

The complaint

Mr S complains that One Insurance Limited has unfairly declined a claim under his legal expenses insurance policy.

Where I refer to One Insurance, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

- In 2024, Mr S made a claim on his legal expenses insurance policy to pursue an employment dispute. He says he was racially discriminated against which led to him being unfairly dismissed.
- One Insurance instructed its panel firm of solicitors to assess the merits of the claim. And they were of the opinion it didn't enjoy reasonable prospects of success. As this is a requirement for cover under the policy, One Insurance declined the claim.
- Mr S raised concerns that the panel solicitors are a personal injury firm who don't specialise in employment law. He doesn't think it's fair for One Insurance to rely on their advice. He brought a complaint to our Service.
- Our Investigator was satisfied One Insurance could fairly rely on the legal advice because the author of it was supervised by a qualified solicitor and director who had previously studied employment law.

As Mr S didn't agree with our Investigator, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

I've reached a different outcome to our Investigator. Before I explain why, I wish to acknowledge the parties' submissions in respect of this complaint. Whilst I've read them all, I won't comment in detail on every single point that has been made. Instead, I'll focus on the key points that are relevant to the outcome I've reached. That's in line with our remit, which is to resolve complaints promptly and with minimal formality.

The terms and conditions of Mr S' legal expenses insurance policy says cover is available as long as One Insurance's solicitors consider the claim has "*reasonable prospects of success*". The policy doesn't define what it means by reasonable prospects, but our Service considers that a claim should be more likely than not to be successful, i.e. at least 51%.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn cover as a result of insufficient prospects of success, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, One Insurance obtained the advice of a panel firm. Looking at the panel solicitor's website, they are personal injury solicitors – there's no mention of any other kind of work. The person providing the advice doesn't appear to be a qualified solicitor, and whilst they were supervised by one, I can't see that the supervising solicitor is suitably qualified in employment law. I say this because, whilst I don't doubt they may have studied employment law at some point in the past, I haven't seen anything to suggest they've worked in this area of law and have relevant experience. As such, I don't consider them to be suitably qualified to give – or supervise – advice on this type of claim.

For this reason, I'm not satisfied it was reasonable for One Insurance to rely on their advice. Nor am I satisfied that it has declined Mr S' claim fairly. One Insurance were aware Mr S wanted to pursue an employment claim – something which the policy provides for – so it's unclear why it instructed a panel firm who specialise in personal injury claims only.

I've no doubt One Insurance's actions have caused Mr S distress and inconvenience. His claim has been declined based on advice One Insurance should never have relied on. And he's been without funding for a year whilst his legal action has been ongoing.

Putting things right

I intend to uphold this complaint and direct One Insurance to instruct a firm of solicitors who specialise in employment law to assess the prospects of success of Mr S' claim. The advice must be provided – or supervised – by a lawyer who is suitably qualified and experienced in employment disputes.

If the legal advice is that Mr S' claim enjoys reasonable prospects of success, One Insurance should backdate cover to the point Mr S made his claim and cover any reasonable and necessarily incurred legal costs he's incurred to date. If the advice is unsupportive, One Insurance are entitled to rely on it and it's for Mr S to provide a legal challenge.

I also intend to direct One Insurance to pay compensation of £350 to recognise the distress and inconvenience Mr S has experienced.

Responses to my provisional decision

One Insurance didn't accept my provisional decision. I've summarised its key points below:

- The supervising solicitor is suitably qualified because they have a practising certificate issued by the Solicitors Regulation Authority.
- Our website says its only if the advice is not clear, well-reasoned, or obviously wrong that One Insurance can't rely on it and I haven't suggested that's the case here.
- I haven't suggested Mr S seek independent advice from an alternative suitably qualified expert. And as he doesn't have one, there are no grounds to indicate the legal assessment is incorrect.

- Our website says we can't look at complaints about the quality of legal advice or the conduct of legal professionals such as solicitors.

Mr S accepted the key findings in my provisional decision but has asked me to revisit how One Insurance should put things right. He says, in summary, that:

- There is a clear conflict of interest between One Insurance and its panel firms. As such, he doesn't think it's fair that One Insurance be allowed to seek the reassessment of prospects. He says he has a positive opinion from an employment firm and he wants freedom of choice under the policy.
- He's incurred legal costs of £1,229 which are a direct financial loss arising from the mishandling of his claim. To put him back in the position he should've been in, these costs should be reimbursed regardless of the outcome of the prospects assessment.
- The compensation I've awarded doesn't fairly reflect the impact of One Insurance's actions. There has been a procedural detriment to his claim because he incorrectly completing the ET1 as a litigant in person which wouldn't have happened if he'd had representation under the policy. He's also had to spend the last year researching insurance law, FCA principles, and employment case law to challenge the initial assessment of his claim whilst keeping his tribunal claim alive, alongside personal challenges and family responsibilities.

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 remain of the opinion that this complaint should be upheld. I'll explain why.

One Insurance is correct that our Service doesn't have the jurisdiction to consider the quality of the legal advice or the conduct of solicitors. Rather, the focus of my investigation is the conduct of the insurer, One Insurance, and whether it has fairly declined Mr S' claim. It's my decision that it hasn't.

Our established approach to complaints of this nature is set out on our website. Had One Insurance reviewed our online technical guidance aimed at businesses – rather than our customer focused pages – it would see that it says:

If you consider that a claim should be pursued, the normal practice is for it to be passed to an external firm of solicitors on your panel. The prospects of success of a claim should be assessed by a suitably qualified lawyer (i.e. a solicitor, barrister, legal executive) and they should have knowledge of the relevant area of law.

Sometimes the legal assessment might be conducted by a paralegal. Paralegals aren't qualified lawyers, but if they're working under the supervision of a suitably qualified lawyer with relevant legal knowledge and the advice is clear, well-reasoned and not obviously wrong, we think it's reasonable for you to rely on the legal opinion when making decisions on cover."

I don't need to determine whether the legal assessment was clear, well-reasoned and not obviously wrong because I'm not persuaded One Insurance can rely on it regardless. This is because it hasn't been obtained from a suitably qualified lawyer who has knowledge of the relevant area of law. The supervising solicitor is obviously qualified; that's not in dispute. But

they don't practice employment law, nor do they have any relevant or suitable experience in this area.

As such, my decision is that One Insurance can't rely on the legal advice it obtained. And to decline Mr S' claim based on it was unfair and unreasonable.

Putting things right

Where a business has done something wrong, it's not our role to fine or punish them. Instead, we'll ensure the customer has been put back in the situation they would've been in had everything have happened the way it should. And where that isn't possible, we may direct a business to pay a compensation award which reflects the impact its actions have had on its customer.

In this case, if One Insurance had handled Mr S' claim correctly, it would've obtained a legal assessment from a solicitor who specialises in employment law. I don't know what the outcome of that assessment would've been, so I can't fairly say that Mr S' claim would've been accepted had it been assessed correctly.

For this reason, One Insurance will need to do what it should've done in 2024 and pay for a suitably qualified lawyer to assess Mr S' claim. As Mr S has an employment solicitor acting for him already, I think it's reasonable for One Insurance to obtain an assessment from them given they're already familiar with the case. Provided it's a fully reasoned opinion, One Insurance should act on that advice.

Mr S has incurred legal costs to date. And if the legal advice confirms that his claim enjoys reasonable prospects of success, One Insurance should reimburse him for these. I appreciate Mr S feels they should be paid regardless. But I don't agree. In order to put him back in the position he would've been in, I need to be satisfied that his claim would've been accepted had it been assessed correctly and that these costs would've been covered by the policy. If the claim would've always been declined, then Mr S would've always had to incur these costs himself, and I can't fairly direct One Insurance to pay them.

I've thought about Mr S' comments regarding the compensation I'm awarding and the impact of One Insurance's actions. I appreciate Mr S says he completed the ET1 incorrectly as he didn't have legal representation and this might prevent him from pursuing some elements of his claim. But he has a duty to mitigate his loss and act as a prudent uninsured person by taking reasonable steps to protect his position. If he needed legal advice or representation to complete and submit the ET1, he should've done so and sought the legal costs as part of his complaint.

Furthermore, I've seen no justified reason for Mr S having to research insurance law, FCA principles, and employment case law in order to challenge the initial assessment of his claim. Whilst raising a complaint will always be distressing and inconvenient, our Service doesn't require this level of knowledge to bring a complaint to us.

Overall, I'm satisfied £350 compensation fairly reflects the impact One Insurance's actions had. I've no doubt it's been a difficult year for Mr S, but there will always be distress and inconvenience involved in pursuing a case in court alongside life's day to day struggles and challenges. I can't compensate him for that. I recognise that One Insurance's actions have made a stressful situation worse, and for that he should be compensated.

My final decision

For the reasons I've explained, I uphold this complaint and direct One Insurance Limited to:

- Obtain a legal assessment of the prospects of success of Mr S' claim from a lawyer who is suitably qualified and experienced in employment law. As Mr S already has a solicitor instructed, it's reasonable that One Insurance pay them for this assessment.
- If the assessment confirms Mr S' claim enjoys reasonable prospects of success at 51% or above, One Insurance should accept the claim and put funding in place in line with the policy terms. And it should pay the legal costs Mr S has incurred to date. If Mr S has already paid these costs, One Insurance should add 8% simple interest from the date he paid them to the date he is reimbursed.
- Pay £350 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2026.

**Sheryl Sibley
Ombudsman**