

The complaint

Mrs C complains that when she tried to claim on her legal expenses insurance policy UK Insurance Limited ("UKI") trading as Churchill Insurance told her the claim would be covered but later refused to pay her legal costs, leaving her with a large debt to pay. She also says UKI arranged for police to call at her home.

What happened

Mrs C made a claim on her policy for legal costs relating to a claim in the employment tribunal. UKI accepted her claim in March 2021 and referred it to panel solicitors to assess.

The panel solicitors contacted Mrs C saying they didn't have time to assess the case and were passing it to a barrister. As they wouldn't be able to issue the claim form at the tribunal by the deadline they advised her to issue it herself and provided a link to information about how to do that. The solicitors also said if counsel advised that her claim had reasonable prospects of success, they would then apply to amend her claim form if necessary.

Mrs C called UKI on 18 March 2021. She said it was very upsetting to be left in a position where she only had a few days to lodge the tribunal claim and wasn't confident about doing this herself. She asked if she found another solicitor to deal with it, whether UKI would pay their costs.

UKI advised Mrs C it would need to agree terms of appointment before costs would be covered and she would have to let the panel firm know she would not be using them, as she couldn't have two firms of solicitors acting for her at the same time.

Mrs C gave UKI details of her solicitors a few days later and it sent terms of appointment to them that day. In the meantime the panel firm continued dealing with the claim and in April 2021 counsel advised that the claim did not have reasonable prospects of success.

In January 2022 Mrs C's solicitors sent their bill of costs and requested payment. UKI passed this to a costs draftsman to consider and started negotiating with her solicitors but then realised they had never returned to terms of appointment, so it shouldn't have discussed paying their costs.

Mrs C complained that she had been led to believe her costs would be covered. UKI looked into it further and found she had instructed her own solicitors on 8 March 2021 – before the phone call on 18 March. UKI said it would pay costs she had incurred on 18 and 19 March 2021 if they related to issuing the claim form at the tribunal.

When the bill was checked, UKI said none of the costs from that time related to issuing proceedings so they wouldn't be covered. UKI said it would pay the interest on costs from 18 March to 9 September, when it realised the error.

UKI says it agreed to pay interest because it referred the bill to a costs draftsman and shouldn't have done this – it should have told Mrs C it couldn't pay those costs, and so she delayed dealing with the costs while waiting for its response. UKI also paid £200 compensation for distress and inconvenience caused by the delay.

Mrs C wasn't happy and referred her complaint to this service. Our investigator thought it was reasonable for UKI not to pay her solicitors' fees. He agreed there had been some delay while UKI assessed her costs but paying the interest together with the £200 it had paid in compensation was fair.

Mrs C had also complained about UKI arranging for police to call at her home. The investigator said in light of comments Mrs C had made and UKI's concern for her safety it was reasonable to do that.

After Mrs C provided further comments the investigator reviewed things and recommended that UKI increase the compensation with a further payment of £300. This was to acknowledge the additional distress caused to Mrs C by leading her to believe at one point that it would pay some of her legal fees only to then say it wouldn't.

UKI accepted this recommendation and is willing to pay the additional compensation but Mrs C doesn't agree and has requested an ombudsman's 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.

An insurer must deal with a claim promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. I've taken this into account when considering how UKI dealt with the claim.

The policy provides cover for employment disputes. But the terms say:

- Cover is only provided if the claim has reasonable prospects of success – meaning that the policyholder is more likely than not to win their case.
- There's no cover for costs relating to the period before UKI has accepted the claim.
- If the policyholder chooses their own solicitors, they must agree to act in line with UKI's terms of appointment and their costs are only covered from the date they agree to the terms of appointment.
- The appointed representative will enter into a separate contract of appointment directly with the policyholder, who is responsible for any of their costs that aren't authorised by UKI.

These terms are reasonable. UKI is entitled to assess the claim and only provide cover once satisfied it's likely to be successful, and once terms have been agreed with the solicitors.

UKI referred the claim to panel solicitors to assess prospects of success. The solicitors passed it to counsel to advise. And counsel's advice was that Mrs C wasn't likely to be successful. An insurer is entitled to rely on legal advice provided it's from someone suitably qualified and experienced and it isn't obviously wrong. In this case, there was a detailed opinion from a barrister and it was reasonable for UKI to rely on it. So it was reasonable for UKI to say it wouldn't cover the claim.

Mrs C is unhappy about the delay in getting that legal advice. She says she was left in a position where she had no choice but to get her own solicitors to help with issuing the claim before the deadline.

I've listened to the call on 18 March 2021. UKI clearly explained to Mrs C the following:

- She could file the claim at the tribunal herself and ask the panel solicitors to amend it

if and when they confirmed prospects of success, or ask her own solicitors to assess the claim – but it would be likely they would also ask Mrs C to file the tribunal claim herself as they would need time to assess the claim.

- Any solicitor taking on the case would need to assess the prospects of success, and they would need to agree to UKI's terms of appointment before it would agree to pay for their legal fees.
- Whatever action she decided to take, she should let UKI know about it.

I understand Mrs C had already instructed her own solicitors before she made this call and she chose to continue using them to help her with her case. But she didn't tell UKI she had chosen to use them and although UKI sent the terms of appointment, the solicitors didn't agree to the terms as required by the policy terms.

In these circumstances, where the policy terms hadn't been met, no terms of appointment were signed, and the solicitors incurred costs that UKI wasn't aware of and had no control over, it was reasonable for UKI not to pay their fees.

Having said that, there were some issues with the way UKI handled the claim. UKI has acknowledged it caused some delays when assessing whether it should be paying Mrs C's solicitor's bill. Mrs C was in a very stressful situation dealing with her employment case and this delay, together with the confusion over whether UKI would pay for some parts of the legal fees, added to her distress.

At one point UKI led Mrs C to believe it would be paying some of her costs only to later decide not to. This caused further concern for her at a time when she was being chased by her solicitors. UKI agreed to pay interest relating to the legal costs and paid compensation of £200. Taking this into account, I think a further payment of £300 is fair.

Mrs C was unhappy about how long the panel solicitors took to assess her claim, the fact they referred it to a barrister, and that they couldn't deal with it before the deadline to issue at the tribunal. She's also unhappy about her solicitors chasing her to pay their bill. While I appreciate how difficult this was for her, I don't think these issues were caused by UKI.

Finally, Mrs C complained that UKI contacted the police who turned up at her house. She had made comments in a phone call that raised concerns about her welfare, and the call handler had then tried to get back to her without success. She was concerned about Mrs C's welfare. In those circumstances I think UKI's actions were reasonable.

I appreciate this whole situation has been very difficult for Mrs C. But for the reasons I've explained I think it was reasonable for UKI not to cover her legal costs, taking into account the relevant policy terms. And while its actions added to her distress, the compensation to be paid, in addition to what's already been paid, is fair.

My final decision

I uphold the complaint and direct UK Insurance Limited trading as Churchill Insurance to pay compensation of £300 in respect of the distress and inconvenience caused to Mrs C.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 28 July 2023.

Peter Whiteley
Ombudsman