

The complaint

Mr B and Miss H are unhappy with how U K Insurance Limited (UKI) has handled a claim under their legal expenses insurance (LEI) policy.

Any reference to UKI includes the actions of its agents. For ease of reading, I've referred to Mr B throughout my decision.

What happened

The circumstances of this complaint are well-known to both parties, so I've summarised events.

- Mr B sought to bring a legal action against the builder of his new-build property because of alleged defects with how it had been built.
- UKI - the underwriter of the LEI policy - accepted the claim and appointed one of its panel solicitors – who I'll refer to as 'S' - to deal with the legal dispute.
- Mr B paid for and provided S with a 'snagging report' to evidence the problems with his property. Mr B says he was advised by S to obtain a surveyor's report as well but told that he'd have to cover any upfront costs himself.
- S later advised the snagging and surveyor report wasn't court compliant. Unhappy, Mr B raised a complaint with UKI. UKI accepted S hadn't progressed his claim in a timely manner and so, it agreed to Mr B instructing his own solicitor. It also reimbursed the cost of the snagging report.
- Mr B's chosen solicitor – who I'll refer to as 'G' – identified S hadn't complied with a time bar limitation deadline which meant Mr B wasn't able to bring a claim for breach of contract against the builder of his property. G advised he might be able to utilise the building guarantee provided to him when purchasing his property to have the defects resolved.
- Mr B complained to UKI. To recognise the stress he'd experienced, UKI paid £300 compensation. It advised Mr B to make a complaint to the relevant body if he was unhappy with the legal advice he'd received.
- UKI subsequently withdrew cover saying there hadn't been a breach of contract in respect of the building guarantee. In addition, it said the policy doesn't cover "*claims arising from or relating to – loss or damage that is insured under another section of this policy or any other insurance policy*" – which it said applied as Mr B had cover under his building guarantee. It also agreed to reimburse Mr B the costs he'd incurred by instructing a surveyor.
- Mr B remained unhappy and so, brought a complaint to this Service. An Investigator considered it but didn't uphold it.

- Mr B disagreed, and so the complaint has been passed to me for 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.

Having done so, I'm not upholding this complaint and I'll explain why. From what I've read, much of Mr B's dissatisfaction is about how S handled his legal claim and the advice it provided. Whilst UKI might have appointed S, we don't hold insurers responsible for the way their panel solicitors carry out litigation on a day-to-day basis. Once the insurer appoints a solicitor, its role is limited to funding the fees and disbursements, and it doesn't have much control over how the claims are run – unless, for example, there are avoidable delays in keeping the policyholder informed on the progress of the claim and the insurer ought to have been aware. So, whilst I understand Mr B's frustration with S - with it having missed the limitation date deadline, and the alleged misleading advice in respect of the surveyor's report – this isn't something UKI can reasonably be held responsible for in the circumstances.

I have however, seen that when UKI initially became aware of the problems Mr B said he'd experienced with S, it agreed to him instructing a solicitor of his choice. This is what I'd expect an insurer to do when relations between the policyholder and solicitor have broken down. And so, I'm satisfied UKI took reasonable steps at an appropriate time.

UKI has also paid £300 compensation to Mr B because it recognised that S's failure to meet the limitation deadline caused him stress. Given UKI isn't responsible for how S litigated in respect of Mr B's claim nor any legal advice it gave, I wouldn't consider it reasonable to direct UKI to cover any potential losses Mr B may have incurred by missing the deadline. So, I consider the amount of compensation it's paid to be reasonable in the circumstances taking into account its responsibilities as the insurance provider.

UKI's decision to withdraw cover

G has said it will proceed with a claim under the building guarantee Mr B has to try and recover losses for the snagging issues and defects. Whilst G has said it's in Mr B's interest to be legally represented when doing so, UKI has said cover has been withdrawn because the policy won't cover "*loss or damage that is insured under another section of this policy or any other insurance policy.*" Secondly, there hasn't been a breach of contract in respect of the building guarantee, and so, there isn't an insured peril.

I'm satisfied the policy wording is clear on both parts. And as the parties accept the building guarantee is an insurance policy, I consider it reasonable for UKI to have relied on the above to withdraw cover.

UKI has advised that if Mr B's claim through the building guarantee is unsuccessful, he could contact it to review the matter as a potential professional negligence claim against S. So, I'll leave that decision with Mr B.

Conflict of interest

UKI isn't a legal expert and so, is entitled to rely on the advice of an appointed legal expert when determining if a claim is covered by the policy's terms and conditions. This is common practice with LEI claims – regardless of who the insurer is - and so, I don't consider UKI to have acted unfairly by doing so.

UKI can't influence S' advice as S – as a legal representative – has a duty to act with integrity and in line with its professional code of conduct. Whilst I appreciate Mr B considers S to have mismanaged his legal claim to limit the costs UKI has had to pay under the policy, I haven't seen any persuasive evidence of this.

Rather, UKI agreed to Mr B appointing his own independent legal expert – before it knew the limitation deadline had been missed - to take forward his legal claim. This action doesn't support his position that UKI was trying to absolve itself from paying legal fees.

Other issues

I'm aware a complaint was made about the surveyor's fee and snagging report costs Mr B initially paid for based on S's advice. UKI has now reimbursed these costs, and as I understand it, this is no longer in dispute. And so, there's no need for me to comment on this further.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Miss H to accept or reject my decision before 27 September 2023.

Nicola Beakhust
Ombudsman