

The complaint

Mr and Mrs B complain about what U K Insurance Limited (UKI) did after they made a claim on their legal expenses insurance policy.

What happened

Towards the end of June 2024 Mr and Mrs B sought assistance from their policy. They said their neighbour had caused malicious damage to their property by drilling holes in their wall (which had damaged the mortar and render). There was an initial discussion over whether they could use their own solicitor. At the start of July the matter was referred to one of UKI's panel solicitors for an assessment of whether it had reasonable prospects of success.

In early August the panel firm confirmed the claim did have prospects of success. However, it drew attention to potential issues a court would consider in relation to the impact on Mr and Mrs B of what had happened and whether the claim would be proportionate to pursue. The firm said the next step would be to send a letter to the neighbour.

Mr and Mrs B were unhappy with the assessment (and the time it had taken the panel firm to produce it). They wanted the panel firm removed and for their own solicitors to be appointed. And they said their neighbour had resumed the work causing damage to their property.

UKI said under the terms of the policy (and given the stage the claim was at) Mr and Mrs B didn't have the right to choose their own solicitor. And it didn't think there were reasons why it should agree to that in this case. It thought the panel firm had given its assessment within a reasonable period of time and there was no reason why it couldn't have continued to progress the claim. It accepted there had been some customer service issues for which it paid Mr and Mrs B £150.

Our investigator said as the panel firm had provided a positive assessment of the claim's prospects UKI would have provided funding for it if Mr and Mrs B had wanted to progress matters. She didn't think UKI needed to agree to Mr and Mrs B using their own firm. She thought the compensation it had offered for poor customer service was fair. And she said concerns Mr and Mrs B raised about what UKI told them prior to the claim being made would need to be considered as part of a separate complaint.

Mr and Mrs B didn't agree. They said the panel firm failed to grasp key issues in relation to their claim (including that the wall in question formed part of their property and wasn't a boundary wall). They didn't think it was reasonable UKI expected them to continue to use that firm given the poor service and lack of support it had provided. They thought UKI should be responsible for costs incurred (including repairs) at their property because action hadn't been taken on their claim. And they said we should consider what UKI told them about using their own solicitor prior to their claim being made (which it then changed position on).

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.

I recognise this has been a challenging time for Mr and Mrs B in which they've had to deal with issues caused by their neighbour and the impact of that on their property. I was sorry to learn how difficult things have been for them. However, what I need to consider are UKI's actions after they made their claim to it in June 2024. I appreciate Mr and Mrs B are concerned about what they were told prior to that but that isn't something I'm considering in this decision. UKI has confirmed it's investigating that separately and will be issuing a further response on that issue. If Mr and Mrs B are unhappy with that outcome that's something we could then consider as part of a separate complaint.

Turning to the issues which form part of this complaint (and which UKI responded to in its final response in October 2024) the relevant rules and industry guidelines say it has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I don't think it's in doubt the claim Mr and Mrs B made is potentially one their policy could assist with given it covers claims for "*physical damage to your home*". However, the policy says cover is only provided where "*we and the appointed representative agree that your claim has reasonable prospects of success for the duration of the claim*". The policy defines that as "*For civil cases, we and the appointed representative agree that there is 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*".

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

I appreciate Mr and Mrs B wanted to use their own solicitor to carry out that assessment (and progress their claim). However, the policy says "*if we accept your claim, we will choose a preferred law firm to try to settle the matter without having to go to court. If it is necessary to take your claim to court, or if there is a conflict of interests, you can choose a law firm to act as the appointed representative*".

And our approach (which takes into account relevant case law) is that a policyholder should be allowed to choose their own solicitor from the point that legal proceedings need to be started. I don't think it's in dispute Mr and Mrs B's claim hadn't reached the point at which legal proceedings needed to be started. And there wasn't a conflict of interest. So they didn't have the right to choose their own solicitor.

I understand UKI did nevertheless query in the circumstances of this case whether there were specific reasons why Mr and Mrs B should be able to use their own solicitors. I think that was appropriate. And it doesn't appear to have received any further information from those solicitors. I understand following further damage at their property Mr and Mrs B told their solicitors at the start of July not to take further action on the claim. The matter was then referred to the panel firm for them to review.

Mr and Mrs B are unhappy with the time it took the panel firm to carry out that assessment. But that isn't something UKI is responsible for (and the timeframe doesn't appear unreasonable in any case). And when Mr and Mrs B contacted UKI at the end of June I think it acted appropriately in contacting the panel firm to try and move matters forward.

The prospects assessment was then provided at the start of August. I know Mr and Mrs B disagree with some of its content but I don't think there were grounds for UKI to challenge it.

In my view the assessment is properly written and reasoned. The panel firm has also confirmed the trainee solicitor who produced it was appropriately supervised. I don't think it was unreasonable the assessment drew attention to concerns a court might have about the impact on Mr and Mrs B of what had happened.

They subsequently made clear the wall in question wasn't a party wall (which the assessment raised as a potential issue). But I think the key point is the assessment was nevertheless positive on the claim's prospects of success. And it confirmed the next step would be to draft a letter to Mr and Mrs B's neighbour (which they would have the opportunity to comment on prior to it being sent).

Mr and Mrs B asked again to be able to use their own solicitors. But as the panel firm had confirmed to UKI it was able to progress the claim I don't think it was unreasonable of UKI to conclude the appointment of Mr and Mrs B's solicitors (or an alternative panel firm) wasn't required. The claim didn't then progress but that's because Mr and Mrs B weren't prepared to use the panel firm. That's a choice they were entitled to make. But as that option was available to them I don't agree UKI is responsible for any related costs they subsequently incurred. It did cause some customer service issues but I think the £150 it's already paid fairly recognises the impact on Mr and Mrs B of what it got wrong.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 1 August 2025.

James Park
Ombudsman