

The complaint

Ms S complains that U K Insurance Limited (“UKI”) unfairly declined a claim under her legal expenses insurance policy.

Where I refer to UKI, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

In 2023, Ms S made a claim under her legal expenses policy to pursue action against a solicitor for professional negligence. But UKI declined the claim on the basis that the solicitor was acting for Ms S in a matter that the policy wouldn’t have covered, so any claim for negligence was specifically excluded.

Ms S didn’t think UKI had interpreted the policy terms fairly. She sought a legal opinion from a solicitor advocate, who was of the opinion the claim was covered.

UKI maintained its decision, so Ms S brought a complaint to our service. And our Investigator upheld it. He said UKI should reconsider the claim by seeking a legal opinion on policy coverage and, if supportive, prospects and proportionality.

Both parties had concerns about the way in which the claim should be handled going forwards, and counter proposals were made. As no agreement could be reached, the complaint was passed to me to decide, and I issued the following provisional decision.

My provisional decision

To be clear, it’s not the role of this service to handle claims or advise on how they should be pursued. My remit, in this case, is to decide whether it was fair for UKI to decline Ms S’ claim on the basis set out in its final response letter dated June 2023.

When doing so, I’ll take into account the relevant rules and regulations, and good industry practice. In particular the Financial Conduct Authority’s (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires businesses to handle claims promptly and fairly, and to not unreasonably reject a claim.

The terms and conditions of Ms S’ legal expenses insurance policy say:

Contract disputes

We will pay costs for breach of contract claims for:

- *buying or hiring goods or services.*

We don’t cover claims arising from or relating to:

- *professional negligence in connection with any matter not covered under this section.*

UKI say, because the original claim is related to bankruptcy which doesn't fall under any heads of cover, the professional negligence is in connection with a matter that's not covered.

Ms S, and her solicitor advocate, say the professional negligence arises from a breach of contract for services, so the claim should be covered.

The starting point is whether Ms S has a claim that falls within the policy cover. She wants to pursue a solicitor for breach of contract and breach of duty of care. I'm satisfied this is a contract dispute relating to hiring services.

The professional negligence is in connection with the legal advice she received from the solicitor. And as that breach of contract is something the policy covers, I don't agree the exclusion applies here.

Even if I agreed with UKI's interpretation of the policy – which I don't – I have to consider whether the policy terms are clear, fair, and not misleading. The fact that the policy terms can be interpreted in multiple ways leads me to believe they lack clarity. And where a policy term is ambiguous about what it means, we'll interpret it in the favour of the non-drafting party.

For these reasons, I don't consider UKI's decision to decline Ms S' claim was fair. And it needs to put things right.

Our Investigator has recommended that a legal opinion is sought on the policy coverage. But I don't think that's necessary. As I've explained above, policy terms should be clear, fair, and not misleading – an insurer or its policyholders shouldn't need legal support in order to determine what they mean.

I intend to uphold this complaint and direct UKI to reconsider Ms S' claim under the remaining policy terms and conditions on the basis that it's not excluded for the reasons set out in the final response letter dated June 2023.

I also intend to award compensation of £200 for the distress and inconvenience Ms S has suffered as a result of having her claim declined. And if she incurred legal costs in seeking the solicitor advocate's opinion on policy coverage dated 20 June 2023, she should provide me with the invoice so I can consider whether these costs should be reimbursed to her.

Responses to my provisional decision

Both Ms S and UKI accepted my provisional decision. I've not been provided with any invoice for the solicitor advocate's opinion.

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.

As both parties accepted what I've said and provided no further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons I've explained, I uphold this complaint and direct U K Insurance Limited to:

- reconsider Ms S' claim under the remaining policy terms and conditions on the basis that it's not excluded for the reasons set out in the final response letter dated June 2023.
- pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 25 June 2024.

Sheryl Sibley
Ombudsman