

The complaint

Mr S' complaint is about a claim he made on his U K Insurance Limited trading as Churchill Insurance ('UKI') legal expenses insurance policy.

Mr S says UKI treated him unfairly.

What happened

Mr S made a claim on his UKI legal expenses insurance policy for cover to bring a claim against an airline. UKI accepted the claim in the first instance and instructed their panel firm to review the matter. The panel firm initially said there were no reasonable prospects of success. Further advice was obtained from another person at the panel firm who then said that although the claim did have reasonable prospects of success, it wasn't proportionate to pursue. The panel firm did however send a letter to the airline as a gesture of goodwill to Mr S. Following this UKI said it wasn't prepared to fund Mr S' claim.

Mr S was unhappy with the service he was provided with by the panel firm. He said the advice he received was wrong, that they failed to return his calls or make reasonable adjustments for his disability. He also said that the panel firm were connected with UKI and felt that had this been drawn to his attention at the point of purchase, he would not have taken out the policy. Mr S has made submissions about the impact of not being able to pursue the airline through his legal expenses insurance policy on his mental health and the distress he felt the panel firm and UKI caused him. He's also unhappy about the time it took UKI to respond to his complaint.

Our investigator considered Mr S' complaint and concluded that it should not be upheld. Mr S doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I don't uphold Mr S' complaint. I've explained why below. Before doing so I acknowledge Mr S' strength of feeling about his complaint and am sorry to hear how this matter has affected him. When considering his complaint points, I can assure him that although I've not referred to each and everything he's said, I have taken these into account when reaching my conclusions. In this decision I'll be focussing on the crux of his complaint. That's not intended to be disrespectful, but rather represents the informal nature of the Financial Ombudsman Service.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and is proportionate to pursue. Mr S' policy is no exception. That means his claim needed to have over 51% prospects of succeeding in order for UKI to cover it and the cost of any intended claim be less than the amount he is likely to recover.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or if they're likely to pay more in costs than they are likely to recover. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. UKI did this.

I'm satisfied that the person who advised Mr S that his claim was not proportionate to pursue had his advice reviewed by someone suitably qualified and experienced in the area of law Mr S was asking for help with, and I've seen nothing that suggests his advice was based on factual mistakes. I appreciate Mr S doesn't agree with that advice. In particular he's said that his claim is for more than the £9.30 he was advised his claim would amount to because the airline haven't paid him the more substantial award of £600 that the Aviation ADR scheme determined he was due. But I can't see that this was considered by the panel firm at all. Mr S says this was raised with them by telephone, but I have no further details of when this was or what was said to him in response. It seems to me that Mr S' further referral back to the panel firm took place after they provided their advice on the value of his claim and UKI declined cover. Based on the evidence I've seen, I'm not persuaded that either the panel firm or UKI were aware of Mr S' further referral back to the panel firm. That's because they have not provided a final answer to him on this. If Mr S wishes for the current position surrounding his claim- namely that the airline haven't paid him the £600 that was decided by another ADR entity- then he should contact the panel firm again and ask them to consider this. Alternatively, if Mr S were to provide an alternative reasoned opinion from a comparable Solicitor setting out that his claim has reasonable prospects of success and is proportionate to pursue, then I would expect UKI to consider that. But as matters stand, I can't say UKI did something wrong by relying on the legal opinion they received.

Turning now to Mr S' concerns about the partiality of the panel firm, I appreciate he feels it was not made clear to him when he took out the policy that there are connections between the panel firm and UKI. But that issue concerns the way in which he was sold the policy. As such this is something he will need to raise with the seller of it. The crux of his complaint however is that the panel firm had a conflict of interest and shouldn't have been providing advice to him on this matter. I've considered what he's said, but I don't agree with him. The panel firm is a distinct legal entity from UKI. They are a firm of professionals with their own codes of conduct and their own regulator. As such their responsibilities are distinct from UKI as an insurer. The fact that the panel firm might have received poor reviews from other clients on the internet and or provided a service to Mr S that he was unhappy with doesn't mean that they were conflicted or more inclined to turn down his claim, which Mr S feels was in the interests of UKI. As the investigator explained, the panel firm's conduct is not something I can consider and is in any event the subject of a separate complaint Mr S has made to the Legal Ombudsman, which is the most appropriate channel in which to address this.

Mr S has referred to delays in UKI dealing with his complaint. Complaint handling is not something I can look at as it's not a regulated activity and therefore not something which falls within the remit of the Financial Ombudsman Service.

Finally, I know Mr S feels that his decision to ask for his claim to be closed was informed by the level of distress he felt in dealing with the matter. Whilst I appreciate that UKI's decision on cover may well have been the cause of this, for the reasons I've mentioned above, I don't think it was unreasonable for them to do so based on the advice they received.

I appreciate my decision will be disappointing for Mr S, but I hope I've provided him with a thorough explanation about why I won't be upholding his complaint.

My final decision

I don't uphold Mr S' complaint against U K Insurance Limited trading as Churchill Insurance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 31 July 2024.

Lale Hussein-Venn
Ombudsman