

The complaint

M, a company, complains about a claim it made on its Inter Partner Assistance SA ('IPA') legal expenses insurance policy.

M says IPA treated it unfairly.

All references to IPA in this decision include their claims handlers.

In this complaint M is represented by Mr D but for ease of reference I shall refer to all submissions as being M's own.

What happened

Mr made a claim on its legal expenses insurance policy for cover to bring a claim against a third party it had a business relationship with.

IPA accepted the claim and instructed Solicitors (firm A) to represent him.

M asked IPA to instruct his own Solicitors at that point, which IPA agreed to, except for the costs associated in duplicating work they'd already funded. The firm M wanted to instruct (firm B) initially accepted its instruction but then withdrew shortly thereafter because they felt that M was not taking their advice.

IPA then gave M the choice to find a replacement Solicitor, but M wanted IPA to appoint someone for it. Following this IPA instructed a panel firm of Solicitors (firm C). Firm C also ceased acting for M on the basis that they felt communications with it had meant that trust and confidence had broken down between them.

M then tried to source a fourth firm (firm D) to act for it but its hourly rate could not be agreed with IPA. Finally, M instructed a fifth firm (firm E) in June 2022 to assist him with his claim. IPA agreed to the instruction of firm E in respect of a different claim but there was no express agreement about firm E's costs being funded in respect of the matter that is the subject of this complaint. Rather IPA asked firm E to establish if the settlement being offered to M by the third party was fair.

Firm E instructed a barrister to consider the matter. The barrister's advice was that the offer posed to M should be accepted. This opinion wasn't supplied to IPA on receipt by either Firm E or M. In the meantime, firm E asked IPA to fund the cost of protective proceedings being issued on M's behalf, which IPA agreed to. When IPA was provided with the Barrister's advice, they declined to cover M's claim any further on the basis that the offer made to it was fair and should have been accepted in the circumstances.

Unhappy, M complained to IPA. IPA considered M's complaint and didn't agree that it had done anything wrong. M then referred its complaint to the Financial Ombudsman Service.

Our investigator considered M's complaint and concluded it should not be upheld. In her final view she said she didn't feel that IPA had treated M unfairly. M does not 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 M's complaint. Before I explain why, I wish to acknowledge the volume of submissions M has made and the number of concerns it has raised. Whilst I have read and considered everything M has said, I won't be addressing everything here. That's not intended to be disrespectful, but rather represents the informal nature of the Financial Ombudsman Service. Instead, I'll concentrate on the crux of M's complaint, namely whether IPA treated it unfairly, particularly in relation to withdrawing funding of its claim.

It's clear from the history of M's claim to IPA that M found it difficult to maintain legal representation, either when IPA instructed Solicitors for it or when M tried to source its own. In this case IPA agreed to the instruction of at least 4 different firms of Solicitors to assist M. What became clear by the conclusion of IPA's funding of M's claim was that advice had been received by a Barrister that the merits of M's claim couldn't be quantified and that the offer made to M should be accepted.

The policy terms say:

"If an insured person does not accept a reasonable offer to settle a claim, we may refuse to pay further costs and expenses."

The terms also make it an ongoing requirement for a policyholder to more likely than not recover damages or obtain any other legal remedy IPA have agreed to, or make a successful defence. In this case it's clear that the Barrister couldn't provide any advice on the merits of the claim and said that the offer should be accepted. Had that advice been disclosed to IPA at the time it had been received, I think IPA would have provided very limited funding to enable acceptance of the offer. Instead, a request was made for IPA to fund protective proceedings being issued against the third party which it agreed to but when IPA discovered the advice given and that the offer had not been accepted by M, it declined to fund the claim any further. I think this was reasonable in the circumstances. IPA was not required to fund a claim in circumstances where advice had been received to settle the dispute on terms offered. And the fact that IPA agreed to fund the costs of issue of protective proceedings and hasn't since changed its position on this after discovering the advice, to my mind is more than reasonable and goes beyond what it needed to do here.

As things stand IPA accommodated the funding of several firms of Solicitors for M when those Solicitors refused to act for it. The policy sets out that an insured person must co-operate fully with IPA and their representative. In this case IPA could well have taken the view on at least one of the occasions where a representative had declined to act for M that they didn't need to fund the claim further because M was not co-operating with their representative. Despite this IPA continued to fund the claim amongst several different firms of Solicitors. Again, I take the view that IPA went beyond what it needed to do here.

Turning now to M's specific complaints. Not all of those complaints were raised with IPA initially, so IPA has not had the opportunity to comment on them all. As such I won't be addressing everything M has asked us to. In particular M's concerns about IPA sharing M's indemnity limit over two claims or M's concerns about the hourly rate offered to firm D by IPA being too low fall outside the scope of M's complaint.

M has made the point that it accepted an offer from the third party in November 2021, that settlement had been agreed and therefore there was no need for further representation or

for IPA to do anything further. I find this assertion puzzling. It's clear from the correspondence I've seen that M was actively pursuing its claim against the third party throughout IPA's involvement and seeking assistance from IPA for help with that claim. Certainly, if M had wanted to accept the offer put to it in November 2021, I see no reason why it was seeking legal assistance at all. Rather M was seeking assistance either to negotiate the offer made to it, or pursue a claim against the third party, if advised to do so. So, I'm at a loss to understand why M considers that IPA providing it with the support it asked for was wrong here.

M has said it shouldn't have been asked to find its own Solicitor by IPA after firm C refused to act for it. For the reasons I've set out, I don't think IPA had to fund the instruction of any further representatives given the reasons why firms B and C refused to act for it. The fact that they gave M the option to source its own at that point was more than it needed to do. IPA wasn't obliged to provide representation at all in those circumstances nor to source a firm that was prepared to act for M.

M is unhappy with the conduct of firm C and says that delays were caused to the progression of its claim. I can't comment on the conduct of firms or Solicitors. They are independent to IPA and are separately regulated. The only thing I can consider is whether IPA caused any delays to the progression of M's claim whilst firm C was instructed. From what I've seen IPA responded within its service standards to any correspondence either M or firm C put to it and any delays in M's claim being progressed were mainly down to its ongoing disagreements with how its claim was being handled by the legal professionals instructed.

M feels that IPA prejudiced its position by authorising protective proceedings being issued and then refusing to see those through by providing ongoing funding. I don't agree. IPA weren't obliged to fund a claim where prospects of success couldn't be quantified, and a reasonable offer had been made but not accepted by M. And had IPA known about the advice received about this, I think it would have been unlikely they would also have covered the cost of protective proceedings at all. The fact that M decided to pursue those proceedings itself without settling the dispute as advised, is in my view a matter for M and not something IPA were responsible for.

I can't comment on why the Barrister instructed by firm M drafted protective proceedings on M's behalf when their advice was also that the offer made to M was fair. What is clear however was that M was aware of both the advice and the request for funding to issue those proceedings at the time they were received. M is a commercial entity so I think it was reasonable for it to have understood further costs would have ensued if proceedings were issued. It could therefore have chosen to accept the advice given to it initially to accept the offer rather than buy further time and issue protective proceedings. Based on the information IPA had at the time, I can see why they agreed to the requests for funding of proceedings when they did. So I don't think they did anything wrong here.

M has said that IPA confused two claims it made at different points and that firm E weren't authorised to act for it on this specific claim. I agree that at times the correspondence on this issue was confusing but as the investigator explained, M was aware that IPA hadn't agreed for firm E to act for it in respect of this specific claim. Either way, it makes no difference as IPA agreed to cover M's costs up to the point that they withdrew funding so there was no detriment to M as a result of this regardless.

My final decision

For the reasons set out above, I don't uphold M's complaint against Inter Partner Assistance SA.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 26 December 2024.

Lale Hussein-Venn
Ombudsman