

complaint

Mr L complains about the way Ageas Insurance Limited dealt with a claim under his legal expenses insurance policy.

background

I issued a provisional decision on this case in August. An extract from that decision follows:

Mr L made a claim under his legal expenses policy. He provided some details about his claim, and said he had instructed solicitors and had an appointment to see them.

Ageas requested further information and Mr L provided some further details. He also said he was unhappy with the time being taken to deal with his claim, and said he had now seen his solicitors and paid their charges of £360. Ageas replied, saying it still didn't have everything it needed to consider his claim, and asked for further information.

When Mr L questioned how his claim was being dealt with, Ageas said his initial claim had been very brief and further information was needed to consider it properly. It advised that the costs he had already paid to his own solicitors weren't covered, but it had now provisionally accepted his claim. Ageas instructed its panel solicitors to assess the case.

In reply, Mr L said he was glad that his claim had been accepted, but he no longer wished to proceed, as his solicitors had advised him that he did not have a good chance of succeeding with his case. He asked Ageas to refund his solicitors' charges.

The panel solicitors then wrote to Mr L saying they had been instructed.

Mr L complained to Ageas. He was unhappy about the time taken to deal with his claim, saying because of the delay he had been forced to consult his own solicitors. He asked why Ageas had consulted panel solicitors without telling him it was doing this. He felt Ageas had not been honest with him about his claim.

In its reply to the complaint, Ageas said it accepted there had been some failings and delay in dealing with his claim. It would have considered paying him some compensation for this, but he had failed to say that his solicitors had advised him not to proceed with the case. This was a breach of his obligations under the policy terms. If he had told Ageas about this, it wouldn't have accepted his claim or instructed the panel solicitors. Because it had done that, costs had been incurred which could have been avoided. So Ageas wouldn't agree to compensate Mr L or refund his legal costs – which he incurred before it accepted his claim.

Mr L then complained to our service. Our adjudicator said that legal costs could only be covered if they were agreed and Ageas hadn't agreed to pay his solicitors, so they could not be recovered under the terms of appointment. The adjudicator considered that Ageas had acted fairly and reasonably in accepting the claim and agreeing to appoint his solicitors. Ageas didn't have to pay costs he had incurred before the claim was accepted.

Mr L was unhappy with this decision and requested a review. He says the adjudicator hasn't answered the issue he raised in his complaint. In particular:

- *he provided evidence that Ageas refused to reply to his letters, which meant he had to find his own solicitor, as there was a deadline to meet and he needed to act quickly;*

- *the dates given by Ageas were wrong, but the adjudicator made her judgement based on those dates rather than the ones he provided, which were the correct dates;*
- *he said he no longer wished to proceed with his case, so he couldn't understand why Ageas had instructed panel solicitors and paid their costs – especially as he had no contact with them and they gave him no advice;*
- *in the circumstances, Ageas should refund his legal costs.*

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy terms say a claim must have prospects of success; in other words, it must be more likely than not that the policyholder will win their case. This is common in legal expenses policies and is reasonable; it means insurers don't have to meet costs for claims that are unlikely to be successful.

The policy also says that costs incurred before a claim is accepted will not be covered, and that a policyholder must take reasonable steps to keep costs to a minimum, and tell Ageas of anything that may change its assessment of the claim. Again, these are reasonable – an insurer wouldn't normally be expected to pay costs that are unreasonable or have been incurred before it has had an opportunity to consider a claim and agree to provide cover.

In this case, Mr L instructed his own solicitors before the claim was accepted. And he didn't tell Ageas that he had paid his own solicitor's fees until about a month after he had seen them. So Ageas hadn't considered his claim or agreed to cover his costs at that point, and we wouldn't normally expect it to refund costs in those circumstances.

Mr L says he had to consult solicitors because Ageas was taking too long to deal with his claim – the situation was urgent because, if he was to go ahead, there was a deadline to meet. He says that if Ageas had replied to him promptly, the situation could have been avoided. It seems unfair to him that Ageas won't refund his costs, but has paid the panel solicitors, even though they did little work and were only instructed after he said he no longer needed solicitors.

Mr L felt our adjudicator accepted Ageas' version of events without considering properly the information he gave about what happened. I've considered very carefully the sequence of events based on the information we've received from both sides.

I agree that there were some delays by Ageas. For example, when Mr L said he was going to see his solicitors, Ageas didn't reply until a month later. On the other hand, although Mr L said he had seen solicitors (and paid their fees), he didn't tell Ageas they had advised him not to proceed until about a month later. By that time, Ageas had accepted his claim and passed it to panel solicitors to consider. In fact, Ageas never actually agreed to appoint Mr L's solicitors. A policyholder generally doesn't have the right to choose their solicitor until it's necessary to issue proceedings, or if there's a conflict of interest, neither of which applied here. So it was reasonable for Ageas to refer the claim to one of its panel solicitors.

Ageas only knew Mr L no longer wished to proceed with his claim after it had instructed the panel solicitors. He could have let them know sooner that he had seen his solicitors and that they had advised him not to proceed with his claim.

On balance, although there was delay by Ageas, there was also some delay by Mr L and when he submitted his claim, Ageas didn't have all the information it needed. It was reasonable to ask him for further details. I don't think Ageas should have to refund the legal costs Mr L incurred when it hadn't assessed his claim or agreed to instruct his solicitors. Nor would it be reasonable to compensate Mr L in these circumstances.

my provisional decision

My provisional decision is that I don't uphold the complaint.

developments and findings

Both parties replied, saying they had no further comments to make and accepted my provisional decision.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As both parties have accepted my provisional decision, I don't need to consider the matter further; there's no reason to change my provisional findings.

my final decision

For the reasons set out in my provisional decision, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 October 2015.

Peter Whiteley
ombudsman