

## **The complaint**

Mr D's complaint is about a claim he made on his HDI Global Specialty SE ('HDI') legal expenses insurance policy.

Mr D says that HDI have treated him unfairly.

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

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them here in detail except where the background is relevant to the outcome of my decision.

Essentially Mr D made a claim on his HDI legal expenses insurance policy, which was declined by HDI. In doing so they relied on the opinion of their panel firm of Solicitors who said the claim didn't have reasonable prospects of success, as required by the policy. Mr D made a separate complaint about this to the Financial Ombudsman Service, which was not upheld by one of our investigators who expressed his view on it.

Following the panel firm's assessment, Mr D obtained a positive legal opinion from a Barrister. As a result, HDI agreed to cover his costs in pursuing the claim, subject to them being reasonable and proportionate.

In the litigation Mr D had obtained judgment in default against the other party, which the other party sought to set aside. The other party was successful in the set aside application, but Mr D was eventually successful at trial. He did not however recover all of the costs he was claiming for. So, he looked to HDI to pay those.

The subject of this complaint to the Financial Ombudsman Service is in respect of HDI's refusal to pay some of Mr D's costs, the service HDI provided him with during the course of the claim, the fact that Mr D felt he was pushed to retain the services of the panel firm as opposed to a new representative and delays and general issues with communication.

Our investigator considered Mr D's complaint. He took the view that of the sums Mr D was claiming for, HDI should pay:

- £900 in costs for the balance of the sums owed in respect of the drafting of Particulars of Claim, a letter to the expert, follow up questions, and a conference with Counsel that they agreed to cover.
- £402 for the balance of expert's fees Mr D was claiming for.
- £100 in compensation for the trouble and upset caused to Mr D as a result of delays and other service issues identified in his assessment.

HDI accepted the investigator's recommendations, but Mr D did not. He wants HDI to pay half of the costs he incurred in attending the hearing of the other party's application to set aside judgment, which HDI do not agree should be paid to him. Because of this, 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 uphold Mr D's complaint for broadly the same reasons as the investigator.

Given that HDI has agreed with the investigator's findings in respect of the amounts he recommended be paid, it's not necessary for me to address these further, save to say that I agree that the approach taken is reasonable and that those sums should be paid. Indeed, I note that the sum of £900 was paid to Mr D some time ago by HDI and that HDI have now also discharged the balance of the expert's fees amounting to £402. HDI have said they have no objection to paying the compensation directed in the sum of £100 subject to my final decision being released. I have therefore made direction for this as well as the costs already paid below for the sake of completeness.

Turning now to the only issue in dispute between the parties. The amount claimed by Mr D from HDI is half of the costs incurred in attending the hearing of the other party's application to set aside judgment amounting to £1,152. As I understand it, the costs being claimed here relate to Barrister's fees, but the Barrister didn't attend that hearing. I don't know why this was- it's possible that the fees were charged because he was stood down late or for some other reason. Either way Mr D is seeking half of them from HDI.

Mr D says that HDI should pay these costs because he wasn't made aware that it would be unnecessary to incur them and that his belief at the time as a litigant in person was that it would be disrespectful not to attend and that the Court would look unfavourably on his claim if he failed to do so. But the evidence I have seen doesn't support this.

The panel firm told HDI that they advised Mr D not to oppose the other party's application and that if they'd been instructed at the time they would not have done so. Whilst Mr D says he does not recall receiving this advice from the panel firm and there's no contemporaneous record of the advice itself being given to him by them, I'm not persuaded that he wasn't told this. I say so because Mr D said the following to HDI by email in August 2023:

*"...I certainly acknowledge the comments made by (the panel firm). However, we must consider that simply not showing up to court because we do not believe we can win, doesn't appear to be a sensible way forward. There is always litigation risk in place for either side, which means they could lose. In any event, the first bit of (the panel firm's) advise (sic) that my claim as a whole did not have prospects was proven incorrect at the courts. My view is that the court attendance is performed with a view to succeed, although I do appreciate that (the panel firm) on behalf of the insurers pointed out that the fees could be saved by not attending i.e. essentially sacrificing any chance of winning the set-aside. Simply not showing up would not be wise and could upset the judge on the day, resulting in sanctions."*

So, I'm persuaded that Mr D was, on balance, advised by the panel firm not to incur costs opposing this application and chose to do so anyway. In addition, HDI didn't agree to cover these costs before they were incurred. It follows that those costs are a matter for Mr D. And it's unclear why he is claiming them from HDI when the Barrister didn't in any event attend that hearing. For those reasons I don't uphold this aspect of Mr D's complaint.

## **Putting things right**

HDI should pay Mr D:

- £900 in costs for the balance of the sums owed in respect of the drafting of Particulars of Claim, a letter to the expert, follow up questions, and a conference with Counsel that they agreed to cover.
- £402 for the balance of expert's fees Mr D was claiming for.
- £100 in compensation for the trouble and upset caused to Mr D as a result of delays and other service issues identified in the investigator's assessment.

### **My final decision**

For the reasons set out above, I uphold Mr D's complaint against HDI Global Specialty SE and direct them to put things right in the way I've set out in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 16 May 2024.

Lale Hussein-Venn  
**Ombudsman**