

## The complaint

Mr R is unhappy with how U K Insurance Limited (“UKI”) dealt with a legal expenses insurance claim that he made.

UKI uses a claims handler to deal with any claims made against the policy. Any reference I make to UKI is intended to include the actions of this agent.

## What happened

What follows is a summary of what I consider to be the main events that led to this complaint. It doesn’t therefore include all of the detail or list everything that happened.

Mr R is a landlord. He approached UKI for assistance with gaining possession of his property from the tenants.

UKI passed the matter over to a firm of solicitors on its panel who initially concluded the action had prospects of success. It is a requirement of the policy that the cause of action have a 51% or more, likelihood of being successful. UKI agreed to fund the legal costs of the action and as such, the solicitors proceeded to issue a Section 21 notice to the tenants via the court process.

The solicitors reported back to UKI that a defence had been received to the action. It cited significant disrepair to the property and that a Section 8 action (for pursuing rent arrears recovery and possession of the property) had already been issued by Mr R against the tenants.

The solicitors said to UKI that it wasn’t aware of this information previously only, that there were arrears which Mr R had said he did not wish it to take action about, that there was a separate action regarding alleged personal injury and that Mr R had confirmed there were no disrepairs to the property. The solicitors explained to UKI that had they been aware of the full facts from the start they would have refused to take matters forward as in their opinion, it wouldn’t have had prospects of success. It also explained it was of the opinion that issuing a Section 21 notice at the same time as a Section 8 could be considered as a retaliatory eviction and an abuse of process. The solicitor firm applied to be removed from the court record as representing Mr R and it asked for proceedings to be delayed so that Mr R could consider his position or obtain new representation.

Due to what the solicitors advised, UKI withdrew funding for the legal action. It explained to Mr R that as the rent arrears started before the policy began, and this was what was, in part, leading to the desire to take possession of the property, action stemming from this wouldn’t be covered by the policy. It also pointed to Mr R breaching the terms of the policy which required him to provide all relevant information and that it was entitled to withdraw funding as the action was no longer considered to have prospects of success.

Mr R was unhappy with funding being withdrawn, he disagreed with the position the solicitors had taken. His point was that the Section 8 and Section 21 processes are separate and therefore he didn’t agree that the rent arrears or alleged disrepairs were relevant to the

action he was asking for assistance with. He complained to UKI but it didn't change its position.

Our investigator considered Mr R's complaint, but she explained to him that she didn't think UKI did anything wrong. Based on the terms of the policy it was entitled to withdraw funding. And therefore, she thought it had acted fair and reasonably.

Mr R disagreed and asked for an ombudsman to consider the complaint. In doing so he reiterated his points and explained that the Section 21 process was later successful. And when granting it, the judge confirmed the two processes were separate and independent of each other. As such he thinks this further supports why the solicitors were wrong to withdraw from the legal action and UKI was incorrect to withdraw funding. He asks that his legal costs be paid for the action he had to fund privately and for compensation to be awarded.

The case has been passed to me to decide.

### **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 terms from the policy that I need to consider here are the ones which concern the provision of information and co-operation with the relevant parties and, the requirement for any legal action to have prospects of success (51% or more) at all times. I'm satisfied having reviewed the policy that these terms and conditions exist and should they be breached, UKI would be entitled to decline cover/withdraw funding for any legal action.

I understand Mr R says he informed UKI of all of the relevant information at the start of the claim and why he feels so strongly that there are no disrepairs. He's explained that, in his view, the tenants have been wilfully damaging the property and he has been repairing it as needed. Therefore, I can understand why he believes he correctly answered the solicitor's enquiry in this respect. And why he believes he was correct to say that he didn't want the solicitors to pursue the rent arrears – as they were already being pursued elsewhere.

As I see it, there are two possibilities here, either Mr R did provide all of the relevant information to UKI, and it wasn't passed onto the solicitors. Or, that he omitted some of the details as he believed the solicitors should only focus on the Section 21 notice and the precise details of the extent of the rent arrears, the action he was taking in regard to this, and the allegations of disrepair were irrelevant to this action.

Having reviewed the file, I find it's more likely than not Mr R omitted to provide the information. I say this because he has held a very strong position all of the way through his insurance claim and following complaint that the legal processes are separate and his position on disrepairs. As such I don't think he provided the full detail to either UKI or the solicitors at the start, as it isn't how he saw the position to be. UKI would have no reason not to pass on information to the solicitors and the solicitors were very clear in their update to UKI that had it been aware of the full facts from the start it would have declined to act, and it would have viewed prospects of success as being less than 51%. Which suggests it wasn't provided with this information initially or it would have proceeded with the case.

Based on the full facts being assessed it is clear that the solicitors thought the prospects of success for the legal action, as required by the policy, had not been met. Therefore, whether the cover was declined at the start or withdrawn later on, doesn't change the overall position. UKI either wouldn't have provided funding or it would have been withdrawn later on, so Mr R still would have been without cover. As such, given what did happen, I don't think it was

unreasonable for UKI to have withdrawn cover when it did.

I understand that Mr R continued with the Section 21 action, and this was successful. He has said the judge, in his commentary, repeatedly confirmed the two processes were separate and confirmed to the third party that their arguments with regard to rent arrears and disrepairs weren't relevant to the Section 21 claim. Mr R has said this supports that the solicitor was wrong in their advice and UKI shouldn't have withdrawn funding, as the action was always likely to have been successful.

Legal action being deemed to fall below an insurance policy's requirement for funding doesn't automatically mean that the action itself will definitely go on to be unsuccessful in court. It is simply that an insurance company doesn't want to fund an action that is considered unlikely to be successful. We don't find that to be an unreasonable position. A solicitor's opinion is also exactly that, an opinion. And solicitors themselves do sometimes have opposing views on the same situation.

Mr R has focussed on the phrase 'abuse of process' and disagreed the solicitor should have concluded this, especially given the judge later went on to confirm the Section 8 and Section 21 processes were separate. I have taken Mr R's comments here on face value as I have not seen separate evidence of any such commentary. I'm mindful however that this wasn't the only reason given by the solicitors for the subsequent negative assessment.

What I need to decide here is whether, at the time the solicitor gave their opinion to UKI, it was reasonable for UKI to rely on it when making its decision to withdraw funding. UKI's claim handlers aren't legal experts, so when making decisions about a claim I think it is fair that they rely on suitably qualified legal advice, unless that advice is obviously wrong. Here the solicitor gave their assessment on the possible risks of continuing with the action and why they believed prospects of success had dropped below the policy requirement.

I haven't seen anything from the time which suggests the solicitor was incorrect in their advice to UKI about the possible risks of continuing with the action, or more importantly, that UKI would have been able to identify this itself or that it should have thought the advice to have been obviously wrong. Having considered everything, I think it was reasonable for UKI to have relied on the solicitor's opinion at that time when reaching its insurance policy decision to withdraw funding.

I'm conscious this decision was taken close to the original hearing date of the action, and this would have caused distress to Mr R. However, I understand that when applying to come of record the solicitor also asked for the hearing to be delayed allowing time for Mr R to consider how he wished to move forward. I think this was reasonable and there would have been nothing extra I would have expected UKI to do here.

I can see reference has been made within the file to legal action arising from the rent arrears not being covered by the policy as they started accruing before the policy began. And there are arguments as to whether this was relevant to the Section 21 claim. However, I don't need to consider this here as I'm satisfied for the reasons explained above, UKI was otherwise entitled to withdraw funding for the Section 21 claim.

Separately, UKI also declined to provide cover for legal costs associated with defending a personal injury claim brought against Mr R by the tenants. Based on the policy terms, I can see this wouldn't have been considered an insured event, so I find that UKI made a reasonable decision here.

Overall, having considered the policy terms and all of the information available to me I'm satisfied that UKI acted fairly and reasonably, and in line with the terms and conditions of the

policy it was entitled to withdraw funding and cover for Mr R's Section 21 legal claim. It was also fair for it to decline to provide cover to defend the personal injury claim.

### **My final decision**

My final decision is that I do not uphold Mr R's complaint against U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 September 2024.

Alison Gore  
**Ombudsman**