

The complaint

Mr F is unhappy with how Fairmead Insurance Limited progressed his legal expenses insurance claim from January 2022 (following a previous complaint to our service).

What happened

Mr F has a claim for professional negligence against a solicitor's firm who previously acted for him. He claimed on his legal expenses insurance with Fairmead for assistance with that. He's made a number of complaints about Fairmead's subsequent actions.

Most recently another Ombudsman issued a final decision on what happened from July 2019 until January 2022. Amongst other things she concluded it was reasonable of Fairmead to rely on an assessment its panel solicitors had produced which concluded the claim didn't have reasonable prospects of success (a requirement of the policy).

In August 2022 Mr F provided a positive assessment of the claim's prospects from his own solicitors. Fairmead agreed to seek counsel's opinion to resolve matters and Mr F's solicitors provided details of their costs to instruct counsel. There was discussion over the rate Fairmead would pay. That was resolved in February 2023 when Fairmead made a revised offer which the solicitors accepted.

Mr F's solicitors sought quotes from counsel to provide the advice. None of Fairmead's preferred chambers were able to assist but it obtained a quote for £5,000 from another chambers and asked for approval of that and payments of its costs for drafting the instructions. Fairmead referred the matter to its costings unit for approval and provided its file to us at the same time.

Our investigator thought it was reasonable of Fairmead to negotiate over the costs it would pay for Mr F's solicitors to draft instructions to counsel. And there were times when Fairmead was waiting for a response from Mr F's solicitors. However, she thought there were occasions where Fairmead could have moved matters forward more quickly and said it should pay Mr F £100 in recognition of the impact of that on him.

Fairmead agreed with her outcome (and I understand has made payment to Mr F). Mr F didn't agree and asked for an Ombudsman to review matters. He didn't provide any further comments.

So I need to reach 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 relevant rules and industry guidelines say Fairmead has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

In common with other legal expenses insurance policies Mr F's says costs will be paid as long the claim has prospects of success. It defines that as "*it is more likely than not that you will recover damages (or other legal remedy) or make a successful defence*". Where there are conflicting legal opinions on a claim's prospects of success our normal approach is to say an insurer should pay to obtain a barrister's opinion on prospects to provide finality.

In this case when Mr F provided a positive prospects assessment from his own solicitors I think Fairmead were right to conclude a barrister needed to be instructed as there were now conflicting legal opinions on this issue. I appreciate there was then discussion over the costs it would pay his solicitors to draft the instructions. But I don't think it was unreasonable of Fairmead to seek to negotiate on the hourly rate (and time commitment) his solicitors initially proposed as their initial email didn't evidence why this was required. Once further information was provided on that Fairmead reviewed matters and made a revised offer which was accepted.

I think it was then reasonable of Fairmead to provide details of its preferred chambers while also confirming it would consider an alternative chambers if the quote was equal to or less than one from its preferred chambers. It doesn't appear any of Fairmead's preferred chambers were able to quote at all but an alternative quote was provided from a different chambers which was being considered by Fairmead in March 2023. I appreciate Mr F may be unhappy about what subsequently happened but I understand he's made a separate complaint to Fairmead about this so that isn't something I'm considering in this decision.

Turning to the time taken for Fairmead to consider matters from August 2022 (when the positive prospects assessment was provided) until March 2023, I agree there were periods when it was awaiting a response from Mr F's solicitors and that prevented matters progressing. For example his solicitors took from late September to late November to provide more information on the justification for their hourly rate. But I think there were times when Fairmead could have moved matters forward more quickly. In particular a response wasn't provided to his solicitor's further hourly rate proposals until early February 2023.

I appreciate this was a difficult time for Mr F who was concerned about potential limitation deadlines for his claim. On the other hand, I'm mindful of the fact he did have professional representatives acting for him who were pursuing matters on his behalf (and were in a position to assist him with any action that was necessary to protect his position). And, as I've said not all of the delay in this period is something Fairmead is responsible for. Taking all of that into account I think the £100 our investigator recommended is a reasonable way of recognising the unnecessary distress and inconvenience Mr F was caused by what Fairmead got wrong.

My final decision

I've decided to uphold this complaint. Fairmead Insurance Limited will need to pay Mr F £100 to put things right (which I understand it has already done).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 8 September 2023.

James Park
Ombudsman