

## **The complaint**

Mr S complains that U K Insurance Limited (“UKI”) has unfairly handled a legal expenses insurance (“LEI”) claim under a home insurance policy.

Any reference to Mr S or UKI includes respective agents or representatives.

## **What happened**

The background of this complaint will be well known between parties and has been detailed elsewhere at length by our Investigator. So, I’m going to provide a summary of events.

Mr S has several complaints with this Service that have been considered separately to this complaint. For the avoidance of doubt, this complaint concerns Mr S complaint about UKI’s actions between the period of late 2020 up until UKI’s final response letter of 18 June 2021.

The events that followed and subsequent complaints have been considered elsewhere so won’t be addressed within this final decision.

- In November 2020 Mr S made an LEI claim under a UKI home insurance policy. This concerned an employment dispute with a former employer.
- UKI appointed Company A solicitors to determine if the claim had reasonable prospects of success. In turn, Company A appointed a barrister to assess prospects of success. In December 2020 the barrister determined the case did not have more than 51% prospects of success.
- Mr S disagreed and raised concerns about Company A’s actions, including passing the matter to a barrister and not submitting all relevant evidence to them.
- On 19 January 2021 UKI issued a final response letter (“FRL1”). Within this it said:
  - UKI stood by Company A’s decision to pass the claim’s assessment on to a barrister. This was due to the significant amount of documentation to review, alongside workloads to avoid any delay.
  - UKI recognised it may have been frustrating for Mr S to receive an assessment from the barrister without discussing the claim with anyone. But it was satisfied the evidence available meant this didn’t impact the assessment. UKI agreed it could’ve handled this matter better and awarded £50 compensation.
  - Company A and its appointed barrister (if it determined this to be necessary) would reconsider matters if more evidence was provided by Mr S. But UKI said the barrister confirmed they had reviewed all the documentation Mr S had provided, and also reviewed his comments in response to the advice being given, and it hadn’t changed their opinion on the prospects of the case.
  - UKI was not legally qualified and relied upon the legal opinion of the appointed representative. And if Mr S obtained a second opinion that showed prospects to be above 51% it would reconsider the matter and pay these costs (but the initial outlay would fall to Mr S).

- On 18 March 2021 solicitor's firm Company B were then appointed. Shortly after, on 30 March 2021 Mr S raised concerns about this firm. Following a back and forth on 11 May 2021 Company B withdrew from representing Mr S.
- Mr S raised concerns about Company B's handling of matters and offense caused by its agent's comments. He then appointed his own solicitor Company C to take over the case and paid for an assessment of prospects himself which was completed on 21 May 2021. Company C determined there were prospects of success above 51%. Mr S asked UKI to cover the legal costs incurred.
- On 24 May 2021 UKI issued another final response ("FRL2"). Within this it said:
  - Company B had responded to Mr S' allegations about the firm on 18 May 2021 and not upheld his complaint.
  - As the LEI insurer, UKI was not legally qualified to comment on how it conducts its file. It said it would expect panel firms to investigate concerns and respond to them – which it had. And it said to escalate this matter, Mr S could bring the complaint to the Legal Ombudsman.
  - UKI said it would not agree to remove Company B from its panel of law firms.
  - Company B had stopped acting for Mr S and in the meantime, he had appointed Company C to provide a prospects assessment. UKI said it offered to provide Company C with its terms of appointment (a contract that agreed the cost it'd cover with a law firm) but it said Mr S didn't want this to happen. As Company C's costs were never agreed with UKI and the terms of appointment were never agreed, it would not pay Company C's costs. It would consider the claim upon receipt of an assessment from Company C.
- Following this a further back and forth between parties took place. Mr S raised various concerns including issues with advice given by a UKI agent, costs, and other issues.
- On 3 June 2021 UKI's terms of appointment were agreed by Company C.
- On 10 June 2021 UKI issued its final response ("FRL3"). Within this it said:
  - UKI's agent had given incorrect advice to Mr S. This was that he would need to obtain a barrister's advice and that its opinion had not changed. UKI said this was not correct and it said it already had agreed with Mr S that he would be able to appoint a solicitor of his own choosing, providing they would confirm his case had over 51% prospects of success – and it would issue its terms of appointments and agree cover. UKI said it would pay £100 in compensation for the incorrect advice and issued a cheque.
  - UKI said it would not cover any costs incurred for Company C's solicitors prior to UKI agreeing cover with them. And this was in line with its comments in FRL2.
- Mr S reiterated concerns, as well as raising issues regarding advice (or a lack of advice) provided by UKI's legal helpline.
- On 18 June 2021 UKI issued its final response ("FRL4"). Within this it said:
  - It had nothing to add to the comments it made in FRL2 about covering Company C's costs prior to appointment.
  - Its policy terms stated its legal helpline did not provide advice in relation to claims made under the policy. And the policy excluded claims arising from or relating to disputes with UKI about the insurance policy. So, it wouldn't provide any helpline advice about a sum of £1,000 that Mr S had incurred for

Company C to assess his claim.

- The complaint came to this Service. One of our Investigators looked into and considered UKI's actions at the stages of the various final response letters. She didn't uphold the complaint, saying:
  - *FRL1*: UKI was required to obtain a legal opinion from a suitably qualified lawyer, which is what Company A did by appointing a barrister. So, this was reasonable and there was no obligation for one of Company A's solicitors to have given their opinion first. The barrister confirmed they had reviewed all information provided by Mr S – and as it isn't the role of this Service to consider the quality of advice, it was reasonable for UKI to rely on this as they (the barrister) were suitably qualified in that area of law. The terms of Mr S's policy require there to be reasonable prospects of success for a claim to be taken forward, so at this time (based on the available evidence and opinion) UKI's actions were reasonable.
  - *FRL2*: This Service would not typically hold insurers responsible for the actions of appointed solicitors unless there are obvious and avoidable delays or communication failures. The Investigator wasn't persuaded there were any obvious issues for UKI to address across this time. She also commented it was for UKI to determine which panel firms it selected.

With regards to costs for Company C's prospect assessment, the Investigator said UKI had acted fairly by not paying these at this time, as Company C had not yet completed the terms of appointment. And she noted that since UKI had since paid £1,200 in September 2023 without an invoice – she wasn't asking it to do anything further.
  - *FRL3*: All parties agreed UKI gave Mr S incorrect advice about requiring a barrister's opinion, which was not true because UKI had already agreed Mr S could appoint a solicitor of his own choosing. As Mr S hadn't acted on this mistake, she considered the impact to be minimal and was satisfied the £100 compensation was fair in the circumstances. She also said UKI had acted promptly in its dealings with Company C and hadn't caused any unreasonable delays.
  - *FRL4*: With regards to the ongoing dispute about Company C's costs not being resolved at this time, the Investigator was satisfied this was because Company C had not returned the terms of appointment by this date.
  - She also considered Mr S' concern that UKI's legal helpline was unable to help with recovery against UKI itself. The Investigator said UKI relied on a common term across these policies that allow it to not cover disputes against itself – so she had no concern with this.
  - The Investigator also considered a report produced by the Legal Services Board from May 2021 which discussed panel solicitors that Mr S put forward. He said this showed panel solicitors are instructed to reject cases that have legitimate prospects. And he mentioned the number of complaints UKI has more widely. The Investigator said this complaint was reviewed on its own merits, and the report was more general in nature and not specific to the details of this claim. The Investigator also made clear that complaints about solicitors/barristers and quality of their advice would need to be brought to the Legal Ombudsman.
- Mr S disagreed with the assessment. And he's provided several extensive responses to the assessment. In summary:
  - He mentioned the assessment being inaccurate and questioned what

evidence had been relied upon. Mr S said key matters were not considered within the Investigators “working papers”.

- He also described UKI and its panel solicitors as sabotaging his legal claims.
  - Mr S had paid for Company C’s services in May 2021. The £1,200 referenced in the assessment that was later refunded to him was for unrelated works in August 2023. He said he had incurred costs himself that had yet to be recovered. Mr S quoted correspondence between him and Company C which he said showed he’d incurred costs himself to the region of around £2,670. Mr S said this Service should’ve asked him for a copy of an invoice of costs incurred, or asked UKI to do so from its correspondence with Company C.
  - Mr S requested everything that UKI had submitted to this Service. And said he was promised by this Service to receive a bundle of documents that UKI had submitted. He referenced this being received previously when attending Tribunals or Court. In relation to this he asked we provide everything received and said this must be unredacted.
  - Mr S also referenced matters that related to events that took place after June 2021 and provided evidence around this.
  - Mr S reiterated concerns about insurers and panel solicitors acting in bad faith more widely and asked this Service to address this.
- UKI responded to say the £1,200 did relate to advice from September 2023 not 2021. But it said Company C’s costs were agreed between Company C and UKI by a costs draftsman DWF in December 2023 for a total of £18,000.
  - The Investigator looked at each of Mr S’ responses but didn’t change her mind. She assured Mr S she had considered all evidence and circumstances but had focused on what she determined to be key points and the crux of the matter. She referred to other assessments in relation to events that followed June 2021, and that the compensation awarded factored in mistakes on the part of UKI. She also said UKI confirmed it had never been provided with an invoice from Mr S regarding Company C’s initial advice. So, this hadn’t changed her mind.
  - The Investigator also provided Mr S with a breakdown of the evidence she’d relied upon. Much of which Mr S had already seen or provided himself to this Service. This included a copy of the policy book, the Legal Services Board submissions Mr S had put forward, UKI’s various FRLs, the barrister’s prospects assessment that Mr S had commented on.
  - Mr S responded discussing various matters, including a later final response of 28 September 2023. He reiterated that he hadn’t been refunded for initial advice from Company C from 2021 reattaching correspondence between him and Company C from April 2022.

Because the matters could not be resolved, the complaint has been passed to me for an Ombudsman’s final decision.

### **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.

Having done so, I’m not upholding this complaint.

When considering what’s fair and reasonable in the circumstances I need to take into

account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.

The nature of my role is that I must assess the evidence from an independent and impartial perspective. That may mean at times I may sound matter of fact or dispassionate, but I want to be clear I mean no disrespect by this.

I also want to recognise Mr S's submissions are extensive. Within this decision I won't be responding in similar detail. This is a reflection of the informal nature of our Service. My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make. This may also mean I don't comment on everything Mr S has said but I can confirm I have read and considered everything provided by all parties.

I also want to acknowledge that Mr S has requested a copy of all documents provided by UKI to this Service. Our Investigator has engaged on this point with Mr S and on several occasions explained that this Service is not required to provide all files received, only the evidence that we consider material that has been relied upon in reaching the decision. Having carefully considered this, I'm satisfied this has happened in this case.

Given the range of issues Mr S has raised, I've grouped concerns and I'll consider these in turn.

*Did UKI act fairly when referring the matter to Company A and relying upon the advice provided?*

As our Investigator has previously outlined, our role is to consider UKI's handling of this claim as the insurer. I am not considering Company A's (solicitors) handling of the legal claim or the quality of advice it provided as this falls outside of the scope of this Service.

Mr S's policy says that a claim must have reasonable prospects of success which it defines as "...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."*

This means if Mr S' claim against his former employer was shown to have at least 51% or greater prospects of success and would recover his losses or damages then the claim should be covered (subject to the remaining terms and conditions of the policy).

In determining whether Mr S' claim has reasonable prospects, UKI sought the opinion of Company A. Company A sought advice from a barrister.

I've read the barrister's assessment, and its detailed and provides reasoning for their conclusions. The barrister explained to UKI that in their legal opinion, the claim did not hold above 51% prospect of success. In doing so they detailed the history of the claim including quotes from emails and gave their opinion on various concerns that Mr S had raised.

UKI is entitled to rely on the legal advice it is provided with – unless that advice is obviously wrong. But from what I've seen it was a reasoned legal opinion from a qualified individual who had taken into account the evidence they were provided with. So, I'm satisfied UKI

acted reasonably in relying on their advice. And once Mr S raised concerns about the assessment, UKI considered that Company A/the barrister had looked again at Mr S comments but these hadn't changed anything.

Mr S has been clear he believes the advice was incorrect and has been clear on as to why he believes the prospects were so evidently above 51%. He also went as far to say that UKI should not be paying Company A or the barrister for their "*false opinions*" and that they failed to mention the law they are supposed to give advice on. And he's described making professional misconduct claims about these parties to the Legal Ombudsman. I recognise his strength of feeling on this, but this doesn't change that the advice was given by a suitably qualified individual and I don't agree it was obviously wrong as Mr S has suggested. So, any complaint he has about the quality of this advice will sit within his respective complaints to the Legal Ombudsman.

Mr S has also shown unhappiness that the matter was brought to a barrister instead of being reviewed by a solicitor of Company A's in the first instance. I share no concerns around this, nor do I agree in principle that obtaining the legal opinion of a barrister at this stage would be inappropriate or harmful. Ultimately, UKI has to obtain a legal opinion, and it's done that.

UKI said it recognised receiving the advice may have caused him frustration as it was done so without reaching out to him. However, Company A and the barrister choosing to proceed to provide advice with the information they had without speaking to Mr S, is a matter for them. And I don't see that UKI has failed or acted inappropriately as the insurer by not insisting such a step take place first. So, I think the £50 compensation UKI awarded was a fair sum and attempt to recognise the frustration caused and I'm not increasing this.

UKI offered Mr S the opportunity to provide an opposing legal opinion and said it would reconsider the matter if he did this. I think this was fair in the circumstances.

#### *Did UKI act unfairly when referring the matter to Company B?*

The claim was soon after passed to Company B – another panel solicitor. Within a short space of time (a matter of weeks) Mr S raised several concerns about Company B's ability to handle matters. This included concerns about not acting in his best interests and making offensive comments regarding Mr S's disability. Company B then withdrew from the claim less than two months after appointment.

As I've outlined above, within this decision I'm not considering Company B's handling of the legal claim or the quality of advice it provided as this falls outside of the scope of this Service. I have to consider whether UKI acted fairly and reasonably as the insurance provider.

UKI said it was not legally qualified and not able to comment on how Company B conducts its file. I think this is accurate and I've seen nothing that persuades me UKI should've intervened earlier than it did – taking into account the relatively short period of time Company B was involved in the legal claim - and given UKI provided a final response letter shortly after Company B had answered the concerns Mr S had raised itself. UKI directed Mr S to escalate this matter to the Legal Ombudsman should he wish to. And I'm satisfied this was the right information to provide within the circumstances.

#### *UKI's choice and use of panel solicitors and alleged bias*

Mr S has asked that UKI removes Company B from its panel of solicitors given his experience. This is based on his belief that they have acted in a manner which amounted to professional misconduct.

As our Investigator has stated, it is not for this Service to comment on the quality of advice provided. And given Mr S has been clear he's taken complaints about the respective parties to the Legal Ombudsman there's nothing further for me to add on this. I recognise his strength of feeling on the matter – but it is not for this Service to make commercial decisions for firms like UKI. So, appointing particular firms as its panel solicitors remains its choice to do so.

Mr S has provided research from the Legal Services Board. He says this shows that UKI was deliberately impeding his ability to make his legal claim by using panel firms to reject a case that had legitimate prospects. I've read this commentary and I have to be clear my review is based on his particular circumstances and the evidence provided. I take on board the concerns he's raised, but this hasn't persuaded me that UKI has acted unfairly by either appointing panel solicitors nor relying on their advice for the reasons I've outlined above.

Mr S has also mentioned the number of complaints raised to UKI more widely. Again, he's free to make conclusions about what this may or may not mean, but simply I've reviewed his individual complaint and the facts of it, so this doesn't change my mind.

*Did UKI act fairly in declining to cover Company C costs prior to terms of appointment being agreed?*

Mr S states that UKI has unfairly declined to cover costs he incurred with Company C. UKI says it wouldn't pay these because these costs were incurred without its agreement.

There's been some back and forth about whether a sum of £1,200 was paid in relation to these costs. And it appears UKI's reference to "initial advice" when describing a later payment had caused confusion previously. From what I've seen, UKI paid a sum that related to later advice – so these costs already paid aren't relevant to this particular point.

So, my starting point here is to consider the policy terms. UKI has pointed to its definition of "Costs" which states:

*"All properly incurred, reasonable and proportionate fees, expenses and disbursements charged by the appointed representative and agreed by us."*

"Appointed representative" is also defined under the policy, and states:

*"The preferred law firm, solicitor or other suitably qualified person appointed by us to represent you under this section of the policy."*

In this case it's not in dispute that Company C weren't the appointed representative appointed by UKI at the time. So, on its face it appears right to me that UKI declined to cover these.

Mr S has said it would be reasonable for UKI to cover these costs. I've thought about this further. In the circumstances – as I've outlined above – I think it was reasonable for UKI to rely on the advice it received from Company A and I'm not persuaded it did anything wrong during the time Company B became involved. As a result, I'm not led to believe that UKI needed to cover additional costs of a firm that wasn't appointed by UKI at that stage.

UKI has also said it received no invoice regarding these earlier costs so had nothing to consider further. Mr S has submitted some communications between him and Company C which reference costs he incurred but these don't break down what the costs were for or when they were incurred. So, this doesn't amount to an invoice or a breakdown as I'd expect. Mr S was specifically asked by our Investigator to submit anything further in relation

to these costs and we received a copy of an invoice for £1,200 for later advice – which is in line with my understanding of what UKI has said.

So given I'm satisfied UKI's actions in relation to Company A and B were reasonable, and the absence of a breakdown of these costs or an invoice submitted to UKI or this Service for its further consideration being shared with this Service, I'm satisfied UKI acted fairly by not covering these costs.

#### *UKI providing incorrect advice over the phone*

Mr S raised concerns about the advice he was given in a phone call with UKI's agent.

UKI has fully accepted the advice it gave was incorrect and the reasons why this was not accurate. In essence, UKI told Mr S he would need to obtain a barrister's opinion (when this wasn't necessary) as it had already told Mr S it would allow him to appoint a solicitor of his own choosing providing that firm confirmed his case had reasonable prospects of success.

Given UKI has admitted its mistake in full I have to consider the impact of this advice. I don't doubt it was a frustrating experience for Mr S to be told something that was different to what had previously been agreed. And I acknowledge that during a challenging time this may have been particularly aggravating. However, Mr S didn't take any steps to instruct a barrister and the issue was put right soon after. So, I'm satisfied the £100 compensation recognises the frustration it caused.

#### *Legal helpline dispute*

Mr S called the legal helpline under his policy to seek advice regarding the above matter related to Company C's costs that he believed UKI should have paid. As the agents didn't help him or provide advice, Mr S complained. UKI relied on its policy terms in responding, saying it wouldn't cover this type of dispute.

So, I've looked at the terms which say:

*"Before you incur any costs, you must contact the legal helpline on 0345 246 2853. The helpline is open 24 hours a day, 365 days of the year.*

*You can ring the legal helpline to talk about any private legal problem under United Kingdom law, whether or not it results in a claim. We will advise you of your legal rights, what courses of action are available to you and whether you need to consult a lawyer.*

*The legal helpline does not provide advice in relation to any claim made under this policy or in relation to any business, trade, profession or venture for gain."*

This last paragraph makes it clear that the helpline wouldn't provide advice in relation to a claim with UKI – which the dispute about Company C's funds would be. So, I think it was right to not provide advice here. UKI also quoted a section titled "*Losses not covered*" related to the LEI cover which said it would not cover claims arising from or relating to "...*any dispute with us about this insurance policy other than as shown under 'How to make a complaint'*". I think this further supports the policy isn't designed to cover this type of dispute and further satisfies me that UKI's action around Mr S' enquiry was reasonable.

#### **My final decision**

For all of the above reasons, I'm not upholding this complaint.



Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 February 2025.

Jack Baldry  
**Ombudsman**