DRN-5778134

The complaint

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

Although the policy is in joint names as the claim (and complaint) primarily involves Mr S I'll mainly refer to him in this decision.

What happened

Mr S (and others) have a dispute with their employer relating to changes to a health insurance scheme. Mr S says he contacted UKI in 2022 and sought assistance with his claim. He recalls being told it wasn't covered because the events giving rise to it began before his policy started. UKI doesn't have a record of that contact. Mr S contacted UKI again in April 2023. It was established he did have cover in place. UKI accepted the claim and agreed to pay costs Mr S incurred since 2022.

The matter was progressed by Mr S's own solicitors who some time later agreed terms of appointment with UKI. In May 2024 the matter was reviewed by junior counsel who advised on its likely prospects of success. His view was the overall prospect of the claim succeeding wasn't more than 50% when considered in the round. UKI queried whether Mr S's KC was in agreement with the assessment. Once that was confirmed it said it would withdraw cover for the claim as the assessed prospects of success didn't meet the policy terms.

Our investigator said it wasn't clear what contact Mr S had with UKI in 2022. But he thought its agreement to cover legal costs he'd incurred from that date did enough to address any issues here. He thought UKI was entitled to rely on the prospects assessment counsel produced in May and didn't think it should have sought further advice about this. And as that assessment meant the claim no longer met the terms of the policy UKI was entitled to withdraw funding for it. He accepted that had been done very close to trial taking place but thought even if UKI had provided funding for settlement negotiations it was unlikely that would have been successful. He didn't uphold the complaint.

Mr S didn't agree. In summary he said:

- Counsel's advice was ambiguous because it gave individual elements a 60–65% chance of success but concluded overall prospects were no greater than 50%. So UKI should have sought a jointly instructed barrister's opinion in line with the relevant policy terms.

- He didn't think it was fair of UKI to withdraw funding for his claim six days prior to trial after funding it for two years. He argued this was a breach of the Financial Conduct Authority's 'Consumer Duty' rules and left him in a position where he was personally liable for trial costs. And he'd been told by UKI the requirement in the policy was for a claim to have 50% prospects of success which his did.

- He said UKI's previous decision to agree funding for the claim had given him a reasonable expectation cover would continue unless there was a major change. And if UKI had concerns about this it could have raised these earlier rather than just before the trial was due to take place. He thought UKI should cover the additional costs he incurred as a result of having to pay privately for the trial costs.

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.

The relevant rules and industry guidelines say UKI has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. Mr S has also referred to the Financial Conduct Authority's 'Consumer Duty' rules. Those are relevant to actions UKI took in relation to the claim from 31 July 2023. So I've also taken those rules into account as applicable when deciding what's fair and reasonable in all of the circumstances.

Mr S's position is that he contacted UKI in 2022 seeking assistance with this claim. UKI doesn't have a record of that contact (though accepts it's possible Mr S may have contacted the legal advice line offered by his policy). I don't think that's something I need to reach a finding on because even if Mr S is correct in his recollection UKI has agreed to cover the legal costs he incurred from 2022. I haven't seen evidence to show he was otherwise disadvantaged by his claim not being accepted in 2022 (if he did in fact make contact with UKI at that time).

Following Mr S's contact with UKI in April 2023 it did question whether he had cover in place for his claim at the point the events giving rise to it arose. I don't think that was unreasonable based on the evidence presented. In any case once Mr S provided details of a previous address UKI was able to quickly confirm cover was available for his claim. And terms of appointment were sent to his own solicitor.

Mr S's key focus is understandably on what then happened and in particular UKI's decision to withdraw funding for his claim six days prior to the case going to trial. His policy says cover is provided if "*we and the appointed representative agree that your claim has reasonable prospects of success for the duration of the claim*". Mr S has provided definitions of prospects of success used by other organisations. I accept they have their own position on this but it's the terms of his policy which govern what cover is available for this claim.

And its definition of reasonable prospects of success is "*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, including an enforcement of judgement, making a successful defence or making a successful appeal or defence of an appeal*".

I understand in a call with UKI in March 2025 the adviser told Mr S the threshold was 50% for funding to be provided. But I think it's clear from the terms of his policy that "*better than 50%"* means the prospects must be greater than that 50% for cover to be available. That does mean Mr S was given inaccurate information when he spoke to UKI but as that was after funding had been withdrawn for his claim it didn't impact the handling of it.

However, as an insurer isn't a legal expert we don't think it's in a position to carry out a prospects 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.

In this case UKI accepted Mr S's claim in April 2023 and later agreed terms of appointment with his solicitors. It's unclear what information was provided about prospects of success after that had taken place. UKI says the terms of appointment required the solicitors to provide an assessment of the claim's prospects and that was included in the updates it was provided with. On the other hand Mr S's solicitors say they didn't provide advice about prospects (and it only came from counsel later on).

Regardless of that UKI must have accepted the claim met the prospects requirement at that time because it agreed to provide funding for it. So even if a detailed assessment wasn't available to it that's been to Mr S's advantage as funding was nevertheless provided for his claim. And I think it's clear he'd already decided to pursue the matter (given he incurred costs in doing so prior to being aware insurance funding was available).

A detailed assessment of the claim's prospects was then provided by counsel in May 2024. Mr S thinks that was ambiguous. I don't agree with him on that. Counsel does identify that individual claim propositions have prospects in the region of 60% and 65%. But his point is that, in order for the overall claim to be successful, a judge would need to find in favour of the claimants on all of those elements. So if one should fail that would cause the entire claim to fail. It's on that basis he concludes "*the prospect of succeeding is no greater than 50% when considered in the round".*

Mr S has highlighted a policy term which says *"If there are conflicting opinions over reasonable prospects of success, you will be required to obtain an opinion from a barrister. The choice of the barrister needs to be agreed between you and us".* However, I don't think that applies here. There aren't conflicting opinion on prospects of success; there's a detailed assessment from junior counsel which Mr S's solicitors confirmed his KC agreed with. And in response to further inquiries from UKI his solicitors said they had again consulted with counsel who couldn't confirm prospects were 51% or greater.

I think the assessment counsel provided is detailed, properly written and reasoned and from someone in a position to provide that advice. In my view UKI was entitled to rely on it and I think it reasonably concluded the policy requirements in relation to prospects of success weren't met. I appreciate UKI had provided funding up until then but the requirement for a claim to have prospects of success is an ongoing one. I don't think the fact funding had previously been agreed meant UKI needed to continue doing so on receipt of a negative prospects assessment. And once cover has been agreed it's for the appointed solicitors to manage the day to day running of a claim. So I don't see this is something UKI should have explored earlier.

However, the decision to withdraw funding was taken around six days prior to the start date of the trial. I recognise that did put Mr S in a difficult financial position. But while counsel's opinion is dated 21 May 2024 it doesn't appear his solicitors provided that to UKI until 6 June. So it had already lost some of the available time to review matters by then. Nevertheless, our general approach is that where proceedings are ongoing it's not normally reasonable for an insurer to withdraw cover without warning leaving a policyholder immediately without support. Generally it should provide some limited funding to, for example, enable a consumer to engage in some negotiation with the other side to bring matters to a conclusion.

It doesn't appear UKI did so in in this case. However, I think it's unlikely any settlement negotiations would have been successful even if funding had been provided for them. This was a claim being brought by a number of different claimants who I understand would all have needed to agree settlement (and where those other claimants were paying privately for the proceedings). And there's no clear evidence the other side would have been prepared to settle either. UKI asked Mr S's solicitors whether any settlement offers had been made but they didn’t respond on that point. As a result I can’t conclude further funding from UKI for settlement negotiations would have made a difference. I think it’s more likely that, even if it had offered that, Mr S would have ended up in the same position.

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 S and Mr S to accept or reject my decision before 26 September 2025.

James Park
Ombudsman