

The complaint

Mr S complains about the way Inter Partner Assistance SA (“IPA”) handled a claim made under his legal expenses insurance (LEI) policy.

Mr S is represented in bringing this complaint and so, any reference to him also includes the comments of his representative. Any reference to IPA includes the comments and actions of its agent.

What happened

The circumstances of this complaint are well known to both parties, so I’ve summarised what happened.

- Mr S has a LEI policy which is underwritten by IPA. In 2018, he made a claim on the policy regarding matters connected to the boundary of his property.
- Mr S alleged the solicitors he’d instructed to purchase his property failed to register property accurately in his name. The other two matters were in respect of Mr S defending his ownership of land which his neighbours were disputing (I’ll refer to these as “dispute 1” and “dispute 2”).
- IPA accepted the claim and appointed a panel firm of solicitors – who I’ll refer to as “M”. In July 2018, M advised Mr S that his professional negligence claim didn’t enjoy reasonable prospects of success and so, it couldn’t be pursued at that stage.
- In August 2018, M advised the remedy sought in respect in dispute 1 didn’t fall under the policy’s scope of cover. On M’s advice, IPA said there would be no funding to pursue the matter at that time.
- In October 2018, M advised in respect of dispute 2, that it didn’t consider the legal matter to enjoy reasonable prospects of success. But, shortly after this, Mr S told IPA matters with his neighbour were escalating.
- This information was shared with M, and it advised the recent actions of Mr S’ neighbour did amount to a trespass, but that Mr S would need to obtain a boundary report before it could confirm whether the claim enjoyed reasonable prospects of success.
- Around this time, Mr S complained to IPA about how the claim was progressing. IPA apologised and explained the terms of the policy needed to be satisfied before the claim could progress.
- In late December 2018, M said the claim enjoyed prospects of success of at least 51%. Based on this, IPA authorised for M to conduct the legal claim.

- From early 2019 M requested further funding be authorised by IPA so it could progress Mr S' legal claim – which was approved by IPA. In October 2019, M informed IPA a letter of claim had been received from Mr S' neighbour, and that the likely outcome of dispute 2 would be that proceedings are issued, or mediation is agreed.
- In February 2020, M sought advice from Counsel in respect of a without prejudice offer which had been received from Mr S' neighbour.
- In the interim, M sent a letter to Mr S' neighbour, and updated IPA in June to say it was still awaiting a response from the other side. Later, in July, a meeting was scheduled for Mr S, his neighbour, and the parties' surveyors. In October, M informed IPA that it was awaiting the expert report following the meeting with the surveyors.
- In January 2021, M confirmed proceedings had been issued *against* Mr S and it provided IPA with a quote for Counsel to draft a defence. IPA agreed to fund Counsel's opinion and later that month, Counsel confirmed defending the claim enjoyed reasonable prospects of success.
- IPA requested an update from M in June 2021, and in July 2021 M said a case management conference had been listed for November that year.
- In October 2021, M confirmed the parties had agreed to mediation – for which further funding was required. A month later, M confirmed mediation had not been successful.
- Around this time, Mr S raised concerns about M's handling of the legal claim. And he asked IPA if it would provide separate limits of indemnity in relation to the different elements of his claim.
- IPA advised Mr S to contact M directly about his concerns. It also told him that there would be no cover in respect of dispute 1, but that if a trespass occurred it would review this.
- In January 2022, Mr S raised concerns about M's handling of matters and IPA passed these to M.
- At the end of May 2022 Mr S informed IPA that a court date had been set for 6 June 2022, but that he felt the claim was incomplete. M told IPA it had only been notified of the trial date in mid-May and that its request for it to be postponed had been denied by the judge.
- On 1 June 2022, Mr S contacted IPA to see if the court date could be adjourned as M weren't available to attend, and he hadn't met the recently appointed Counsel.
- On 6 June, IPA responded to M and said it was seeking urgent funding approval. At this time, IPA told M its request for funding exceeded the policy limit and asked if M knew whether Mr S was in a position to fund the claim beyond this.
- The next day, Mr S told IPA he had no solicitor and that Counsel had one day to prepare for the trial and so, was at a disadvantage. He also confirmed he wouldn't be able to cover any costs exceeding the indemnity limit.
- IPA told M funding had been agreed to the indemnity limit and again raised concerns about Mr S' ability to pay legal costs beyond the limit.

- Unhappy, Mr S complained to M and IPA about how the claim and legal matter had been handled.
- In November 2022, Mr S and IPA were provided with a costs judgment which awarded costs against him.
- In January 2023, IPA confirmed it would pay the remaining indemnity left to M. It also told Mr S that whilst he opposed the fees, as he was defending a claim, there was no option but for the legal to proceed to court. And the judge had also denied M's request to postpone the trial.
- Unhappy, in July 2023, Mr S brought a complaint to this Service. IPA issued its final response letter in August 2023. It didn't agree it was responsible for paying Mr S adverse costs or legal fees he incurred above the indemnity limit.
- An Investigator considered the complaint but didn't uphold it. Overall, she was satisfied IPA had handled the claim fairly, and that much of Mr S' concerns related to the conduct of M – something this Service didn't have jurisdiction to consider.
- Mr S disagreed and so, the complaint has been passed to me for an Ombudsman's 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.

I have read all the information provided by Mr S. In making my decision, I need to consider what's fair and reasonable in all the circumstances of the case, taking into account relevant law and regulations; regulators' rules, guidance, and standards; codes of practice – specifically the Insurance Conduct of Business Sourcebook (ICOBS) which requires insurers to handle claims promptly and fairly; and (where appropriate) what I consider to be good industry practice. Although I will take account of relevant law, it's only one of the factors to consider when deciding what's fair and reasonable. Having done so, I'm not upholding this complaint – I'll explain why.

But before I do, I want to assure the parties that whilst I've read all the information submitted, we're an informal alternative dispute resolution service and our role is to provide an impartial review of a case quickly, and with minimal formality. In reaching a final decision, I use my judgement to decide what is fair based on the main crux of a case, and so, my decision focusses on what I consider to be relevant to the outcome I've reached.

From what I've read, much of Mr S' dissatisfaction is about, or connected to, how M handled his legal claim. Whilst IPA appointed M, we don't hold insurers responsible for the way their panel firm of solicitors carry out litigation on a day-to-day basis. Once the insurer appoints a solicitor, its role is limited to funding the fees and disbursements, and it doesn't have much control over how a claim is run.

With regards to funding, I've seen that when authorising this, IPA repeatedly told M how much of the indemnity limit remained. I also note that when M asked IPA for funding in respect of obtaining Counsel opinion, IPA asked it to get a few quotes as it considered the initial one to be excessive. So, from what I've seen, I'm satisfied IPA took reasonable steps – within its realm of influence – to ensure the indemnity limit was applied fairly.

With regards to dealing with Mr S' concerns about M, I've seen that when these were raised

IPA promptly referred the matter to M for it to address these – which is what I'd expect it to do. I haven't seen enough evidence to persuade me IPA should have taken a different course of action. But even if I were persuaded IPA should have done something differently, I wouldn't be directing it to cover the legal costs Mr S has incurred above the indemnity limit – which is ultimately, what Mr S is seeking. As that wouldn't be a reasonable remedy in the circumstances - given IPA isn't responsible for the legal claim and the outcome of that.

I'm aware Mr S is aggrieved M didn't attend court, and I note his opinion that the newly appointed Counsel was ill-prepared - which he says prejudiced his position in court. He considers IPA's decision to approve funding at this stage to be unfair – saying IPA was aware of the difficult circumstances and that he couldn't afford to pay costs beyond the policy limit. Mr S adds that M didn't make him aware that going to court would exceed the indemnity limit. But I'm not persuaded IPA's decision to agree funding at this point was unreasonable. I say this for three reasons.

First, M confirmed to IPA that as Mr S was the defendant in the trial, he had no choice but to attend court. So, whilst I acknowledge this put him in financial difficulty, ultimately, he was always going to be required to attend court – with or without funding from his LEI policy.

Second, the judge had denied M's request to adjourn the trial – again, meaning it was always going to go ahead. And if IPA hadn't sought urgent funding, Mr S would have found himself in the unfavourable position of having to personally bear even greater legal fees.

Third, Mr S has said the terms and conditions say M must discuss matters with Mr S if the indemnity limit is unlikely to be enough. However, as explained by our Investigator, this was taken from M's terms and conditions and what its obligations are – not IPA's. So, I don't find this persuasive evidence of IPA having treated Mr S unfairly.

So, whilst I understand Mr S' frustration with M and how it litigated his legal claim this isn't something IPA can reasonably be held responsible for in the circumstances. And I'm satisfied IPA's decision to approve funding up to the indemnity limit was fair and reasonable in the circumstances.

Paying the court order

Mr S has also said he was told by IPA the court order would be covered by the policy indemnity, but I haven't seen any evidence to support this. Mr S asked this Service to retrieve a telephone call in which IPA allegedly said this. Even if I were persuaded it was said, ultimately, the policy document is clear as to what the maximum indemnity limit is – namely £50,000 – and so, I wouldn't in the circumstances direct IPA to cover legal costs which exceed this amount, even if incorrect information had been given.

Progressing the claim

I've looked at the claim history to see if IPA progressed it in a timely manner. From what I've seen, I'm satisfied that overall, it did. Once it was established the legal claim was covered – which took some time owing to additional information being required by M – IPA progressed the claim as I'd expect, with a legal opinion on the prospects of success being obtained. As IPA isn't a legal expert, it's standard practice for an insurer to obtain legal advice from a solicitor or barrister as to whether a legal claim enjoys reasonable prospects of success. So, whilst this adds to the time things take, it's a necessary step and one which is set out in the policy document which says:

“In respect of all claims, it is always more likely than not that you will: A) recover damages or obtain any other legal remedy which we have agreed to b) make a

successful defence c) make a successful appeal [...] d) recover higher damages than any costs and expenses.”

Indemnity limit and insured incidents

With regards to the indemnity limit, IPA said in its final response that all concerns relating to the neighbour in dispute 2 have been treated as one claim and therefore, subject to one policy limit of £50,000 – which it confirmed had been fully used. To explain why it was being treated as one claim, it referred to the following policy term:

“Insured Incident

The Incident or the first of a series of incidents which may lead to a claim under this insurance. Where more than one claim is reported that relate to an incident or incidents that are connected by the same cause of action, time, or event, then these claims will be treated as a single claim.”

I'm satisfied the policy makes it clear incidents connected by the same cause of action, time or event will be treated as a single claim. Mr S has said he was led to believe there were three claims each with its own indemnity limit. Whilst he *potentially* had indemnity limits for two other claims, that doesn't change the fact the indemnity was used up on his legal claim concerning dispute 2. And so, I don't consider IPA's position that the indemnity limit had been fully utilised in respect of this legal claim to be unfair.

Complaint handling

Mr S also says IPA didn't respond to his complaints about the service it had provided. As our Investigator explained, “complaint handling” isn't a regulated activity. However, in certain circumstances I might be able to consider it if its ancillary to a regulated activity. Here, Mr S' complaint is about having to pay legal costs he doesn't think he should have to bear - owing to IPA's handling of his claim. I appreciate Mr S wants to know *why* there was an apparent delay in IPA providing a final response, but as I'm satisfied it's handled his claim fairly, finding this out isn't material to the outcome.

I recognise my decision will be very disappointing for Mr S. Without doubt this has been a very stressful time for him and his family, and I appreciate the impact the legal matter and claim has had on him. But my role is to decide if IPA has treated Mr S fairly and reasonably, and from what I've seen, I'm satisfied it has in the circumstances. As I've said above, IPA's role in the claim is limited to underwriting the legal costs up to the indemnity. Mr S being left having to pay costs is a result of the legal process, which isn't in the insurer's control. And so, based on everything I've seen, I won't be directing IPA to take further action in respect of this complaint.

If Mr S remains unhappy about M's handling of the legal claim, he can contact the Legal Ombudsman and Solicitor's Regulation Authority about the matter.

My final decision

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 June 2024.

Nicola Beakhust

Ombudsman