

The complaint

Mrs K's complaint is about a claim she made on her One Insurance Limited ('One') legal expenses insurance policy, which was declined.

Mrs K says that One treated her unfairly and wants them to fund the legal costs she incurred at her own expense to help resolve the legal problem she had.

In this decision, all references to One include their claims handlers.

What happened

Mrs K made a claim on her One legal expenses insurance policy for cover to help her with a boundary dispute on her driveway.

One accepted the claim in the first instance and passed it to a firm of Solicitors to consider. A Solicitor considered the claim and determined that it didn't have reasonable prospects of success based on the evidence presently available, as required by the policy. He also pointed out that the policy didn't in any event provide cover for defending claims in relation to property disputes against policyholders, which seemed to be what Mrs K was seeking cover for. As a result, One refused to fund Mrs K's claim.

Mrs K didn't agree with the assessment that had been carried out and didn't feel the Solicitor appointed was independent. She also thought the type of claim she was seeking to make was covered by the policy.

One considered the complaint and upheld it in part. Whilst they didn't accept the policy extended to covering the type of claim Mrs K wanted to make for the same reasons set out by the Solicitor they'd instructed, they identified a service failing in that there was a delay between the claim being made and accepted of 13 days, which they thought would have caused Mrs K frustration and inconvenience. As such they offered her compensation of £50.

Unhappy, Mrs K referred her complaint to the Financial Ombudsman Service. Our investigator considered Mrs K's complaint and concluded it shouldn't be upheld. Mrs K doesn't agree so the matter has been passed to me to determine.

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 won't be upholding Mrs K's complaint. I'll explain why.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mrs K's policy is no exception. That means their claims needed to have over 51% prospects of succeeding in order for One to cover the claim.

We don't think this is unfair. Litigation 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 on the merits of the claim itself, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. One did this.

I'm satisfied that the person advising Mrs K was suitably qualified and experienced in the area of law Mrs K was asking for help with, and I've seen nothing that suggests his advice in respect of the merits of the claim was based on factual mistakes. I appreciate Mrs K doesn't agree with the advice she's received but that's not something I can consider. If she were to provide an alternative reasoned opinion from a comparable Solicitor, then I would expect One to consider that. Equally, if she provided One with any new evidence or information that has now come to light that might change the outcome of her assessment, like chartered land surveyor's report commenting on the location of the boundary between her property and her neighbour's, then I would expect One to refer that back to the Solicitor they appointed. But as matters stand, I can't say One did something wrong by relying on the legal opinion they received.

I appreciate that Mrs K don't agree with the way in which her claim was handled. She doesn't feel that the person One appointed was independent and that his appointment didn't accord with the terms of the policy. From what I've seen the Solicitor appointed by One was providing advice independently through his firm. We consider that firms of Solicitors are independent professionals even if they have working relationships with insurers. They are separately regulated and subject to their own codes of conduct. If Mrs K feels there is some question over the independence of the Solicitor who advised on her claim, she's entitled to complain to him directly or through the Legal Ombudsman.

Mrs K has also made assertions about the fact that the policy does engage to cover defending claims for property disputes. In principle I agree with her depending on the exact nature of the legal dispute she is seeking cover for. When she made her claim to One Mrs K said she was seeking cover for removing a fence that's on her boundary on the driveway in order to get her car in and out. There doesn't seem to be any restriction on pursuing or defending claims for nuisance or trespass so if the claim her neighbour has brought against her is in relation to this, it would in principle attract cover under the policy. If however the neighbour is claiming for physical damage to their property and Mrs K is defending this then cover is restricted because it only extends to pursuing claims for physical damage. But I don't think the meaning of the terms make a difference here because the claim itself has been determined to have no reasonable prospects of success. And that's relevant because the crux of this dispute is a claim of trespass, at least by Mrs K arising from the position of the boundary. The advice of the Solicitor is that without expert evidence her claim doesn't have reasonable prospects of success. If Mrs K is able to provide further evidence of a comparable legal opinion, then I would expect One to review her claim in line again in line with the policy terms which, for clarity, say:

“Property Disputes

Benefits:

- We will pay costs for any dispute relating to events causing disruption to the quiet enjoyment of your home, arising from nuisance or the trespass of third parties. You must be either the homeowner or rent the property.*
- Advisors costs to pursue a legal action for financial compensation for damages against a person or organisation that causes physical damage to your main home. The damage must have been caused after you first purchased this cover. You must be either the homeowner or rent the property”.*

Turning now to the service failing that One identified, I’m satisfied that the amount they’ve offered her for the delay caused is in line with what we’d award in such circumstances so I think their offer of compensation is reasonable and that they don’t need to do anymore. If Mrs K wants to accept this amount and hasn’t already done so, she should contact One directly.

My final decision

For the reasons set out above, I don’t uphold Mrs K’s complaint against One Insurance Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs K to accept or reject my decision before 29 May 2024.

Lale Hussein-Venn
Ombudsman