

The complaint

Mr and Mrs L complain that HDI Global Speciality SE (“HDI”) have unfairly declined a claim under their legal expenses insurance (“LEI”) policy.

Any reference to HDI or Mr and Mrs L includes any respective agents or representatives. I’ll largely refer to Mr L as he has led the complaint with this Service.

What happened

The background of this complaint is well known between parties, so I’ve summarised events.

- In September 2022, Mr L’s tooth was damaged while dining in a restaurant (Company A) from the impact of an alleged foreign item or inherent issue within some bread. He stated Company A’s staff members apologised and took responsibility for it. Mr L retained the tooth in question but not the offending item.
- Mr L incurred treatment costs of around £735. He subsequently contacted HDI to make a claim against Company A for the incident.
- In October 2022, HDI considered the claim and obtained a legal opinion on its prospects. The legal opinion (“S”) said the prospects were below 50% and that the onus was on Mr L to prove a breach of duty and/or that bread or anything within it was defective. As the bread/item had not been retained, it said this would be extremely difficult to evidence.
- So HDI declined the claim but directed Mr L to seek independent counsel advice if he disagreed – and if in doing so he could show there were reasonable prospects it would reconsider. HDI also said the claim would not be proportionate to pursue as the costs incurred would likely exceed the sum sought.
- One of our Investigators looked at what happened and declined the claim. She said HDI’s legal opinion was clear and well-reasoned, and Mr L had provided no conflicting opinion. So, she was satisfied it was fair for HDI to rely on S’ legal advice when declining the claim.
- Mr L disagreed, saying:
 - HDI’s agent had no intention to pay his claim and acted in a way to prevent it.
 - He was effectively being penalised for not making a larger claim given its comments around proportionality.
 - HDI had failed to engage with his complaint or respond to a letter from October 2022.
 - HDI’s position should entitle him to a proportion of the claim if this is below 51%. And that the lack of engagement with either Company A or Mr L’s own dentist indicated a breach in its duty of care.
- The Investigator looked again but didn’t change her mind. She said LEI policies would not pay out on a pro-rata basis and she was ultimately satisfied HDI had fairly followed the advice it was given in line with its policy terms.

Mr L still disagreed, so the matter 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. I'll explain why.

- My role is to focus on what I consider the crux of the complaint to be which means I will only comment on those things I consider relevant to the decision I need to make. This means I won't comment necessarily on everything Mr L has said but I can confirm I have read and considered everything provided by both parties when determining the outcome that I deem to be fair and reasonable.
- In this case, HDI has acknowledged an insured event has taken place under Mr L's policy. So, I don't need to consider that aspect. HDI says the claim is without 50% chance of success – which is required under the policy.
- Policies of this nature require claims to have reasonable prospects of success – typically defined as at least 51% and which would recover losses or damages. This means if Mr L's claim was shown to have at least 51% or greater prospects of success and would recover his losses or damages then the claim should be covered (subject to the remaining terms and conditions of the policy).
- In determining if Mr L's claim had reasonable prospects, HDI relied on the opinion of S. This outlined the potential claim Mr L may be able to make and assessed prospects at below 51%. This has been shared with Mr L so I won't repeat it here. But I'm satisfied this was well reasoned and clear.
- HDI is entitled to rely on the legal advice it is provided with – unless that advice is obviously wrong. I've been given nothing to suggest this is the case.
- Following HDI's decline of the claim, Mr L was invited to obtain a conflicting legal assessment if he disagreed. He hasn't done so, so I see no reason to consider HDI needs to reconsider this matter.
- Mr L has focused on the proportionality aspect of HDI's response. He argues that the policy includes an exclusion related to values below £100 not being covered. And as a result of the sum he's seeking being above this (at £735) it should not be excluded. But whether or not I agree with this doesn't impact the lack of prospects of success the claim carries – so this wouldn't change anything even if I agreed with him.
- Mr L has also argued that HDI didn't fully review S' file or have consent to do so. I've considered this point but in light of the above, even if I was satisfied something had gone wrong in the handling I'm not satisfied it has any bearing on the legal advice that was given by S or HDI's ability to rely on it. So, it hasn't changed my mind.
- I understand Mr L feels strongly about this matter and would like HDI to take on board the strength of the points he's put across from his own testimony. But simply, I'm satisfied HDI has considered the legal opinion provided on the likely success of the claim and that it was fair for it to rely on it. Mr L also says S told him HDI could've given information to him earlier in the claim. Even if this was the case, I'm satisfied the claim moved on within a month so this wouldn't lead me to make any additional direction or compensation.

My final decision

For the above reasons, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 4 September 2023.

Jack Baldry
Ombudsman