

The complaint

Mr F's complaint is about a claim he made on his Fairmead Insurance Limited ('Fairmead') legal expenses insurance policy.

Mr F says Fairmead treated him unfairly.

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

What happened

Mr F's complaint follows a number of others made to the Financial Ombudsman Service in respect of a claim he made on his Fairmead legal expenses insurance policy for cover to bring a claim against a firm of Solicitors.

In this complaint I'm only considering Fairmead's actions from March 2023 until 19 June 2023. That's because the last Ombudsman's decision commented on Fairmead's actions up to March 2023 and in this case, Fairmead have addressed the issues Mr F has raised up to 19 June 2023 in their final response letter. I'm not permitted to consider anything outside the scope of that period because it has either already been considered by this Service or Fairmead hasn't had the opportunity to comment on it.

Mr F's complaint in this case is about delays in Fairmead progressing his claim to the extent that it has become statute barred. He also feels that he's incurred significant out of pocket expenses because of the delays caused in progressing his claim and that he's had to fund a considerable amount of his own legal costs, which should not have been necessary had Fairmead done what they should have.

This dispute follows a previous determination by the Financial Ombudsman Service that Fairmead needed to pay for a third legal opinion on the merits of Mr F's claim in order to allow Fairmead to determine whether they were prepared to fund that claim. In this case Fairmead took the view that the King's Counsel ('KC') Mr F wanted to instruct was too senior, that the costs quoted were too high and that a conference as well as an advice was unnecessary. Fairmead offered to pay £2,000 plus VAT towards the £5,000 Mr F had already chosen to pay the KC. They eventually increased their offer to £3,000 plus VAT. By this point Mr F's claim had one month before the expiry of the limitation on his claim. Mr F wants Fairmead to compensate him for the loss of opportunity in pursuing his claim as well as the legal fees he's already incurred.

Our investigator considered Mr F's complaint but did not uphold it. Mr F 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 Mr F's complaint. I'll explain why. Before doing so, I

wish to acknowledge both Mr F's considerable submissions in this complaint and his strength of feeling about it.

I appreciate the matters that Mr F is dissatisfied about are considerable but I won't be addressing each and every submission he's made in respect of these. That's largely because many of those submissions relate to a time period I cannot consider for the reasons I've set out in the background to his complaint. So, I can't for example consider delays as a course of conduct pre dating the period I'm looking at because that period of time has already been considered by the Financial Ombudsman Service. I can however consider Mr F's dissatisfaction about the matters that occurred between March and 19 June 2023. In doing so I will focus on the crux of that complaint rather than each individual submission, which is whether Fairmead treated Mr F unfairly and need to do something to put things right. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service.

Turning now to Mr F and Fairmead's dispute about the instruction of a KC in his claim. It was previously determined by the Financial Ombudsman Service that Fairmead would fund a Barrister's opinion in assessing the merits of his claim.

In this complaint I don't think it was unreasonable for Fairmead to refuse the instruction of a KC at the cost quoted by Mr F's Solicitors. That quote was for a conference with the KC followed by a written advice. Mr F's Solicitors also said that the instruction of a KC was appropriate in this case and that it was obvious from the instructions supplied that the issues in the claim were complex and out of the ordinary run of the mill Solicitor's negligence claims.

Fairmead on the other hand took the view that the cost estimate was both excessive in terms of preparation time claimed by the KC (which they felt was an unrecoverable cost on a standard basis) and that no explanation had been provided about why a conference was necessary instead of being provided with an advice on the papers alone. Further they took the view that no proper explanation had been provided about why this specific case was one which required the instruction of a KC other than not being run of the mill according to Mr F's Solicitors. Despite reaching a stalemate, Fairmead eventually offered to pay £3,000 plus VAT towards the fees Mr F had paid. Mr F remains unhappy with this and has not accepted the offer.

In this case the Barrister's opinion was required to establish whether Mr F's claim had reasonable prospects of success. DAS agreed to pay those fees but looking at everything both Mr F and his Solicitor said, I'm not persuaded that the instruction of a KC at the rate he was charging, as well as a conference, rather than a written advice was necessary here. And I'm not convinced that any persuasive evidence was provided to support why the instruction of a KC was necessary at all in this case over the instruction of a Barrister who hadn't taken silk. Because of this, I can't say that Fairmead acted unreasonably and I think the offer they made of £3,000 plus VAT was more than enough for an advice to be obtained about the merits of Mr F's claim in order to establish whether they should fund it. I can understand why Mr F chose to pay the KC's fees himself but that was a matter for him and not one I consider Fairmead were liable for because they were yet to establish whether this was a claim that was capable of cover in any event.

Mr F feels that Fairmead should compensate him for the loss of opportunity in pursuing his claim. I don't agree. As I said above, Fairmead hadn't established whether this was a claim they were prepared to cover. And in my view the amount they had offered Mr F to fund Barrister's fees in advising on this was more than reasonable. The fact that Mr F's claim was close to limitation by the time this offer was made, to my mind makes no difference. Mr F had after all funded the Barrister's fees himself so I'm not sure why he didn't disclose any

opinion he might have already obtained to Fairmead to support his claim at that point. And if Mr F wanted to pursue his claim, I think it's likely he would have done so with the assistance of the Solicitors he'd already instructed to assist him with it.

Finally, I've considered the delays Mr F says were caused to his claim but looking at the correspondence between Fairmead and Mr F's Solicitors, I'm not persuaded there was a delay on Fairmead's behalf. From what I've seen they responded to the correspondence sent to them within their own service standards. The fact that agreement couldn't be reached about the KC's fees doesn't, in my view, mean there was a delay in Mr F's claim being progressed. It might have not been progressed in the way that Mr F wanted but it was progressed so far as Fairmead made it's position clear, which I've determined was reasonable in the circumstances.

My final decision

For the reasons set out above, I don't uphold Mr F's complaint against Fairmead Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 11 December 2024.

Lale Hussein-Venn
Ombudsman