

The complaint

Ms L complains that U K Insurance Limited (“UKI”) has unfairly handled a claim made under her legal expenses insurance (LEI).

References to Ms L and UKI will at times refer to respective agents or representatives.

What happened

The background of the complaint is well known to all parties, so I’ve summarised events.

- Ms L holds UKI LEI cover and made a claim under the policy in relation to a property dispute with a neighbour.
- UKI obtained a legal opinion from Company D about the claim which said it did not enjoy reasonable prospects of success – which was required under the policy terms for a claim to be covered.
- Ms L disagreed and provided her own barrister’s opinion (Barrister C), that supported her claim’s prospects of success.
- Company D reviewed Barrister C’s position and obtained the advice of senior counsel (Barrister S) who agreed with Company D’s findings. UKI followed the advice and maintained its decline of further costs.
- Ms L then obtained further evidence and provided this to Barrister C who in turn gave further advice. This was shared with Barrister S who concluded there were still not reasonable prospects of success for the claim.
- As a result, UKI continued to decline the claim. Following a complaint, UKI provided a final response in May 2022. It said it would agree to pay certain fees for Barrister C as a gesture of goodwill but wouldn’t cover any solicitor costs.
- The complaint came to this Service and one of our Investigators reviewed what happened. Ms L also raised concerns about UKI not giving her the option of referring her complaint to arbitration instead of this Service when she first complained.
- The Investigator said UKI had fairly relied on the expert evidence it was provided with, and there was nothing that persuaded her the legal advice from Barrister S was so obviously wrong that UKI shouldn’t have followed it.
- She also said while UKI could’ve highlighted arbitration as an option earlier, ultimately the matter was reviewed by an independent and impartial dispute resolution service free of charge, so she felt there was no material impact on Ms L.
- But the Investigator said UKI’s handling was poor in places and that it didn’t engage with the issues Ms L raised as it should’ve. So, she awarded £100 in compensation.
- UKI accepted the view but Ms L didn’t. She provided a detailed response, saying Barrister S had acted negligently, or had acted in bad faith in collusion with UKI. She provided detail of her reasons as to why she felt Barrister S had failed to understand her claim or acknowledge the new evidence she had provided. And she stated her position was prejudiced in relation to arbitration as this Service is unable to consider

the quality of legal advice.

- The Investigator looked again but didn't change her mind. So, the matter has been passed to me for an Ombudsman's final decision. Ms L has also notified us of a separate complaint she has raised about Company D to the Legal Ombudsman.

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.

Having done so, I'm upholding this complaint. I'll explain why.

- For the avoidance of doubt, I want to be clear this Service is not able to assess the quality of Company D or Barrister S's advice. This is a matter for the Legal Ombudsman or a court. So, I won't be commenting on legal advice given and will focus on the actions of UKI and its obligations in handling this claim.
- Policies of this nature require claims to have reasonable prospects of success – typically defined as at least 51% and which would recover losses or damages. This means if Ms L's claim was shown to have at least 51% or greater prospects of success and would recover her losses or damages then the claim should be covered (subject to the remaining terms and conditions of the policy).
- In determining if Ms L's claim had reasonable prospects, UKI relied initially on the opinion of Company D's solicitor. This outlined the potential claim Ms L may be able to make and assessed prospects at below 51%.
- UKI is entitled to rely on the legal advice it is provided with – unless that advice is obviously wrong.
- Following UKI's decline of the claim, Ms L obtained a conflicting legal assessment from Barrister C (in line with the policy terms). This first advice positioned Ms L's claim with prospects of 50-55%. And Barrister C's follow up advice after receiving further evidence then placed prospects at 55-60% subject to certain factors.
- In line with its policy, UKI passed these legal opinions to Barrister S for their review. The advice I've been provided with from Barrister S details their reasoning for not being satisfied Ms L's prospects met the required 51% or above. Barrister S is a qualified individual with suitable experience in the relevant area of law, and their advice was properly written and reasoned, so I'm satisfied it was fair for UKI to rely on it.
- Ms L has put forward many arguments to say why she disagrees with Barrister S. And it seems to me UKI and Barrister S has engaged with this, with UKI sharing the following with Ms L:
"[Barrister S] cannot understand why [Barrister C] can say in her first advice that the patio access is the strongest claim (60-65%) and then in her second opinion to say the rear access is (55-60%). If [Barrister C] is relying on there being an express right of way; it can only be one or the other. [Barrister C] does not make this clear in her advice. [Barrister S] is of the opinion that you do not have an express right of way over the rear access and thus he based his opinion on considering if you had a prescriptive right of way."
- Overall, Ms L's arguments largely appear to be disagreements with Barrister S' interpretation of evidence or his opinion when compared to Barrister C's, as opposed to anything that would be obviously wrong to UKI.
- Having reviewed everything carefully I've not seen anything within the advice

provided by Barrister S or Company D that would satisfy me it was obviously wrong so that UKI shouldn't have relied on it. It follows I'm satisfied UKI acted fairly in relying on the advice provided to decline covering further costs for Ms L's claim.

- I understand Ms L has a separate complaint about the quality of the advice provided by Company D and Barrister S with the Legal Ombudsman – who are placed to answer such a complaint. And I hope this review will bring some resolution for Ms L on this matter.
- In regard to UKI's handling of the claim, I agree with our Investigator that UKI could've been clearer with Ms L about who her complaint was addressed to, and it should have dealt with these matters quicker. Although I recognise the impact of these mistakes seem limited to minor delays and frustration for Ms L. So, I think the £100 compensation UKI has now accepted to pay is fair in the circumstances.
- Ms L says UKI should've advised her of her option of arbitration earlier, and that its failure to do so prejudiced her position as she had already brought a complaint to this Service by the time she was told of it, which meant it was too late to take that option.
- Ms L says she understands she may have incurred costs in doing so, but that she would've agreed to these because arbitration allowed for the consideration of the legal advice provided – something this Service cannot.
- Ms L has told us she has a separate complaint with the Legal Ombudsman about this very matter. So, even if I were to agree here that UKI should've directed Ms L to this alternative option earlier, I'm not persuaded it has had any material impact on her. I say this as she still has had the option of independent bodies reviewing the matters she is concerned about – namely, this Service considering UKI's actions, and the Legal Ombudsman due to consider the actions of Company D. So, this isn't something I'd look to compensate her for or direct UKI to do anything further about.

My final decision

I uphold this complaint. U K Insurance Limited must pay Ms L £100 in compensation for the distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 2 February 2023.

Jack Baldry
Ombudsman