

The complaint

Mr W's complaint is about a claim he made on his QIC Europe Ltd (QIC) legal expenses insurance policy.

Mr W says QIC treated him unfairly and that he's out of pocket as a result of their actions. He wants QIC to reimburse him for the sums he's incurred.

In this decision, all references to QIC include their claims handlers.

What happened

Mr W took a legal expenses insurance policy underwritten by QIC. In 2019 he made a claim on that policy to pursue a personal injury claim.

QIC considered the claim and allocated it to their panel firm to act for him. In 2022 Mr W informed QIC that the firm they'd instructed were no longer trading and that another firm would be taking over. He was asked to sign a Conditional Fee Agreement (CFA) by both firms of Solicitors.

In both cases Mr W was told it was a condition of the policy that he enter into a CFA in order for the panel firms to act for him. Mr W did so accordingly. When Mr W's claim concluded, he was asked to pay the cost of an After the Event (ATE) insurance policy premium and some disbursements. Mr W says he didn't know he would have to pay anything and says that this wasn't explained to him by QIC. Mr W says he's now out of pocket and wants QIC to reimburse him accordingly.

Our investigator considered Mr W's complaint and concluded that it should be upheld. She said that it wasn't a condition of the policy that Mr W had to enter into a CFA so QIC were wrong to direct him to do so. She directed that QIC should either pay the costs he's been invoiced for or instruct someone suitably qualified to assess the costs that were reasonably incurred and pay them. In addition, the investigator said QIC should pay interest of 8% on the costs Mr W has paid to date from the date they were paid, until they are reimbursed by QIC.

QIC didn't agree with the investigator's view, so the matter was passed to me to decide.

I issued a provisional decision in December 2023 in which I said:

"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 uphold Mr W's complaint for broadly the same reasons set out by the investigator but I've directed that QIC should put things right differently.

The starting point is the policy terms. For personal injury claims, they cover:

“Professional fees to pursue a civil claim for damages relating to death of or bodily injury to an insured person caused by negligence.”

“Professional fees” are defined as “All reasonable and proportionate fees, costs and disbursements properly charged by the authorised professional as long as we give our authority beforehand.”

It’s not in dispute that QIC told Mr W that he had to enter into a CFA with both of the firms of Solicitors he instructed. But there’s nothing in the policy terms that make this a condition of personal injury cover. QIC say this was always their intention, but I don’t think this makes any difference. It’s not a policy requirement for Mr W to have entered into a CFA and therefore I don’t think it was fair for QIC to direct him to do so.

QIC have said that the terms of the CFA Mr W entered into were a matter for him to address with the Solicitor instructed and that they couldn’t get involved with this. They say they told Mr W during a phone call in November 2022 that they couldn’t advise him about the terms of the CFA proposed. Whilst I agree that the terms of the specific CFA Mr W entered into with the second firm of Solicitors weren’t down to QIC to explain to him, the fact that he was told by them that it was a policy requirement- when it wasn’t- to my mind means that QIC were responsible for him entering into these agreements with both firms when he didn’t have to. Because of this I think they need to honour the terms of the insurance, as drafted, and pay for any fees, costs and disbursements. I don’t think QIC are entitled to assess the amounts charged by the second firm of Solicitors in this case because if things had gone as they should have, Mr W would have had the opportunity to mitigate any cost risk to him. This could have been done by the firm he’d instructed agreeing their costs and disbursements with QIC incrementally and obtaining authority to incur them at each stage of litigation. The fact that Mr W lost this opportunity means that QIC need to put him back in the position he would have been in had things gone as they should. And I think that means that it’s more than likely he wouldn’t have incurred any costs at all.

I asked Mr W to supply evidence of what he’s incurred. He’s now done so. I’m told the CFA he entered into with the second set of Solicitors was less favourable to him. And from what I’ve seen he was liable to pay for an ATE premium and some disbursements. Given it was never a requirement of the cover for Mr W to enter into this agreement, I think QIC should be responsible for these amounts and that QIC need to reimburse Mr W for the amounts he’s paid accordingly.”

I directed that QIC should:

“QIC should:

- Reimburse Mr W for the amounts that were deducted from his settlement amount in the form an ATE premium, additional disbursements and any success fees that might have been applied that I haven’t yet seen. Mr W will need to supply QIC with evidence of the sums he’s paid the second firm of Solicitors before they can reimburse him.*
- Pay Mr W interest of 8% per year simple on the sums they pay from the time they were deducted from his settlement amount, until they are reimbursed.”*

I asked both parties to provide me with anymore comments or evidence they wanted me to consider in response to my provisional decision. Mr W appears to have accepted my findings whilst QIC have asked for evidence of the costs incurred by Mr W. They’ve also asked for clarification on what period interest is to be paid.

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 in light of the parties' responses to my provisional decision, I remain of the view that Mr W's complaint should be upheld for the same reasons and in the same way I'd set out in that decision. Neither party has disputed those findings and QIC's responses amount to a request for clarification.

The award I'm making remains the same so it's up to Mr W to provide QIC with evidence of the costs he's incurred in order for them to consider his claim.

QIC will need to work out the interest element of my award once they've identified what is payable to them by Mr W in light of when that occurs, compared to when sums were deducted from Mr W's settlement amount.

Putting things right

QIC should:

- Reimburse Mr W for the amounts that were deducted from his settlement amount in the form an ATE premium, additional disbursements and any success fees that might have been applied that I haven't yet seen. Mr W will need to supply QIC with evidence of the sums he's paid the second firm of Solicitors before they can reimburse him.
- Pay Mr W interest of 8% per year simple on the sums they pay from the time they were deducted from his settlement amount, until they are reimbursed.

My final decision

I uphold Mr W's complaint against QIC Europe Ltd and direct them to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 January 2024.

Lale Hussein-Venn
Ombudsman