

The complaint

Mr E is unhappy with Financial & Legal Insurance Company Ltd's (FLIC) decision to decline a claim under his legal expenses insurance (LEI) policy.

Any reference to FLIC includes the actions of its agent.

What happened

The circumstances of this complaint are familiar to both parties, so I've summarised what's happened.

Mr E has an LEI policy which is underwritten by FLIC. In August 2021, he sought cover under the policy to pursue a legal claim against a barrister who he said had breached a contract by allegedly giving Mr E negligent legal advice. FLIC considered the claim but declined it on the basis it didn't enjoy reasonable prospects of success, which is a condition of the policy.

Mr E disagreed and so, FLIC referred the legal claim to its panel solicitor – who I'll refer to as P - for advice. P advised the legal claim didn't enjoy prospects of success because it didn't consider the barrister to have acted negligently. P added that even if the legal claim did enjoy prospects of success, it wasn't proportionate to pursue – which is another condition of the policy. Based on this, FLIC maintained its position that the claim wasn't covered.

Mr E disagreed. He added that the barrister against whom he was seeking to pursue legal action had unfairly influenced the outcome of another complaint Mr E had with this Service, and he thought P should take that into account. P did so but said it didn't change the legal opinion it had reached and so, FLIC's decision remained unchanged.

Unhappy, Mr E brought a complaint to this Service. An Investigator considered it but didn't uphold it. She was satisfied FLIC was entitled to rely on P's legal advice to determine if the claim was covered, and she hadn't seen evidence to persuade her that FLIC had treated Mr E unfairly.

Because Mr E disagreed, the complaint has been passed to me for an Ombudsman's decision.

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.

Mr E has provided an abundance of information for this Service to consider – a substantial amount of which relates to the legal dispute he is seeking to pursue. Whilst I know Mr E feels very strongly about this, I can't comment on the merits of his legal claim. I am instead deciding whether FLIC has treated him fairly by declining to cover his claim.

In reaching my decision, I have looked at everything both parties have provided, but my decision will only focus on those issues which I consider to be relevant to the complaint. And for the avoidance of doubt, I am only considering the complaint issues addressed by FLIC in its final response letter dated 3 October 2022.

I've seen Mr E has been given extensions to provide further information to this Service. This – along with the wealth of information he's provided – satisfies me I have enough information to reach a fair and reasonable decision on this complaint.

FLIC's decision to decline Mr E's claim

FLIC has declined Mr E's LEI claim saying it doesn't enjoy reasonable prospects of success and isn't proportionate to pursue. The starting point in determining whether this is fair is the policy document which in terms of prospects of success says there *isn't* cover:

"Where, in our, the administrator's or the authorised representative's opinion, your claim does not have a reasonable prospect of success."

So, I'm satisfied the policy makes it clear that for the claim to be covered, there needs to be reasonable prospects of success – or put another way, the legal dispute must have more than a 51% chance of winning. This is a standard condition, common to LEI policies, and isn't a requirement this Service considers to be unfair as ultimately, the insurer carries the risk of having to pay the other side's legal costs if the legal dispute is unsuccessful. With regards to proportionality, the policy says:

"Your insurance does not cover professional fees and/or defendant's costs: [...] where, in our opinion, the value / amount in dispute is disproportionate to the time and professional fees involved in its pursuit."

The requirement that costs are not too high when compared to the value of the claim is another standard requirement and is largely universal to LEI policies. So, on the face of it, it's reasonable that FLIC has declined Mr E's claim when it considers these two conditions to have not been met.

But in deciding whether FLIC has acted fairly, I need to consider *how* it reached its decision. It seems FLIC made a preliminary decision that the claim didn't enjoy prospects of success and then subsequently referred the matter to P for legal advice. FLIC isn't a legal expert and so, it's standard practice for insurers to rely on the advice of legally qualified experts when determining if a claim is covered by the policy.

I've looked at the legal advice P has provided. I note the advice was provided by a suitably qualified legal expert with the relevant experience and skills. Having read the advice, I've not seen anything obviously wrong with it, and so, I'm not persuaded FLIC acted unfairly by relying on it.

Whilst I understand Mr E is aggrieved FLIC didn't provide the contact details for P, I don't think it treated him unfairly by doing so. I say this because ultimately, the advice P provided was for FLIC not Mr E, and so, Mr E wasn't entitled to speak to P.

Mr E has said FLIC has withheld information from P to avoid paying the claim. But I've not seen evidence to support this. Rather, from what I've seen FLIC has provided P with the information it required to advise on prospects of success and proportionality.

Furthermore, I've also seen that when Mr E challenged P's advice and wanted it to consider a further point to see if it made a difference to its legal opinion – namely, that Mr E considered the barrister about whom he wanted to pursue action against to have unfairly

influenced another complaint with this Service – FLIC did so. It provided reasoned advice to FLIC explaining why it was satisfied Mr E's claim hadn't been prejudiced, and reiterated that even if prospects existed, the claim remained disproportionate to pursue. So, I'm not persuaded Mr E has been treated unfairly in this respect.

Challenging P's legal opinion

I'm aware Mr E has sought his own legal opinion to challenge P's advice which he considers shows his legal dispute enjoys reasonable prospects of success.

Mr E has said he wants this Service to consider the legal opinion, but our Investigator has explained that as the opinion post-dates FLIC's final response, it can't be considered as part of this complaint.

FLIC has agreed to review the legal advice and will provide a response to it – which is what I'd expect it to do. If following its review, Mr E disagrees with the outcome FLIC reaches he'd first need to complain to it before referring the matter to this Service.

Summary

In summary, I'm satisfied it was reasonable for FLIC to rely on P's legal advice to conclude Mr E's legal claim didn't enjoy prospects of success and wasn't proportionate to pursue and that in turn, there wasn't cover under the policy. And so, I'm satisfied its decision to decline Mr E's claim was fair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 31 August 2023.

Nicola Beakhust
Ombudsman