

## **The complaint**

Mr H complains that Financial & Legal Insurance Company Ltd (“F&L”) gave him unclear information about the cover available under his legal expenses insurance policy and unfairly declined his claim.

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

## **What happened**

Mr H made a claim on his policy to take legal action against his employers for discrimination. He says F&L were unclear about the policy requirements and whether he had freedom to choose his own legal representation, which led to him incurring costs with his own solicitor. His claim was subsequently declined because it was disproportionate to pursue.

Mr H says F&L failed to explain what it meant by prospects of success and proportionality as well as the requirements for panel and non-panel solicitors. He says it should’ve taken extra care to ensure he fully understood, especially as he’d told them he suffers from a mental health disability. He raised a complaint.

F&L rejected the complaint, so Mr H brought it to our service. And our Investigator upheld it. She said F&L should’ve provided proportionate funding up to the value of the claim. She also agreed that F&L had used jargon which it had failed to explain, leaving Mr H confused. So she recommended that F&L make a contribution to Mr H’s legal fees and pay compensation.

Mr H accepted the recommendations, but F&L didn’t. So the complaint was passed to me and I issued the following provisional decision.

## **My provisional decision**

I’ve reached a different conclusion to our Investigator. I’ll explain why.

### *Unclear information*

The terms and conditions of Mr H’s legal expenses insurance policy says:

*“The authorised representative nominated and appointed by us or the claims administrator will act on your behalf and you must accept the nomination. If we agree legal proceedings should be commenced through court or it is mandatory for you to be represented by a solicitor you may choose an alternative solicitor to act for you however, you must obtain our/the claims administrator’s written agreement for them to become your authorised representative.”*

Mr H complains that F&L didn’t make it clear that he wasn’t entitled to use a solicitor of his own choice.

I've listened to and read the transcripts of the calls Mr H had with F&L when he made his claim. On the first call, Mr H tells the advisor that he *"wants to start proceedings against [his employers]"* and that he has *"got a law firm in mind"*. The advisor explains that the policy requires Mr H to *"use a solicitor that [F&L] would appoint, at least until the point of issuing court proceedings"*. Mr H responds that he's *"going to issue legal proceedings straight away"*.

Later in the call, the advisor queries whether Mr H has submitted an ET1 – which is the issue of court proceedings in an employment case. Mr H responds that he hasn't, but that he *"wants to issue one asap"*.

Based on this, the advisor has treated Mr H's claim as being at the point of issue which enables him to choose his own solicitor under the policy terms. He asked Mr H to get his solicitor to email over the full details of the claim so that it could be assessed.

I don't think this was incorrect given the information Mr H had provided. It was clear he wanted to use his own solicitor and as he'd said he was at the point of issue, it was reasonable for the advisor to accept that freedom of choice was available under the policy.

But I do think the advisor should've clarified at this point that the policy isn't going to cover any legal costs until the claim is accepted under the policy, so the costs incurred for Mr H's solicitor to provide the claim details will be his responsibility. If the advisor had done so, Mr H may have decided to submit the claim himself or consider the other options available to him, like using a panel firm. I think compensation should be paid here, which I'll expand on later.

The advisor goes on to explain the policy requirements that a claim must fall within cover, have prospects of success, and be proportionate to pursue. Mr H responds saying *"No, I understand"*.

Mr H complains that the advisor didn't explain what these terms meant, and that extra care should've been taken to ensure he fully understood.

Generally I agree it's important a business avoids using industry jargon / terminology when talking to or writing to its customers – or if it needs to, it provides an explanation of what it means – to ensure the customers understand how the policy works and what is required.

But Mr H said he understood. And given his job title, which he'd provided earlier in the call, I think it was reasonable for the advisor to be satisfied that Mr H did indeed understand. If Mr H didn't, he only had to say so and the advisor would've had the opportunity to explain.

### *Claim rejection*

The terms and conditions of Mr H's legal expenses insurance policy says:

*"Your insurance does not cover professional fees and/or defendant's costs:*

*c) where, in our/the claims administrator's opinion, the value/amount in dispute is disproportionate to the time and professional fees involved in its pursuit,*

*h) where, in our, the claims administrator's or the authorised representative's opinion, your claim does not have a reasonable prospect of success."*

These conditions are a requirement of virtually all legal expenses policies, and I don't think they're unfair. Court action can be expensive. A privately paying customer wouldn't generally

want to bear the cost if advised their claim was unlikely to succeed or that their legal costs would be more than the amount they would recover in court. And I wouldn't expect a legal expenses insurer to either.

F&L asked Mr H's chosen solicitors for their opinion on the prospects of the claim being successful, as well as an estimate of the likely award and the costs/disbursements to pursue the claim to conclusion.

The solicitors said they were unable to say whether the claim enjoyed reasonable prospects of success at that time as it was too early to say. They said the likely award for injury to feelings would be around £15,000, but that if Mr H was actually or constructively dismissed, that could increase the value of the claim depending on how quickly Mr H was able to secure alternative employment. They estimated their costs at £30,000 plus VAT.

Based on this assessment, I think it was fair for F&L to conclude that the policy terms hadn't been met. I say this because prospects of success have not been confirmed as being reasonable (defined as "at least 51%" by the policy) and an estimate of the likely costs to pursue the claim outweigh the estimated award. So I don't think F&L has acted unfairly here based on the information it was provided with. If, as the claim evolves, the solicitor's opinion on prospects or proportionality alters in any way they – or Mr H – should let F&L know and I'd expect it to reconsider cover under the policy.

### *Putting things right*

As I've explained, I don't think F&L gave unclear information on whether or not Mr H could use his own solicitor, nor do I think it declined his claim unfairly. But I do think it could've done more to clarify that Mr H's legal fees weren't covered by the policy until the claim had been accepted meaning that the cost of his solicitor submitting the claim would be his responsibility. Whilst Mr H's solicitors would've always needed to have provided their opinion on prospects and proportionality, Mr H may have been able to reduce his legal fees by submitting his claim evidence himself. For this, I think it's reasonable that F&L pay Mr H compensation of £100.

### **Responses to my provisional decision**

Neither party had any further submissions in response to my provisional 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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

### **My final decision**

For the reasons I've explained, I uphold the complaint in part and direct Financial & Legal Insurance Company Ltd to pay Mr H compensation of £100. This should be paid within 28 days of Mr H's acceptance of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 March 2023.

Sheryl Sibley  
**Ombudsman**