

## **The complaint**

Mr R's complaint is about a claim he made on his U K Insurance Limited ('UKI') legal expenses insurance policy for cover to bring a claim against a Court in which he'd brought a claim against another.

Mr R says UKI treated him unfairly.

## **What happened**

Mr R made a claim on his UKI legal expenses insurance policy for cover to bring a claim against a Court in which he'd brought a claim against another.

UKI instructed their panel firm to consider whether the claim fell within cover. The panel firm said that Mr R didn't have a contract with the Court so his claim wouldn't fall within the policy terms as the only term that might have engaged was the contract section of the policy, but this didn't apply.

Mr R says he went on to settle his claim against the Court by instructing his own Solicitor. He says the panel firm's advice was flawed and that UKI shouldn't have instructed them to consider his claim because there was a conflict of interest in them advising in a claim he was involved in. In addition, Mr R also says UKI should have given him the freedom to choose his own Solicitor to advise them on his claim.

Our investigator considered Mr R's complaint and didn't uphold it. He said that the claim Mr R advanced through his own Solicitor wasn't a claim in contract, but rather a claim for breach of the Equality Act 2010, which wasn't covered by the policy. As such he said that UKI were entitled to decline the claim in the way that they did. He also said UKI were entitled to instruct their panel firm to advise them in relation to the claim- their instruction wasn't to act for Mr R, rather it was to provide them with advice. And it was up to the panel firm to declare whether they thought they could advise Mr R impartially. The investigator also said that Mr R didn't have the freedom to choose his own Solicitor because there was no cover available under the policy at all. As such the legislation he's quoted doesn't apply.

Mr R 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 R's complaint. This is why.

The starting point are the policy terms. They say:

**“✓ Contract disputes We will pay costs for breach of contract claims for: • buying or hiring goods or services • selling goods • buying or selling your home”**

The other sections of cover are in relation to personal injury, clinical negligence, employment claims, property protection and motoring offenses so they don't apply to the claim Mr R wanted to make. The question for UKI was therefore whether Mr R had a contract claim against the Court he wanted to litigate against for buying or hiring goods or services.

UKI referred the claim to their panel firm for advice on the issue. The panel firm advised that Mr R didn't have a contract with the Court just because he'd paid an issue fee, as this was requirement of litigating at that Court. I don't think the position UKI took was unreasonable. They were entitled to seek advice on the question of whether the claim amounted to a contract dispute, and I agree with the advice given. Whilst I appreciate why UKI took advice, I am able to determine the issue of policy coverage without the benefit of it. I'm satisfied that based on the claim Mr R made against the Court himself, the claim wasn't founded in contract but rather in breach of Equality Act 2010 legislation. So UKI were right to turn down cover.

Mr R is unhappy that UKI involved the panel firm because he considered them to have a conflict of interest. In particular, he references the fact that the panel firm gave advice in the underlying claim that was litigated at the Court Mr R was claiming against and says they were proved wrong. He also says he's made a complaint against the panel firm to the Legal Ombudsman and is looking to make a claim against them in professional negligence. I understand the panel firm has refused to act for Mr R in other claims he's made because they consider the relationship between them has broken down. Whilst all of this might be true, it doesn't in my view mean that UKI weren't entitled to ask the panel firm for advice on whether the claim could be advanced in contract law. The panel firm weren't being asked to act for Mr R and given their history, I imagine they would have declined to do so anyway. The panel firm are an independent firm of professionals with their own codes of conduct and regulator. If they felt they were unable to provide UKI with impartial advice, I think it's unlikely they would have done so. And given the advice makes no difference in this case to my view of Mr R's complaint, I don't think it's prejudiced him in any way. Mr R wasn't entitled to cover with or without that advice. The letter of claim from his own Solicitors sent to the Court is evidence of this.

Mr R feels he should have been given freedom to choose his own Solicitor in respect of his claim. But the legislation relevant to that only applies when there's a claim that's capable of cover. There was no claim capable of cover here because Mr R didn't have a contract for buying or hiring goods or services with the Court, so I'm not persuaded that freedom of choice arises at all. And whilst I know that Mr R feels strongly that the legislation relating to this issue supports him, I don't intend to explore it further because there's simply no cover in place to allow the issue to become one that UKI needed to consider.

**My final decision**

For the reasons set out above, I don't 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 12 December 2023.

Lale Hussein-Venn  
**Ombudsman**