

## **The complaint**

Mrs S and Mr S's complaint is about U K Insurance Limited's handling of a claim made under the legal expenses section of their home insurance policy. Mrs S has been the main correspondent on the complaint, so I will refer to Mrs S throughout the decision.

## **What happened**

In October 2021, Mrs S and Mr S made a claim for cover in relation to a breach of contract claim they wanted to pursue against a contractor for breach of contract in relation to supply and installation of windows and doors at their property.

UKI appointed one of its panel of pre-approved solicitors to assess the claim and advise. The panel solicitors determined that while there might be prospects of succeeding in getting a judgement against the contractor, they were unlikely to be able to enforce any judgement.

Mrs S conducted some negotiations with the contractor herself and in May 2022 issued proceedings as a litigant in person. Having done so, Mrs S determined that the panel solicitors had misadvised her, as it had based its advice on the incorrect respondent.

In June 2022 the panel solicitors accepted their advice had been incorrect and there would be a reasonable chance of recovery of any judgement against the correct respondent.

Mrs S told UKI of this in June 2022 and UKI asked another panel firm to reassess the claim. In the meantime, Mrs S had a court deadline to submit papers on 27 June 2022, which she needed legal advice about.

The second panel firm concluded in August 2022 that the case did have reasonable prospects of success and recovery but didn't think it was proportionate to pursue. However, after further discussion with Mrs S, UKI agreed to refer the matter back to the first panel solicitors to assess the value of the claim. UKI agreed they could also obtain an expert report to assist in the valuation.

Mrs S was unhappy with the time taken and lack of legal assistance in the meantime. Mrs S and Mr S raised a complaint with UKI that was answered in a final response letter dated 7 October 2022. There were further difficulties after this date and UKI agreed to re-open the complaint and issued a supplementary final response letter in February 2023 which also dealt with the further difficulties between October 2022 and February 2023.

UKI says it is not responsible for the fact the first panel solicitors had given incorrect advice, as they are independent professionals. It says that as soon as it was aware of the error it acted quickly in getting the claim assessed again. It was not going to reasonably be able to confirm cover in time for the submission of paperwork, which was due three days after it was told of the mis-advice. UKI also there were issues around proportionality that it was entitled to investigate, which is why cover could not be confirmed straight away. However, it acknowledged there were delays in progressing the claim for which it paid £250 compensation in October 2022 and also further delays and difficulties after 7 October 2022 for which it paid another £250 compensation in February 2023.

I understand the solicitors also paid compensation of £500 in 2022 in recognition of their error and gave referral rights to the Legal Ombudsman

Mrs S and Mr S remained unhappy with UKI's response and so referred the matter to us. They made a number of submissions in support of their complaint. I have considered everything they have said but have summarised the main points below:

- They did not have a contract with the panel solicitors but have suffered as a result of their mistake. They were contracted with UKI and it had a responsibility to ensure they received the service they were entitled to, so it is responsible for the solicitors' error.
- If the first panel solicitors had not made the error in their advice, they would have been given legal representation from November 2021. Settlement negotiations would then have happened before the other side became entrenched in their arguments, which they formed when they believed they had the advantage of an aggressive solicitor over them as litigants in person. It is likely the matter could have resolved within weeks. Instead they have had to endure the problems with their property for two further winters and had the stress of dealing with the matter themselves.
- It took another eight months before cover was agreed after the first panel solicitors admitted their mistake and recommended that the claim be covered.
- This also supports that it was UKI that the panel solicitors were providing the service to and not them.
- They needed help with the 27 June 2022 deadline but UKI did not answer their calls or give them any assistance.
- UKI referred the matter to another panel firm without their consent.

Mrs S has also said that she has a condition brought on by stress and the intense stress of this matter, in particular from October 2022 to February 2023, has meant she has not been able to complete occupational training alongside her work. She has been signed off work and asks for compensation in the equivalent amount of her earnings (£43,000) and additional expenses she has as a result of this condition around £6,500 to be paid by UKI; as well as compensation for sharing their personal data with the other panel solicitors without consent of £2,000.

Initially UKI said this complaint was out of time, as it was referred to us more than six months after the letter of 7 October 2022 but it has since agreed that the time started running from the supplementary response it sent Mrs S and Mr S in February 2023. I am satisfied that the complaint about issues raised with UKI before its letter of 7 October 2022 (and answered in its letters of 7 October 2022 and February 2023) is one I can consider.

One of our Investigators looked into the complaint. She explained that one of my Ombudsman colleagues has already issued a final decision in February 2024 about the issues complained about after the final response letter of 7 October 2022 up to the date of the second final response letter of 28 February 2023. This final decision also addressed the complaint about UKI sharing Mrs S and Mr S's personal data with the second panel solicitor because it had not been addressed in either of UKI's final response letters.

The Investigator therefore explained that we cannot look again at the matters that were considered in that final decision and that she was going to consider the complaint raised about events up to 7 October 2022.

Having done so, the Investigator did not recommend that the complaint be upheld, as she was satisfied UKI was not responsible for the mis-advice by the first panel solicitors and that UKI's offer of compensation was reasonable to reflect the delays on its part.

Mrs S and Mr S do not accept the Investigator's assessment. They have made a number of further submissions in response to the Investigator. Again, I have considered everything they have said but have summarised the main points below:

- Even if UKI is not responsible for their panel solicitor's mistake it still had a duty to get the claim back on track and restore them to the position we should have been in. Instead, UKI used the second panel solicitors' assessment to pull funding, which left them vulnerable at a time they needed help.
- UKI finally agreed to fund a legal expert in November 2022, and then a barrister for their opinion in February 2023, and finally to reinstate the legal cover. This proves it was in UKI's power to do this all along, and that it should have done this in June 2022.
- They do not agree that the claim should have been split and say it has weakened their case against UKI.
- The ongoing impact on Mrs S's health and finances occurred as a result of UKI's decisions between June and October 2022 "*when they pulled cover on a legitimate claim*".
- They want me to re-examine the sharing of data with the second panel solicitors "*from the perspective of the purposes for sharing this information, and whether consent was sought for this*". As the referral happened in June 2022 it falls within the time frame of this complaint and not the complaint dealt with by my colleague in February 2024.
- Though it would have been reasonable for UKI to appoint a solicitor because they needed help, it was not reasonable for them to share our information for the purposes of absolving their responsibility to provide us with legal cover. The sharing of our information was not for the purposes of helping them.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

It is not just the time when events happened that impact whether I can consider them or not, rather it is when they were raised with UKI. So for the sake of certainty, the matters that I can look at, and will address in this decision, are the events which were complained about before the date of UKI's final response letter of 7 October 2022 and which have not been the subject of a final determination at this service already.

So while the referral to the second panel solicitors happened in June 2022, because it was not addressed in UKI's final response letter of 7 October 2022, it was the subject of the final determination of my colleague in February 2024. I cannot therefore consider this matter again. My colleague determined UKI did not act unreasonably in appointing the second panel solicitors to consider the claim and that Mrs S and Mr S would, in any case, likely have agreed to the appointment if they had been expressly asked. Anything raised with UKI between 7 October 2022 then and February 2023, and since then, does not form part of this complaint.

### **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.

Mrs S and Mr S's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including contractual disputes, such as they found themselves in. However, it is a condition of cover under the policy that:

*"there is a better than 50% chance that you will:*

- obtain a successful judgment, and*
- recover your losses or damages or obtain any other legal remedy we agree to, including an enforcement of judgment or making a successful defence, appeal or defence of an appeal."*

The policy also says that: *"we can refuse to pay further costs if we or the appointed representative consider that those costs would be disproportionate to the value of the claim."*

Almost all legal expenses insurance policies have similar terms and I do not regard this policy term as unfair or unreasonable. It is designed to prevent claims and legal costs involved in actions that have little merit.

It is for a policyholder to establish that they have a valid claim but in common with most other legal expenses insurers, UKI agrees to pay for a legal opinion at the outset to assess if the claim is one that should be met under the policy. It has arrangements with a panel of pre-approved solicitor firms, which is aimed to make this more cost effective.

UKI has a duty to exercise care in selecting firms for its panel but solicitor firms, whether on UKI's panel or not, are independent professionals subject to their own professional rules of conduct and practice. UKI would have no right to dictate how that firm decides to carry out its work and UKI cannot be held liable for any act or omission made by them. I also cannot consider the conduct of independent solicitors, only assess the conduct of UKI.

Given this, I do not consider that UKI is responsible for the incorrect advice on the prospects of Mrs S and Mr S's legal claim. It follows therefore that – while I acknowledge the difficulties this mistake caused – UKI is not responsible for the impact on their home and work life of having to carry out the negotiations and initiating the legal proceedings themselves, or the overall time taken to conclude the legal dispute.

UKI was informed of the wrong advice on Friday 24 June 2022, three days before the deadline the following Monday for submission of paperwork to the court. Mrs S also told UKI they did not want the panel solicitors involved given the wrong advice. In the event, I understand the deadline was pushed back to late August 2022.

Mrs S says UKI pulled cover on a legitimate claim between June and October 2022 but I do not agree this was the case.

It had not been established that Mrs S and Mr S had a valid claim under the policy before June 2022 and in June 2022 UKI was aware the first panel solicitors thought there were prospects of a successful outcome and recovery. But it was reasonable for UKI to have time to consider that new information before confirming cover.

In addition, the prospects of recovery is only one of the factors that determine whether there was a valid claim under the policy. As set out above, the policy also requires the claim to be proportionate. And the first panel solicitors letter confirming that they thought the claim did have reasonable prospects of successful recovery based on the correct respondent did not give any assessment of proportionality.

I do not therefore think it was unreasonable that UKI did not provide representation for the submission of paperwork on 27 June 2022. I also do not think it was unreasonable that UKI wanted to have the claim assessed and obtain a legal opinion on the proportionality. I know Mrs S was under pressure at the time, due to the ongoing proceedings, but I am not persuaded it was unreasonable that UKI did not confirm cover for legal representation at that stage.

UKI referred the claim to the second panel solicitors. I note my colleague concluded this referral was not unreasonable and that he thought it likely Mrs S and Mr S would have agreed to the referral, if they had been specifically asked.

Mrs S and Mr S say they want a re-examination of why they were appointed but I think this has also been addressed by my colleague, as he said *"it's clear Mr and Mrs S wanted another firm to look at their claim and UKI says ... [the second panel solicitors] were the only other firm on its panel that could assist with a dispute like this. It doesn't appear Mr and Mrs S had an alternative in mind and they haven't suggested they'd have refused permission for ... [the second panel solicitors] to look at their claim if UKI had asked."*

And, as stated above, UKI was entitled to obtain an opinion on proportionality to establish the claim was covered under the policy. The referral was made in early July 2022 and the file provided to the second panel solicitors at the end of July 2022.

The second panel solicitors provided their assessment that the claim was likely disproportionate to pursue on 17 August 2022. Mrs S and Mr S were very unhappy with that advice and the time it had taken to provide it. However, again UKI is not responsible for the advice or any delays on the part of the solicitors and UKI was entitled to rely on the advice.

After Mrs S and Mr S complained, it did however agree to the first panel solicitors reviewing the matter again to assess the value of the claim and confirm proportionality. It was referred back to the first panel solicitors in mid-September 2022. I think that was a reasonable action to take in the circumstances.

The first panel solicitors asked for some more information and on 5 October 2022 told UKI that there was a lot to consider, as the court papers would need to be amended. They also agreed the claim was disproportionate to pursue. UKI confirmed to the first panel solicitors it would pay for the expert report on 6 October 2022. There were delays in obtaining the report after that date but again I can only consider up to this point for the reasons set out earlier in his decision.

I can appreciate the frustration caused to Mrs S and Mr S by the time taken to get to this stage from late June 2022, especially as there were ongoing proceedings, which would have undoubtedly been hugely stressful. I consider that UKI could at times during this period pushed matters along quicker than it did but I do not think this entire time period is due to anything UKI did wrong. Both sets of solicitors took time to consider the matter and provide their advice which is outside UKI's direct control, although I can see UKI did try and chase up both solicitors and was in contact with Mrs S throughout.

Having considered everything, I do not think the time between June 2022 when UKI found out the panel advice was incorrect and 7 October 2022 was entirely due to anything UKI did wrong. But there were some periods when it could have progressed it quicker than it did. I think the compensation UKI has already paid Mrs S and Mr S is reasonable to reflect the delays on its part.

**My final decision**

I do not uphold this complaint against U K Insurance Limited.

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 2 August 2024.

Harriet McCarthy  
**Ombudsman**