

## **The complaint**

Mr M's complaint is about a claim he made on his Soteria Insurance Limited legal expenses insurance policy.

All references to Soteria include their claims handlers.

## **What happened**

Mr M made a claim on his Soteria Insurance Limited legal expenses insurance policy for cover to bring a professional negligence claim against Solicitors he instructed to act for him in respect of a medical negligence claim.

The history of the claim is well known to both parties, so I don't intend to repeat it here. The matters I am considering and which essentially form the crux of this complaint are:

- whether there was any failure by Soteria to progress Mr M's claim within a reasonable amount of time and if so what level of compensation should be awarded to him.
- whether Soteria failed to provide Mr M with the cover he was entitled to under his policy and what should happen next.

Mr M has also referred to various examples of where he thinks Soteria are responsible for maladministration of the policy, but I don't intend to determine those issues on a standalone basis- rather I'll look at Soteria's actions in the round and comment on them where relevant when determining the matters I've set out above.

Our investigator considered Mr M's complaint and initially concluded that it shouldn't be upheld and that Soteria weren't responsible for the actions of the panel firm. She later reviewed things afresh as well as Mr M's considerable submissions in response. At that point she concluded that Soteria had failed to properly progress Mr M's claim within a reasonable timeframe or properly assess it under the terms of the policy. As such she recommended Soteria pay Mr M £950 in compensation for this and arrange for assessment of his claim to now take place.

Soteria have agreed to the investigator's recommendation, but Mr M has not. He's made a number of submissions in response which I will deal with in summary in the body of this 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 agree that Mr M's complaint should be upheld for broadly the same reasons set out by the investigator.

I set out above the issues I'm considering in this complaint. Mr M has introduced some

additional matters since he brought his complaint to this Service- including the fact that he feels the policy was mis-sold. But that's not something I can deal with here. I know the investigator has made some comment on that matter, but I don't think it's appropriate for us to determine the issue in finality because it's not one the seller of the policy would have had the opportunity to comment on and the issue of the sale of the policy hasn't in any event been considered in detail by them or the investigator. If Mr M wants to pursue a specific complaint for mis-sale of the policy, he will need to raise it with the business that sold it to him in the first instance.

I also won't be considering any of Mr M's submissions in relation to the actions of the panel firm. They are an independent firm of professionals with their own codes of conduct and regulator. It's not within my remit to determine any complaints against them save where they were administering the terms of the policy by say turning down cover on behalf of Soteria. If Mr M remains unhappy with their conduct, he will need to address this with them directly. If he remains dissatisfied, he can refer the matter to the Legal Ombudsman.

Mr M has made considerable submissions in this complaint which I know he wants addressed. I won't however be addressing those submissions individually. No disrespect is intended to Mr M in this regard. It simply reflects the informal nature of this Service.

I turn now to whether there were any failures by Soteria to progress Mr M's claim within a reasonable amount of time. Soteria themselves have accepted their failings in this regard. Whilst they initially offered Mr M £250 to put things right, they have subsequently accepted the investigator's view that this doesn't go far enough to compensate Mr M for the time it took to progress things. So, the question for me is to determine whether this is the right amount of compensation.

There was almost a four-month delay in Soteria acknowledging the information they'd asked Mr M to provide before his claim could be assessed. Things then progressed but stalled again because there was considerable debate about who Mr M wanted to consider the merits of his claim, as well as grievances about the actions of the panel firm and the instructions and information they intended to send to the Barrister. Whilst I can't attribute the stalemate reached entirely to Soteria, I do think they were in a position to move things forward sooner in order to fulfil the terms of the policy based on the information they had. This would have enabled them to decide whether they were in a position to offer cover at all.

As things stand no merits assessment has been conducted to date. So Mr M doesn't know if Soteria are prepared to offer him cover. And I understand that he was advised the limitation for his claim against his former Solicitors is fast approaching. The delays to my mind amount to the initial four months it took for the claim to be acknowledged and for over a year after that where no assessment happened before Mr M complained in finality. I have no doubt, having read everything he's said, that this would have caused him considerable stress and frustration. I would ordinarily award more than the £950 recommended by the investigator for delays amounting to this sort of time frame but I'm also mindful that they aren't entirely of Soteria's own making. I say so because the tone, length, nature and frequency of the correspondence from Mr M, did in my view partly contribute to this delay. And I can see that Soteria, through their panel firm, did try to work with him amicably for some time to reach the point where an assessment could be provided which would be acceptable to him. Because of this I agree with the investigator that £950 is adequate to compensate him for the delay in his claim being progressed.

It follows that in failing to progress the claim Soteria also failed to provide Mr M with an assessment of his claim in order to determine whether he was entitled to the benefit of funding at all. So I turn to what should happen next.

I appreciate that Mr M wants control over a number of things such as who will assess his claim and what instructions they should receive. But I don't think that's up to him to decide. There is currently no cover in place as his claim has yet to be assessed. And given Soteria are paying to establish whether cover should be afforded, it's up to them to decide who to instruct and what instructions to give. In doing so they're entitled to rely on the opinion of their panel firm in this regard so long as that professional is suitably qualified and the advice being obtained is not based on factual mistakes. As yet there is no advice so I can't say it is based on a factual mistake and I'm satisfied that the panel Solicitor is suitably qualified to instruct a Barrister to consider the merits of the claim. So if Soteria wish to instruct the Barrister through the panel firm as they initially wanted to, they should do so by providing all of the information Mr M has submitted in support of his complaint to them. Mr M should also be given one additional opportunity to supply anything else he wants to the Barrister to consider. If however Soteria wishes to instruct another legal professional, that is up to them, but they should provide the same information I've set out above to that person.

In making this determination I recognise that Mr M feels the panel firm weren't going to provide all the information to the Barrister that he'd supplied but this was later identified and is therefore subject to correction- had instructions in finality been sent. So although I understand his trepidation, I don't think the matter is now in issue as the panel firm accepted particular documents were omitted in error and Mr M will in any event have another opportunity to supply any further information he wants to be considered.

The investigator said that Mr M was entitled to take his own advice about the merits of his claim if he had no faith in the panel firm or the Barrister they intended to instruct. In response to that Mr M said he didn't have the funds available to do so. Mr M now takes issue with that submission being disclosed in the investigator's view. Whilst I understand he may find this issue sensitive, it is important to address it given it forms part of his submissions. I've also taken into account what he's said about this. Having done so, I don't think this means Soteria need to fund his own choice of Solicitor or Barrister to consider the merits of his claim because of his personal circumstances. His claim isn't at a point where he has the freedom to choose his own Solicitor because his matter is not at a point where proceedings are necessary. So the options open to him now are to allow Soteria to instruct a professional of its choice or to withdraw his claim entirely. If his circumstances change and he disagrees with Soteria's Barrister's view, then he can take his own advice, at his own expense. If that opinion is favourable I would expect Soteria to consider things further in accordance with its policy terms and inline with the approach we adopt in such circumstances.

Mr M has made the point that Soteria aren't currently acting in line with their policy terms by instructing a Barrister to comment on the merits of his claim. He cites the following term in that regard:

*"2. Reasonable prospects and proportionality*

*(a) We will assess whether Your claim has Reasonable Prospects of success and/or is Proportionate before We can confirm cover.*

*(b) If We decide that Your claim does not have Reasonable Prospects and/or is not Proportionate and You get a legal opinion, at Your own expense, that says Your claim does have Reasonable Prospects and/or is Proportionate then We will arrange to get a final opinion from an independent barrister."*

Mr M argues that as he hasn't obtained an opinion at his own expense, so Soteria aren't entitled to instruct a Barrister. I don't agree. That policy term applies in very specific circumstances- in particular where an assessment of merits has already been obtained. In this case that assessment has yet to be determined so as I've said above, it is now up to

Soteria to obtain that and they are, in my view entitled to take that advice from a legal representative of their choice.

### **Putting things right**

Soteria should pay Mr M £950 in compensation for the delays in dealing with his claim.

Instruct a Solicitor or Barrister of their choice to consider the merits of Mr M's claim against his former Solicitor, providing all of the information Mr M has supplied in support of his claim. If Mr M wishes to supply anything further, then he should be allowed one opportunity to provide that.

### **My final decision**

I uphold Mr M's complaint against Soteria Insurance Limited and direct them to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 20 June 2023.

Lale Hussein-Venn  
**Ombudsman**