

The complaint

Mr and Mrs M complain that U K Insurance Limited (UKI) trading as Direct Line has rejected a claim on their legal expenses insurance policy. They say there are two separate claims but UKI is treating them as one.

Where I refer to UKI this includes its agents and claims handlers acting on its behalf.

What happened

Mr and Mrs M have a joint insurance policy which includes legal expenses insurance. Although the policy is in joint names and they have submitted the complaint jointly, Mr M has in the main been pursuing the complaint and so for ease I will generally refer to Mr M alone.

Mr and Mrs M made a claim on the policy in December 2021. They wanted cover to pursue a claim against their neighbours for invasion of privacy relating to the neighbours recording things on CCTV. They later contacted UKI about cover for a claim relating to a failure by their neighbours as data controllers to disclose information. Mr and Mrs M had taken a case to the Information Commissioner's Office ("ICO") and were successful but said the neighbours hadn't complied with the ruling and they needed to take enforcement action.

UKI accepted the first claim might be covered by the policy and passed it to its panel solicitors to assess. The claim was rejected on the basis of legal advice from the solicitors that the case didn't have reasonable prospects of success, as required by the policy terms.

Mr M provided further information after the ICO ruling but the panel solicitors said the outcome of the complaint to the ICO didn't change the prospects of success. Mr M accepted that but has said the second claim should be considered in its own right as a separate claim.

When Mr M complained to UKI it didn't change its decision, so he referred the complaint to this service.

Our investigator didn't think the complaint should be upheld. He said:

- it was reasonable for UKI to accept the advice of the panel solicitors that the claim didn't have prospects of success, and that both claims were linked;
- if Mr M provided his own legal advice, he would expect UKI to consider that.

Mr M disagreed and provided further comments but after further correspondence with Mr M the investigator maintained his view. And he said UKI had pointed out that the policy wouldn't cover an action to enforce the ICO ruling.

Mr M still disagrees and has requested an ombudsman's decision. He's made a number of points in pursuing the complaint but in brief, the key points include:

- this complaint is about the fact UKI refused to deal with his second claim in its own right, separately from the first claim;
- the fact the ICO claim would not be covered by the policy hasn't been mentioned before;

- it's clear UKI conflated the two claims and didn't look at the ICO claim separately – that is what he was complaining about and so his complaint should be upheld;
- UKI should be directed to reply to him on the second claim.

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.

The policy provides cover for certain types of legal action. These include for example personal injury claims and contract disputes. If a claim doesn't fall within one of these heads of cover, then it won't be covered. In this case, the relevant head of cover relates to property claims including trespass and nuisance.

As with most legal expenses insurance, a claim will only be covered where it has reasonable prospects of success – in other words, where the consumer is more likely than not to win their case. It wouldn't be reasonable to expect an insurer to fund a claim that is not likely to succeed.

UKI accepted the claim was of a type that would potentially be covered and referred it to panel solicitors to assess. Their advice was that the claim wasn't likely to be successful.

It's reasonable for an insurer to rely on legal advice, provided it's a reasoned opinion from someone suitably qualified and experienced, unless it's obviously wrong. In this case, there was clear legal advice from a solicitor and it was reasonable for UKI to rely on that advice. So it was fair for UKI to reject the claim on the basis of that advice.

Mr M accepts that the original claim doesn't have reasonable prospects of success but says there are two distinct claims.

Mr M went back to UKI after obtaining a ruling from the ICO. He says this was a separate claim. But UKI considered the further points he made about the ICO and referred this to the solicitors. That's what I'd expect it to do. The solicitors' advice was that it wasn't a separate claim – it was all part of the same claim. Again, since this was properly reasoned legal advice from someone suitable to give that advice, UKI was entitled to rely on that. And UKI explained that if Mr M wanted to challenge this, he could obtain his own legal advice.

The advice would need to show there was a separate claim; not connected to the original claim; which was of a type covered by the policy; and which had reasonable prospects of success. If Mr M had done that, then UKI would have needed to reconsider.

As it stands, UKI has legal advice that the claims are related and do not have prospects of success. In those circumstances, it's reasonable to reject the claim.

UKI has also pointed out that there is no cover under the policy terms for enforcing an ICO decision in isolation. I think that's right – the policy sets out the types of claim that are covered, and taking action to enforce an ICO ruling does not fall within any of the heads of cover in the policy. So even if Mr M's right and this is an entirely separate claim, it would not be covered by the policy anyway.

This could only be covered as part of the original claim – but that is not covered as it doesn't have reasonable prospects of success.

Mr M has obtained further evidence and says UKI hasn't seen all of that. If he wishes to submit it for consideration UKI would need to consider it. But this is a new matter. If Mr M is

unhappy with any decision UKI makes after it has considered these new points, that would be a fresh complaint.

My final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 8 August 2023.

Peter Whiteley
Ombudsman