

The complaint

A partnership, which I'll refer to as D, complains about the way U K Insurance Limited trading as NIG ("UKI") dealt with a claim on its legal expenses policy.

Mr A, who is a partner of D, brings the complaint on D's behalf.

Where I refer to UKI, this includes its agents and claims handlers acting on its behalf.

What happened

Mr A made a claim on behalf of D to cover the costs of professional negligence claims against three firms of accountants. Mr A dealt with the claim and complaint throughout and for ease I'll refer to him.

There is a lengthy history to this matter. The first claim was made in 2018 and was followed by two further claims. Although separate claims, they are related. Mr A was unhappy with the way the claims were dealt with. He made a complaint in 2018 and another in 2020. UKI provided a final response to each of those complaints.

Mr A made a further complaint about arrangements for solicitors to be appointed.

UKI has arrangements with some panel solicitors but they were unable to act, so Mr A contacted another firm of solicitors. There was correspondence with them in 2019 about terms and an hourly rate was agreed.

There was a further complaint in 2022 about ongoing delays dealing with the claim. In its final response to this complaint in January 2023, UKI accepted there had been a short delay replying to solicitors' correspondence in October 2022 and offered compensation of £150.

Mr A was unhappy with this and referred the complaint to this Service.

Our investigator explained that although there were various claims and Mr A was unhappy about a number of issues, he could only consider this specific complaint and the response given by UKI in January 2023 (together with some related issues Mr A had raised which had not been included in the response).

The investigator said:

- Mr A raised concerns in an email in August 2022 about the indemnity and the hourly rate agreed by UKI. UKI didn't address those issues, but did acknowledge a short delay replying to his solicitors in October 2022 and offered compensation of £150.
- UKI should have replied to the concerns raised in the earlier email. As it didn't, it should increase the compensation to £400.
- An hourly rate of £100 was typically used with panel solicitors but for other solicitors, a rate in line with the county court guidelines is reasonable. Going forward, as Mr A had to use his own solicitors, UKI might consider making interim payments.

- If Mr A was unhappy with other issues he should raise these as separate complaints, making it clear which claim they relate to.

UKI accepted the investigator's view but Mr A didn't.

He asked a number of questions about how the claims were managed, including issues relating to the appointment of solicitors and what fees had been paid to them. The investigator explained that previous concerns around the choice of solicitor had been addressed in the final responses in 2018 and 2020; they were not part of this complaint and it was too late to complain about those now.

He also explained that it wasn't our role to answer questions but to address specific complaints that have first been referred to UKI.

Mr A remained unhappy and requested an ombudsman's a decision.

The investigator referred the complaint for a final decision and said any issues within our jurisdiction would be addressed but other issues would not be considered.

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.

This complaint concerns a long-running claim which dates back a number of years. This complaint only concerns those issues addressed in UKI's final response sent in January 2023, together with some related concerns Mr A raised that UKI could have addressed but failed to.

Our investigator explained to Mr A that we can't consider complaints from 2018 and 2020 as they are separate issues and he is out of time to refer those to us now. The only way we could consider those complaints would be if Mr A raised them separately and provided evidence showing there are exceptional reasons which meant he was not able to refer them to us at the time. We could then consider if it would be possible to investigate those complaints now.

We have received detailed comments from Mr A and extensive documents from UKI. We were set up to provide an informal alternative dispute resolution service and our role is to provide an impartial review, quickly and with minimal formality. I use my judgement to decide what's fair, based on the main crux of a case. So I won't comment in detail on every single point that has been raised and will focus on the key points that are relevant to the outcome of this particular complaint.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. There's no dispute in this case that the claim is covered. The specific complaint I'm dealing with is about delays by UKI in the period between August 2022 and January 2023.

UKI had appointed solicitors to act for D. In the first instance, it would usually instruct one of its panel of solicitors but they were unable to act. So another firm was appointed.

If the policy terms specify an hourly rate to be paid to solicitors, that's the starting point for considering what should be agreed. This policy doesn't specify a rate but says reasonable and necessary costs will be paid.

UKI agreed a rate with D's solicitors that was in line with the County Court guideline rates. These provide a useful guide to reasonable rates and in the circumstances I think the rate offered was reasonable.

Costs are assessed and settled at the end of the case. Interim payments are not generally paid, other than sometimes for certain disbursements such as expert's fees. In view of the delays that have arisen UKI may wish to consider making some interim payments towards the costs in this case.

UKI has acknowledged there was a short delay replying to correspondence in October 2022. The solicitors said they couldn't continue acting due to a conflict of interest. There was some correspondence about appointing alternative solicitors and Mr A suggested another firm of solicitors (which had acted previously). It seems UKI didn't initially appreciate the urgency of the situation; another firm needed to be appointed very quickly in view of court deadlines. But after that short initial delay of around two weeks it did respond to further correspondence promptly and negotiated terms for the other firm of solicitors to be appointed.

However, Mr A had been corresponding from August to October 2022 raising concerns about the claim without getting a response. So there was delay there, in addition to the delay in October.

This was a difficult period for D, as there were court deadlines to meet. Any delay would have been upsetting and put Mr A to some trouble; having to chase for response would have taken him away from other activities. In the circumstances I agree that £400 is fair to compensate for the distress and inconvenience caused.

As I've explained, I can't consider complaints about earlier events dating back to 2018. And if there are more recent issues Mr A is unhappy with, which he hasn't already raised with UKI as formal complaints, he may do that on behalf of D. If he's unhappy with any response provided, he may refer that to us.

My final decision

I uphold the complaint and direct U K Insurance Limited trading as NIG to pay compensation to D of £400 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 8 July 2024.

Peter Whiteley
Ombudsman