

complaint

Mr and Mrs U complain that U K Insurance Limited ("UKI") refused a claim on their legal expenses insurance policy.

background

Mrs U made a claim to UKI for legal cover to pursue a nuisance claim. UKI referred the claim to one its panel solicitors to consider. Due to a conflict of interest, the panel solicitors weren't able to take on the case. So UKI passed the papers to another one of its panel solicitors.

The second panel solicitors said Mr and Mrs U weren't likely to win their case. Based on that legal advice, UKI said it wouldn't provide cover.

Mrs U complained about this and requested a second opinion from another firm of solicitors. She also complained about the claim being transferred from one solicitor to another. And she said they should have been able to choose their own solicitor.

Our adjudicator didn't think UKI's actions were unfair or unreasonable. She said UKI was entitled to act on the basis of legal advice. Although it was unfortunate that the first firm of solicitors couldn't take the case on, that wasn't due to any fault by UKI. She didn't think Mr and Mrs U were entitled to choose their own solicitors.

Mr and Mrs U don't agree and have requested a review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The policy terms say a claim must have prospects of success, which means it must be more likely than not that the policyholder will win their case. Terms like this are common in legal expenses policies and we consider them reasonable. They mean insurers don't have to meet costs for claims that are unlikely to be successful.

I would expect an insurer to get advice from a solicitor before deciding whether a claim has reasonable prospects. UKI did get legal advice and is entitled to rely on that advice, unless it's obviously wrong.

Policyholders are only entitled to choose their solicitors in limited circumstances – for example, where it's necessary to issue court proceedings, or if it's an unusual and complex case. That wasn't the case here. It was reasonable for UKI to pass the case to panel solicitors.

There was a short delay when the first panel solicitors weren't able to act and their papers were then passed to a second firm. But this wasn't due to any fault by UKI.

The second panel solicitors said they didn't think Mr and Mrs U were likely to be successful. I've seen nothing to suggest this advice was obviously wrong. I note that UKI phoned the solicitors to clarify the position. The solicitor who had looked at the case explained the nature of the proposed legal claim and his reasons for thinking that Mr and Mrs U weren't likely to be successful.

UKI advised Mr and Mrs U that, if they got their own legal advice saying they were likely to be successful, it would reconsider. Without any legal opinion to contradict the panel solicitors' advice, it wouldn't provide cover. That was a reasonable approach to take.

Mr and Mrs U have said the legal assessment was wrong, but UKI didn't assess the legal claim itself and was entitled to rely on the panel solicitors' advice.

Mrs U has also said they never received the policy documents, so couldn't be said to have accepted the policy terms. This complaint is only about the insurer's decision on their claim. If there's a complaint about information given when they bought the policy, they would have to take that up first with the business that sold the policy.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs U to accept or reject my decision before 30 December 2015.

Peter Whiteley
ombudsman