

## **complaint**

Ms T complains about Liverpool Victoria's handling of her legal expenses insurance claim.

## **background**

Ms T contacted Liverpool Victoria in May 2011 in relation to a speeding ticket she had received. She was referred to the legal helpline which was run by a firm of solicitors on its behalf. She told them that she had received a summons to attend a magistrate's court hearing in May 2011 and she had already consulted a solicitor who she wanted to represent her. She said she would be pleading guilty but felt that she had mitigating circumstances and asked for her claim for legal expenses to be covered.

Ms T rang the helpline again later in May 2011 as she had not received a call back. Her claim was referred to a claims handler the same day, and they were informed that she wanted to use her own solicitor to represent her at the hearing. They set up a claim for Ms T and rang her solicitor on the day of the hearing. Their record of the call indicated the solicitor said he was based in the North West and the hearing was in the afternoon in the South East so he would not be able to get there in time. However, he said he could deal with the court by post for a fixed fee. He agreed to send a copy of the court summons to the claims handler by return and they emailed their terms of appointment for him to sign and return. Ms T was informed.

In June 2011, Ms T made a complaint about the service provided by the helpline and the claims handler. She was disappointed that they had not contacted her within the timescale promised when her court hearing was imminent. She said that her solicitor had only received a telephone call four hours before the hearing, and he was not able to attend and she had to go on her own and the court imposed a fine. She felt that if she had been represented in court she would not have been fined. She claimed that she should be reimbursed for the fine and receive additional compensation.

Ms T was given details of the claims handler's complaints process. She asked if she could have cover to appeal the court decision because she had been denied legal representation and she felt that a different outcome would have been reached if she had been represented. Her solicitor had been told that the offer of funding was a one-time offer so the hearing in May 2011 could not be postponed. She said that the lack of action was not the kind of service expected from a professional organisation.

Liverpool Victoria issued its final response to Ms T, after which she submitted a complaint to us. Our adjudicator considered the complaint and concluded it should not be upheld. She said that the delays had not been substantial and did not warrant compensation. Even if the claim had been accepted at an earlier stage, she would not have expected Liverpool Victoria to cover the cost of her solicitor travelling to the hearing. There was no independent evidence to support Ms T's argument that, if her solicitor had been present at the hearing, there would have been a different outcome. Liverpool Victoria's notes indicated that her solicitor had not requested a postponement of the hearing and he had confirmed that he could deal with the matter by letter. Liverpool Victoria had covered the legal costs incurred in dealing with the matter, so Ms T had received the benefit of legal expenses cover under the policy.

Ms T did not agree with the adjudicator's assessment. She said, in summary:

- The firms she was put in touch with were not her choice of solicitor and they both delayed getting back to her. If she had been contacted earlier, there would have been plenty of time to make the necessary arrangements and review her case.
- The location of her solicitor had no bearing on the matter and it was agreed she could instruct her own solicitor during the first telephone call.
- She realised there was no guarantee the outcome of the case would have been more favourable but she was told by several legal sources that this was likely. She was deprived of the opportunity of legal representation in court.
- She felt that she was mis-led and not provided with the service promised or paid for.

### **my findings**

My role is to decide whether Liverpool Victoria, and its agents, handled Ms T's claim for legal expenses fairly and reasonably and in accordance with the policy terms.

The policy provided cover for "*Defence of prosecution*", which said "*We will pay up to £100,000 for your reasonable legal costs in your defence of a motoring prosecution arising from an incident whilst you were using your car/motorcycle. We may decide to support a plea in mitigation if we feel this will affect the outcome.*"

The section on "*Settling claims*" provided:

*"This insurance only covers legal costs incurred by one of our panel of solicitors, appointed by [the claims handler], or their agents until court proceedings are issued.*

*If proceedings need to be issued or if a conflict of interest arises you may choose your own solicitors if we approve them.*

....

*We will be entitled to get any information, document or file from the solicitor and/or [the claims handler] including an opinion on your chances of success and the proportionate benefit to you of making your civil claim or of acting in defence of your prosecution.”*

Ms T was clearly unhappy that she was not contacted by the claims handler until the morning of the court hearing and, therefore, she did not have the opportunity to discuss her case earlier. She says that she should have been contacted within two days of her first contact with the helpline. The claims handler made contact with her solicitor on the first working day following the bank holiday at the end of May 2011 and it has acknowledged that there was a slight delay in validating her policy. In view of that, and to be fair and reasonable to Ms T, it decided to forego the legal assessment to ascertain whether or not there were reasonable prospects of success. I think this was a reasonable response.

Whilst it is clear that there were some delays on the part of the claims handler in contacting Ms T's solicitor, I do not believe that they were substantial or that they prejudiced Ms T's case. Accordingly, I do not believe compensation is warranted.

Ms T has not obtained any independent evidence from a legal expert to show that she was likely to have secured a more favourable outcome in court if she had been represented in person. She had pleaded guilty to the offence but she wanted to contest the documents which had been issued. When the claims handler contacted her solicitor on the day of the hearing, he advised them that he could deal with matters by correspondence and he prepared a letter for the court to consider. I am not persuaded that he considered a postponement of the hearing was necessary or that, if he did, he made Liverpool Victoria or its claims handler aware of this.

The claims handler does not have a copy of the letter which the solicitor sent to the court, but it appears that mitigating factors were put forward to the court on Ms T's behalf. I have not seen persuasive evidence to indicate that the offer of funding was held out to be a one-time offer, or the hearing could not have been postponed if the solicitors had thought it necessary.

Ms T's chosen solicitor was based in the North West of England and she says that he would have made arrangements to travel to the hearing if he had been contacted earlier. However, the policy only covered "*reasonable legal costs*".

The claims handler paid the legal fees incurred by Ms T's solicitors for the work they carried out on her behalf, and she therefore received the benefit of the cover under the policy. I realise that Ms T is unhappy with the service she received, but I do not find that Liverpool Victoria is liable for any additional costs or compensation.

**my final decision**

For the above reasons, my final decision that I do not uphold the complaint. I make no award against Liverpool Victoria.

Nimish Patel  
**Ombudsman**