

The complaint

Mr N complains that Inter Partner Assistance SA (“IPA”) withdrew cover for his legal expenses insurance claim.

Where I refer to IPA, this includes its agents and claims handlers acting on its behalf.

What happened

Mr N made a claim on his legal expenses insurance policy. He wanted to take legal action for misrepresentation against someone who had sold a property to him.

IPA referred the case to one of its panel firms of solicitors, who confirmed it had reasonable prospects of success (as required by the policy) and took the case on. In April 2021 the solicitors advised that the case had been passed to counsel for advice. They wrote to Mr N in June and July 2021 about counsel’s advice, which was not supportive.

The solicitors then wrote to IPA explaining that:

- counsel’s advice was negative, but Mr N wasn’t taking heed of the advice;
- he wanted to pursue legal action to obtain evidence from the planning authority but this would be very expensive and of little benefit;
- counsel had asked some questions of Mr N and if he answered those questions, they would consider the matter further.

The solicitors asked IPA to approve a limited amount of funding to deal with this and IPA agreed to this.

There was further correspondence between the solicitors and Mr N. The solicitors said Mr N wasn’t providing the detailed answers they needed, but they obtained a further opinion from counsel. Counsel confirmed his opinion that the claim was not likely to be successful. On the basis of this, IPA decided to withdraw cover. Mr N was told if he disagreed with counsel’s advice he could obtain his own legal advice.

IPA also said the costs to date were £17,000 and a large proportion of that had been incurred after counsel’s first advice, in a bid to provide answers to his questions and help Mr N continue with the case.

Mr N complained about cover being withdrawn but IPA did not change its decision and when he referred the complaint to this service, our investigator didn’t think it should be upheld. She said IPA was entitled to rely on the legal advice and withdraw cover if the advice was that his claim didn’t have reasonable prospects of success.

Mr N has requested an ombudsman’s decision. He says the legal advice was flawed as there was other information that should have been considered but wasn’t taken into account.

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.

IPA says it's a requirement under the policy for a claim to have reasonable prospects of success and although the initial advice was that there were reasonable prospects, cover was later withdrawn when that advice changed.

It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed. Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. They are entitled to keep this under review as a case progresses.

Unfortunately we have received limited information in this case and I don't have full copies of all the legal advice. But I'm satisfied from what I have seen that counsel's advice was not favourable. IPA could potentially have withdrawn cover as soon as it received an unfavourable advice but the solicitors asked for limited funding so they could obtain answers from Mr N to some questions about his case. They later said they hadn't received all the information they wanted but asked counsel to advise, based on what was available.

When this advice confirmed that the position hadn't changed, IPA withdrew cover. I think that was fair – I wouldn't expect it to continue cover when counsel's advice is not supportive.

Mr N has referred to some documents that he says support his case. And he says both IPA and the solicitors were keen to just close the case without answering his questions. But from what I've seen, they carried on with the claim after counsel's first advice and gave him every opportunity to provide further information that would support his claim. Although he has made a number of points about the legal advice, he hasn't provided contrary legal advice. If Mr N wants to challenge the decision, the way to do so is to obtain his own legal advice that supports his claim. In the absence of that it wouldn't be reasonable to expect IPA to continue funding his case.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 August 2023.

Peter Whiteley
Ombudsman