

## **The complaint**

Mr S and Miss W complaint UIA (Insurance) Limited unreasonably withdrew funding for a claim they made on a legal expenses insurance policy.

## **What happened**

What follows is only intended to be a summary of the events that led to this complaint. It does not therefore provide all of the detail or is it a detailed timeline of events.

Mr S and Miss W became aware that an adverse possession application had been registered for land next to their property. Mr S and Miss W contacted UIA to make a claim for assistance with legal costs to object to the application.

UIA accepted the claim and agreed to appoint Mr S and Miss W's preferred solicitors. The solicitors proceeded to deal with the claim, in line with the relevant deadlines set by the Land Registry. Approximately six months into the claim UIA withdrew funding for the claim saying a mistake had been made and that cover shouldn't have been provided at the start. It said following a review of counsel's opinion there appears to be no ongoing trespass, so no cover is provided under the policy. Mr S and Miss W did not accept this and complained but UIA did not change its position. They then brought the complaint to this service.

Mr S and Miss W have said the solicitor stopped acting for them when UIA withdrew cover and they had to seek alternative representation to continue with the ongoing legal action. In the meantime, they have funded the claim privately and the matter is still ongoing.

## **My provisional findings**

I issued my provisional findings on 12 April 2023. I said I intended to uphold the complaint. In summary, I made the following points:

- The policy terms do not include a requirement of ongoing trespass so UIA can't introduce this as a condition to withdraw cover on the claim.
- I was satisfied adverse possession is intrinsically linked to trespass, and in the way this claim is presented, I'm satisfied it would fall for cover under trespass in the policy.
- Counsel's opinion has been able to differentiate between different parcels of land and therefore I'm satisfied there is proof of where boundaries are as required by the policy.
- Counsel gives Mr S and Miss W more than 51% chance of proving ownership and defeating at least part of the application. And with an assumption being met, they believe a further aspect also has more than a 51% chance of success.

To put things right I said UIA should arrange to again provide cover under the policy for the legal claim and put right the losses Mr S and Miss W had suffered in the meantime. I said it

should also pay them £500 compensation.

### **Responses to my provisional findings**

Mr S and Miss W said they accepted my provisional findings but have concerns about my proposed remedy and how quickly it will be implemented. They say they have, in the past, experienced delays in UIA's handling of the matter. And they are concerned how this will impact the claim going forward and UIA's willingness to agree terms with their solicitor of choice. They are concerned their legal claim will be prejudiced as a result.

They ask that UIA not be entrusted with responsibility of negotiating terms with their solicitor. And, that as they hold UIA responsible for losing the opportunity to settle the claim at an earlier stage, that I direct UIA, should it be needed, to cover the third party's costs outside the limit of indemnity.

UIA disagreed with my provisional findings. In summary it said that adverse possession and trespass are separate. And it maintains that no actual trespass has occurred, the boundary line is not proven and, Mr S and Miss W do not meet the policy requirement of owning the land in question. It quotes part of counsel's opinion in order to support this assertion.

It says it accidentally accepted cover for adverse possession however this is not mentioned in the policy as an insured event.

### **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 remain of the opinion set out in my provisional findings for the same reasons.

I explained in my provisional findings I was satisfied that counsel has set out Mr S and Miss W should more likely than not be able to show ownership of the land and that different parcels of land can be easily identified from the information held. As such, I'm satisfied the policy requirement of needing to own the land and the boundary being known is met.

Having read all of counsel's opinion, I note the specific sentence UIA has referred to is contained within the section of the document titled "background". Counsel then goes on to detail their analysis of all of the evidence available and why they are of the opinion that Mr S and Miss W have prospects of success in defeating the adverse possession application. So, overall, I am not persuaded that this sentence, taken in isolation, overrides the rest of the opinion counsel set out.

I similarly set out in my provisional findings why I thought adverse possession and trespass were linked. I'm satisfied that a threat to the ownership of the land, through adverse possession, is enough to be considered as trespass. UIA has said there has been no actual trespass, by that I assume it means physical trespass. However here, again, I will point UIA to its policy terms. It does not state physical trespass and so it can't introduce this as a condition to decline the claim.

UIA has said Mr S and Miss W could revisit a claim of trespass once, and if, they are declared owners of the land at the conclusion of this claim. However, Mr S and Miss W won't realistically be able to revisit this. I accept that as part of the natural course of this claim formal ownership of the parcels of land in question will be established. However, it wouldn't be fair or reasonable, based on counsel's opinion of their prospects of proving ownership, to

deny them the funding now to object to the adverse possession application, as this is something I'm satisfied falls for cover.

So, for the reasons above, and those set out in my provisional decision. I uphold this complaint.

While I understand Mr S and Miss W's concerns, I won't be making any direction on what costs UIA should pay going forward as it is entitled to seek an agreement with the solicitors as it would normally do. This is set down in the policy terms and it wouldn't be reasonable to go against this.

Similarly, I won't be making any direction that UIA should be held responsible for the third parties' costs, if required, at the conclusion of the claim. Mr S and Miss W are entitled to cover, and this should be dealt with in the usual way. The conclusion of the legal claim is unknown and therefore it wouldn't be appropriate for me to make any direction on this here.

Should there be any further issues with the insurance claim, and if Mr S and Miss W are unhappy, they would be entitled to make a further complaint.

### **Putting things right**

Bearing in mind the time sensitive nature of the action, UIA should act promptly and do the following to put things right:

Subject to Mr S and Miss W repaying the applicable excess, UIA should again provide cover for reasonable legal costs up to the indemnity limit of the policy.

As Mr S and Miss W have privately funded legal action in the meantime, UIA will need to arrange to reimburse the reasonable legal costs that Mr S and Miss W incurred in full. They should add interest at 8% simple per annum on this amount from the date(s) the payments were made to the date of settlement.

Given Mr S and Miss W would not have been able to benefit from the reduced rates agreements insurers are generally able to negotiate. And due to UIA's error they had no option but to seek other representation, I don't think it would be reasonable for the full amount (above) to be deducted from Mr S and Miss W's indemnity limit.

UIA will therefore need to obtain details of the work undertaken in the meantime and, applying the rates it agreed with the previous solicitor, work out how much of the indemnity limit would have been used in the intervening period. Once UIA has worked out that amount, it would be entitled to deduct the same from the indemnity limit.

UIA will then need to make contact with Mr S and Miss W's current solicitors to see if they can reach an agreement on the costs for funding the ongoing claim.

UIA should also pay Mr S and Miss W £500 compensation to reflect the trouble and upset its error caused.

### **My final decision**

My final decision is that I uphold Mr S and Miss W's complaint against UIA (Insurance) Limited. I direct UIA (Insurance) Limited to put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Miss W

to accept or reject my decision before 13 June 2023.

Alison Gore  
**Ombudsman**