

The complaint

Mr W is unhappy U K Insurance Limited turned down a claim he made on his legal expenses insurance policy.

What happened

In March 2023 Mr W contacted UKI seeking assistance with a claim he wanted to bring against the NHS. He believed it had been guilty of medical malpractice in relation to conditions affecting him and had been deliberately withholding and concealing information from him (which he described as medical gaslighting).

UKI said this wouldn't constitute a personal injury claim and considered it under the clinical negligence section of Mr W's policy. However, that excluded claims arising from "*any alleged failure to correctly diagnose your condition*". It thought that applied to the issues Mr W was raising. And in any event it thought these issues had begun prior to the start date of his policy which would also mean they were excluded from cover.

Our investigator thought UKI acted correctly in considering this under the clinical negligence section of cover rather than personal injury. And based on what Mr W had said about his claim he thought UKI acted reasonably in concluding the exclusion for failure to diagnose a condition would apply. He also thought the date of occurrence was prior to the start date of the policy given it defined this as "*the first in a series of events that give rise to the need to claim*".

Mr W didn't agree. In summary he said:

- The issues giving rise to this claim followed on from his attendance at his local Accident & Emergency Department (A&E) which took place after he'd taken out this policy. He reiterated his claim didn't relate to misdiagnosis but to medical professionals purposely failing to disclose information to him in a fraudulent manner.
- He said he'd been denied access to emergency treatment and highlighted in detail issues that had arisen since his visit to A&E including where doctors had downplayed and dismissed his situation and denied him proper tests and treatment. He also drew attention in general terms to the reasons an insurer might decline a claim.

So I need to reach a 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.

Mr W has gone into some detail about how the medical issues he describes have affected him. He's clearly found this a very difficult time and I was sorry to learn about how challenging things have been for him. But the question I need to consider is whether UKI did anything wrong when dealing with the claim he made. I note the points Mr W has made about the reasons an insurer might generally use to decline a claim but the issue for me is whether UKI acted fairly and reasonably in deciding his claim wasn't covered for the reasons it relied on.

I've looked first at the terms and conditions of Mr W's policy. In order for cover to be available at all his claim needs to fall within one of the insured events the policy covers. I appreciate Mr W has focussed in his submissions on what he describes as 'medical gaslighting' but that isn't something in itself the policy covers. It would only do so if those issues fell within one of the insured events it does cover.

Those events include 'Clinical Negligence'. That says "*we will pay costs where negligent surgery, clinical or medical procedure or treatment leads to...physical bodily injury to you*". Based on the information Mr W has provided I think the issues he's raising could fall within that section. But the policy doesn't cover "*claims arising from or relating to...any alleged failure to correctly diagnose your condition*".

I don't think it was unreasonable of UKI to conclude that applied to the claim Mr W was making. His argument is essentially that medical professionals failed to recognise the issues that were impacting him and therefore didn't provide appropriate treatment. I think that would reasonably be classed as misdiagnosis. I appreciate he's raised other issues that would arguably go beyond misdiagnosis, for example concealing information from him and not properly recording details in his medical records.

But it's not just misdiagnosis the policy excludes but claims "*arising from or relating to*" that. I don't think it's possible to detach the other points Mr W has made from that issue; the underlying issue giving rise to them remains the alleged misdiagnosis. So I don't think it was unfair of UKI to conclude the exclusion applied meaning cover wasn't available for Mr W's claim under this section of cover.

Mr W says the personal injury section of the policy should cover the claim he made. That says "*we will pay costs for an incident that causes physical bodily injury to you, or leads to your death*". And he's argued he has been caused injury because chronic stress (which I understand he links to the NHS failings) has caused physical problems (including an issue with his jaw). But the policy doesn't cover "*illness or injury that develops gradually or isn't caused by a specific or sudden accident*".

In this case Mr W has suggested the physical problems he's highlighted have developed as a result of stress. That wouldn't constitute a specific or sudden accident. So if that's the cause of these issues it's not something his policy would cover. And while I recognise he's separately described other impacts on his physical health I've not seen clear evidence to show they result from an accident. Case law has established that an accident is an event which was neither expected nor intended and which causes hurt or loss. But in this case the essence of Mr W's argument is it was deliberate (so intended) actions of NHS professionals which impacted him.

I understand there are nevertheless context specific and differing legal opinions as to whether negligence does or doesn't mean an accident has occurred. And I'm aware in some circumstances an intended injury could be deemed accidental. But Mr S hasn't provided any legal opinion evidencing the issues impacting him in this case did constitute an accident. Even if that was the case the resulting illness or injury would still need to result from a specific or sudden accident. In this case Mr W has outlined numerous different actions he

believes impacted him covering at least a nine month period. He hasn't identified a specific or sudden accident that caused the illness or injury he now wants to claim for. So based on the available evidence I think it was reasonable of UKI to say cover wasn't available under this section of his policy either.

UKI has also said the issues impacting Mr W began before the start of his policy. And it only provides cover where *"the incident happens within the territorial limits and the date of incident is during a period cover was in force"*. 'Date of incident' is defined as *"for civil cases, the date of the incident that leads to a claim. If more than one incident arises at different times from the same cause, the date of incident is the date of the first of these incidents"*.

I don't think it's in dispute the issues giving rise to Mr W's claim happened within the territorial limits. But when he contacted UKI he's recorded as saying the *"malpractice goes back as far as 2009"* and there was *"failure to pick up condition on multiple occasions"*. I also note he made reference to an A&E appointment which preceded the policy start date when he contacted our service. That suggest the issues giving rise to Mr W's claim did occur prior to the policy start date. Normally I'd then go on to consider whether Mr W would have been aware those matters might lead to a claim prior to taking out the policy. But I don't need to do that in this case. That's because for the reasons I've already explained I'm satisfied UKI has fairly concluded the policy doesn't Mr W's claim in any event.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 March 2025.

James Park
Ombudsman