

The complaint

Mr F complains about the way Fairmead Insurance Limited has handled a claim under his legal expenses insurance policy.

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

What happened

Mr F's complaint follows a number of others made to the Financial Ombudsman Service in respect of claims made on his Fairmead legal expenses insurance policy arising from an application for permanent ill health benefits. As the detailed background to this complaint is well known to the parties involved, I won't repeat them here.

In a previous complaint to this Service, Mr F was unhappy that Fairmead had refused to indemnify him for counsel's fees of approximately £12,000 because it said they were excessive. During that complaint, we were advised Mr F had agreed to the reappointment of Fairmead's panel solicitors who would instruct a barrister who specialises in pension matters for a much lower cost. Our Investigator was satisfied this was a fair resolution and as neither party disagreed, the complaint was closed. I'm not able to revisit this complaint, or any previous cases decided by this Service.

Mr F's latest complaint to this Service, which I'm considering here, is:

- Mr F's chosen solicitors incurred £4,800 in legal costs to prepare the file and instructions for counsel. As Fairmead didn't agree to counsel's fees – and instead appointed its panel solicitors and an alternative barrister – this indemnity was wasted and should be reimbursed to his policy's indemnity limit.
- The barrister, instructed by the panel solicitors, didn't have sight of all necessary documents in order to conclude their legal assessment of the claim. As such, their opinion shouldn't be relied upon.
- The panel solicitors contacted Mr F directly for payment of their legal costs, causing distress.

Fairmead didn't uphold Mr F's first two complaint points. It said the indemnity hasn't been wasted as the panel solicitors benefited from the work carried out to prepare the file. And the barrister had sight of everything they said they needed to reach an outcome, so it was entitled to rely on the advice obtained.

In respect to the third complaint point, whilst Fairmead said it's not responsible for a solicitor's actions, it offered £150 compensation in recognition of the distress Mr F would've experienced by receiving invoices of over £5,000 which he was incorrectly told he was responsible for.

Mr F remained dissatisfied, so he contacted this Service. But our Investigator wasn't persuaded Fairmead needed to do anything more to put things right. As Mr F didn't agree with our Investigator, the complaint has been passed to me to decide.

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've reached the same outcome as our Investigator, and for broadly the same reasons. 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.

Indemnity used to prepare file for counsel

When Mr F was using a solicitor of his own choice, Fairmead was asked to authorise £4,800 of indemnity to prepare the file and instructions for counsel.

Whilst the solicitor didn't go on to instruct counsel, the work was still completed under the policy and these costs still need to be paid. So, for Fairmead to return these costs to the policy's indemnity, it would mean it would effectively be paying the solicitors out of its own pocket – rather than under the policy. To fairly direct Fairmead to do that, I'd need to be satisfied it did something wrong or unfair in the first instance. And I'm not persuaded it has.

I say this because, at the time these costs were authorised, it wasn't known that counsel's fees would be unreasonably high and there weren't any foreseen circumstances which would've indicated to Fairmead that these costs should be refused. The next step was to get counsel's advice and Fairmead agreed to the costs Mr F's solicitor said it needed to achieve this. As such, I'm not persuaded Fairmead acted unreasonably.

In any event, Fairmead says these costs weren't incurred unnecessarily as the panel solicitors benefited from the work completed. It said they were able to analyse the position, work out next steps, get quotes from barristers, and instruct the chosen barrister based on the information put together in the bundle of documents. And this effectively saved time and money.

Barrister's opinion

The barrister's opinion sought by the panel solicitors was provided following a conference and a review of the information on the case. Fairmead says the barrister was provided with the full list of documents prepared for the previous counsel, but they didn't required sight of all of them. Instead, the barrister reviewed all the information they deemed necessary, and they were able to request any further information outside of that – which they did.

It isn't the role of this Service to evaluate the merits of Mr F's underlying legal claim. Instead, we look at whether the insurer has acted fairly. As long as its obtained advice from suitably qualified lawyers, we won't generally question its reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

The barrister's opinion is properly written, well-reasoned, and not obviously wrong. And they're suitably qualified in the area of law this claim relates to. So, I haven't seen anything

to persuade me that Fairmead shouldn't rely on it. Rather it's up to Mr F to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he wants to challenge this further.

Panel solicitor's invoices

It's not in dispute that the panel solicitor incorrectly sent Mr F their invoice directly requesting that he pay it. And this has caused some confusion and distress. Fairmead accept this shouldn't have happened as its responsible for the costs incurred under the policy, and it has paid £150 compensation to put things right. But it says it isn't responsible for the actions of a firm of solicitors and that Mr F should complain to them directly if he remains unhappy.

As our Investigator has explained, this Service can't hold an insurer responsible for the actions of another business unless they're acting as the insurer's agents or representatives – which isn't the case here. And this Service can't investigate the actions of a firm of solicitors – who have their own regulators and Ombudsman Service.

The mistake doesn't lie with Fairmead. However, I'm pleased to see that as soon as it became aware of the mistake, it took steps to rectify things by apologising, reassuring Mr F he doesn't need to pay the invoices, and paying compensation. As such, I'm not persuaded it needs to do anything more than that.

I understand Mr F asked Fairmead to confirm the amount the panel solicitors had invoiced for, and Fairmead has advised its costs team are currently considering invoices totalling approximately £27,000. Mr F is concerned as this far exceeds the amount his solicitor had quoted for counsel's fees of approximately £12,000. But I haven't seen anything to suggest these invoices relate solely to obtaining counsel's advice which Fairmead has confirmed cost £4,500 plus VAT in total.

That said, Mr F is entitled to know how his indemnity has been spent. So once the cost team has considered the invoices, Fairmead should let Mr F know what has been paid and what for. If Mr F has any concerns on receipt of this information, he can raise a new complaint to Fairmead. And once he has a final response letter – or if eight weeks passed without one – he can escalate his complaint to our Service if he remains dissatisfied.

My final decision

For the reasons I've explained, I don't uphold this complaint.

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

Sheryl Sibley
Ombudsman