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**Private and confidential**

Mr T Bayliffe  
43 Whidborne Avenue  
Torquay  
TQ1 2PG  
United Kingdom

20 May 2021

**File Reference:** F074459

Dear Mr Bayliffe

**Your complaint on behalf of Mrs Cherie Anne Bayliffe about Carpenters Limited**

Please find enclosed our final decision in respect of Mrs Bayliffe's complaint.

Yours sincerely



Deborah Dunphy  
Ombudsman

  
LEGAL  
OMBUDSMAN

**Private and Confidential**

Mrs C Bayliffe  
43 Whidborne Avenue  
Torquay  
TQ1 2PG  
United Kingdom

20 May 2021

**File reference:** F074459

Dear Mrs Bayliffe

**Your complaint about Carpenters Limited**

You have now had the opportunity to comment on my colleague's Case Decision dated 29 April 2021. The case has been passed to me for a Final Decision because you did not agree with my colleague's conclusions.

I have read and reviewed all of the evidence that has been provided. I have also considered all of the comments on the Case Decision. Having done so, please find attached my Final Decision.

If you accept this Final Decision, it will be binding on Carpenters Limited and will be in full and final settlement of your complaint. If you reject this Final Decision, it is not binding in any way.

Please let us know whether you accept or reject the decision by writing to us at the above address or by emailing [decisions@legalombudsman.org.uk](mailto:decisions@legalombudsman.org.uk).

If you have any questions about the effect of accepting or rejecting my decision, the General Enquiries Team can be contacted on 0300 555 0333. Please note that they weren't involved with the investigation and aren't able to discuss my decision with you.

Yours sincerely

A handwritten signature in black ink that reads "D. J. Dunphy". The signature is written in a cursive style with a large, looping 'y' at the end.

Deborah Dunphy  
Ombudsman

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## Final Decision

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20 May 2021

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**I set out below my final decision in this matter:**

Carpenters Limited (“the firm”) were contacted by Mrs Bayliffe’s insurer in October 2019 and asked to consider a claim for loss following her involvement in a road traffic accident. Mrs Bayliffe’s claim for personal injury was rejected by the third party insurer in January 2020 and the firm proceeded to close their file.

Mrs Bayliffe’s husband represented her during the time the firm were acting for her and he is acting as her representative in this matter. He has raised the following complaint about the service Mrs Bayliffe received from the firm:

**1 The firm discriminated against Mrs Bayliffe because of her mental health condition by choosing not to proceed further with her claim**

In her Case Decision, my colleague concluded that the service provided by the firm was reasonable and no remedy was required. This was accepted by the firm but rejected by Mrs Bayliffe. As such, the matter has been passed to me to make a final decision.

I have considered the comments made by Mr Bayliffe in an email dated 29 April. The key points from this will be addressed in my decision but where a comment or document has not been specifically referred to, this does not mean it has not been considered.

The background to this matter is as follows. Mrs Bayliffe was involved in a road traffic accident when a lorry reversed into her stationary car. She had suffered from acute anxiety disorder since suffering a stroke in 2015 and whilst she suffered no physical injury, the accident exacerbated her anxiety. Mrs Bayliffe had the benefit of legal expenses insurance and the insurer agreed to the firm acting under a “no win, no fee” arrangement.

Mrs Bayliffe's view is that the firm have discriminated against her because of her mental health disorder, as they closed her file as she did not suffer any physical injuries and she was therefore not entitled to financial compensation.

The firm's position is that they told Mrs Bayliffe they would potentially have difficulties in recovering compensation for her as she had not suffered any physical injuries. They say they attempted to settle the claim with the third party insurer, as instructed, but they rejected the claim citing case law.

The firm's client care letter set out the basis of the firm's agreement to act and suggested that the initial view was that prospects of success were reasonable but that view could change as matters progressed:

**Does the likely outcome of the case justify the expense or risk?**

My initial assessment as to the prospects of success is that the chances of the claim succeeding are reasonable. However, that assessment may change when I have obtained further information and carried out initial investigations. At this stage, I would advise that the risk/expense of continuing with the matter appears to be justified having regard to the likely outcome and the value of the claim, and the fact you have insurance to cover you against costs. I will inform you immediately if I consider there to be any reason to change that assessment.

The firm wrote to Mr Bayliffe on 23 October 2019 and noted that in an earlier conversation, Mr Bayliffe had confirmed that Mrs Bayliffe had suffered no financial loss or injury as a result of the accident and that they had proceeded to close their file.

The firm later revised this position and agreed to re-open the claim and they obtained a medical report. The firm spoke to Mr Bayliffe on 16 December and confirmed they would send the medical report to him and would request Mrs Bayliffe's instructions. They noted that they advised him that the third party insurer may not accept a personal injury claim as Mrs Bayliffe had not suffered any physical injury.

The firm sent the medical report to Mrs Bayliffe on 26 November. This detailed Mrs Bayliffe's injuries as an exacerbation of pre-existing anxiety together with other psychological impacts and suggested she would recover from these and her anxiety would return to pre-accident level within six months of the accident.

The firm explained that if they sent the report to Mrs Bayliffe's opponent they would seek to finalise the case based on the assumption that she would recover in accordance with the timescales set out in the report. They cautioned that the claim would be valued as such, regardless of whether Mrs Bayliffe's recovery was as anticipated. The firm valued Mrs Bayliffe's claim at between £1000 and £2000 and went on to ask if she wanted to attempt to settle the claim now or wait to see if she recovered when expected.

In an email on 27 December, the firm provided further explanation in respect of their valuation of the claim. They also went on to caution:

*"If Mrs Bayliffe recovers from her psychological injuries within 6 months of the accident that is roughly what I believe she would receive as an offer from the defendant insurer if they choose to make an offer. As previously discussed the defendant insurer may not offer any compensation as there is a case law that states if the claimant sustained no physical injuries then no compensation can be awarded, if the defendant insurer rely on that case law for their defence then it is likely Mrs Bayliffe will receive no compensation."*

Mr Bayliffe's response the same day was that the firm should proceed to settle the claim and *"achieve the best possible amount based on your recommendations"*.

On Mr Bayliffe's instructions the firm put forward an offer for £5000 and on 13 January 2020 they wrote to Mrs Bayliffe to tell her that unfortunately the third party insurer would not make any offer of compensation based on the fact that she had not suffered any physical injuries, citing case law *Nicholls v Rushford* (Nicholls vs Rushton) in support of their decision. The firm said that they would close their file as they were unable to pursue the claim any further.

The firm cannot compel the third party insurer to make an offer of compensation. Where this is the case, very often the only option is for court proceedings to be issued but for this to happen then the claim's prospects of success must be considered to be reasonable. It seems the firm's view is that it was unlikely that any court claim would succeed and when considering whether they could proceed any further, they would have to consider both the risk and the potential costs involved in doing so. This is what I would expect the firm to do and so I am not critical of their decision not to proceed with the claim.

At first glance, the firm's letter of 13 January seems abrupt, and I would expect to see further explanation about why the firm would not be able to proceed with a claim for psychological injury, other than referring to the relevant case law. I note, however, that the firm had drawn this possibility to Mr Bayliffe's attention earlier on in the claim and I note also that this letter followed a telephone conversation with Mr Bayliffe. It is possible that the firm gave more reasoning during this conversation and Mr Bayliffe would have had the opportunity to ask any questions. The firm's attendance note of the call stated that they told Mr Bayliffe that they had no counter argument against the third party insurer's stance.

Mrs Bayliffe's complaint is that the firm discriminated against her *because of her* mental health condition. I do not believe this to be the case. The firm closed their file because the third party insurer declined to make any offer of compensation. The firm did not stop acting because of Mrs Bayliffe's mental health condition. They stopped acting because they were unable to secure any offers of compensation and prospects of success were not great enough to issue court proceedings.

I have seen an email from Mr Bayliffe to the firm on 24 February 2020 in which he asked the firm to confirm which case law had been referred to by the third party insurer. In response, the firm noted that they had received a request from Mr Bayliffe's new solicitor to transfer the file to them and they were in the process of arranging this.

This indicates to me that whilst the firm had decided that they were unable to proceed with the claim, Mr Bayliffe was able to instruct another firm of solicitors to consider the position and so Mrs Bayliffe did not lose the opportunity to progress her claim, if she so wished.

The firm's position, as detailed in their response to Mr Bayliffe's complaint, was that in the majority of cases it is not possible to claim for psychological symptoms in the absence of a physical injury, unless there has been a recognised condition diagnosed solely as a result of the accident. In Mrs Bayliffe's case, she was already suffering from acute anxiety disorder but the accident had exacerbated these symptoms.

In response to the Case Decision, Mr Bayliffe has said that the medical expert concluded that Mrs Bayliffe had been traumatised by the accident and that she may recover within six months, or she may require more help. He takes issue with the firm's suggestion that Mrs Bayliffe rejected a modest offer of compensation, as they only dealt with him and not her, as a result of her ongoing trauma. He says they could not possibly have discussed the case with her at all.

He goes on to say that Mrs Bayliffe has *"for a year now, remained in total disarray"* owing to an expansion of her acute anxiety disorder following the accident.

Having read Mr Bayliffe's correspondence and complaints and considered the evidence, I am in no doubt that this has been an incredibly difficult time for both him and Mrs Bayliffe. I have seen that he set out the impact the accident had on Mrs Bayliffe, in terms of her worsening anxiety, and on him, in caring for her. I have seen that he urged the firm to obtain compensation for both of them.

I am satisfied, however, that the firm followed Mr Bayliffe's instructions in attempting to obtain a settlement offer from the third party insurer but as they firmly refused to consider this, the only alternative would have been to issue court proceedings or to close the file.

I cannot agree that the firm's decision to close Mrs Bayliffe's file meant that they were discriminating against her on the basis of her mental health condition. Rather, they considered the available evidence, the third party's refusal to consider any settlement and decided that they could not progress the claim any further.

**Therefore, my final decision is that I find there has been no poor service and no remedy is required.**

If you decide to accept my decision, it will be binding on Carpenters Limited and will be in full and final settlement of your complaint. This also means that you will not be able to take any further legal action on the same facts.

If you choose to reject this Final Decision, it is not binding in any way and you would be free to pursue the matter in any way you may choose.

Therefore please reply in writing by **Thursday 3 June** to let us know what you have decided.



If we do not hear from you by this date we will assume you reject this decision and the file will be closed without any further action.

Yours sincerely

A handwritten signature in black ink that reads "D. J. Dunphy". The signature is written in a cursive style with a large, looping 'y' at the end.

Deborah Dunphy  
Ombudsman