

## **The complaint**

Mr S is unhappy with what Soteria Insurance Limited did after he made a claim on his legal expenses insurance policy.

## **What happened**

Mr S wanted legal assistance with a medical negligence claim following problems with an operation. His solicitors contacted Soteria which requested medical records. In January 2019 a legal adviser from one of Soteria's panel solicitors said the claim had now been assessed and it didn't think there was objective evidence of a poor standard of surgery. It said it would reassess if supportive expert evidence was obtained but concluded "we are sorry that we are unable to assist [Mr S] with his claim in this respect and leave you to advise on alternative funding mechanisms".

In May 2019 Mr S contacted Soteria to say he'd obtained expert evidence which confirmed the care provided was substandard. Soteria said it would arrange for this to be assessed if Mr S provided that information to it. However, it appears the next contact from Mr S was in March 2023 when he told it he'd successfully pursued his case through his solicitors having taken out an 'After the Event' (ATE) insurance policy. He thought Soteria should refund the cost of that policy and the success fee which had been deducted from his settlement as he wouldn't have incurred those costs if his claim had been correctly considered by Soteria.

Our investigator tried to obtain Soteria's business file in line with our normal process. However, despite requests to the contact we'd been given that wasn't provided. So she reached her view based on the available information. She thought Soteria was entitled to rely on the legal assessment that had been provided by the panel firm and it had explained to Mr S that it would reassess matters if further information was provided. But it didn't hear from him until after his case had concluded. She didn't think it needed to pay the cost of his ATE policy or the success fee.

Mr S didn't agree. He didn't think the assessment was one Soteria could rely on and no documents had been provided in support of it. He said a medical expert had reviewed the same information and reached a different conclusion. He thought the subsequent success of his claim also showed the assessment was wrong. And after it had been sent to him he'd entered into the ATE policy with a different insurer and couldn't withdraw from that or the funding agreement with his solicitor without facing financial penalties.

I reached a provisional decision on the complaint earlier this month. In summary I said:

*The relevant rules and industry guidelines say Soteria has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.*

*It's disappointing that, despite a number of requests to the contact Soteria provided to us, it hasn't provided any information about the complaint prior to our investigator reaching her view or after that. However, under our rules (and in particular DISP 3.5.14) if a respondent business fails to comply with a time limit I'm able to proceed with consideration of the complaint. DISP 3.5.9 also says that I'm able to reach a decision on the basis of what has been supplied and take account of the failure by a party to provide the information requested. So I've progressed the complaint on that basis.*

*I'd normally look first at the terms and conditions of Mr S's policy. But Soteria hasn't provided those. However, I have seen a file copy of a Soteria legal expenses insurance policy document which says that for cover to be provided a claim needs to have reasonable prospects of success which it defines as:*

*"A 51% or better chance that You will succeed with Your claim and recover damages, obtain another legal remedy We have agreed to You seeking, make a successful defence or make a successful appeal or defence of an appeal. We, or a Legal Representative appointed by Us, will assess whether there are Reasonable Prospects and will continue to assess Reasonable Prospects throughout Your claim."*

*The policy also says it doesn't cover "Any claim which We consider is not Proportionate". It says that's where "an estimate of the legal costs is "greater than the realistic value of Your claim or the likely benefit to You of Your claim or any legal remedy You wish to pursue with Our agreement".*

*Although that document isn't the one that would apply to Mr S's claim (it's dated October 2019) it's a standard requirement of legal expenses policies that a claim should have reasonable prospects of success and be proportionate to pursue in order for funding to be provided for it. So I think it likely Mr S's would have contained the same or similar wording to the terms I've quoted.*

*And our long standing approach is that because an insurer doesn't have legal expertise the assessment of prospects of success should be carried out by a suitably qualified lawyer who has relevant experience. Where a properly written and reasoned assessment has been produced we think it's reasonable for an insurer to rely on that when deciding whether a claim has reasonable prospects of success or not.*

*In this case Mr S has provided us with what appears to be the prospects assessment on his case which is dated 23 January 2019. That is extremely brief with the assessment itself comprising less than three lines. And while there's no set length for a prospects assessment I think it would be reasonable to expect it to set the test against which claim is being assessed and then provide a clear explanation as to whether it meets that or not.*

*I don't think the assessment in this case does that. I can also see it followed a review of the medical evidence provided by Mr S. I appreciate it does make brief reference to an operation note but it doesn't make any mention of the subsequent surgery Mr S had which his medical expert placed weight on when concluding there had been substandard care during his initial operation. I'm not satisfied this is a properly written and reasoned opinion.*

*Nor am I satisfied it was provided by someone qualified to provide it with relevant experience. The opinion is from a 'Legal Advisor'. And while the letter provides no further information about his qualifications, online information doesn't show he was a qualified solicitor and suggest he had only recently completed a law degree.*

*There's no indication he had any specific experience of medical negligence claims. I'm not satisfied Soteria was entitled to rely on his opinion and it follows that I don't think it fairly turned down Mr S's claim.*

*I've thought about the impact of that on Mr S. The assessment did say the claim could be reassessed if supportive expert evidence was obtained. But it also made clear that "we are unable to assist [Mr S] with his claim in this respect and leave you [his solicitors] to advise on alternative funding mechanisms". Taking into account that the assessment process had already taken at least three months I don't think it was unreasonable Mr S decided to go forward with his own solicitors. And I understand when he contacted Soteria in May 2019 he couldn't have extricated himself from those arrangements without financial penalty.*

*In any case I think the key issue here is that Soteria failed to ensure it had a properly written and reasoned legal assessment from someone suitably qualified it could rely on. To put Mr S back in the position he would have been but for that failing it's that which needs to be put right. Soteria will therefore need to arrange for the information available in relation to Mr S's claim in January 2019 to be assessed by a suitably qualified lawyer to see if it would have had reasonable prospects of success (and been proportionate to pursue).*

*If that assessment concludes it would then Soteria will need to refund the amount Mr S paid for the ATE policy he took out through his solicitors. And it will also need to refund him the success fee that was deducted from his settlement. That's because if the assessment of prospects and proportionality is positive I haven't seen any other reason why Mr S's claim wouldn't have been funded under his legal expenses insurance with Soteria. So he wouldn't have incurred those other costs but for what it got wrong.*

*I also think Mr S will have been caused some distress and inconvenience by his claim being turned down on the basis of an inadequate assessment. I've taken into account that didn't prevent him from pursuing the underlying claim but in the circumstances I think it would also be appropriate for Soteria to pay him £100.*

## **Responses to my provisional decision**

Mr S didn't have any further points to make and confirmed he accepted my provisional decision. Soteria didn't respond.

## **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.

As neither party has provided any comments which impact the outcome of my provisional decision I don't have any reason to alter the conclusions I previously set out.

## **Putting things right**

Soteria will need to arrange for the information available in relation to Mr S's claim in January 2019 to be assessed by a suitably qualified lawyer to see if it would have had reasonable prospects of success (and been proportionate to pursue).

If that assessment concludes it would then Soteria will need to refund the amount Mr S paid for the ATE policy he took out through his solicitors. And it will need to refund him the success fee that was deducted from his settlement.

It will in any event need to pay Mr S £100 in recognition of the distress and inconvenience it caused him.

### **My final decision**

I've decided to uphold this complaint. Soteria Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 29 February 2024.

James Park  
**Ombudsman**