

## **The complaint**

Mrs F is unhappy with what Liverpool Victoria Insurance Company Limited did after she made a claim on her legal expenses insurance policy. All references to LV include its agents and claims handlers.

## **What happened**

Mrs F had an employment dispute and submitted an Employment Tribunal claim in December 2022. In July 2023 she sought assistance under her legal expenses policy with LV. It asked her for further information which she provided. In August LV confirmed the case was covered by her policy and it could instruct a panel firm to progress it (including assessing whether it had reasonable prospects of success; a requirement of the policy). Mrs F explained why she might prefer to use her own solicitors who were already instructed. And she asked for the necessary paperwork to be sent to them.

At the end of September LV agreed an amount for those solicitors to complete a Claims Management Report (CMR) which included an assessment of prospects. But it said the rate it would pay if they were appointed under the policy was £100 an hour. The solicitors returned the CMR at the start of November which confirmed Mrs F's claim did have reasonable prospects of success. At the end of that month LV confirmed it could appoint them under the policy and asked for its terms of appointment to be signed and returned.

In response to Mrs F's complaint LV accepted there had been delay in it progressing the claim. To address that it agreed to backdate cover to 1 November 2023 (on receipt of the signed terms of appointment from her solicitors). It also agreed to pay £250 in recognition of the distress and inconvenience it caused her. But it didn't accept the offered hourly rate rendered Mrs F's freedom to choose her own solicitor meaningless. It said Mrs F could 'top up' the difference if she wanted to continue with her current firm, find a firm who would accept the offered hourly rate or it could appoint a panel solicitor to act for her.

Our investigator thought that LV's offer of compensation and backdating cover to 1 November 2023 was a fair way of addressing the delays it was responsible for. And the policy did specify that £100 an hour was the amount it would pay for a non-panel solicitor. He didn't think there was evidence to show a higher rate should have been offered in this case so thought LV acted fairly in saying that was what it would pay if Mrs F wanted to pursue the claim through her own representatives.

Mrs F didn't agree. She outlined the history of her claim with LV and said as her ET claim was progressing she had no choice but to seek legal representation. And after she made a claim there was delay by LV in carrying out the validation process which wasn't something she was responsible for. So she thought cover should be backdated prior to 1 November 2023 and said she would accept this being in place from 10 August. She questioned why the terms of appointment would need to be signed for cover to be provided.

She also clarified which policy she thought applied to her claim and that restricting the hourly rate to £100 did mean her freedom to choose her own solicitor was meaningless. Neither she or her solicitor had been able to find a firm that would have worked for that rate. And she

thought the compensation LV had offered was inadequate given the impact on her of the delays for which it was responsible.

I issued a provisional decision on the complaint earlier this month. In summary I said:

*The relevant rules and industry guidelines say LV has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.*

*I've considered first whether LV has acted fairly in restricting the rate it said it would pay Mrs F's solicitors to £100 an hour. And the relevant policy terms here are the ones in place at the point her claim against her employer first arose as the policy says cover is provided where "the date of occurrence of the insured incident is during the period of insurance".*

*It also seems clear when Mrs F contacted LV the claim had reached the point where proceeding were necessary (she'd already issued her claim in the Employment Tribunal). That means, in line with the relevant legislation, Mrs F had the right to choose her own solicitor. However, that doesn't mean LV had to pay whatever rate that firm charged. Case law (Brown-Quinn & Anor v Equity Syndicate Management Ltd & Anor [2012] EWCA Civ 1633) has established an insurer has the right to restrict what it would pay to a non-panel solicitor, provided the remuneration is not so low as to render the policyholder's freedom of choice meaningless.*

*And the terms of the policy in place at the point Mrs F's claim arose says "the amount we will pay a law firm (where acting as the appointed representative) is currently £100 an hour". That wording is repeated elsewhere in the policy and I think it does make clear the amount a policyholder can expect to receive in that situation. So I think it's reasonable in principle for LV to rely on this term when considering Mrs F's claim.*

*However, that might not be the case if applying that rate to the claim she made meant she couldn't have found a choice of solicitors who would work for that rate. And I appreciate the rate offered by LV is significantly lower than the amount charged by her own solicitor and that provided in the county court guideline rates. I also recognise that while LV may have had panel firms that would have taken on the claim for the £100 hourly rate those firms may do so because of the volume of claims they receive.*

*So the fact those firms would have taken the case doesn't on its own evidence the offered hourly rate didn't unfairly restrict Mrs F's freedom to choose her own solicitor. We would expect an insurer to also show non-panel solicitors were prepared to act on the hourly rate set out in the policy for this type of case. We don't expect an insurer to evidence a non-panel firm could take on this specific case but that they've had claims with similar circumstances where non-panel firms have been prepared to act for the hourly rate the policy contains.*

*In this case LV has given us evidence in relation to that. It's provided the details of ten non-panel solicitors who acted for it in recent employment claims for its hourly rate. I appreciate Mrs F wasn't able to find an alternative firm to act for £100 an hour but I think LV has done enough to show that other firms would have been prepared to act for that rate. So I can't conclude it has rendered her freedom of choice meaningless.*

*I do understand why Mrs F wanted the firm she'd appointed (and with whom she'd already established a good relationship) to pursue her claim. But I haven't seen evidence which shows her case was so complex or involved an area of law so specialised that only that firm (or a firm charging similar rates) would have been able to deal with it. I accept Mrs F's claim required a lawyer with experience of employment law but many of the non-panel firms who acted for LV's hourly rate are listed as having either employment law expertise or of*

*specialising in that area. As a result I can't say LV should have used its discretion to agree a higher rate in this case.*

*I've gone on to consider what date cover should be backdated to. LV has already accepted that should be from 1 November 2023 which is when Mrs F's solicitors returned the completed CMR confirming the claim had prospects of success. And while I appreciate it has taken some time to progress the claim, I don't think all of those delays are ones for which LV is responsible. It would reasonably have needed time to review and consider information Mrs F provided. And for the period from the end of September until the start of November it was awaiting the return of the CMR from her solicitors.*

*However, I do think there were other occasions when LV could have progressed matters more quickly. There was some delay in it initially requesting information from Mrs F and it then took too long to review the evidence she provided (and a question it asked about the date of occurrence of her claim was information it already had). There was then further delay in communicating with her solicitors which meant there was little progress with the claim through much of August and early September 2023. Looking at the timeline of events I think it's reasonable to say there's been around six weeks of further delay here. And without that it's likely the CMR would have been provided to LV by 20 September 2023. So I think it's fair cover is backdated to then.*

*I've also considered the compensation LV has offered for the distress Mrs F was caused during this period. I do appreciate this was an extremely worrying time for her when she was understandably concerned about the progress of her ET claim and how that was to be funded. But I think some of those issues would have been present regardless of any failings by LV; bringing an employment claim of this nature is unfortunately always likely to be a stressful experience. I'm also mindful of the fact that as Mrs F had already appointed solicitors she did have legal representation throughout this period.*

*And while that won't have addressed her concerns about how to fund her claim I've already concluded LV acted fairly in relation to the hourly rate it offered. Taking all of that into account I think the £250 LV has already paid is a reasonable way of recognising the impact on Mrs F of the delays for which it was responsible.*

*Mrs F also has concerns about what happened prior to her making a claim under this policy which she says caused further delays (because LV took too long to advise her of the correct claims handlers to contact). However, I'm only considering in this decision the issues LV responded to in its final response letter of 30 November 2023. If Mrs F wants to pursue concerns about what happened prior to her contact with it in July 2023 that's something which could potentially be considered as part of a separate complaint.*

### ***Putting things right***

*LV will need to backdate cover for Mrs F's claim to 20 September 2023 and consider costs incurred from that period onwards against the terms and conditions of the policy (but will be entitled to apply the hourly rate set out in the policy of £100).*

*I appreciate Mrs F's solicitors don't appear to have signed the terms of appointment but where that's the case our approach is an insurer should nevertheless provide the cover it thinks a policyholder is entitled to. That's also in line with the policy terms in this case which explain that where a policyholder chooses a law firm and they refuse to act on the same terms as a preferred law firm "the most we will pay is the amount we would have paid if they had agreed to the Standard Terms of Appointment".*

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

LV accepted my provisional decision. Mrs F didn't agree.

- She queried what policy applied to the claim she'd made given the number of different insurers which had been referenced in relation to this (and the fact LV had taken over her policy from a previous provider). And she questioned what the correct policy said about the hourly rate that would apply. She said the final response to her complaint had been provided by LV's claims handlers who she had initially submitted a separate complaint to us about.
- She outlined the background to her claim and the reasons why she needed to seek legal assistance. And she reiterated that she thought costs incurred in the period prior to July 2023 should be covered by LV.
- She said her ET case was extremely complicated and required a solicitor with experience of employment law. And she provided a schedule in support of her position on this. She said the ET had agreed to extend the length of the hearing in recognition of the complexity of the case. And she questioned whether the non-panel solicitors LV had provided details of would have been able to deal with it.
- Neither she or her solicitor had been able to find other firms who would work for the £100 an hour LV offered. And she drew attention to the difference between the county court guideline hourly rates and the amount LV had agreed to pay.
- She explained why it wouldn't have been appropriate to change solicitors given the ongoing negotiations with her employer which at the time were thought likely to achieve a settlement. And she reiterated the outcome she was seeking from this complaint.

So I need to reach a final 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 I said in my provisional decision, all references to LV include its agents and claims handlers. So while I appreciate the final response to Mrs F's complaint was issued by those claims handlers that was done on behalf of LV. And it's responsible for their actions.

I also explained in my provisional decision why I wasn't considering matters prior to July 2023 as part of this complaint. If Mrs F wants to pursue concerns about what happened before that date that's something which could potentially be considered as part of a separate complaint.

I'm aware LV has taken over the previous provider of Mrs F's legal expenses insurance. However, I'm satisfied the policy terms I've seen, and on which I've based my decision, are the correct ones in relation to the claim she made. And they do set out the amount LV will pay to a law firm (where acting as the appointed representative) is £100 an hour. So that's the rate that would apply, in principle, to Mrs F's claim.

I accept Mrs F's claim would reasonably require a solicitor with experience of employment law. And she's questioned whether the non-panel solicitors who LV says previously acted for its £100 an hour rate would have been able to deal with it. However, as I said in my provisional decision most of the non-panel firms who LV said acted for that rate are listed as having either employment law expertise or of specialising in that area. I've reviewed the

information Mrs F provided about her claim and, while this may have some complexities, I don't think it shows her case was so complex or specialised that only the solicitor she chose (or a firm charging similar rates) could have dealt with it.

I accept Mrs F wasn't able to find an alternative firm and I understand why she didn't in any case want to do so. And I've already acknowledged the rate offered by LV is significantly below the county court guideline rates. But I think LV has shown other firms would have been prepared to act for that and so I can't conclude it has rendered her freedom of choice meaningless. I don't think LV did need to offer a higher rate.

Mrs F continues to feel cover should be backdated to August 2023 (or earlier) but she hasn't provided any further comments for me to consider in relation to that. So I don't have any reason to change my previous view which was that cover should be in place from 20 September 2023 (and LV has agreed to that).

### **Putting things right**

LV will need to backdate cover for Mrs F's claim to 20 September 2023 and consider costs incurred from that period onwards against the terms and conditions of the policy (but will be entitled to apply the hourly rate set out in the policy of £100).

I appreciate Mrs F's solicitors don't appear to have signed the terms of appointment but where that's the case our approach is an insurer should nevertheless provide the cover it thinks a policyholder is entitled to. That's also in line with the policy terms in this case which explain that where a policyholder chooses a law firm and they refuse to act on the same terms as a preferred law firm *"the most we will pay is the amount we would have paid if they had agreed to the Standard Terms of Appointment"*.

### **My final decision**

I've decided to uphold this complaint. Liverpool Victoria Insurance Company Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 21 February 2025.

James Park  
**Ombudsman**