

The complaint

Mr B's complaint is about the handling of a claim under his legal expenses insurance cover with U K Insurance Limited ("UKI").

UKI is the underwriter of this policy, *i.e.* the insurer. This complaint concerns the actions of the agents it uses to deal with claims on its behalf. As UKI has accepted it is accountable for the actions of the agent, in my decision, any reference to UKI includes the actions of the agents.

What happened

In May 2021, Mr B contacted UKI to make a claim under the legal expenses policy as he wanted representation in a claim against his landlord.

UKI initially said that the dispute Mr B was claiming for had started before he took out the policy in August 2018. Mr B pointed out he had had the policy since 2014 and the issue giving rise to the claim had only come to light in March 2021. UKI asked for some more information and in early June 2021 agreed to pass the matter to one of its panel of preferred solicitors to assess the claim.

Mr B is very unhappy with the way the claim has progressed since then. There was a delay in instructing the solicitors and Mr B had not been kept up-to-date. He made a complaint and UKI offered £150 compensation for this.

The first panel solicitors said the matter concerned a commercial lease and it would be better suited to another firm to assess. UKI therefore passed the claim to a second panel firm in mid-July 2021. Mr B was not happy with this, as he says the lease is not a commercial lease and this caused about a month's delay.

UKI contacted the second panel firm to state it was a residential lease and to ask if they had any issues with it dealing with the matter. The second panel firm did not provide a full response until mid-August 2021. The second panel firm said they needed some further information before they could advise if there were reasonable prospects of success in the claim Mr B wanted to make against his landlord, a pre-requisite of cover under the policy.

The solicitors did confirm there were reasonable prospects of Mr B's claim succeeding and the claim progressed but Mr B says the panel solicitors spent over two years on the matter, and then determined that the case was uneconomic to pursue. UKI paid Mr B £1,000 being what the solicitors said the claim was worth, in lieu of further legal costs. Mr B says this was a relatively straightforward legal case that should have been before the tribunal within 12 months.

Mr B says he complained to UKI consistently about the progress of the case with the panel solicitors. He accepts UKI could not intervene in the legal process but UKI was aware of his concerns and the details of his case and it failed to “*properly intervene and resolve the issues*” such as offering different solicitors, which caused him and his wife serious distress.

UKI said it was not responsible for the actions of the solicitors. UKI says it did try to assist when Mr B contacted it to advise he was not happy with the solicitors and it asked them to contact Mr B to try and resolve matter and requested updates so it could understand the position of the case. It did however offer £75 compensation for the issues encountered and by way of an apology. UKI also later offered another £75 for the issues regarding the first panel solicitors, as it accepted it should have realised they were not suitable for the instruction in question.

Mr B remains unhappy with UKI’s response to his complaint. He says it is not appropriate for UKI to abrogate all responsibility for the issues with the solicitors and “*effectively distance themselves from any form of blame for their failures in managing my claim and making positive interventions when things were clearly not right. Firstly, as the aggrieved party I had no control over the choice of Solicitors made by ... [UKI] and have to rely on them providing access to appropriately qualified legal assistance and a company that are efficient and effective in the way they carry out their responsibilities. It is clear that there is a big question mark around the competence and ability of ... [the panel solicitors] and this is well reflected in open source searches and in particular public feedback*”.

Mr B also says he had no control over payment of the solicitors, so had no leverage over them. UKI was responsible for paying them, so would have had more influence and could have applied pressure to ensure that things were moved forward promptly and any issues quickly remedied.

Mr B says the case has been with three fee earners, they have written two pre-action letters to the other party, collated various items of correspondence and other documentary evidence and sought external advice from two barristers. He says the need to obtain external advice seemed to be an unnecessary expense, as it was not a complex matter.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied UKI had fulfilled its obligations as an insurer and it could not interfere with the conduct of the solicitors. The Investigator said UKI had tried to assist and while it had access to all the information about Mr B’s legal case, it does not have the expertise to determine if it is being conducted appropriately and it is entitled to rely on the solicitors’ advice. The Investigator said there was nothing so obviously wrong with the solicitors’ handling of the legal claim that UKI should have identified it as such.

Mr B does not accept the Investigator’s assessment. He has made a number of points in his initial complaint and in response to the Investigator. I have considered everything he has said but have summarised his main points below:

- The initial rejection of the claim and then the allocation to a panel firm that incorrectly said they couldn’t act, meant it was two months before his case was in the hands of solicitor he thought could progress the matter.
- He had no choice over the solicitors UKI allocated.
- There was a lack of response and long delays on the panel solicitors’ part from the outset and by early 2022, he was concerned about the quality and accuracy of the solicitor’s work. He raised this with the solicitors and also with UKI.
- He made several phone calls to UKI in early 2022 about the slow progress of the legal claim and the accuracy of their correspondence.

- It was no help whatsoever for UKI to ask the solicitors to get in touch with him.
- Asking the solicitors for updates also did nothing to progress matters.
- UKI never got to grips with the problems and made no positive intervention.
- In August 2022 he made a formal complaint about the solicitors and sent all the relevant information to UKI. It said it would ask the solicitors to contact him but this was of no help, given he was in dispute with them. UKI then said it would follow up with the solicitors.
- The solicitors agreed to transfer Mr B's case to another fee earner and he felt he had no choice but to accept that as a resolution. But things did not improve and he had to contact UKI again in early 2023. Again, when he involved UKI it simply asked the solicitors for updates.
- He continued to raise concerns with UKI about the solicitors between January and June 2023 when he had to make another formal complaint to the solicitors.
- UKI was not helpful and refused to accept any responsibility for the situation he found himself in, Mr B therefore then also made a formal complaint to UKI in October 2023.
- Allowing the solicitors to spend over 2 years on an uncomplex and uncontested matter does not evidence UKI was carrying out appropriate interventions.
- The case was assessed as having good prospects of success early on and this continued for the life of the case. UKI was well aware of the details of the case.
- The Investigator's statement that UKI's agents do not have the legal expertise to address the legal issues is concerning. The agents are specialist legal insurance claims-handlers, they should have and legal expertise in dealing with such claims, they have to ensure that any claims enjoy good prospects of succeeding before accepting such a claim and then allocating to one of their panel of solicitors.
- In assessing if a claim is covered, they must read and understand the issues presented to them by claimants.
- In his case the agents would have seen liability was admitted by the other party, the only dispute was a reluctance to compensate for the wrongdoing.
- It should therefore have been obvious that the solicitors' work was not commensurate with having the matter for over two years.
- The Investigator's summary of the case includes reference to UKI not getting a response from the solicitors for a month on one occasion and not at all on another, which should have raised a red flag with UKI about the service the solicitors were providing.
- The Investigator failed to address the fact he contacted UKI by e-mail on 1 February 2023, 2 February 2023, 7 February 2023, 10 February 2023, 4 May 2023, 9 May 2023, 7 June 2023, 12 June 2023, and 15 June 2023 with complaints about the solicitors and that he received no reply to these concerns.
- She also failed to address the unhelpful telephone conversation he had with UKI in August 2023 when the agent was combative, would not listen to his point and was reluctant to pass him on to a manager. He was told a manager would contact him but no manager has been in touch.

Mr B also says he has complained about the claims-handling agents, which is a separate legal entity, and he has not complained about UKI

As the Investigator has not been able to resolve the complaint, it has been 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.

Preliminary matters

UKI provides the legal expenses cover, it is the insurance underwriter backing the policy. However, it is required by statute to separate its legal expenses business from its other liabilities and so it uses agents to deal with legal expenses insurance claims on its behalf. Claims-handling on behalf of an insurer is not a regulated activity (*i.e.* an activity that I have jurisdiction to consider) in its own right. The claims-handling agents were acting on behalf of UKI and it is responsible for anything they do, or do not do. I am satisfied therefore that the complaint is correctly against UKI, the provider of the legal expenses insurance.

Also, as Mr B is aware, the issue about the initial rejection of the claim cannot be considered as part of this complaint as he received a final response about this from UKI in 2021 and he did not refer a complaint to us within six months of that letter as required.

Claim-handling

UKI's agents considered the claim and appointed one of their panel of pre-approved solicitors. Most legal expenses insurance policies work in the same way.

We expect legal expenses insurers, and their claims-handling agents, to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, however, it has no duty to oversee how they run the case and it isn't responsible for any action or omission on the solicitor's part.

As Mr B is already aware, solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor was chosen by Mr B or whether they are on the insurer's panel of preferred solicitors. Panel solicitors will have some agreements in place with insurers and they are paid by the insurers, but it does not change that their primary duties are to the courts and their clients (in this case Mr B).

In addition, this service has no jurisdiction over solicitors. I have no power therefore to make any finding about the complaints Mr B has made about how long the solicitors took to manage his case, or the quality of their work.

I understand the first panel solicitors incorrectly identified the claim as being about a commercial lease and returned the case to UKI to allocate to another firm. I understand the frustration with this, as it led to a few weeks delay in the claim being progressed. UKI has accepted that it should not have instructed this firm initially and has offered £75 compensation for this. I consider this reasonable in the circumstances.

UKI then appointed the second firm of panel solicitors. There is no evidence that this firm was not suitable to deal with the matter. Mr B has referred to online reviews of the firm but I do not think this is proof that they should not have been on UKI's panel or instructed in his case.

I can see that Mr B raised concerns about the solicitors with UKI numerous times during the handling of the claim. When Mr B raised his concerns about the panel solicitors to UKI, it asked the solicitors to look into it and for updates. I think this was reasonable. Mr B says it should have been obvious to UKI that the legal case should have progressed a lot quicker than it did and did not need barrister's opinions. UKI should also have known that the explanations given by the solicitors and the work they were claiming for were not reasonable given the case in hand. Mr B says UKI's agents should have had sufficient legal expertise to determine this.

I have not seen any independent evidence, such as a qualified legal opinion, to support what Mr B says about the management of his legal case and which would establish that the panel solicitors actions were not reasonable. Mr B says it should have been obvious and I

recognise his strength of feeling about it, but I cannot take his word about how a legal claim should be progressed as against qualified lawyers.

UKI's agents are experienced in handling legal expenses insurance, and some of its staff might have legal qualifications, but they have no right to assess the legal advice or legal handling of a legal case.

Each time Mr B raised concerns, the agents contacted the solicitors and the solicitors explained the position and the work they were doing. I have not seen anything so obviously wrong in its explanations that UKI's agents should have done anything more. I do not agree that the agents were required to assess the legal case and I also cannot assess the explanations given by the panel solicitors.

It is also up to the panel firm to decide which fee earner is allocated work. UKI had no right to interfere with the running of a legal claim, including which fee earner is appointed. Mr B had issues with the original fee earner and I understand they were changed twice. It seems to me that UKI was entitled to consider that a reasonable step by the solicitors in response to some of the concerns he had raised.

Mr B also says that a delay of a month in the solicitors responding to UKI, and a non-response to another letter, should have raised a concern with the agents about the service provided by the solicitors. I do not think this in itself would be reason for UKI to have interfered with the panel solicitors handling of the claim or warranted removing them from the case.

Mr B also says he wrote to UKI several times in February 2023, and in May and June 2023 with concerns about the solicitors and did not receive a response to these emails.

Many of the emails referred to in the first half of 2023 were copying UKI in on emails Mr B was sending the solicitors, so I do not consider that they all should reasonably have elicited a specific response from UKI. I can also see that the agents did act on them and asked the solicitors for information during this period. UKI also authorised a request to get a barrister's opinion on the case in this period. I do not therefore think any lack of specific response to Mr B to these emails amounts to a failing that would warrant an award in Mr B's favour.

Mr B also says he was spoken to in a combative way in August 2023 when discussing the offer to settle the claim and his concerns about the solicitors. UKI accepts that it could have given Mr B more information about the offer to settle the claim and it has also apologised that Mr B was not called back by a manager.

I have not listened to the call but both parties agree that it was not productive and it is clear Mr B did not agree with what he was being told. I appreciate that would have been frustrating but Mr B has not said the call was inappropriate or provided any other information about it that would lead me to think any award is warranted for the way this call was handled.

UKI has also acknowledged there were some delays in responding to the solicitors and offered £75 for this and any distress and inconvenience it has caused Mr B (in addition to the £75 for the initial problems with the first panel solicitor). Having considered everything carefully, I think this is fair and reasonable and I do not intend to ask UKI to do anything further.

I realise Mr B feels very strongly about this complaint, but for the reasons given I do not intend to uphold it. I think the total offer of £150 compensation is reasonable overall.

My final decision

U K Insurance Limited has already made an offer to pay Mr B £150 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that U K Insurance Limited should pay Mr B £150, if it has not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 August 2024.

Harriet McCarthy
Ombudsman