

The complaint

Ms S complains about U K Insurance Limited (“UKI”), and her intended use of arbitration related to her family legal protection insurance policy.

Any reference to Ms S or UKI includes respective agents or representatives.

What happened

The background of this complaint is well known between parties, so I’ve summarised events.

- Ms S made a claim related to breach of contract for buying or hiring services under her family legal protection insurance.
- In December 2022 UKI issued a final response letter explaining why it had declined the claim. This letter outlined options for Ms S to escalate matters if she remained unhappy, including an option to use this Service or arbitration.
- Ms S chose to use arbitration and following a dispute about the choice of arbitrator UKI issued another final response letter in February 2023. It stood by its choice, and attributed a lack of progression to a delay on Ms S’ part – saying she had not agreed to pay costs should she lose at arbitration.
- The matter came to this Service, and one of our Investigators didn’t uphold the matter. Ms S disagreed so the matter came to me.
- I issued an Ombudsman’s final decision that considered matters up until February 2023, not upholding the complaint. I explained the scope of my decision was narrow and would not touch on the subject matter the arbitrator would be considering – the insurance claim itself. And I was satisfied UKI had acted reasonably by seeking clear agreement with Ms S on her potential liability for costs. And that UKI hadn’t caused any material delays to the arbitration to the extent I would make an award.
- In June 2023 UKI issued another final response. Within this it addressed concerns about service, as well as its choice of arbitrator and commentary around the relevant law it said should apply. It recognised there was a delay in responding to a claim form and awarded £100 to apologise for this service issue.
- Ms S has since brought this second complaint about the events that followed. Ms S has provided substantial submissions outlining her concerns. These include the arbitration not progressing and reiterating her disagreement with UKI’s position on its selected arbitrator and choice of law. She also raised more general concerns about UKI’s position on the choice of law across its insurance policies.
- One of our Investigators looked into matters and upheld the complaint, saying:
 - The insurance policy was clear in the event of a dispute over choice of arbitrator, the matter would be referred to the Chartered Institute of Arbitrators (“CIA”) to determine. And given there had been a dispute over the arbitrator for some time, UKI should have referred this accordingly. So, while this Service would not become involved with the decision of any such review, she was satisfied UKI had delayed matters for Ms S. So, she awarded £200 in

addition to the £100 already offered for other service issues.

- This Service would not comment on commercial decisions UKI made regarding the products it offers or wider regulatory concerns.
- Ms S had raised concerns about UKI's accessibility – and while we wouldn't comment on a wider commercial level – she was satisfied UKI had alerted Ms S to various ways she could contact it.
- UKI agreed to the view, and said it would send Ms S “*relevant forms*” for her to sign so the matter could be escalated to the CIA.
- Ms S disagreed, providing a detailed submission that reiterated concerns, adding:
 - UKI had failed to send her “*relevant forms*” to fill in previously.
 - The investigator hadn't addressed concerns about the choice of law that should apply to the arbitration.
 - The delay on UKI's part had caused substantial impact on her.
 - She wished for this Service to direct UKI to provide details of an arbitrator working under different law, ask or direct the CIA to select an arbitrator that practiced Scottish law, and for UKI to change its processes for residents of the UK outside of England.
- The Investigator responded to these points, saying she recognised UKI should've begun the referral to the CIA earlier – and in doing so, this included any necessary steps (such as forms). It would now be for the CIA to determine the arbitrator – not this Service. She said the award she made recognised the level of distress and inconvenience she believed was reasonable. And she reiterated this Service wouldn't direct UKI to make commercial changes to its policies as Ms S requested, as we look at individual complaints.

So, the matter has been passed to me for an Ombudsman's final decision.

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.

Ms S' submissions to this service are extensive. It is evident she has gone to great lengths and effort to explain why she believes UKI has acted unfairly. Given the informal nature of this Service, I have not mirrored this level of detail.

My role is to focus on what I consider the crux of the complaint to be – which means I will only comment on those things I consider relevant to the decision I need to make.

The crux of the matter here concerns UKI's choice of arbitrator, and a dispute about the law that should apply when considering the claim itself. Under a section related to complaints, Ms S' policy states:

“If your complaint relates to Section 4 – Family Legal Protection, you can refer your complaint to arbitration instead. This is where an independent person, known as an arbitrator, makes a decision on how to settle the dispute.

The arbitrator will be a solicitor or barrister or other suitably qualified person that you and we agree on. If you and we can't agree, we will ask the Chartered Institute of Arbitrators to decide.

The arbitrator's decision will be final and whoever does not win will have to pay all

costs and expenses of the arbitration.”

Ms S wishes to use the arbitration process to handle the dispute about her insurance claim being declined. And it's clear there is a dispute over the selected arbitrator that UKI put forward to deal with this matter.

So, it is important here I outline the scope of the decision I am considering.

The arbitrator (once appointed) will consider the insurance claim itself. So, given Ms S has selected the arbitration process instead of referring the insurance claim dispute to this Service, I will not be commenting on any of this subject matter that the arbitrator will look at.

Ms S has explained at length why she believes UKI has failed to provide a suitable arbitrator for various reasons. But the policy is clear that a dispute about such a matter will fall to the CIA to select one as Ms S and UKI do not agree. So again, I will not comment on the proposed appointment or selection on the part of UKI as this decision will fall to this Institute to determine.

I have considered the events that followed on from my last final decision and UKI's actions. Simply, it is evident there was an ongoing dispute about UKI's chosen arbitrator. And given the policy states it will refer the matter to the CIA in the event the parties cannot agree, I'm satisfied this course of action should have been taken. But even as of June 2023, some four months on from UKI's previous final response letter, this option wasn't taken forward.

So, I'm satisfied UKI made a mistake here, and that its actions delayed matters. I've taken into account the impact Ms S has described, and I don't doubt it added unnecessary frustration to events for her across the several months that the matter didn't move forward. However, given the arbitration matter will now move forward, I'm satisfied this limits the impact of the delay. And I'm in agreement a sum of £300 in total (taking into account the £100 already offered by UKI) is fair and reasonable in the circumstances.

Ms S appears to have raised concerns about having to fill in the additional relevant forms UKI has mentioned. But this sort of administration doesn't persuade me to make any additional award.

Ms S has also raised concerns about UKI's wider insurance policies in relation to the selection of law, and processes regarding accessibility to raise concerns.

As our Investigator has said, it is not for this Service to set or direct firms to change wider commercial practices. My decision outlines the mistakes I believe UKI has made in this instance, and I will leave it to the relevant arbitrator/CIA to determine the other issues in hand.

In regard to accessibility to raise concerns, it's evident Ms S has been able to raise matters with UKI, which it's answered, then she brought those issues to this Service. So even if I agreed there had been failings in places – which from what I've seen I don't think there has been – this wouldn't persuade me to make any additional award or direction.

My final decision

For the above reasons I uphold this complaint. U K Insurance Limited must:

- Pay Ms S £300 in total for compensation related to delays and service issues. This is inclusive of the £100 it had previously offered within its June 2023 final response letter.

- Engage with the Chartered Institute of Arbitrators to take the dispute regarding the arbitrator forward. This will include providing appropriate information and any necessary forms to Ms S to allow such a review in line with its policy terms.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 20 December 2023.

Jack Baldry
Ombudsman