

## The complaint

Mr and Mrs P complain Inter Partner Assistance SA (IPA) turned down a legal expenses claim they made.

Although the policy is in joint names, as the claim involves Mrs P, I'll mainly refer to her in this decision.

## What happened

Mrs P suffered an injury while abroad. She thought the hotel she was staying in was responsible for that and sought assistance from a legal expenses policy (provided as part of her travel insurance) to recover the cost of her holiday. IPA turned down the claim. It said the policy didn't cover claims where there wasn't sufficient prospect of success of obtaining reasonable compensation. It accepted there had been some poor communication for which it agreed to pay Mrs P £100.

In response to our inquiries about the complaint IPA also said it was relying on a policy exclusion for claims against *"a travel agent, carrier, us, or their agents, someone you were travelling with, a person related to you, or another insured person"*. It thought that applied here as Mrs P had booked a package holiday and any claim against the hotel would be considered as pursuing the travel agent.

Our investigator thought the £100 IPA had offered was appropriate to recognise the impact of its poor communication on Mrs P. However, he didn't agree it had fairly turned down the claim. In line with the policy terms and our normal approach it should have obtained a legal opinion on the claim's prospects of success. As it didn't appear to have done so it couldn't turn down the claim on the basis that requirement wasn't met. And while the exclusion it had referenced would likely apply to a claim against a travel agent, Mrs P could make a direct claim against the hotel. IPA hadn't shown the exclusion would apply to that. He said it should reassess the claim against the remaining terms of the policy (including the requirement for it to have reasonable prospects of success).

IPA didn't agree. It said the expectation would be the insured would appoint solicitors of their own choosing who would advise on whether a claim against the hotel would have prospects of success. As its legal team didn't agree that was the case it wasn't in a position to appoint Mrs P's own solicitors.

So I need to reach a final 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.

The relevant rules and industry guidelines say IPA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Given IPA's response to our investigator's view it's unclear whether it still thinks the exclusion it previously relied on would apply to a claim against the hotel. However, for the avoidance of doubt, I don't agree it would. That exclusion says IPA isn't liable for *"Legal costs and expenses incurred in pursuit of any claim against a travel agent, carrier, us, or their agents, someone you were travelling with, a person related to you, or another insured person"*.

But there's no evidence the hotel was acting as agent for the travel agent; in fact the terms and conditions of Mrs P's booking say *"your contract will be with the applicable Service Provider of your chosen Travel Service (who may be the principal or the agent of the principal) and [travel agent] acts only as an agent on their behalf"*. So a claim against the hotel wouldn't be caught by the policy exclusion.

The policy also excludes *"Any claim where in our opinion there is insufficient prospect of success in obtaining reasonable compensation"*. However, it separately says prospects of success means *"at any time, we may, but only when supported by independent legal advice, form the view that you do not have a more than 50% chance of winning the case and achieving a positive outcome. If so, we may decline support or any further support"*.

Our long standing approach (which is clearly set out on our website) is that because an insurer isn't a legal expert it isn't in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case IPA hasn't evidenced it obtained such an assessment on Mrs P's claim. Its most recent response suggests its legal team didn't think the claim did have prospects but that isn't clear and it hasn't in any case provided us with a properly written assessment of that from someone suitably qualified and experienced. If IPA is suggesting Mrs P should have obtained such an assessment (without it first doing so) I don't agree. It's for IPA to show, on balance, whether a condition or exclusion of the policy applies and I'm not satisfied it's done so in this case.

### **Putting things right**

IPA will need to reconsider the claim against the remaining policy terms. As the requirement for a claim to have prospects of success is an ongoing one if that's an issue IPA will need to obtain a properly written and reasoned assessment on that from a suitably qualified and experienced lawyer. I also agree there was some poor communication by IPA in its handling of the claim. I think it's appropriate it pays Mrs P £100 in recognition of the impact of that on her (if it hasn't already done so).

### **My final decision**

I've decided to uphold this complaint. Inter Partner Assistance SA will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 5 September 2025.

James Park

**Ombudsman**