-to-day life for some time.
- Around October 2021 Mr W contacted Company A to discuss compensation. Mr W then instructed a solicitor (Company I) who in turn, contacted QIC on 27 May 2022.
- Miss C and Mr W had held LEI cover with QIC since 10 March 2020. QIC declined to cover the claim. It said the policy required policyholders to tell QIC of any event or circumstance which may lead to a claim under the policy within a reasonable time of it happening, and always within 180 days. And here, QIC had been notified of the claim long after the 180 days had passed.
- One of our Investigators looked into what happened and upheld the complaint. He agreed that strictly, Mr W had failed to comply with the 180-day timeframe. But he said ICOBS outlines that insurers should not reject a claim for breach of condition or warranty unless it can show the breach (late notification in this case) had caused prejudice to the claim. And here, he thought QIC had failed to demonstrate the impact of this delay. So, he directed QIC to progress the claim in line with the remaining policy terms.
- QIC disagreed. It reiterated the delay, said the notification period was a condition precedent to liability – quoting a court case that discussed how a condition precedent could exist due to conditional links between terms – and QIC referenced its own terms. QIC also argued the first year of the policy was sold on a “*claims made*” basis which meant the claim would need to be made within the timeframe of that policy – and it wasn’t. It said the policies that were taken in March 2021 and 2022 differed as they were on a “*claims occurring*” basis meaning the incident itself needed to take place during the life of the policy. So, the incident or circumstance pre-dated the policies.
- The Investigator stood by his position, so the complaint was passed to me for an Ombudsman’s decision. I issued my provisional thoughts on 23 February 2023. I’ve summarised these below.

- *The claim:* I was satisfied the claim was made late and outside of the 180 days specified by the policy terms. But QIC had failed to evidence this breach had prejudiced its position so I didn't think it was fair for it to rely on this term.
- *Claims made/claims occurring:* I was satisfied Miss C and Mr W had continuous cover, and given the claims made/occurring terms it appeared on its face neither policy would cover the claim. But in line with the FCA principle of treating customers fairly, this Service does not consider it fair for a customer to "*fall between two stools*" where there is no gap in cover. So, I didn't think it would be fair for QIC to decline the claim on this basis.
- *Condition precedent:* I was satisfied the terms of the policy did not reflect the 180-day requirement as a condition precedent. I discussed the case law it quoted and potential conditional links of terms but said even if I was satisfied such a link existed, I would need to be satisfied that a consumer understood this amounted to a condition precedent, and that this was clear and drawn to a customer's attention – which it wasn't here.

I also explained the scope of my role requires me to consider the law, but also requires me to determine what is fair and reasonable in the circumstances of each complaint. And here I wouldn't be satisfied it would be fair for QIC to rely on the 180-day requirement as a condition precedent as I wasn't persuaded this had been made clear to Miss C or Mr W.

- QIC said it did not agree fully with my findings, but it would reconsider the claim in line with the remaining policy terms. Miss C and Mr W responded to agree.

So, the matter has been passed back to me for an Ombudsman's 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.

Having done so, I'm upholding this complaint.

Following my provisional decision, QIC and Miss C and Mr W have responded to agree to the outcome I proposed. For this reason, I see no reason in reiterating or discussing my findings any further. And I issue this decision only for completeness for Miss C and Mr W.

My final decision

For the above reasons and those stated in my provisional decision, I uphold this complaint and direct QIC Europe Ltd to reconsider the claim in line with the remaining terms of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C and Mr W to accept or reject my decision before 27 March 2023.

Jack Baldry
Ombudsman