

The complaint

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

UKI is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints 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 agent.

What happened

Mr C says he became aware of a legal claim made against him in January 2023, when he received notice of a court judgement against him. Mr E says the claimant had deliberately sent all correspondence relating to the claim to an incorrect address. Mr E says he immediately contacted UKI in January 2023 to try to lodge a claim but UKI did not proceed.

In March 2023, Mr C says he contacted UKI again to ask urgently for representation at an imminent hearing about the claim.

UKI said it would not provide cover, as the policy requires all claims to be notified to it within 30 days of the policyholder becoming aware of the issue and Mr C did not do so.

Mr E is not happy with this and complained.

UKI says Mr C had informed it that he had received notice of the judgement against him in January 2023, but it has no record of him contacting it until March 2023. UKI also says that in any event, during the claim call in March 2023, Mr E had told UKI he had known of the claim since a phone call to him from the claimant's solicitors in February 2022 but hadn't taken any action about it, as he said he had thought it was a scam at the time. UKI says Mr E was aware of the claim since early 2022 and did not contact it until March 2023, by which time the legal proceedings were at an advanced stage and judgement had already been made against him.

As UKI did not change its position on the claim, Mr M referred his complaint to us.

One of our Investigators looked into the matter. The Investigator said that he was satisfied the claim had not been notified in time but UKI could only reasonably rely on the late notification if it could show it had been prejudiced by the late notification. The Investigator said that given the late stage of the legal proceedings by the time UKI was notified, he was satisfied it had been prejudiced. The Investigator therefore did not recommend the complaint be upheld, as he was satisfied UKI was entitled to reject the claim for the reasons it had.

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

- There is a failure in UKI's claim screening process, as it did not record it as a claim when he phoned in January 2023.
- UKI told him it would be impossible to prove he did not call in January 2023, if he had not used his own number to call, or if it deleted calls.
- He thought the call he received in 2022 was a scam.
- He had an obligation under the policy to protect UKI from a fraudulent claim, so could not have submitted a claim in 2022 based on that call.
- He asks us to get a recording of the call from the solicitor in 2022.
- Neither the call in February 2022 or March 2023 prove late notification and he asks for actual proof if it exists.
- A false timeline was given to the court in March 2023 that meant the court believed he'd been aware of the claim as well.
- He does not believe he has prejudiced UKI in any case, and UKI can't prove undoubtedly that he prejudiced it.
- If he'd been represented in March 2023, the claimant's fraudulent claim would have been exposed and the fees would have disappeared, in fact UKI would have made money as their representatives would have been paid, by the claimant as the loser in the litigation. So it would not have been prejudiced.
- He was prejudiced, as he was not aware of the claim earlier, so he notified UKI late because of the third-party actions. If UKI was prejudiced it was therefore due to the actions of the third party claimant, not him.
- He has had to pay the judgment in favour of the third-party claimant and their legal fees, for which he is trying to get a loan.
- He was under great stress and desperate for help. He has had a breakdown and his health has been significantly impacted.

As the Investigator was unable 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.

I can see this is a very stressful time for Mr E. He has been involved in legal proceedings that he considers fraudulent and unjustified. He has also been ordered by the court to make a payment to the claimant and pay their legal costs, which is causing him financial difficulty.

I have considered everything very carefully to determine whether it was fair for UKI to refuse cover. Having done so, despite my sympathy for Mr E's situation, I do not consider it has acted unfairly. I will explain why.

Mr E's policy provides cover for various legal issues that might arise. The cover is subject to various terms and conditions. The condition relevant to Mr E's claim is as follows:

“Action by You

It is a condition precedent to Our liability that You will:

a) immediately notify Us on the happening of any incident which could result in a claim under this Policy

b) immediately notify Us of, and deliver to Us at Your own expense, a claim with such detailed particulars and proofs as may reasonably be required by Us and (if

demanded) by Us a statutory declaration of the truth of the claim and any matters connected therewith, within:

- i. 7 days of the event giving rise to the claim, in the case of loss, destruction or damage, caused by riot, civil commotion, strikers, locked out workers, persons taking part in labour disturbances or malicious persons;*
- ii. 30 days of the expiry of the Indemnity Period (as defined in Section 4: Rent Receivable, of this Policy) in respect of business interruption claims; or*
- iii. 30 days of the event giving rise to the claim in the case of any other claim, or such further time as We may allow; and notwithstanding items b i to iii above, You will immediately forward any claim by a third party or notice of any proceedings or any other correspondence and information received by You relating to such claim on receipt”.*

Terms such as these are not uncommon in legal expenses insurance policies and I do not consider them unclear or unfair. Insurers are, however, required to apply any policy terms fairly. I have therefore considered whether UKI has acted fairly in applying these terms to refuse Mr E's claim.

As the Investigator has explained, we have long held that it is unfair and unreasonable to reject a claim on the basis of a policy condition, unless breach of the condition has caused some prejudice to the insurer. This is also set out in the Financial Conduct Authority rules regarding insurance claims handling.

So, the critical issues for me to decide are:

1. when did Mr E first become aware of the claim made against him?
2. When did Mr E notify UKI of the claim?
3. Was that more than 30 days prior to notifying UK? And,
4. if it was, was UKI materially prejudiced by the fact that Mr E's claim was not notified to it in time required? This needs to be on the balance of probabilities, so whether it is more likely than not, rather than beyond any doubt.

Mr E does not dispute that the third-party claimant's solicitor called him in February 2022 and notified him of the claim. The condition set out above states that he should have immediately informed UKI of this, or at least within 30 days. However, Mr E says he had good reason to think the call was a scam, especially as he asked the claimant about it and they denied taking any legal action against him. Mr E also says he looked up the phone number that called him and it did not relate to a law firm but was a private mobile number. Mr E says he did not hear anything further about the claim until January 2023. Mr E therefore says he had no reason to notify UKI of the claim prior to January 2023 and indeed was protecting UKI from a fraudulent claim.

I have considered this very carefully. While I can appreciate Mr E may have had suspicions the call was not from a solicitor, I am not persuaded that it would be unreasonable to expect Mr E to have notified UKI in 2022 that he had received notice of a legal claim against him. In addition, I note the court was satisfied that Mr E had been notified properly of the claim against him before January 2023. Mr E says this was not correct but the courts would require proof of service and it was apparently satisfied Mr E was aware of the claim before the judgement order made in January 2023.

Given this, I think Mr E should reasonably have notified UKI of the claim within 30 days of the phone call in 2022. However, for argument's sake if I am wrong about this, I have gone on to consider the matter based on the date that Mr E says he was notified of the judgement against him – i.e. January 2023 – as the first date he was aware of the claim. Using this

date, Mr E would have been required to contact UKI immediately on getting the court order, or at least within 30 days of receiving notice of it.

Mr E says he contacted UKI in January 2023, as soon as he was made aware of the court order but the call-handler failed to record the call as a claim. UKI has no record of any contact from Mr E before March 2023. Mr E says UKI told him that it wouldn't be able to find records if he used a different phone number but he has not provided any evidence that he did use a different number. I also note that Mr E has not said he made any further contact with UKI between January and March 2023, even though there were further applications and hearings listed to take place. If he had thought UKI should have started a claim in January 2023, I think it reasonable to expect he might have followed that up with UKI but I can see no evidence he did so.

Having considered this carefully, I do not consider that there is enough evidence to be satisfied that Mr E notified the claim in January 2023.

UKI's file records show that Mr E contacted it on 22 March 2023 to ask for assistance with the claim. Mr E has not said he made any contact with UKI between January 2023 and 22 March 2023 and UKI has no record of any contact in that period. This was more than 30 days from him being aware of the court order.

I have to now consider the fourth point set out above - was UKI materially prejudiced by the fact that Mr E's claim was not notified to it in the time required by the policy?

While he maintains he contacted UKI in January 2023, Mr E also says that in any case, there is no prejudice due to any delay in notifying the claim between January and March 2023, as UKI could have proved the claim was fraudulent and costs would have been recovered from the third-party claimant. I do not find this persuasive because, while I note how strongly Mr E feels about this case against him, there is no reliable independent evidence that Mr E could have likely had the judgment set aside.

Between Mr E being notified of the claim in 2022 and January 2023, the proceedings were issued and an order made against Mr E. I do not think it is difficult for UKI to demonstrate it has been prejudiced by not being aware of the claim during that period. UKI did not have the chance to assess the claim to see if there were reasonable prospects of Mr E's position in the legal case succeeding, agree what legal action to take, or to set reasonable fees.

And between January 2023 and March 2023, further applications were made to the court, including by Mr E, to be heard in March 2023 before UKI was notified of the claim. These steps would have resulted in further costs being incurred and the risk of cost orders being made against Mr E. Again, UKI was not able to assess or consider any of this.

I am therefore satisfied there was a delay in reporting the claim from at least January 2023 to March 2023, and from 2022, that did cause prejudice to. It follows that I am also satisfied that UKI was entitled to refuse the claim on this basis.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 August 2025.

Harriet McCarthy

Ombudsman