

The complaint

Ms L complains HDI Global Speciality SE has unfairly withdrawn cover under her legal expenses insurance (LEI) policy.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised what's happened.

- Ms L has a LEI policy which is underwritten by HDI.
- Ms L sought to claim on it to pursue a legal dispute against the seller she'd purchased her property from. She said the seller had misrepresented information regarding the property's heating system and roof during the sale.
- HDI accepted the claim and referred the matter to its panel firm of solicitors (who I'll refer to as 'J') for a prospects of success assessment. J deemed Ms L's legal claim about the central heating to enjoy reasonable prospects of success, and a Letter of Claim was subsequently sent to the seller.
- Because the seller didn't engage with J, it was deemed necessary to instruct Counsel to draft the Particulars of Claim and to provide prospects on the likelihood of Ms L's claim succeeding at Court.
- Counsel's opinion was that Ms L's claim - regarding the heating - enjoyed prospects of success.
- It later transpired the seller potentially didn't own a property and so, there were concerns about recoverability being that there might not be a fixed asset against which damages, or a judgment could be secured.
- J explained that whilst the absence of a fixed asset would usually render prospects to fall below 50%, Ms L's case was different because they were aware the seller had received a substantial cash sum by selling their property to Ms L. But without information confirming the seller's assets, it couldn't say prospects were better than 50%.
- HDI subsequently withdrew cover. It said it would agree to J taking another look at Ms L's claim in 3-6 months but that if prospects remained below 51%, Ms L would need to fund any further legal costs until reasonable prospects were established.
- Unhappy with HDI's decision, Ms L brought a complaint to this Service. An Investigator considered it and upheld it, saying HDI should ask J to carry out further enquiries into the seller's assets by instructing an enquiry agent and covering the costs of doing so.
- Ms L agreed with the Investigator's opinion though wanted to clarify the amount she

was seeking to be recovered was approximately £10,000. HDI considered J to be responsible for deciding what enquiries were reasonable and so, didn't consider it or this Service to be suitably placed to comment on this.

- Because the parties disagree, the complaint has been passed to me for an Ombudsman's 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.

- HDI has a responsibility to handle claims fairly and promptly and must not unreasonably decline a claim. Here, HDI has withdrawn cover because it says Ms L's legal claim no longer enjoys reasonable prospects of success.
- The policy document defines "reasonable prospects of success" 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."*
- So, I'm satisfied the policy makes it clear that a legal claim with prospects of success deemed at less than 51% wouldn't be covered.
- It's not in dispute that Ms L's legal claim initially enjoyed prospects of success – it was only upon realising the seller potentially didn't have a fixed asset that the issue of recoverability arose - which cast doubt on whether prospects were greater than 50%.
- I note J said that whilst in theory the seller had access to a substantial fund to satisfy a damages judgment – it hadn't been able to confirm there was a fixed asset to which a judgment could be secured.
- Because the concerns about recoverability have potentially impacted the legal claim's prospects of success I can understand why, on the face of it, HDI considered it reasonable to withdraw cover. But here, I'm not satisfied HDI has done enough to satisfy itself J had carried out reasonable checks to determine whether there were other assets or not. And I think this led to HDI withdrawing funding prematurely.
- Whilst HDI has said it's not responsible for the decisions J has made in terms of its enquiries into the seller's assets, it is ultimately, responsible for deciding whether it has enough information to satisfy itself that its decision to decline a claim is reasonable.
- HDI has limited information from J saying the seller doesn't appear to have a fixed asset. But I'm not persuaded that's sufficient. It's routine practice for solicitors to instruct enquiry agents and put together a report about the respondent's assets and financial status. And it's not unreasonable to expect the insurer to have had sight of such a report before deciding whether to provide cover – particularly in a situation like this where the prospects of success seemingly hinge on this information. But that's not happened here.
- So, in line with what our Investigator recommended, I consider it reasonable to direct HDI to ensure an enquiry agent is instructed to complete further enquiries into the respondent's status and assets, and that the cost of doing so is covered by the

policy. Doing so will inform J's position as to the legal claim's prospects of success, which will in turn be considered by HDI in determining whether the claim is covered.

My final decision

My final decision is that I uphold this complaint and HDI Global Speciality SE must direct J to carry out further investigations into the respondent's assets by instructing an enquiry agent - or have this arranged elsewhere if J is unable to meet this request. The cost of doing so should be covered by HDI.

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

Nicola Beakhust
Ombudsman