

The complaint

Mr W is unhappy with what U K Insurance Limited did after he claimed on his landlord insurance policy.

What happened

In November 2022 Mr W contacted UKI seeking assistance from his policy with a repossession claim. UKI asked for consent from Mrs W (who the tenancy named as the landlord) and details of the solicitors Mr W said he wanted to use. In February 2023 Mr W said a possession hearing was scheduled for later that month and he wanted to use his own solicitors. Later that month Mrs W provided consent for him to deal with the claim. UKI asked Mr W's solicitors for an assessment of the claim's prospects of success. It advised Mr W in March that hadn't been received and said it could appoint one of its panel firms to consider the claim if he wanted.

Mr W contacted UKI again in October 2023 and said he'd now repossessed the property. UKI agreed to consider a claim for rent recovery from the former tenant. It asked panel solicitors to advise on whether this would have reasonable prospects of success. Mr W was concerned about the terms of appointment the panel firm sent him as they said he'd be liable for their costs. UKI provided him with reassurance on this in January.

Over the next few months Mr W contacted UKI to chase progress on a number of occasions. However, the panel firm didn't provide its advice until August 2024. It said it didn't consider the prospects of recovery met the terms of the policy. UKI said it wouldn't provide funding for the claim. However, it accepted there had been some customer services issues with its handling of it and offered to pay Mr W £50 in recognition of the impact of that on him.

Our investigator didn't think it was fair of UKI to say it wouldn't provide any costs in relation to the repossession claim because the terms of appointment hadn't been signed by Mr W's solicitors. And given the repossession claim was successful he thought it was clear the claim did have reasonable prospects of success as required by the policy. He thought UKI should pay costs associated with that claim in line with the terms of the policy from the date cover for it was confirmed.

In relation to the rent recovery claim the prospects advice had been provided by a paralegal and UKI hadn't evidenced their assessment had been supervised by someone suitably qualified and experienced. He didn't think UKI was entitled to rely on that opinion and should arrange for the assessment to be provided or reviewed by someone who was suitably qualified and experienced.

He also said there had been delay in the handling of the claim. And while some of that appeared to be the responsibility of the panel solicitor he thought UKI should have done more to follow up on this. Given the impact of that, and the issues UKI had already acknowledged, he said it should pay Mr W a total of £150.

UKI didn't agree. It said it would have been happy to consider the costs incurred by Mr W's

solicitor in relation to the repossession hearing but it hadn't received any information confirming those costs or what the legal assessment of the claim had been. It didn't think the assessment of prospects of recovery involved a point of law. And given the CCJ's the former tenant had against them any repayment was likely to be minimal. It did agree to pay the compensation our investigator recommended.

Mr W also responded. He said the policy had been mis-sold because it hadn't provided cover for non-payment of rent and damage to his property. He hadn't been reimbursed the legal costs of obtaining the first repossession order. And he set out the costs he'd incurred in relation to that, damage to his property and loss of rental income. He didn't agree the £150 compensation did enough to put things right. I issued a provisional decision on the complaint last month. In summary I said:

I appreciate Mr W has concerns about the sale of this policy. However, he made a separate complaint about that to UKI in November 2024. That issue doesn't form part of this complaint. If Mr W has received a further response from UKI he's unhappy with that's something we might be able to consider as part of a fresh complaint.

I also appreciate Mr W is concerned about damage to his property and loss of rental income (he's highlighted costs associated with that in his response). But I've not seen he's made a claim on the buildings and contents section of his policy for damage. UKI did tell him a claim under the rent guarantee section wouldn't be covered because he hadn't obtained a reference for his tenant (which is a requirement for cover to be provided). But that doesn't appear to be something Mr W has raised as a complaint to UKI. And it would need an opportunity to consider that issue before we could look into it.

Turning to the matters I'm considering in this decision the relevant rules and industry guidelines say UKI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. And the legal expenses cover Mr W's policy provides includes costs and expenses relating to repossession, rent recovery, dilapidations and maintenance. So it could in principle assist with the claims Mr W was seeking to bring.

However, it's a condition for cover to be provided that reasonable prospects exist for the duration of the claim. And the policy defines that as "For civil cases, the prospects that the Insured Person will recover losses or damages or a reduction in tax or National Insurance liabilities (or obtain any other legal remedy that [we] have agreed to, including an enforcement of judgment), or make a successful defence must be at least 51%. A Preferred Law Firm or tax consultancy on [our] behalf, will assess whether there are Reasonable Prospects."

The policy also says that where it is necessary to go to court and legal proceedings are issued then the policyholder can choose their own law firm to act as their appointed representative. It goes on to explain: "If You choose a law firm as Your own Appointed Representative who is not a Preferred Law Firm or tax consultancy, [we] will give Your choice of law firm the opportunity to act on the same terms as a Preferred Law Firm or tax consultancy. However, if Your Appointed Representative refuse to act on this basis, the most We will pay is the amount [we] would have paid if they had agreed to [our] Standard Terms of Appointment. The amount We will pay a law firm (where acting on Your behalf) is currently £100 per hour".

In this case Mr W initially sought cover for the repossession claim he was pursuing against his tenant. I think it was reasonable UKI sought further information from him about that and also requested consent from Mrs W given the tenancy agreement was in her name. And it doesn't appear it received that information (including details of the law firm Mr W wanted to use) until February 2023. Following that it asked that firm to carry out an assessment of the

claim's prospects of success. However, that firm didn't provide that assessment or make any contact with UKI about the claim. Nor does Mr W appear to have got back in contact with UKI until October 2023 despite it emailing him in March to explain his solicitors hadn't been in touch and offering to appoint a panel firm.

I've considered if it would nevertheless be fair for UKI to consider the costs Mr W incurred in this period (as our investigator recommended). I don't think it would. That might be the case where cover for the claim had been confirmed but there was a dispute over the terms of appointment (for example over the hourly rate to be paid). In that situation we'd expect an insurer to provide cover for the claim at the hourly rate it thinks would be appropriate.

However, I don't think that's what happened here. UKI never received any response from Mr W's solicitors (including confirmation as to whether the claim had prospects of success). It might be reasonable to assume they would have agreed it did as Mr W had been successful at a possession hearing earlier in February. But in any event, as no contact was made, UKI had no control over the subsequent conduct of the claim or the costs that were incurred. And the policy doesn't cover "costs and expenses incurred before expressed acceptance of a claim by [us]" Given that I don't think it would be fair to expect UKI to cover the repossession costs incurred in this period; if Mr W has concerns over the actions or inactions of his solicitor in respect of contact with UKI that's an issue he can raise with them.

I've gone on to consider what UKI did in relation to the further claim Mr W made for rent recovery and damage against his former tenant. That would also need to have had reasonable prospects of success as defined in the policy. So I think it was right UKI referred that to panel solicitors so an assessment of that could be made. And it does seem to have taken considerably longer than might reasonably have been expected for that to be produced. That isn't in itself something UKI is responsible for but I agree it could have been more proactive in following this up particularly as it doesn't appear to have received any response to the chasers it sent the panel firm. And I agree that will have caused Mr W unnecessary distress and inconvenience. I think it's right UKI pay him a total of £150 to recognise that.

The assessment that was then provided to UKI (and Mr W) in August 2024 concluded the claim didn't meet the policy terms because the percentage of successfully recovering from the former tenant was 50% (against a policy requirement of at least 51%). However, it's our long standing approach that a prospects assessment should be carried out by a suitably qualified lawyer who has relevant experience. And an insurer should only rely on a prospects assessment provided by a paralegal if they're working under the supervision of a suitably qualified and experienced lawyer.

In this case the assessment was produced by a paralegal. UKI has suggested it didn't involve a question of law but I don't think that's right. The assessment does contain an assessment of the viability of taking court action to recover a debt and makes recommendations in relation to that. I think that's something which goes beyond simply collecting details of the tenant's potential assets. And while UKI has provided details of the solicitor who supervised the paralegal it says they "oversees the team and where appropriate signs off on pieces of work". It hasn't confirmed that applies to the assessment in this case. So I'm not satisfied this is something UKI was entitled to rely on in declining cover for Mr W's claim.

Putting things right

UKI will need to obtain a prospects assessment on the claim Mr W made in October 2023 from a suitably qualified and experienced solicitor. It can either obtain a new assessment or arrange for the existing assessment to be reviewed. If that assessment is positive UKI will

need to provide funding for Mr W's claim in line with the remaining terms and conditions of his policy. And it will also need to pay him £150 in recognition of the distress and inconvenience he was caused by what it got wrong.

Responses to my provisional decision

UKI said it had arranged for the assessment carried out on the October 2023 claim to be reviewed by a solicitor at the panel firm. And they'd confirmed they agreed with the advice given (and provided reasoning in relation to that).

Mr W highlighted costs he'd incurred (relating to property damage, rental income and legal costs). He queried why this wasn't covered. And he provided a reference for his tenant. 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.

For the reasons I explained in my provisional decision the concerns Mr W has about claims relating to property damage and loss of rental income aren't matters I'm considering as part of this complaint. Mr W has now raised these points separately to UKI (including providing a copy of his tenant reference). So it will now be for it to consider these points. If Mr W is unhappy with any subsequent decision it reaches that's something we might be able to consider as part of a separate complaint.

Mr W has also provided us with an invoice for legal costs dated January 2023. However, I explained in my provisional decision why I didn't think it was fair to expect UKI to cover costs falling within that period. That's because as his solicitors didn't respond to the contact UKI made it had no control over the conduct of the claim or the costs that were incurred. That remains my view.

However, I wasn't persuaded UKI was entitled to rely on the assessment produced in August 2024 because I wasn't satisfied this had been produced by a paralegal working under the supervision of a suitably qualified and experienced lawyer. I said UKI would need to either obtain a new assessment or arrange for the existing assessment to be reviewed. It's now arranged for the existing assessment to be reviewed and I'm satisfied that has been done by someone suitably qualified and experienced. As a result I don't think there's further action UKI needs to take here. But it will still need to pay Mr W £150 to recognise the unnecessary distress and inconvenience it caused him.

My final decision

I've decided to uphold this complaint. U K Insurance Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 June 2025.

James Park
Ombudsman