

The complaint

Mr and Mrs S's complaint arises from the handling of a claim made to Inter Partner Assistance SA ("IPA") under the legal expenses section of their travel insurance policy.

IPA is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As IPA has accepted it is accountable for the actions of the agent, in my decision, any reference to IPA includes the actions of the agents.

What happened

Mr and Mrs S held a travel insurance policy with IPA that included legal expenses cover. In February 2024, while on holiday abroad, they were both injured in an accident involving the bus they were travelling on and a car. Mr and Mrs S made a claim under the legal expenses section of their policy for cover to pursue a claim for damages for their injuries. (I understand they also made a claim under other parts of the travel policy, for medical expenses but that does not form part of this complaint.)

Mr and Mrs S made a complaint about the time IPA was taking to assess their legal expenses claim. IPA responded to the complaint at end of April 2024. It said it needed a copy of the police report of the accident to assess the merits of the claim properly, which was taking some time to obtain. However, IPA agreed it could have provided better communication to Mr and Mrs S and offered £75 compensation for this.

IPA had obtained advice on the merits of the claim from one of its panel of pre-approved solicitors in March 2024, which was sent direct to Mr and Mrs S. They advised that the claim did not have reasonable prospects of success, partly as they need the copy of the police report to determine who the correct respondent would be. However, they also said the legal costs would likely exceed any damages Mr and Mrs S would recover because there are no general damages awarded for personal injuries in the country in which the accident happened. The policy excludes claims that are disproportionate to pursue, so IPA told Mr and Mrs S it would not cover the claim.

Mr and Mrs S made a further complaint about the claim being declined. As they had not heard from IPA in response to this, they brought the complaint to us in April 2024. At that stage, they were unhappy with the time taken to respond to them and the refusal of their claim. IPA has since issued its final response to the second complaint and did not change its position. Since then Mr and Mrs S also complained about the police report not being provided to the panel solicitors. As far as I am aware, IPA has not responded to this complaint point.

In the complaint form, Mr and Mrs S also asked for compensation for money lost on holiday due to their injuries but this is not something I can address in this decision, which is only about the handling of the legal expenses claim.

One of our Investigators looked into the matter. He explained that, as an insurer, IPA does not consider the legal merits of any case itself but instead is entitled to rely on the advice of suitably qualified legal professionals. IPA had obtained an opinion on the merits of the legal

claim but this was from a paralegal. The Investigator said we would expect IPA to demonstrate that the paralegal had appropriate supervision, without which he did not think IPA had shown the opinion was provided by a suitably qualified legal professional. IPA did not respond to the Investigator's request for proof of supervision. The investigator therefore recommended that IPA reassess the claim and obtain appropriately reasoned advice on prospects from a suitably qualified legal professional; and that it should make sure the legal professional has access to all the relevant evidence in the case, including the police report.

The Investigator also said that if any further opinion confirmed the legal claim had reasonable prospects, IPA should deal with the case. If not, Mr and Mrs S have the option to provide their own legal opinion, which IPA should consider.

The Investigator also recommended that IPA pay the sum of £150 compensation for the delays and poor service.

IPA has not responded to the assessment.

Mr and Mrs S do not accept that the £150 compensation is sufficient to reflect the trouble caused to them. They say it does not even cover the cost of the insurance and they had the stress of their injuries and IPA's refusal to assist them.

As the Investigator has not been able to resolve the complaint, it has been passed to me.

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.

Mr and Mrs S's policy provides cover for legal expenses to pursue a claim for compensation following an injury due to an accident. Like all other insurance policies this is subject to terms and conditions. The main terms relevant to this case are as follows:

"Prospects of success:

We will only provide cover where your claim or any appeal you are pursuing or defending is more likely than not to be successful. If you are seeking damages or compensation. It must also be more likely than not that any judgement obtained will be enforced."

The policy also excludes over for:

"Any claim where the legal costs and expenses are likely to be greater than the anticipated amount of compensation."

These are not unreasonable terms and they are not uncommon.

It is for a policyholder to establish that they have a valid claim but in common with most other legal expenses insurers, IPA agrees to pay for a legal opinion at the outset to assess if the claim is one that should be met under the policy. It has arrangements with a panel of pre-approved solicitor firms, which is aimed to make this more cost effective. IPA has a duty to exercise some care in selecting firms for its panel but it is up to the solicitor firm to decide which fee earner is allocated to a specific case. Solicitor firms commonly use employees with various levels of qualification. Paralegals and the like provide an integral part of the justice system. It is for each firm to determine who should have day to day conduct of a case but the Law Society requires that any unqualified employees have to be

adequately supervised.

If the panel firm that a legal expenses insurer has appointed chooses to allocate the case to a paralegal, we do usually require the insurers to provide evidence of appropriate supervision.

In this case, the claim was assessed by a paralegal. There is no evidence, of which I am aware, that the advice given is incorrect, or that IPA should have recognised it as such. However, in order to be able to rely on it to refuse the claim we do expect IPA to demonstrate that it is a legal opinion from a suitably qualified legal professional. In this instance that means that we would require evidence that the paralegal that assessed the legal claim was suitably supervised.

IPA was asked to provide confirmation of suitable supervision but it has not responded. Given the time that has passed and that the police report is now available, I agree with the Investigator that it is reasonable for IPA to have the claim reassessed by a suitably qualified lawyer. I expect IPA to provide all the relevant information, including the copy of the police report obtained.

I need to manage Mr and Mrs S's expectations that this does not mean the opinion will necessarily be different from that already obtained. But if the opinion does state there are reasonable prospects of success and the claim is proportionate to pursue, then IPA should proceed with the claim.

I will now turn to the time taken by IPA to consider the matter and the police report. As stated, it is for the claimant to provide evidence to support their claim. In this case, that means it was for Mr and Mrs S to obtain the police report. I do not therefore think that IPA was incorrect in telling Mr and Mrs S they had to do this. However, I can also see that the police had asked for the insurer to contact them directly. IPA did contact the police itself in March 2024 but told Mr and Mrs S they would have to pay the necessary fee. As it was their responsibility to get the report, I think it was reasonable that IPA require them to pay the necessary fee. In the end, I understand Mr S went back to the country in question to pay the fee and obtained the report.

While, as stated, IPA was not responsible for getting the report, once it was aware of the difficulties Mr and Mrs S were having in getting it, I think it could have contacted the police itself sooner. IPA has also acknowledged that there was some poor communication and its service could have been better, including the fact that some calls were not returned. Having considered everything, I agree with Investigator that some additional compensation is appropriate and that the total sum of £150 is reasonable (this is to include the £75 already offered).

My final decision

I uphold this complaint and require Inter Partner Assistance SA to have Mr and Mrs S's legal claim reassessed for prospects from a suitably qualified lawyer; and pay them £150 compensation for the distress and inconvenience caused by this matter. (For the avoidance of doubt this is to include the £75 already offered, so if Inter Partner Assistance SA has already paid that, it only now needs to pay the remaining £75.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 8 November 2024.

Harriet McCarthy

Ombudsman