

The complaint

Mr and Mrs S are unhappy with what U K Insurance Limited did after they made a claim on their legal expense insurance policy.

What happened

In 2021 Mr and Mrs S contacted UKI seeking assistance with a breach of contract claim in relation to the supply and installation of new windows and a door. UKI referred the matter to a firm of panel solicitors (D) for it to assess whether it had reasonable prospects of success and was proportionate to pursue. D concluded in November 2021 it wasn't because there weren't reasonable prospects of recovery.

Subsequently (in June 2022) D accepted its advice had been incorrect because Mr and Mrs S's contract was with an individual rather than his company. UKI asked another panel firm (L) to reassess the claim. It concluded in August it did have reasonable prospects of success and recovery but didn't think it was proportionate to pursue. After discussion with Mr and Mrs S, UKI agreed to refer the matter back to D for further consideration of the value of the claim. It subsequently agreed D could obtain an expert report to inform that valuation.

Mr and Mrs S were unhappy with the time taken to obtain that report and UKI followed matters up with D. It also agreed to fund a barrister to advise Mr and Mrs S on their options in relation to a February 2023 court date. Mr and Mrs S wanted to use their own solicitor to draft instructions to counsel but he didn't agree to UKI's terms. So they reluctantly agreed D could do this.

UKI then agreed to fund the barrister to attend the court hearing with Mr and Mrs S. Following that hearing (and having considered the expert report which had by then been produced) D advised the claim wasn't proportionate to pursue. It thought costs would exceed any likely award by around £400.

UKI said given the relatively small difference between the costs and claim value it was prepared to absorb the risk and provide funding for Mr and Mrs S's claim (given their claim journey to date). D were appointed to act for them and I understand the claim has now been progressed to a successful conclusion.

Our investigator said issues covered by UKI in a final response issued on 6 October 2022 hadn't been referred to us within six months of that being sent. However, we could consider what had happened from then until a further final response was issued on 28 February 2023.

In relation to that she noted there had been delays in obtaining the expert report. But she didn't think that was something UKI was responsible for; it had taken reasonable steps to follow this up with D. And it had agreed to pay for the barrister and provide ongoing funding for the case even though the claim had been assessed as being slightly disproportionate to pursue. She thought the £250 UKI had offered in its final response was fair and didn't think it needed to do anything more.

Mr and Mrs S didn't agree. They said from June 2022 until February 2023 UKI had refused to agree funding for either panel firm to represent them despite their claim having reasonable prospects of success and recovery. And they thought the prospects of UKI not recovering its costs were always minimal. They thought the final response issued in February 2023 superseded the previous one or, in the alternative, by agreeing to reopen their complaint UKI had waived the six-month time limit. They also raised concerns about what happened since the February 2023 final response.

They said UKI didn't have permission to share information with L and its assessment of proportionality took into account costs to amend pleadings which were only necessary because of what D previously got wrong. And UKI then insisted on obtaining expert opinion rather than providing funding for their claim. They also said UKI's terms of appointment didn't provide any genuine freedom of choice as they were unable to find a solicitor who was prepared to agree to them.

Mr and Mrs S thought if legal expenses had been agreed for their claim at the outset it was likely the matter would have resolved within weeks. But as that didn't take place the other side became entrenched in their arguments and they had to endure two further winters with water ingress due to the ill fitting windows. And they highlighted the impact all of this had had on them.

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.

I appreciate this has been an extremely difficult experience for Mr and Mrs S. They've made clear in correspondence how this affected them both financially and in relation to their health. I was very sorry to learn about this and I hope they have now been able to resolve the issues with the windows and doors at their property. But the question for me is whether UKI did anything wrong when dealing with the legal expenses insurance claim they made. And as Mr and Mrs S are aware I can't consider the actions of the panel solicitors who were involved with the claim.

I recognise Mr and Mrs S want us to consider issues covered in the 7 October 2022 final response from UKI. I can see that response addressed the incorrect advice D provided, issues relating to the valuation of the claim, L's actions in relation to it, the decision to seek an expert report and delays by UKI in dealing with the matter. It offered £250 for those, provided referral rights to our service and explained that referral needed to take place within six months of the date of the final response.

Mr and Mrs S didn't refer that complaint to us within six months of 7 October 2022. However, their argument is that response was superseded by the subsequent final response or that, by reopening the complaint, UKI waived the six month referral deadline. But that isn't something I'm considering in this decision which is about what happened between October 2022 and February 2023.

However, as Mr and Mrs S have challenged our investigator's view as to whether we can consider the issues covered in the October 2022 final response, I've asked her to set up a separate complaint to consider those points. An Ombudsman could then consider this as part of a jurisdiction decision if necessary.

Turning to the issues I can consider in this decision (which are primarily about what happened between October 2022 and February 2023) the relevant rules and industry guidelines say UKI has a responsibility to handle claims promptly and fairly. It shouldn't

reject a claim unreasonably.

In common with other legal expenses policies Mr and Mrs S's only provides cover where a claim has reasonable prospects of success. It defines that as

"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."*

The policy also says *"we can refuse to pay further costs if we or the appointed representative consider that those costs would be disproportionate to the value of the claim"*.

In this case I think it's accepted that in October 2022 Mr and Mrs S's claim had reasonable prospects of success as defined in the policy. The issue was whether it was proportionate to pursue. I appreciate Mr and Mrs S think UKI was always likely to recover its costs from the other side and I know they were ultimately successful in their claim. But that isn't something they or UKI could have been certain of prior to that happening. So I think it's appropriate for proportionality to have been considered on the basis of a reasonable assessment of the claim value against the likely cost to pursue it. But I agree with Mr and Mrs S it wouldn't be fair to include in that costs which directly result from rectifying errors caused by what D got wrong when providing its initial advice.

However, I think the issue is that in October 2022 it wasn't clear what the value of Mr and Mrs S's claim was (or what they'd likely be awarded if successful at court). And I think it was therefore reasonable UKI agreed to provide funding to obtain expert evidence to assist with this. Until that was established it wasn't clear Mr and Mrs S had a claim which met the requirements of their policy for funding to be provided.

The following month Mrs S contacted UKI again as she was unhappy with a lack of progress by D in obtaining expert evidence. I think UKI took reasonable steps in response to that. It contacted D and, based on the information it provided, I don't think there was more it should then have done. When Mr and Mrs S raised further concerns it again contacted D (in December) and requested more information including a timeline of events. And that didn't suggest significant delay by D in progressing matters; rather that the delay was down to issues with the expert themselves.

But, as UKI was aware Mr and Mrs S had an upcoming court hearing, it did agree to obtain counsel's advice on next steps to assist them. Given cover hadn't yet been confirmed under the policy (because it wasn't yet clear if it was proportionate to pursue) I think that went beyond what UKI was required to do. But I agree it was appropriate given Mr and Mrs S's claim journey to date.

Mr and Mrs S initially asked for their own solicitor to draft instructions to the barrister. I can see UKI contacted him but he wasn't prepared to agree UKI's terms of appointment (in particular the requirement for payment to be made on account). I don't think those terms are in themselves unusual but I think UKI could have considered whether an exception could be made in this case. As I understand it the solicitor was only being instructed in relation to drafting instructions rather than progressing the case more generally.

But even if UKI had done that it appears when it spoke to him he had only limited recall of the case (and his office was then closed for the Christmas break). And following further discussion with Mr and Mrs S, UKI instructed D to progress these instructions a week later.

So I don't think any issues with the appointment of Mr and Mrs S's own solicitor caused significant delay to the progress of their claim.

Providing instructions to the barrister does then appear to have taken longer than expected because UKI wanted to await the expert evidence (so the barrister could look at a complete picture). That doesn't appear unreasonable in my view. But given the difficulties that caused for Mr and Mrs S and their upcoming court hearing I think it was right UKI agreed funding for the barrister to attend that with them. And given D subsequently assessed the claim wasn't proportionate to pursue I think UKI acted fairly in going beyond the policy terms by agreeing to provide ongoing funding for Mr and Mrs S's claim.

I've also considered Mr and Mrs S's concerns that information was passed to L without their permission (given this specific issue wasn't addressed in the October 2022 final response). I've listened to a call between Mr S and UKI on 24 June 2022 in which he explained what D had got wrong and said they'd lost confidence in them. He said they wanted an alternative firm and because of upcoming court deadline didn't have time to shop around for a solicitor of their own. The matter was subsequently referred to L but it does appear that was done without Mr and Mrs S specifically agreeing to that.

However, it's clear Mr and Mrs S wanted another firm to look at their claim and UKI says L were the only other firm on its panel that could assist with a dispute like this. It doesn't appear Mr and Mrs S had an alternative in mind and they haven't suggested they'd have refused permission for L to look at their claim if UKI had asked. So I think it's most likely that, if UKI had asked for their consent to approach L, they'd have agreed to that. As a result I don't think they've lost out as a result of anything UKI got wrong.

I appreciate that may nevertheless have caused them some unnecessary distress. But in its February 2023 final response UKI agreed to pay Mr and Mrs S a further £250 (which I understand it's already done). I think that does enough to recognise the impact on Mr and Mrs S of this and any other distress and inconvenience they were caused by failings by UKI which form part of this complaint. If Mr and Mrs S have concerns about what UKI did from February 2023 onwards those will need to be raised with it as part of a fresh complaint. And we'll consider the jurisdiction points they've raised as they relate to the October 2022 final response separately.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 14 March 2024.

James Park
Ombudsman