

The complaint

Ms L and Mr L complain that INTACT INSURANCE UK LIMITED would not agree to their own choice of solicitors being appointed to act for them under their legal expenses insurance policy.

Where I refer to INTACT, this includes its agents and claims handlers acting on its behalf.

What happened

Ms L and Mr L have legal expenses cover as part of their home insurance policy. The cover is underwritten by INTACT. They made a claim on their policy in relation to a claim against their neighbours involving an invasive plant, which was causing damage to their property. They said they wanted to appoint their own solicitors to act for them but INTACT didn't agree to this.

Ms L and Mr L complained but INTACT said the policy terms say the policyholder's own choice of solicitor can only be appointed once legal proceedings are issued; before then, it would appoint one of its panel firms of solicitors.

When they referred the complaint to this Service, they said they wanted INTACT to confirm it could consider instructing the insured's chosen solicitors before the issue of proceedings, and agree to instruct their solicitors, with cover backdated to August 2024.

Our investigator said the policy term was clear that Ms L and Mr L were not able to choose their own solicitor until proceedings were issued. He didn't think the circumstances were such that their own solicitors should be appointed rather than a panel firm.

Ms L and Mr L disagreed and their solicitor made a number of points on their behalf, including:

- The policy term identifies when a client is "free to choose" a solicitor. It does not say they can't request their own solicitor before then.
- INTACT says it's not possible to consider a request, but the term does not say it must choose a panel firm or that it can't choose a firm suggested by the policyholder. It may decide not to. But INTACT is saying it can't even consider this, which is not correct.

The investigator considered these points but didn't change his view. So Ms L and Mr L have requested an ombudsman's 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.

In making my decision I need to consider what's fair and reasonable in all the circumstances of the case, taking 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 relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim.

The starting point for deciding whether the claim was dealt with reasonably is the policy terms. The relevant term says

“In any legal action when formal legal proceedings have been issued at court by you or someone making allegations against you, or where there is a conflict of interest, you’re free to choose a suitably qualified representative.”

Ms L and Mr L’s solicitor says this only means the policyholder didn’t have the right to choose their own solicitors until that point – it doesn’t prevent INTACT from considering a request before then.

But the policy terms go on to say:

“In any other circumstances the provider will choose a representative to act on your behalf.”

So the position as set out in the policy terms is that INTACT will choose the solicitors up to the point when proceedings are issued. I think it’s for this reason INTACT said it couldn’t agree to a non-panel firm; the policy terms say it will choose the solicitor.

I still need to consider if that’s fair in the circumstances of the case. And there may be circumstances where it isn’t – for example, a case that involves a particularly complex or unusual area of law.

The policy doesn’t allow a policyholder to choose their own solicitors simply because the case is complicated. If the case is particularly complex or unusual it may be fair for them to choose their representative, but this would be in exceptional circumstances, for example where the case involves a particular expertise which isn’t available from a panel firm. I appreciate Ms L and Mr L’s solicitor says his firm is a leading practice in this area but, having considered the circumstances of this case, I don’t think they have shown only their expertise would be appropriate here.

If INTACT referred the case to panel firms and they did not have the expertise to take the case on, it would need to appoint a non-panel firm. But if Ms L and Mr L haven’t agreed to the case being referred to panel solicitors to consider, INTACT hasn’t had the opportunity to assess the case.

I also need to take account of relevant law – although I don’t have to apply the law in the same way that the courts would. In this case, the relevant law is the Insurance Companies (Legal Expenses Insurance) Regulations 1990. These regulations say a policyholder is free to choose their lawyer where they need to be represented in any inquiry or proceedings.

The usual approach is that once it reaches the point where it’s necessary to issue proceedings, the policyholder is free to choose their solicitors. If Ms L and Mr L reach that point, I’d expect INTACT to consider their choice of solicitors. It would not be fair to apply the policy term strictly and say they can’t choose their own solicitors until after they have issued proceedings. But at the point when INTACT considered the request, things had not reached that point and so Ms L and Mr L were not entitled to choose their own solicitors.

I appreciate their solicitors say INTACT didn't even consider the request. And I agree it was not prevented from doing so. But, taking into account all the circumstances I don't consider it was unreasonable to want to refer the case to panel solicitors in the first instance. As I've said, if none of the panel firms have the expertise to deal with the matter, INTACT would then have to consider alternatives.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr L to accept or reject my decision before 20 October 2025.

Peter Whiteley
Ombudsman