

The complaint

Mr C complains that HDI Global Specialty SE unfairly declined a claim under his legal expenses insurance policy.

Where I refer to HDI, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I only intend to provide a summary of the key events here.

- Mr C made a claim under his legal expenses policy to pursue a clinical negligence dispute.
- HDI appointed one of its panel firms of solicitors to assess the merits of the claim.
- The solicitors concluded that the claim didn't enjoy reasonable prospects of success, as required by the policy.
- Based on this advice, HDI declined the claim. But it said Mr C could challenge the advice by obtaining a barrister's opinion at his own cost, which would be reimbursed if supportive.
- Mr C raised a complaint, which he brought to our Service. He says his claim does enjoy reasonable prospects and that it was only declined by the solicitors because they'd be unable to recover their costs in the small claims court.
- Our Investigator didn't uphold the complaint. She was satisfied HDI had acted in accordance with the policy terms and conditions.
- Mr C didn't agree, so the complaint has been passed to me to decide.

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 terms and conditions of Mr C's policy say that claims will only be covered if they enjoy *"reasonable prospects of success"* defined by the policy as *"a greater than 50% chance of the insured successfully pursuing or defending the claim and, if the insured is seeking damages or compensation, a greater than 50% chance of enforcing any judgment that might be obtained"*.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained 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.

In this case, HDI obtained the advice of a panel firm. And they were of the opinion that the claim doesn't enjoy prospects of greater than 50%. Having considered the legal assessment, I'm satisfied it's properly written and well-reasoned. And it's been obtained from a suitably qualified lawyer. So I haven't seen anything to persuade me that HDI shouldn't rely on it.

Rather, it's up to Mr C to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he wants to challenge this further. The policy says this should be in the form of a barrister's opinion and if it's supportive, HDI will reimburse the reasonable costs of that opinion.

I appreciate Mr C believes the solicitor's rejection of his claim is for unjust and strategical reasons, but I've seen no evidence of this. The solicitors have been clear why the claim doesn't have merit and Mr C hasn't provided any legal opinion or evidence to prove otherwise.

As such, I'm satisfied HDI has handled the claim in accordance with the policy terms and conditions, and I'm not persuaded it acted unfairly.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 August 2023.

Sheryl Sibley
Ombudsman