

The complaint

Mr and Mrs J's complaint is about a claim Mrs J made on their Fairmead Insurance Limited ('Fairmead') legal expenses insurance policy.

All references to Fairmead include their claims handlers.

What happened

Mr J made a claim for help with a costs order that had been obtained against her on her Fairmead legal expenses insurance policy.

After asking for information to validate whether there was a claim they could consider, Fairmead passed the matter to their panel firm.

The panel firm concluded the claim had no reasonable prospects of success and it had been notified late which meant that Fairmead didn't have to cover it. Fairmead accepted there had been two instances of their not responding to Mrs J in accordance with their service standards, so they offered her £100 in compensation for this.

Mrs J's complaint is about the delays she says Fairmead caused which she feels impacted the merits of her claim and therefore her ability to challenge the costs order made against her.

Our investigator considered the matter but concluded it shouldn't be upheld. Mrs J doesn't agree so the matter has been passed to me to determine.

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 don't think Mrs J's complaint should be upheld. I'll explain why.

Mrs J's claim stems from a dispute that predated her policy. Essentially, she made a claim against Royal Mail and a convenience shop in which a Post Office franchise was located about some items she'd posted that went missing. My understanding is that the items were valuable. Mrs J obtained judgment in default against both those parties but sometime later, the two defendants applied to set aside the order against them.

A hearing took place in which the orders for judgment were set aside and Mrs J was ordered to pay costs. She was given a specific period in which to do this.

It was after the order for costs was obtained against Mrs J that she approached Fairmead for help. Her complaint is that Fairmead took too long to deal with things and that this affected the merits of her being able to challenge the order for costs. She also says she was told at some point early on by the panel firm that her claim did have good prospects of success.

I've considered everything both parties have provided but I'm not persuaded Fairmead's

conduct had anything to do with Mrs J losing the opportunity to challenge the costs order. I say so because based on everything I've seen, there were no significant delays in their conducting a review of her claim to establish whether it should be covered or allocating it to a panel firm for advice on the merits of it. And given the advice received was that the claim had no reasonable prospects of success and was made too late, this wouldn't have been a claim that would have been covered had Fairmead done anything any quicker. So, Mrs J wouldn't have had the benefit of assistance sooner to deal with the costs order. Nor have I seen anything that suggests she would have gone elsewhere to challenge the costs order and been successful if she'd received advice from Fairmead's panel firm earlier.

Fairmead's obligation under the policy was to consider whether the claim was covered. I think it did that. It obtained the advice of a firm of Solicitors confirming the position on the merits of the claim and an assessment of whether it fell within policy terms. Both meant the claim wasn't covered. That's because the claim didn't have over 51% prospects of success. In addition, it wasn't reported within a reasonable time of the event and Fairmead's position had been prejudiced by this. Both of these were policy requirements.

For clarity, I'm satisfied that in this case, Fairmead's position was prejudiced. If things had gone as they should have, Mrs J should have reported the initial claim before she pursued things at Court- and not when an application to set the judgment aside came or when that application was successful and an order for costs was made against her. Her failure to do meant that Fairmead wasn't able to consider the merits of the claim from the outset, and if satisfied that it would have been covered, control the costs and direction of the proceedings. In the absence of that happening, I can't say Fairmead were wrong to have taken the position they did. That having been said, even if Mrs J had reported the claim before she made it, it's possible she might not have had cover in place. The policy I've seen doesn't extend to that date, but she may have had another policy with Fairmead or another legal expenses insurer at that time that would have covered the claim- at least in principle.

Mrs J says the panel firm initially told her a claim to set aside the costs order might have merit and that Fairmead's delay in dealing with it prejudiced this. I haven't seen anything at all that supports this. It's right that the panel firm might have had an initial call with Mrs J about her claim and discussed it without reviewing everything, but their ultimate view was that the claim didn't have reasonable prospects of success. And Mrs J hasn't supplied anything, like a copy of an early opinion supporting that the claim would have had merit, if it was challenged quickly from either the panel firm or an alternative Solicitor. So, I'm not persuaded by this argument.

I appreciate that Mrs J might well be unhappy with the panel firm's conduct but that's not something I can determine. They are an independent firm of Solicitors with their own codes of conduct and regulator. If Mrs J remains unhappy, she should raise a complaint with them directly or The Legal Ombudsman.

Finally, I know Fairmead have offered Mrs J £100 in recognition of the fact that they didn't reply to her on two occasions within their 5 day service standards. I think that's reasonable in the circumstances of her claim. If Mrs J hasn't already done so, she can contact Fairmead directly to accept this amount, should she wish to do so.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs J's complaint against Fairmead Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 15 September 2023.

Lale Hussein-Venn
Ombudsman