

The complaint

Mrs M complains about what UIA (Insurance) Limited did following claims she made on her legal expenses insurance policy.

What happened

Mrs M has home insurance with UIA which includes legal expense cover. In late 2019 she contacted UIA as there were ongoing issues at her property following works carried out by her neighbour (and on which awards under the Party Wall Act had been made by surveyors instructed by the parties). A complaint about how UIA dealt with the claim made on Mrs M's buildings insurance policy has been separately considered by our service.

I understand UIA agreed Mrs M's legal expenses policy could cover a professional negligence claim against surveyors involved with the case and a trespass claim against her neighbour. However, after providing further information including expert reports panel solicitors advised in February 2021 the trespass claim didn't have reasonable prospects of success. And a professional negligence claim could only be pursued once Mrs M's losses had crystallised.

Subsequently (and following a meeting with UIA about the buildings insurance claim) it agreed to consider a nuisance claim against her neighbour. The panel firm advised in June 2021 that did have reasonable prospects of success but an expert report was required. That was produced in October 2021. Following that an opinion was sought from counsel on the prospects of success of the nuisance claim. He advised in May 2022 the claim didn't have better than 50% prospects of success (largely because he thought a court would be likely to dismiss the claim on the basis any issues arising from Party Wall works should be pursued in line with that Act).

Mrs M didn't agree with that but I understand did continue with action under the Party Wall Act. However, although further work was carried out the problems at her property weren't resolved. In February 2023 the panel firm contacted her and queried progress; it said although the nuisance claim wasn't progressing following counsel's advice the professional negligence claim remained open. Mrs M said UIA had arranged for a loss adjuster to visit her property and a structural engineer was being commissioned. She asked the panel firm to contact UIA for an update which they did. In August 2023 they said no information had been received and raised concerns about the limitation date for any professional negligence claim.

Mrs M confirmed the structural engineer's report was still awaited. Following further correspondence the panel firm said in their view limitation would likely expire in December 2023 (though accepted an argument could be made for a later date). And they said the prospects of success of a professional negligence claim didn't exceed 50% "*for the reasons previously discussed*".

Unhappy with lack of progress with her legal expenses claims Mrs M complained to UIA in March 2024. In response it said it was entitled to rely on the assessments carried out by the panel firm and if Mrs M wanted the matter to be considered further she would need to

provide a positive counsel's assessment of her own. It didn't consider there had been delay in it progressing matters.

Our investigator thought UIA was entitled to rely on the prospects assessments (from counsel) for the nuisance claim and from the panel firm for the professional negligence claim. And while Mrs M had subsequently contacted her own solicitor they hadn't said the nuisance claim had prospects of success (though had disagreed with the analysis of the barrister). In any case that advice had been obtained after UIA issued its final response to her complaint.

He accepted some of the identified issues in progressing the buildings insurance claim (delay and a lack of communication between UIA and its claim handlers) would also have impacted the legal expenses claim. However, he didn't think there was an impact on Mrs M which warranted a further remedy beyond the £1,000 that had been already been agreed in settlement of that complaint. And he said if Mrs M had concerns about how the panel firm handled her claim (including whether it had given her clear information about the limitation date for the professional negligence claim) that was something she'd need to pursue as a complaint against that firm.

Mrs M didn't agree. She provided a very detailed response (which I've considered) but in summary said:

- UIA had wrongly directed her to pursue legal claims rather than addressing the matter under her building insurance policy. This had meant that repair work had been delayed and had exacerbated the damage to her property. And UIA and the panel firm had initially pursued an incorrect legal claim, failed to act on evidence and missed crucial timeframes in relation to the professional negligence claim.
- There had been poor communication and co-ordination between UIA, its claim handlers and the panel firm. And UIA had failed to provide the solicitors with relevant information which had prevented timely progress on the claims being made.
- As a result of the delay by UIA the cost of repair work at her property had increased and the drawn out process had caused her significant stress, disrupted her life, and negatively impacted her health. UIA had a duty to handle the claims professionally and ensure that the appointed panel firm was competent. She didn't think it had done so here and the repairs at her property remained incomplete with ongoing nuisance and further damage being caused.
- UIA should reimburse the additional repair costs caused by their delay, cover the expert advice she'd obtained and provide compensation for distress and inconvenience as well as expediting the necessary repairs and legal action required to resolve the matter.

So I need to reach a final decision.

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 rules and industry guidelines say UIA has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I appreciate the issues at Mrs M's property have been ongoing for many years and I recognise what a challenging experience this has been for her. In addition I know during this period her husband was diagnosed with a terminal illness and very sadly passed away in October 2019. I was extremely sorry to learn about how difficult things have been for her.

However, the question I need to consider is what UIA did when dealing with the legal expenses claims she made. Mrs M has gone into considerable detail about what she believes UIA got wrong and I've reviewed her detailed submissions. But I don't think it's practical or in line with the informal nature of our service to address every point raised. Instead, I've sought to focus on what seem to me to be the key issues.

Mrs M says UIA are responsible for what the panel firm did and her comments include concerns about them. But their actions aren't something I can consider. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. "*Carrying out a contract of insurance*" is a regulated activity. That's why I can consider what UIA did here. However, the actions of the solicitors acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules. So that isn't something we can look at. It's possible the Legal Ombudsman might be able to consider the concerns Mrs M has about the actions of the solicitors (including initially pursuing the wrong claim and not properly advising her about limitation deadlines).

Turning to her claim against UIA her policy does cover "*a dispute relating to visible property which you or your family own following...a public or private nuisance or trespass provided that where any boundary is in dispute, you have proof of where the boundary lies*". The policy separately covers disputes about agreements entered into for "*buying or hiring consumer goods or services*" So the claims Mrs M has against her neighbour and the surveyors are potentially ones that her policy could cover.

But it's a condition of cover being provided that a claim always has reasonable prospects of success. The policy says that means "*you or your family at all times throughout the progress of the claim, have a greater than 50% chance of successfully pursuing or defending a claim against another party*".

As an insurer isn't a legal expert we don't think it's in a position to carry out the prospects assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So I think it was right UIA referred the claims Mrs M made to one of its panel firms for an assessment of their prospects of success.

I understand the panel firm didn't consider the professional negligence claim would have prospects of success (and later had concerns about whether limitation for that claim had expired). And while its initial view was the nuisance claim did have prospects the counsel who subsequently considered the matter (after an expert report had been obtained) concluded it didn't.

Counsel set out his view in an extremely detailed opinion that references relevant law and gives a clear explanation for his outcome. I think that opinion is properly written and reasoned and I don't think there was any reason UIA shouldn't have relied on it. Similarly, I've seen correspondence between Mrs M and the panel solicitor in which that solicitor set out her position on the prospects of success of potential negligence claims. In particular she explained why she didn't feel those claims could progress until clear evidence of loss as a

result of the actions of the surveyors had been established. She also set out concerns about limitation. Again I think those were opinions that UIA was entitled to rely on.

I appreciate Mrs M doesn't agree with the advice from counsel. And she says her solicitors don't agree with the position the panel firm set out on limitation for the professional negligence claim. But it doesn't appear she'd provided a contrary legal opinion to UIA at the point it issued its outcome to the complaint she made (and while she did subsequently provide comments from her solicitor they don't specifically address the question of whether the nuisance claim has reasonable prospects of success). If Mrs M is able to provide a legal opinion in support of her position on either claim I'd expect UIA to review matters. But in the absence of that I don't think it was unfair of it to conclude the policy requirements in relation to prospects of success hadn't been met and turn down both claims on that basis.

However, I do agree with Mrs M that there were issues with UIA's handling of these claims. I think there was a lack of coordination between UIA and its claims handlers as to who was responsible for addressing issues raised by Mrs M. I think she could reasonably have expected to receive a more joined up response from the insurer who was providing policy cover. And there does also appear to have been delay by UIA in moving matters forward. To take one example it doesn't appear to have provided a response to an information request from the panel firm in March 2023 (or a further request in September 2023).

Mrs M says as a result the repair work at her property has been delayed. But I don't think that's right. While I do think there have been issues with UIA's handling of her claims it has fairly concluded cover for them isn't available under her policy. I've not seen clear evidence to show the position on that would have been any different without delay by UIA.

I do appreciate what a difficult time this has been for Mrs M. I recognise the stress she's been caused and I'm really sorry to learn about the impact on her health. But it does seem to me that many of the issues Mrs M has identified as contributing to this primarily relate to the handling of her separate building insurance claim (for example not initially considering her claim under that policy) and the impact of what went wrong there.

That's something we've already considered as part of her separate complaint to our service and have awarded compensation for. I've carefully considered the points Mrs M has raised but I'm not persuaded there's a separable impact from failings in the handling of her legal expenses which would warrant an additional payment for distress and inconvenience.

I know the issues at Mrs M's property remain unresolved and in her submissions she's highlighted matters which took place following her complaint to UIA. However, that's not something I'm able to consider in this decision; if Mrs M feels further problems have arisen in relation to either her buildings or legal expenses insurance claims that's something she can raise as a fresh complaint to UIA (which we could then consider separately if she remained dissatisfied following any response it provided).

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 1 April 2025.

James Park
Ombudsman