

## The complaint

Dr D's complaint is about U K Insurance Limited's ("UKI") handling of a claim she made under the legal expenses section of her home insurance policy.

## What happened

Dr D had a dispute with a contractor who had carried out some work on her home. Her policy with UKI states that the policyholder must ring the legal helpline before incurring any legal costs. Dr D rang the helpline in September 2022. She asked if making a claim under the legal expenses section of the cover would affect her home insurance premiums in the future. Despite speaking to various people, Dr D says no one could give her a clear answer about this. Dr D says she nevertheless decided to make a claim and had a telephone consultation about the issue and gave a lot of information.

Dr D says she was told to get quotes for rectifying the work she said was defective. She spent four days, which she had to take as annual leave, writing to the contractor, preparing a chronology and getting quotes. The issue was not resolved with the contractor, so Dr D contacted UKI again to proceed with the claim.

UKI accepted the claim and appointed one of its panel solicitors to assess it. The panel solicitors determined that while there was a reasonable chance of Dr D's legal claim against the contractor succeeding, there might be difficulty in recovering any settlement from the contractor, which would mean there was no cover under the policy to pursue the legal claim. Dr D obtained the address of the contractor and details of assets owned by the contractor, including a car and boats, but the solicitors maintained their advice, as they said he did not own his home and the other assets were not "*immovable property*".

Dr D is very unhappy with this. She says that as the matter went on more and more details of the terms and conditions of the cover came out but these should all have been provided to her when she first contacted UKI. She was told UKI could help with her claim but she was not told that this would be subject to conditions and whether it could help would be reassessed as the claim progressed. Instead, she says she spent four days annual leave doing the tasks she was told to do which was a waste of time. Dr D also says that given the efforts she's made and the "*vagueness and inaccessibility*" of the information UKI has relied on to refuse her claim, she wants UKI to reconsider taking on the claim. Dr D has made a number of submissions in support of her complaint. I have considered everything she has said but have summarised the main points below:

- It is not clear to customers whether making a legal expenses claim will impact their premiums so they cannot make an informed decision about whether to claim or not. This needs to be changed.
- The policy terms were not sent to her and are not available on her online account. The policy terms should be more readily available.
- She was told by UKI in September 2022 that it could help with the claim and there was no mention of this being only general advice during that call and that if further assistance was needed it would be subject to terms and conditions. It should have been explained to her when she first contacted UKI (and in the policy documents)

that the contractor would need to own “*immovable property*” for her claim to be covered.

- From her experience, “*immovable property*” was a key term that should have been communicated to her in the policy document and during that first phone call.
- She would never have started the process if she had known UKI might not follow through with the complete process.
- The lack of transparency gives the appearance that UKI was making up reasons to avoid her claim.
- UKI should also revise its practices to provide faster responses to customer feedback. It took from April to August 2023 for UKI to respond to her with an incomplete response. This was a day before she was due to renew her policy, which meant she had no time to shop around and take her business elsewhere.

UKI says the policy documents were sent to Dr D when she first took out the policy and at each renewal, and, if it is set up online, it can be viewed online too. UKI says the policy sets out that any claim needs to have reasonable prospects of succeeding, which includes reasonable prospects of recovering an award. UKI says that the term “*immovable property*” is a legal term and this would not be set out in the policy, as it is something the solicitors would consider when determining the prospects of recovering a settlement from the opposing party.

UKI also says that the legal helpline does not advise on insurance matters, such as the effect of a claim on the premium. UKI says when Dr D first spoke to the helpline, she was given advice about how to try and resolve the dispute, including obtaining quotes for the remedial works. As this didn’t work, the matter was passed to its panel solicitors. It says Dr D was offered appropriate general legal advice and she would have needed to get quotes for the remedial work for her claim to be considered by the panel solicitors anyway. As the contractor didn’t have any permanent assets, the likelihood of obtaining a successful judgement *and* recovery of the losses was unlikely. This means the claim did not have reasonable prospects of recovery, and therefore cover was withdrawn. It says that as an insurer, it isn’t legally qualified and is entitled to rely on the panel solicitors to give advice and make decisions on the legal claim. UKI says it has dealt with the claim fairly and was entitled to refuse to continue the claim.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he thought UKI had acted fairly and reasonably and in line with the policy terms.

Dr D did not accept the investigator’s assessment, so the matter was passed to me.

### **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.

Dr D’s policy provides cover for the legal costs involved in various disputes, including contract disputes such as Dr D was involved in. The policy says UKI will:

*“provide cover under section 4 Family Legal Protection as long as:*

*we and the appointed representative agree that your claim has reasonable prospects of success for the duration of the claim.”*

Reasonable prospects of success are defined in the policy as being when:

*“For civil cases, we and the appointed representative agree that there is a better than*

*50% chance that you will: obtain a successful judgment, and recover your losses or damages or obtain any other legal remedy we agree to, including an enforcement of judgment or making a successful defence, appeal or defence of an appeal..."*

All legal expenses insurance policies that I am aware of have a similar condition. I do not consider it unreasonable, as it is not in the interests of policyholders, insurers or taxpayers for claims that do not have a reasonable chance of succeeding to be pursued.

Dr D's policy with UKI says that before a policyholder incurs any costs, they must contact the legal helpline. This is what Dr D did. During the first call the helpline advised Dr D to get quotes for the remedial work required and to try and resolve the problem with the contractor. This didn't resolve the matter, so she called the helpline again and a formal claim for legal expenses cover was set up. Dr D says she was not told that the first call was initial advice only and that there would be conditions that would apply to the claim, which might mean that it could not be seen through to the end.

I am not persuaded that there was anything unreasonable in this process or the advice to try and resolve the issue and gather relevant evidence (such as the quotes) with the contractor before taking the matter further. Dr D says she wasted four days of annual leave getting quotes and contacting the contractor but there is no convincing evidence that this was not appropriate advice. The fact Dr D was ultimately unsuccessful in resolving the dispute with the contractor does not alter this. The communications with the contractor together with quotes to back up Dr D's position may have resolved the issue, without the need for a formal claim, and the fact it didn't in this case doesn't make that wrong. When that was unsuccessful, UKI considered a formal insurance claim.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint panel solicitors to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case. This is what UKI did here when it appointed the panel solicitors.

Dr D says she was not aware that there would be any conditions to her claim, once she was told that UKI would provide her with support. All insurance claims are subject to terms and conditions and as stated the relevant condition in this case, that a legal claim has reasonable prospects of success, is not an unusual or unreasonable one. It is also a characteristic of legal claims that the prospects of succeeding may alter as the case progresses, for instance as new evidence comes to light. It is therefore something that has to be continually assessed. Lawyers would generally do this for private paying clients as well, in order to assess that it is still advisable to proceed.

When the claim was submitted, UKI's panel solicitors looked into it further to assess if there were reasonable prospects of succeeding in recovering any monies through the courts. They determined that as there was no evidence the contractor owned any fixed or immovable property such as a house, so even if she got a court order in her favour, Dr D would be unlikely to be able to recover any monies.

Dr D is adamant that the requirement that a potential defendant have "*immovable property*" should have been made clear in the policy documents and during the phone calls with the helpline. I do not agree that this is a reasonable expectation.

The condition is sufficiently clear in my opinion and is not unreasonable. As UKI has said it would be for the appointed lawyers to determine if there were reasonable prospects of a legal claim succeeding (in accordance with the policy definition). In Dr D's case, the fact the

contractor did not appear to have any permanent “*immovable*’ *assets*” was relevant to the assessment of the chances of her legal claim but this might not be relevant to all potential legal claims. And, conversely a respondent might have “*immovable assets*” but the lawyers might still determine that there is not a reasonable chance of a successful recovery. I am therefore satisfied that UKI has set out sufficiently clearly the terms of the insurance.

The policy documentation was sent out at each renewal and there is no evidence as far as I am aware that it was not sent to Dr D at renewal in July 2022. However, even if Dr D was not sent the policy document and she was not aware of this condition when she started the claim, I do not think this means that UKI should be required to disregard this term and cover the costs of a legal claim where there is not a reasonable chance of recovering any award.

Dr D says that if she had been aware of the policy term and the possibility that the legal case would be seen through to the end, she would not have wasted time getting the alternative quotes and other information. However, she asked the helpline for advice on how to resolve the issue with the contractor and I am satisfied UKI dealt with the matter appropriately. Dr D has had some inconvenience in trying to get this resolved but I am not persuaded that is due to anything that UKI has done wrong, it is rather due to the dispute with the contractor.

Dr D also says that the helpline staff should have been able to tell her if a claim would affect her future premiums. They are there to offer legal advice, not advice about the insurance generally. I can understand why Dr D wanted clarity on this, and the helpline should probably have referred her to UKI for an answer, however, while this was frustrating, I do not think that any award is required for this.

Dr D says that UKI should change its process about this and other matters, including the accessibility of the policy documents online. Even if I thought UKI’s processes and practices were wrong, we do not regulate insurers and therefore I have no power to make an insurer change its business model or processes generally.

Dr D is also unhappy with the time taken by UKI to respond to her complaint. Complaint-handling is not a regulated activity in its own right, so I cannot consider UKI’s handling of Dr D’s complaint. However, I note that she raised her complaint in end March 2023 and UKI sent a final response letter in response to her complaint in April 2023. It also wrote to Dr D again in August 2023. UKI told Dr D of her right to refer her complaint to this service in both letters.

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Dr D to accept or reject my decision before 22 February 2024.

Harriet McCarthy  
**Ombudsman**