

The complaint

Mr H complains that Liverpool Victoria Insurance Company Limited (“LV”) has withdrawn the funding for his legal expenses insurance claim in relation to a boundary dispute with his neighbour.

LV uses an intermediary (“Arc Legal”) to administer its legal expenses insurance. Any reference to LV within this decision should also be read as including the acts or omissions of such intermediaries.

What happened

Mr H holds a home insurance policy with LV, which includes cover for legal expenses. LV was initially made aware of the boundary dispute in 2016. Complaints have been made to LV previously so this decision will only focus on what’s happened from around 2018 onwards.

The details of this complaint are well known to both parties, so I won’t repeat them all here. Instead, I’ll give a summary and then focus on giving my reasons for my decision.

LV appointed one of its panel firms of solicitors to assess Mr H’s legal claim. It followed the advice given by the law firm in relation to whether it should continue to fund the claim.

The boundary issue related to a strip of land. The law firm didn’t think Mr H’s property value would be impacted (or significantly impacted) by the loss of the strip of land. But it did think that it would be impacted by an unresolved dispute.

LV had concerns about continuing to fund the claim as there seemed to be no signs of a resolution. But funding continued, based on the advice of the law firm, in part because of the other side’s insistence on legal proceedings and because it was deemed that a settlement was close on more than one occasion. But in September 2019, the law firm concluded that the claim was no longer proportionate. It said that a reasonable person of reasonable financial means wouldn’t, without the benefit of legal expenses insurance, pursue the matter out of their own pocket. So cover was withdrawn on the basis that the claim was no longer ‘proportionate’.

Also in September 2019, Mr H notified LV that the other party had started to erect a fence along the boundary that was in dispute. The law firm said there was a covenant against this but couldn’t say if it would be enforceable. Mr H hoped to secure funding from LV for an injunction to prevent further work. He said he was willing to concede the land in dispute but wanted to have the boundary declared and registered with Land Registry. The law firm said an interim injunction would cost between £5,000 - £7,000 plus VAT and the boundary dispute could run between £60,000 - £75,000 with the losing party being liable for most of the winning party’s costs.

Having conceded on the disputed land, Mr H wanted the policy to provide funding for the following:

- The declaration of the boundary
- Retention of a stone circle adjacent to the boundary
- Registration of the boundary with Land Registry
- Establishment of the legality of the abovementioned covenant

LV said these weren't covered by the policy which, in relation to property, is intended to 'pursue or defend a claim'. And it also said that the overall claim was no longer proportionate. LV responded to Mr H's suggestion that it had mistakenly considered proportionality of the entire claim, rather than just in relation to the remaining points he'd requested funding for. It referenced the policy terms which state that it "*will treat all events related by cause or time as one.*" Given this and the advice of the law firm, LV withdrew funding for the claim.

Mr H doesn't think LV has acted fairly. He said that proportionality was determined by the law firm and wasn't questioned by LV. And he believed he was entitled to £100,000 of legal support and doesn't think it was made clear in the documentation that this sum was to include all costs. He said he's spent a great deal of time and energy dealing with this claim.

Our investigator considered this complaint. She felt that LV had acted in line with the terms and conditions of the policy in relation to proportionality, noting that the law firm had stated the cost of pursuing the matter was deemed to be 'highly likely' to exceed £100,000. She also agreed with LV that an application to Land Registry fell outside of what the insurance policy would cover.

Mr H disagreed. He noted the policy listed various issues that would be taken into account to determine proportionality (the amount of money at stake; the value and complexity of the case; the geographical location of the policyholder and the other party to the action; the stance of the other party; whether a reasonable person without legal expenses insurance would pursue the matter and finance their own costs). He said he couldn't find anything stating that *all* of these issues would have to be satisfied to continue to pursue a claim. He also reiterated that it wasn't clear £100,000 was the total sum available. And he noted that he hadn't received a response from the law firm when he queried how the potential legal costs had been calculated. He feels it would be beneficial to LV to employ a law firm who would determine costs to be high so the claim could be declined.

I got in touch with Mr H informally, as our rules allow, to try to resolve this complaint at an earlier stage by addressing the specific concerns he'd raised in response to our investigator and letting him know how I was minded to proceed. I felt it was clear and logical for all the issues to be taken into consideration when determining whether the legal expenses are proportional to the potential benefit of pursuing the claim. In relation to the £100,000 cap, I referenced the policy terms which state:

Third party costs shall be covered if awarded against you and paid on the standard basis of assessment... And for any claim or claims arising from one insured event, the most we'll pay will be £100,000.

I explained that I felt this made it clear that any costs arising from the matter would need to be covered by the £100,000, including the other side's costs. And, finally, I explained that LV – as an insurer – was entitled to rely on legal advice provided by a firm with relevant expertise, which is what it did here. While it didn't seek a second opinion, there'd been no conflicting expert opinion and Mr H seemingly hadn't provided a legal challenge. So I didn't

think, overall, LV had acted unfairly in relying on advice from the law firm stating it would be disproportionate to continue funding the claim.

Mr H responded to query why LV had funded his claim for two and a half years; to question why LV hadn't sought information about potential costs much sooner; and to state that LV should be more specific about the maximum amount of cover which he feels is woefully inadequate. He asked for my formal decision on the matter.

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.

While I know this will come as a disappointment to Mr H, I don't uphold his complaint – I'll explain why.

The crux of this complaint is whether it was fair and reasonable for LV to withdraw funding. And that was, for the most part, due to 'proportionality'.

Proportionality

While it was said that Mr H had reasonable prospects of success for winning his case, the overarching question here is around whether "*the cost of legal expenses to pursue [the] claim would be proportional to the expected benefit*" as is required under the policy. The terms state that to determine this, it will consider several factors (listed earlier). Mr H has questioned whether these all need to be satisfied to continue with cover. But ultimately, I think the term "*whether a reasonable person without legal expenses insurance would pursue the matter and finance their own legal costs*" encompasses the other considerations.

LV, as an insurer but not a legal expert, has taken advice from a law firm around this matter, which it's entitled to and generally expected to do. The law firm said the boundary dispute could cost £60,000 - £75,000 and said the following:

On balance I do not think a reasonable person without the benefit of legal expenses insurance would spend say, in excess of £10,000 on trying to resolve the dispute but may be prepared to pay up to that amount depending on their circumstances.

Given the potential costs were said to go substantially over this amount, it can be concluded from this that a reasonable person without the benefit of this insurance *wouldn't* be prepared to continue funding the dispute out of their own pocket. It could be said that this, in itself, is enough to withdraw funding. But I've also considered the correspondence between LV and the law firm for the time the claim was ongoing, particularly as Mr H expressed concern around funding having been provided for as long as it was, with seemingly no consideration for the potential costs. The emails I've seen show that some of the decision-making was based around whether the law firm would advise a privately-paying client to continue to defend the matter. Where it was deemed it would, LV continued to fund the claim.

It appears that LV queried whether it should continue to fund the claim at points where it was asked for further funds. But the law firm expressed that settlement was close (in January 2019) and that matters appeared to be nearing conclusion and loose ends just needed to be tied up (in April 2019). So LV continued in light of the advice presented. Of relevance is contact from the law firm in January 2019 which said "*If the parties continue to argue over what might become a very small area of land then I will advise the cover should be withdrawn on the ground of lack of proportionality.*" And we know that the matter was still ongoing in September 2019. While Mr H later conceded on the land and asked for funding

for alternative means, I say it was still 'ongoing' because LV is entitled to "*treat all events related by cause or time as one*" and the issues stemmed from the initial boundary dispute.

So, based on the evidence I have, I don't think it was unreasonable for LV to rely on the advice of a law firm in relation to funding this claim. I'm satisfied that it appropriately queried whether it should continue funding and proceeded on the basis of the recommendations it was given. I conclude that it acted in line with the terms and conditions of the policy here. Mr H questioned why LV hadn't sought information about the potential costs much earlier. But, from what I've seen, it appeared that there'd been the possibility of resolving the dispute at an earlier stage, which would've prevented the costs from escalating. Unfortunately, an earlier resolution didn't come to fruition as a result of pushback from the other side.

While Mr H said he didn't receive a response from the law firm when he queried how the potential legal costs had been calculated, that doesn't change my view that LV was entitled to rely on the advice it was given. Mr H has also said it would be beneficial to LV to employ a law firm which would determine potential costs to be high so the claim could be declined. I've been given no reason to think that's what happened here and note that LV paid out quite significant amounts before funding was withdrawn. Mr H didn't provide an opinion on the matter (from someone equally or more qualified) that conflicted with the advice of the law firm, and I see no reason for LV to have doubted what it was told or sought an alternative opinion. I appreciate that Mr H doesn't agree with the law firm's assessment on proportionality. But his own opinion on this matter cannot reasonably outweigh that of the solicitors; for example, even where a policyholder is himself legally qualified, he can't act as an independent expert in his own cause.

The policy cover

Due to the issue of proportionality, I'm satisfied LV was within its rights to withdraw funding. But, for completeness, I did want to touch on the matters Mr H requested funding for, having agreed to concede the land in dispute. Mr H wanted to agree a boundary line to avoid losing any more land than he'd already conceded, register said boundary, retain a feature in his garden, and determine the legality of a covenant preventing a fence from being built. But it appears that these would all be intended to *prevent* a future dispute, rather than '*pursuing or defending a claim*' as the policy states. The policy would only pay out if there was more than a 50% chance that the policyholder would win the case – but these requests don't relate to a case that could be 'won'. This links in to my next point which is that the policy is for 'legal expenses': "*Legal fees, costs and expenses incurred by your legal representative...*" But registering a boundary with Land Registry isn't a legal proceeding so wouldn't be covered by this policy.

Maximum cover

Mr H feels LV should be more specific about the maximum cover and also feels £100,000 of cover is inadequate. I remain of the opinion that it's clear, fair and not misleading that the most LV would pay (subject to proportionality and reasonable prospects of success) for any claim or claims *arising from* one insured event would be £100,000. I don't have anything further to add in relation to this. But I should point out that it isn't for me to tell LV what cover it should offer. It's for an insurer to decide the level of risk it's willing to accept, as long as it's made clear within the documentation – which I conclude it is.

I do appreciate how difficult this situation has been for Mr H, and it's clear how much time and energy has gone into the issue of the boundary dispute. But, based on all the evidence I've seen in relation to the legal expenses insurance, I don't think LV has acted unfairly. So I won't be asking it to take any further action.

My final decision

For the reasons given above, I don't uphold this complaint against Liverpool Victoria Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 June 2021.

Melanie Roberts
Ombudsman