

The complaint

Mr D is unhappy with what Ageas Insurance Limited did after he made a claim on his legal expenses insurance policy.

What happened

In April 2023 Mr D contacted Ageas seeking assistance with a negligence claim against legal professionals. Ageas asked for further information about the claim and then agreed to obtain an assessment from panel solicitors on whether it had reasonable prospects of success (a requirement of the policy). A negative prospects assessment was provided later that month. Mr D provided a detailed response to it but Ageas doesn't appear to have received that at the time. In response to the complaint he subsequently made Ageas said, as the panel solicitors assessment had been negative, it wouldn't be taking further action. But if he was able to provide information the panel firm said was missing it would review matters.

In his most recent view our investigator said the evidence provided to Ageas included a positive assessment of prospects from Mr D's own solicitor (who was more experienced than the panel solicitor). So there were conflicting opinions on the claim's prospects of success. He thought it would be fair of Ageas to obtain a barrister's opinion on prospects to resolve this difference of view.

Ageas didn't agree. It said:

- The opinion from Mr D's solicitor wasn't well reasoned and was simply a brief note provided to a different insurer. It didn't consider this represented a contrary legal opinion and didn't think it was one we'd accept if the position was reversed.
- In any case its position wasn't the claim didn't have reasonable prospects of success but the information provided to date was insufficient to form a view on this. So the policy requirements relating to prospects hadn't been met.
- Despite requests Mr D hadn't provided requested documentation in support of his claim including evidence to show the relationship between him and the legal representatives he was seeking to claim against. Nor had he shown the proceedings he'd taken had been issued correctly and that its position hadn't been prejudiced by late notification.
- The proposal to obtain a barrister's opinion was premature and any barrister would have the same concerns about a lack of information. It thought the correct way forward was for Mr D to provide the information which had been requested so this could be reviewed by the panel firm.

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 Ageas has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Mr D's policy provides cover to pursue civil proceedings directly arising from the provision of services for his personal use. Ageas has accepted his claim is one the policy could in principle cover. However, for that to be the case the policy requires "*there are at least 51 % Prospects of Success*". And it defines that as "*The prospects of successfully proving liability in Your favour, and additionally where relevant of obtaining a costs or other Order or Judgment and successfully enforcing the same or (where applicable) the prospects of successfully defending a prosecution*".

As an insurer isn't a legal expert we don't think it's 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 it appears as part of his initial submissions Mr D provided the assessment of the claim his solicitor had already carried out (it's included in a list of documents Ageas says were then sent to the panel firm).

I don't agree with Ageas that can't be considered a properly written and reasoned assessment or isn't one we'd have accepted if the position was reversed. I accept it's relatively brief (and addressed to a different insurer). But it nevertheless reaches a clear conclusion saying "*I have assessed overall merits of the claim at 60%+*". It goes on to explain over the next four paragraphs what the rationale for that conclusion is. That includes considering the failure of Mr D's legal representatives to provide proper advice when it was "*plainly obvious*" which direction the hearing was heading. And that "*breach will be easy to establish*". It also identifies a specific loss to Mr D as a result of the failure to properly advise on an offer made by the other side.

So when Mr D approached Ageas he'd already obtained a supportive opinion from his own solicitors. Ageas might reasonably have had points it wanted to query but it could have raised those with Mr D's solicitor. Or if it had genuine concerns about relying on that opinion it could have sought an opinion from a lawyer of higher legal standing (a barrister). Instead Ageas referred the matter to panel solicitors for them to assess. I don't think that was appropriate because if that firm concluded the claim had negative prospects of success there would then be two conflicting legal opinions on the claim and an unresolved question as to which should be preferred. That is in fact what happened.

In response to our investigator's view Ageas says it believes the real issue is missing information Mr D should have provided in support of his claim. I've reviewed the panel solicitors assessment and I agree she does identify an absence of documentation (and makes some assumptions about the claim as a result). The missing information includes details of the retainer between Mr D and his representatives, the instructions given to counsel as part of that claim and details of the claim he'd made against them.

However, while I appreciate Ageas asked Mr D to provide details of the retainer between him and his legal representatives he explained that wasn't information he had (and believes one was never issued to him). Clearly Mr D can't provide information he doesn't have. And while the panel solicitor suggested she hadn't seen the court papers setting out his claim Mr D says that was provided to Ageas.

I also note in their instructions to the panel solicitor Ageas provided documentation and said Mr D had “*advised this is all the evidence they hold*”. I’m not sure that’s correct. Mr D says he emailed Ageas on 14 April 2023 and said he could provide further information (aside from items that weren’t in his possession) And in his response to Ageas following receipt of the prospects assessment Mr D sought to address other points which the panel solicitor had concerns about. It’s unfortunate that email wasn’t received at the time but it’s not clear to me whether Ageas fully reviewed the points raised on subsequent receipt of it.

In any event regardless of what information was available (or should have been available) to the panel solicitor Mr D’s own solicitor didn’t express any concern about not having the required information to assess prospects. And while the panel solicitor has raised questions about the prospects of success of the claim those don’t appear to be shared by Mr D’s solicitor. So I think there are competing legal opinions on the case.

Taking all of that into account I don’t agree with Ageas that it would be premature to seek a barrister’s opinion on the matter. I think that is the appropriate way of establishing which of the different legal opinions on the case should be preferred (and is arguably what Ageas should have obtained on receipt of the claim). I understand the concerns Ageas has about whether the barrister will have sufficient information to reach an opinion on prospects. But if they have access to the same information as was provided to Mr D’s solicitor they’ll be in a similar position to him.

Ageas has also raised concerns about whether its position has been prejudiced because of the late notification of this claim. However, it hasn’t relied on that as a basis for turning down the claim to date. But I think it would be reasonable to include in the instructions to the barrister that they should consider whether there has been any significant prejudice to Ageas’s position. That will include reviewing the court papers that have been lodged to assess whether that process has been followed correctly.

Putting things right

Ageas will need to obtain an opinion from a barrister on whether this claim has reasonable prospects of success and whether its position has been prejudiced by late notification. Prior to doing so Mr D should be given the opportunity to provide any information he wants the barrister to consider which should include the key documents his solicitor took into account when reaching their assessment of the claim’s prospects of success. If that opinion is positive (and doesn’t identify significant prejudice to Ageas) it will need to progress the claim in line with the remaining policy terms.

My final decision

I’ve decided to uphold this complaint. Ageas Insurance Limited 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 D to accept or reject my decision before 12 September 2025.

James Park
Ombudsman