

The complaint

Mr and Mrs D's complaint is about a claim they made on their UIA (Insurance) Limited ('UIA') legal expenses insurance policy.

Mr and Mrs D feel that UIA have treated them unfairly.

In this decision all references to UIA include their claims handlers.

What happened

Mr and Mrs D made a claim on their UIA legal expenses insurance policy for cover to pursue a claim against their neighbour in relation to a trespass to their property.

UIA accepted their claim in the first instance and passed it to one of their panel firms of Solicitors to consider. The Solicitors said that if a boundary line were to be established in favour of Mr and Mrs D, it would enjoy high prospects of success but that would be subject to expert evidence. UIA agreed to fund the claim on this basis.

The panel firm then started corresponding with Mr and Mrs D's neighbours with a view to trying to bring the dispute to an end. Sometime later they provided a report to UIA to say they remained of the view that there were no reasonable prospects of success without the benefit of expert evidence to support Mr and Mrs D's position that their neighbours had trespassed and that Mr and Mrs D would need to be responsible for the cost of any expert's report that might help establish this.

Given the position, UIA told Mr and Mrs D they wouldn't be able to continue funding their claim, but they would cover their costs to date. They also said that if Mr and Mrs D disagreed with the advice given by the panel firm, they would need to obtain a Barrister's opinion that supports them, which UIA would then reimburse.

Unhappy with the position they found themselves in, Mr and Mrs D complained to the Financial Ombudsman Service. Our investigator considered their complaint and concluded that their complaint should be upheld. Mr and Mrs D don'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 and Mrs D's complaint. I'll explain why below. Before doing so, I want to make clear that although I haven't referred to all the submissions Mr and Mrs D have made, I have considered them all when reaching my findings. That's not intended to be disrespectful, it simply represents the informal nature of the Financial Ombudsman Service.

The issues for me to determine are whether UIA acted reasonably, when withdrawing cover for Mr and Mrs D's claim, whether they should have provided cover at all and if doing so for

a limited period prejudiced Mr and Mrs D's position.

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 and Mrs D's policy is no exception. That means their claims needed to have over 51% prospects of succeeding in order for UIA to cover them.

We don't think this is unfair. Litigation 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, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. UIA did this.

The advice from the outset to UIA was that if a boundary line were to be established in favour of Mr and Mrs D, it would enjoy high prospects of success but that would be subject to expert evidence. So, the prospects of success of this claim were never known to UIA. Despite this they agreed to fund Mr and Mrs D's initial costs in trying to help them establish this position and/or resolve their dispute with their neighbour. UIA did this by asking the panel firm to get quotes from a boundary expert to help determine the position of the boundary and they offered to pay half of these costs in the hope that a single joint expert could be agreed between the parties.

From the correspondence I've seen, the time it took to progress the position was down to Mr and Mrs D's neighbour's Solicitors co-operating with the panel firm and the expert they identified no longer accepting instructions to act. By the time the third fee earner at the panel firm took over conduct of Mr and Mrs D's file, the panel firm said they'd investigated the appointment of other boundary experts. At that point however the panel firm said that the claim was one that should really have been declined at the time it was brought because it wasn't possible to establish that it had reasonable prospects of success. They said it was only because UIA asked about the cost of boundary experts to help determine the position of the boundary that cover continued. The panel firm said that UIA made a mistake when doing this and so should have declined cover. As a result, the panel firm said that UIA were now preparing to withdraw cover.

Having considered the position, I agree that this was a claim that should not have been covered by UIA to start with. The panel firm did confirm that the merits of the complaint were based on the boundary line being established in favour of Mr and Mrs D and there was no evidence at the time that supported this. That said, I don't think it was wrong for UIA to take the position it did- which was to investigate whether a report could be obtained to support the position and afford cover to help them resolve things. They did so even though they weren't obliged to. I appreciate UIA didn't tell Mr and Mrs D that this might mean cover could be withdrawn at a later date, but I don't think they needed to specifically do this. The policy terms meant that cover could be withdrawn at any given point if the merits of the claim changed. That's not something I'd expect insurers to routinely make clear to policyholders and an ongoing requirement of cover. And in this case Mr and Mrs D were given the benefit of cover for some time both to help establish the merits of their claim and resolve the dispute with their neighbour. The fact that this didn't come to fruition doesn't mean UIA did something wrong. UIA withdrew cover at the point that they received advice from the panel firm that even if a boundary expert did determine the boundary was where Mr and Mrs D said it was, it would mean there was a small trespass to their land and if cross examined an expert would need to say they weren't 100% sure this was accurate. The panel firm also said

that even on the basis of a supportive report, they didn't think a Court would likely make Mr and Mrs D's neighbour demolish their wall and rebuild it. Overall, the panel firm thought that the cost risk in proceeding was too great, so thought Mr and Mrs D shouldn't continue to pursue the matter.

I've thought about whether providing cover then withdrawing it, left Mr and Mrs D in a worse position than if UIA hadn't provided funding at all. And I'm not satisfied that it did. Mr and Mrs D were already in a dispute with their neighbour before UIA instructed the panel firm. I've seen correspondence from the neighbour's Solicitor to Mr and Mrs D. So, there was already a live dispute in progress that Mr and Mrs D would likely have had to declare anyway if they sold their property. So, the fact that the panel firm entered into further correspondence with the neighbour's Solicitors, makes no difference to my mind. I appreciate Mr and Mrs D say they might have made different decisions about what to do about their property, but they say so with the benefit of hindsight. I haven't seen anything that confirms they might have done something differently if UIA declined their claim from the outset. And given matters didn't proceed that way, I haven't seen anything that supports it's more likely than not Mr and Mrs D were prejudiced.

I take on board Mr and Mrs D's comments that there was no material change in their position or the law either when UIA started funding the claim or when they withdrew funding. But for the reasons I've set out above, I don't think UIA did anything wrong either by providing cover or withdrawing it. And when withdrawing they did so on the basis of the advice provided by the panel firm. For clarity I'm satisfied that the Solicitor who provided that advice was experienced in the area of law Mr and Mrs D were asking for help with and I've seen nothing that suggests her advice was based on factual mistakes. I appreciate Mr and Mrs D might not agree with the advice they've received but that's not something I can consider. If, as UIA said, they were to provide an alternative reasoned opinion from a Barrister, then I would expect UIA to consider that. Equally, if they provided UIA with any new evidence or information that has now come to light that might change the outcome of their assessment, I would expect UIA to refer that back to their panel firm. But as matters stand, I can't say UIA did something wrong by relying on the legal opinion they received.

I know Mr and Mrs D are unhappy with the panel firm's conduct more generally. They feel UIA are responsible for this. I don't agree. The panel firm are independent professionals with their own codes of conduct and their own regulator. UIA don't have any control over their day-to-day handling of the matters they're instructed to deal with or the type of advice they provide. If Mr and Mrs D remain unhappy with the panel firm, they can complain to them directly or to the Legal Ombudsman.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs D's complaint against UIA (Insurance) Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and Mr D to accept or reject my decision before 29 February 2024.

Lale Hussein-Venn
Ombudsman