

The complaint

Mr R's complaint is about a claim he made on his U K Insurance Limited, trading as Direct Line (UKI) legal expenses insurance policy, which UKI declined.

Mr R says UKI treated him unfairly.

What happened

Mr R made a claim on his UKI legal expenses insurance policy for cover to pursue a claim in relation to some boots he purchased which he says were faulty.

UKI instructed their panel firm to consider the claim. They concluded the claim didn't have reasonable prospects of success as required by his policy because the other party had made a reasonable offer to settle the claim. Mr R was unhappy with the outcome of the assessment, so the panel firm assessed his claim again by referring to another appropriate lawyer for advice. The advice regarding the prospects of his claim succeeding remained the same. Because of this UKI said they weren't prepared to fund any further legal costs.

Mr R is unhappy with the position UKI have taken. In particular he says:

- UKI failed to give him freedom to choose his own Solicitor when he was entitled to this;
- the panel firm had a conflict of interest so shouldn't have been acting for him;
- the advice given to him by the panel firm isn't correct. This is a complex area of law and one that requires specialist advice.

Our investigator considered Mr R's complaint and concluded that it shouldn't be upheld. Mr R doesn't agree so the matter 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.

Having done so, I won't be upholding Mr R's complaint. I'll explain why.

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. Mr R's policy is no exception. That means his claim needed to be more likely than not to succeed in order for UKI to cover it.

We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. 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, we look at whether the insurer has acted fairly. So long as it has got advice from suitably qualified lawyers, we won't generally question its reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. UKI did this. They obtained the advice of the panel firm who determined that Mr R's complaint didn't have reasonable prospects of being successful. And when Mr R complained about that advice, the panel firm arranged for his claim to be reviewed again by another lawyer there. That's not to say that the case was unwinnable, just that it was more likely than not to fail. I appreciate that Mr R doesn't agree with that advice, but I've seen nothing that persuasively sets out why the opinions obtained were wrong nor that Mr R's merits in defending the claim were higher than previously advised.

Although Mr R doesn't agree with the opinions provided, I'm satisfied that the lawyers that advised him were suitably experienced in the area of law he was asking for help with and there's nothing to suggest that those opinions were obviously wrong or based on factual mistakes. I realise Mr R feels his claim falls into a complex area of law, such that the panel firm weren't able to deal with it, but I don't agree. The panel firm had suitable experience in the matter that he was asking them to consider, and I'm not persuaded that the matter was complex in nature. Rather it appears to be a straightforward consumer contract claim that most Solicitors firms are able to deal with. Because of this I think UKI were entitled to place reliance on the opinions they were given when declining cover.

Mr R has said that he was entitled to the freedom to choose its own Solicitor. It's correct that he was entitled to the freedom to choose its own Solicitor when legal proceedings became necessary. That means that at the point at which legal proceedings were afoot and negotiations failed. But that term is subject to Mr R's claim having reasonable prospects of succeeding. In this case Mr R didn't demonstrate that at all by way of an alternative legal opinion of any kind. Because of this and the fact that Mr R's claim wasn't at a stage where proceedings became necessary and negotiations failed, I can't say UKI need to do anything further.

Finally, Mr R has referred to there being a conflict of interest between UKI and the panel firm. Whilst UKI have a commercial relationship with the panel firm, I haven't seen anything to suggest this amounts to a conflict of interest. I say so because the panel firm is a separate independent firm of professionals with their own code of conduct and regulator. They may well take on insurance funded work for UKI, but that in itself doesn't amount to a conflict of interest. I can see that Mr R has said he's complained to the Legal Ombudsman separately about the panel firm's conduct. That's not something I can comment on save to say the actions of the panel firm fall outside of anything I can decide.

My final decision

For the reasons set out above, I don't uphold Mr R's complaint against U K Insurance Limited, trading as Direct Line.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 August 2023.

Lale Hussein-Venn
Ombudsman