

The complaint

Mr I is unhappy with how Fairmead Insurance Limited progressed his legal expenses insurance claim (following issues considered in a previous complaint to our service).

What happened

In March 2022 Mr I made a claim on his legal expenses insurance policy as he wanted to pursue an employment claim. Issues relating to what happened between March 2022 and April 2023 have been considered in previous complaints to our service.

In May 2023 Mr I provided an updated counsel's opinion which was negative about most elements of his claim. Counsel did however give reasonable prospects for a victimisation issue. In relation to disability discrimination he said he wasn't in a position to review or update the assessment undertaken by a previous counsel. And Mr I would have to rely on the prospects assessment he provided (which put this at 55%).

Fairmead said in June 2023 it would ask counsel to value the elements of the claim that had prospects of success with a view to paying that amount rather than funding them going forward. As Mr I hadn't heard anything about this (and was concerned about cover for a forthcoming hearing) he queried progress in October. And he complained to our service about the delay.

Fairmead said there had been some dispute over the fees counsel would charge for carrying out the quantum assessment. However, it accepted it should have resolved this more quickly and, as it didn't, counsel hadn't been formally instructed to carry out the work until the start of November. It offered to pay Mr I £250 in recognition of the inconvenience he'd been caused by this delay.

Our investigator agreed Fairmead should have done more to progress matters in this period. But she didn't think that had impacted Mr I's ability to progress claims where Fairmead had already told him cover wouldn't be provided. And she noted following the disclosure process Fairmead had now agreed to fund a further assessment of Mr I's claims to see if this changed the position on prospects. She said any issues following on from that would need to form part of a new complaint. And she thought the £250 Fairmead had offered for the delay covered by this complaint was fair.

Mr I didn't agree. He said £250 was insufficient and unfair. He thought there had been persistent unreasonable behaviour by Fairmead and it had deliberately sought to undermine his legal dispute by delaying its responses to him. In support of that he made reference to my decision on his previous complaint.

And he queried what information Fairmead had provided in relation to the proposed settlement for his victimisation and disability discrimination claims which still hadn't been provided to him despite the acknowledged delay.

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.

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

I've looked first at the terms and conditions of Mr I's policy. As he's aware it's a requirement a claim must have reasonable prospects of success for the duration of the claim. It defines that as *"for civil cases the prospects that you will recover losses or damage (or obtain any other legal remedy that the administrator has agreed to including an enforcement of judgement), make a successful defence or make a successful appeal must be at least 51%"*.

In May 2023 the only elements of Mr I's claim which had been assessed as meeting that term were a victimisation issue and a disability discrimination claim. So those were the only elements that would have been eligible for funding under the policy. However, the terms also say *"the administrator may decide to pay you the reasonable value of your claim, instead of starting or continuing legal action"*. So Fairmead was able to pay Mr I the value of those claims instead of funding legal action in relation to them.

As the policy says it should pay the *"reasonable value"* of the claim I think it was appropriate of Fairmead to ask the barrister who had advised on prospects to assess that, given his familiarity with the case. I think there was then some initial delay which it wasn't responsible for; I accept it was entitled to negotiate with the barrister over the fee he would charge for his assessment. But it's clear Fairmead wasn't then proactive in following this up with the barrister and that did lead to a significant delay in confirmation of its instructions to him.

I've thought about whether the £250 Fairmead has offered is the right amount to recognise the impact of this on Mr I. I appreciate this was a difficult time for him as he needed to prepare for upcoming tribunal hearings. But, as he appears to have been pursuing heads of claim which had been assessed as not having reasonable prospects of success, I think that's something he would always need to have done.

And while I'm obviously aware of what happened on his previous complaint it's only the issues relevant to this one and the impact on Mr I of that I'm considering here. Nor have I seen evidence to support Mr I's view that the delay in this case was a deliberate act; I think it's more likely Fairmead failed to make progress with the matter because of an error on its part. Clearly that shouldn't have happened. But I think the £250 it's offered is a fair way of recognising the unnecessary distress and inconvenience Mr I was caused by this.

Mr I has also made reference to how the valuation of his claims is being progressed along with the further prospects assessment of them. I can see Fairmead has now been in contact with him about this though I understand Mr I disagrees with the position it's reached. I appreciate he's in a difficult position with a hearing set for the end of March but these aren't matters I'm considering. If Mr I is unable to resolve them with Fairmead he can make a fresh complaint. And if he's unhappy with its response that's something we could then consider.

My final decision

I've decided to uphold this complaint. Fairmead Insurance Limited will need to put things right by paying Mr I £250. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 28 March 2024.

James Park

Ombudsman