DRN-5677422

The complaint

Mr and Mrs P are unhappy with what U K Insurance Limited did after they made a claim on their legal expenses insurance policy.

What happened

In February 2024 Mr and Mrs P sought assistance from their legal expenses policy with a negligence claim against an NHS trust (relating to medical treatment Mrs P had received). After confirming cover was available UKI asked a firm of panel solicitors to review matters, including considering whether the claim had reasonable prospects of success (a requirement of the policy).

Mr and Mrs P were unhappy with what the appointed solicitor then did. UKI said it didn't have an alternative panel firm who could deal with this sort of claim but they could appoint their own solicitor. Mr and Mrs P weren't able to find a firm that would act so at the start of August UKI provided them with a list of firms that had previously agreed to act on its terms. In subsequent correspondence it said if none of those firms were able to act it could provide details of others. And it accepted the panel firm's actions had clearly caused Mr and Mrs P distress. It said would pay £250 in recognition of that.

Our investigator thought as UKI didn't have an alternative panel firm who could deal with the claim it was reasonable of it to say Mr and Mrs P could choose their own solicitor. Given the difficulties they had in finding another firm it was appropriate UKI provided details of firms which had previously acted under its terms in similar cases. She didn't think there was more it should have done. And, as UKI wasn't responsible for the actions of the panel firm, she didn't comment on the compensation offered for what it got wrong.

Mr and Mrs P didn't agree. They made detailed submissions across a number of emails (all of which I've read) and in summary said:

- They didn't agree the complaint should have been investigated against UKI (with whom they hadn't had any dealings). It should have been pursued against a different business (D). They thought that was supported by the policy documentation.

- The full policy documents hadn't been provided to them when they took out and renewed their policy; they provided details of the information provided to them at that time (including an Insurance Product Information Document) which they thought formed their insurance contract. It wasn't acceptable to now introduce new terms to that.

- There had been a breach of their insurance contract as the insurer had failed to ensure the cover offered by their policy was provided. It had agreed to the appointment of what they regarded as an incompetent firm of panel solicitors And it then sought to include new terms into the policy by placing the requirement to find a new firm on them.

- They didn't think it was reasonable to expect them to make contact with thousands of solicitors to find out if they could progress a claim under the terms of their policy. They thought that showed the insurer was acting illegally and outside the terms of the policy in order to avoid a legitimate claim.

- Their policy documents didn't say the insurer only had one firm of panel solicitors dealing with clinical negligence claims and if that had been made clear to them at the point of sale they'd have taken out cover elsewhere.

- They explained their concerns about what the panel solicitor had done when dealing with their claim. And they highlighted how Mrs P had been impacted by the medical conditions which now affected her and the background to their 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.

I appreciate this has been an exceptionally challenging time for Mr and Mrs P. They've explained in some detail how Mrs P has been affected by the medical treatment she received and what the impact of that has been on her (and the effect on Mr P as well). I was extremely sorry to learn how difficult things have been for them; I don't doubt what a tough time this has been. But the question I need to consider is what happened after they made a claim on their legal expenses insurance.

In relation to that I'm satisfied UKI are the correct respondent for this complaint. I appreciate in practice Mr and Mrs P's contact has been with a different business. But the issues they're raising relate to what happened after they made a claim on their policy. And it's the insurer of the policy which is responsible for the relevant regulated activity ('carrying out a contract of insurance') associated with that. Their policy terms say "*the words 'we', 'us', 'our' and 'ours' means U K Insurance Limited unless otherwise stated*". Mr and Mrs P's policy schedule says their policy is *"underwritten by U K Insurance Limited*". And the Financial Conduct Authority register confirms it's UKI which is authorised for carrying out a contract of insurance; D only appears on the register as a trading name of UKI.

Mr and Mrs P say they weren't provided with full information about their policy when they took out cover. I understand their position is the documents they were provided with at that time form the contract between them and UKI. And it's a breach of contract for it to rely on provisions in the full policy document that weren't part of that information.

It's for the courts to determine whether there's been a breach of contract. What I'm required to consider is whether UKI acted fairly and reasonably taking into account relevant laws and regulations, regulators rules, guidance and standards, codes and practice and where appropriate good industry practice at the relevant time. And in relation to a claim the relevant rules and industry guidelines say UKI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I don't think it was unreasonable of UKI to rely on the full policy terms when considering Mr and Mrs P's claim. I think it's generally understood that it's the full policy document which governs the contract between insurer and insured. I think that would in any case have been apparent to Mr and Mrs P from the information they were provided with. The policy schedule says "*this schedule forms part of the policy You should read the schedule and the policy booklet together and keep them in a safe place*". And the Insurance Product Information Document (IPID), which Mr and Mrs P have referenced, says it only provides a summary of the main cover and exclusions. If Mr and Mrs P have concerns about what was provided to them when the policy was taken out that could form a separate complaint about the sale. But I don't think it was unfair of UKI to rely on the full terms when considering their claim.

Those terms do include cover for clinical negligence. I don't think it's disputed this claim is one the policy could, in principle, assist with. However, it's a requirement for cover to be provided that "*we and the appointed representative agree that your claim has reasonable prospects of success for the duration of the claim".* That means *"For civil cases, we and the appointed representative agree that there is a better than 50% chance that you will: a) obtain a successful judgement; and b) recover your losses or damages or obtain any other legal remedy we agree to…"*

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. So I think UKI acted correctly in asking for this to be assessed by one of its panel solicitors after Mr and Mrs P made this claim in February 2024.

I recognise Mr and Mrs P are extremely unhappy with what the panel solicitor then did. However, the actions of the solicitors when acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules. So I can't consider the concerns Mr and Mrs P have raised about what they did. I can see Mr and Mrs P have made complaints to that firm and the Legal Ombudsman using the appropriate complaints procedures.

Mr and Mrs P say UKI shouldn't have referred the claim to an "*incompetent"* firm at all. However, I don't think it was unreasonable of UKI to conclude that firm was in a position to carry out the assessment. It's a national law firm with wide experience of dealing with legal expenses claims. And if that firm didn't feel Mr and Mrs P's claim was one it could dealt with the onus would be on it to advise UKI of that (which it didn't do).

Mr and Mrs P are particularly concerned that, after they requested another panel firm be appointed, UKI wasn't able to do so because it didn't have an alternative with expertise in clinical negligence claims. I do find it surprising UKI didn't have another firm available. However, it's made clear that was the case. And that isn't information I'd expect the policy to contain given the very specific set of circumstances that led it to be an issue for Mr and Mrs P. It would in any case be something that was subject to change as it reflects the expertise of the panel firms available at a particular time.

But as UKI didn't have an alternative firm I think it was reasonable of it to say it would agree to the appointment of Mr and Mrs P's own choice of solicitor. They feel it should then have done more to find a firm that would act for them. I've also taken into account that the policy says *"if we accept your claim, we will appoint a preferred law firm to try to settle the matter without having to go to court"*. However, in this case UKI did initially refer the matter to panel solicitors. And the cover offered by the policy is for the costs incurred in pursuing a legal expenses claim. It doesn't in itself provide the services of a solicitor or say UKI needs to find an alternative where relations between the parties break down.

Nevertheless, I would expect UKI to offer reasonable assistance to a policyholder where it wasn't able to offer an alternative firm. In this case it provided Mr and Mrs P with a list of firms that had previously acted under its terms in clinical negligence cases. I've reviewed that list and I can see it contains a number of firms who from my experience regularly act under legal expenses insurance policies.

There might nevertheless have been a need for negotiation on the hourly rate UKI was prepared to pay (or other terms). I'm not clear if that was an issue in relation to any of the firms Mr and Mrs P approached. But UKI did indicate it would be prepared to negotiate on the terms as it said it was *"more than happy to discuss with solicitors to see if anything can be worked out with them in line with the policy*". UKI then offered (in September 2024) to provide the names of other solicitors who had acted on its terms. However, it appears at that point Mr and Mrs P were awaiting a review of medical records by solicitors acting for the relevant NHS trust so didn't progress that.

It's really unfortunate Mr and Mrs P haven't been able to find a firm prepared to act for them. But I don't agree that means UKI was attempting to avoid a legitimate claim. It wasn't required, under the terms of the policy, to provide Mr and Mrs P with an alternative solicitor; the cover offered is for the costs of their legal expenses claim. And I think it did provide reasonable assistance when it wasn't able to appoint an alternative panel firm. I don't think there was more it could fairly have been expected to do. So while I do accept what a frustrating and upsetting experience this has been for Mr and Mrs P I don't think that's come about because of anything UKI got wrong. It follows that I don't think it needs to do anything to put things right (I appreciate it has already agreed to pay Mr and Mrs P £250).

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 and Mrs P to accept or reject my decision before 19 September 2025.

James Park
Ombudsman