

## **complaint**

Mr S complains that U K Insurance Limited (“UKI”) withdrew cover on his legal expenses insurance claim.

## **background**

Mr S made a claim on his legal expenses policy. He wanted cover to take legal action against a garage that he done some repairs on his car, which he said had not been done properly. The garage offered to inspect the car but he wasn’t happy about it carrying out more work.

UKI accepted the claim and instructed its panel solicitors to assess the case. The solicitors advised Mr S that his case didn’t have reasonable prospects of success without expert evidence showing the garage had failed to take reasonable care or use satisfactory materials, or that it had caused damage to the car. They said they would consider the case further if he provided supporting evidence, and it was for him to decide whether to incur the costs of that.

The solicitors later advised Mr S that even if he obtained supporting evidence, it was likely the offer the garage had made would still be reasonable.

Mr S obtained a report which confirmed there was a problem with his car engine, though it wasn’t conclusive about what the cause was. He didn’t wish to accept the offer from the garage and was unhappy with the service he’d received from the panel solicitors. He complained to UKI about the way the solicitors had dealt with the case.

UKI spoke to the panel solicitors, who advised that despite the report Mr S had obtained, they couldn’t proceed with a court case without evidence confirming the cause of the problem. They confirmed their view that the garage’s offer to inspect the car was reasonable and said Mr S was at risk of being ordered to pay wasted costs if he rejected a reasonable offer.

UKI told Mr S it had spoken to the solicitors, who confirmed the offer was reasonable and should be accepted. It said Mr S could get a second opinion himself; if he had legal advice supporting his claim it would reconsider. He might then need to get advice from a barrister but it would reimburse the cost of this if the advice confirmed he had reasonable prospects of success.

Mr S was still unhappy. He wrote to UKI saying he would like it to appoint new solicitors. UKI wouldn’t change its decision, saying the initial legal advice was that the case didn’t have reasonable prospects; his report didn’t confirm the cause of the problem; and so it was reasonable to allow the garage to inspect his car. And as he didn’t accept that advice, it was withdrawing cover. UKI again advised Mr S he could get his own legal advice if he disagreed.

Mr S then told the panel solicitors they could write to the garage accepting the offer. The solicitors said they would do this if he confirmed he had no further concerns about their service but Mr S didn’t agree and said the solicitors were biased. Following this, the solicitors said the relationship between them and Mr S had broken down and they could no longer act for him.

When Mr S brought his complaint to this service, our investigator said UKI was entitled to rely on the legal advice from the panel solicitors and if Mr S' claim didn't have reasonable prospects of success, he wasn't entitled to cover.

Mr S disagreed and requested an ombudsman's decision. He said:

- He provided more evidence after the case was closed and the panel solicitors said they would pursue the case as there were prospects of success, but their conditions were not acceptable to him.
- He accepts UKI are not legal experts but they should have listened to his representatives, who sent a letter which UKI simply ignored.
- To find out the actual fault, the car needs to be stripped down and inspected properly and UKI should fund that, not put the cost on him.

I issued a provisional decision on the complaint. In the provisional decision I said:

*The policy includes cover for the type of case Mr S wished to pursue against the garage. But cover is only provided if the claim has reasonable prospects of success – in other words, that he's more likely than not to win his case.*

*The policy terms also say UKI can refuse to pay further costs if the policyholder doesn't accept an offer to settle a claim, which UKI or the appointed representative (in this case, the panel solicitors) consider should be accepted.*

*Terms like these are not unusual and can be found in most, if not all, legal expenses insurance policies.*

*So to have cover, Mr S had to show he was likely to be successful. And if at any time the solicitors advised him to accept a reasonable offer from the other party, and he refused to do so, the terms allowed UKI to withdraw cover.*

*UKI's responsibility was to deal with the claim fairly and in line with the policy terms. As an insurer, it wouldn't have the expertise to assess the prospects of the legal case. I'd expect an insurer to get legal advice on this, and it's reasonable for the insurer to rely on that advice, unless it's obviously wrong.*

*There was advice from the panel solicitors, and their initial advice was the Mr S wasn't likely to be successful unless he had expert evidence confirming the cause of the problem. They also advised that even if he obtained supporting evidence, it was likely the offer the garage had made would still be reasonable.*

*Mr S is very unhappy with the way the solicitors dealt with the case. It's not for me to comment on the solicitors' actions – I am only looking at how UKI dealt with the insurance claim. From UKI's perspective, there was clear legal advice that Mr S wasn't likely to win his case without expert evidence and in any event, there was a reasonable offer that he should accept. The legal advice wasn't obviously wrong (to the extent that it would have been obvious even to a layman that it was wrong). Indeed I note Mr S pursued a complaint about the solicitors to the Legal Ombudsman and, while there were one or two issues with the service provided to him, the advice itself wasn't found to be wrong.*

*I appreciate that Mr S did get a report from an engineer which showed there was a problem with his car that might have been related to the work the garage had done. But the solicitors explained that the report didn't confirm the problem was more likely than not caused by the*

*garage's actions. And while Mr S provided a letter from solicitors he instructed himself, that letter also didn't actually say it was likely his case against the garage would be successful.*

*Mr S says it's unfair that he was expected to meet the costs of obtaining evidence and the insurance policy should have covered this. In the first instance, it's for a policyholder to prove their claim. So the onus was on Mr S to show his case had reasonable prospects – it wouldn't be reasonable to expect an insurer to cover the cost of a policyholder proving their claim.*

*Mr S is also unhappy that UKI didn't respond to the letter from his solicitors. But as I've explained, that letter didn't show he was likely to win his case. UKI never had clear legal advice confirming the case had reasonable prospects of success.*

*In these circumstances, it was fair and reasonable – and in line with the policy terms – for UKI not to continue providing cover.*

### **Replies to the provisional decision**

UKI has not provided any further comments in response to the provisional decision. I have however received further comments from solicitors instructed by Mr S. In brief, they say:

- Mr S provided an expert's expert which supported his case and the cost of that should have been covered by UKI;
- having reviewed the expert's report, they think there is a case for the garage to refund Mr S for the work it did, as it didn't identify the problem correctly and there are reasonable prospects of success in recovering this money;
- the offer that was made wasn't reasonable because there was no attempt to refund the charges Mr S paid for work where the fault doesn't appear to relate to the work done, but to a different issue.

### **my findings**

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

Mr S' solicitors say he provided an expert's expert which supported his case and the cost of that should have been covered by UKI. But as I have explained, it's for a policyholder to prove their claim and I wouldn't generally expect an insurer to cover the cost of doing that.

I have considered the further points made on behalf of Mr S. I appreciate that his solicitors have set out in some detail why they think the previous advice was wrong and the offer wasn't a reasonable one. Looking back at the information UKI had at the time, it's still my view that its decision was fair, in light of the legal advice it had obtained. It didn't have clear legal advice that the whole claim had prospects of success. And in any event, the panel solicitors were clear that the offer was reasonable and their advice was that Mr S should accept it. On that basis alone, UKI was entitled to withdraw cover.

As UKI (and our investigator) explained, if Mr S provided further legal advice it would reconsider the matter. Mr S has now provided further advice which sets out why his solicitors consider there are reasonable prospects of success and importantly why the offer made wasn't reasonable, meaning Mr S shouldn't be expected to accept it. If Mr S hasn't already done so, he can submit that to UKI and I'd expect it to review the matter in the light of that advice. If UKI maintains its position and Mr S still disagrees, he may make a further

complaint. But for the reasons I've explained, I think the decision UKI made based on the advice it had at the time was fair.

**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 S to accept or reject my decision before 18 July 2021.

Peter Whiteley  
**ombudsman**