

## **The complaint**

Mr K and Mrs K are unhappy Liverpool Victoria Insurance Company Limited declined to cover a claim on their legal expenses insurance policy.

Although the policy is in joint names as the claim relates to Mr K, I'll mainly refer to him in this decision. All references to LV include its agents and claims handlers.

## **What happened**

In September 2023 Mr K contacted LV seeking assistance from his legal expenses policy with an employment claim. LV said the claim had arisen within the first 90 days of the policy start date and queried whether Mr K had previous cover in place. It also highlighted a policy exclusion relating to group or class actions.

Mr K provided evidence of a previous policy. LV asked a panel firm to assess whether the claim had reasonable prospects of success. They confirmed it did and LV sent terms of business to Mr K's own solicitor. In December 2023 they said Mr K's claim was part of a group claim (and they were acting for seven other claimants). LV declined the claim on the basis of the exclusion it had previously cited.

Our investigator reviewed the evidence and was satisfied a group of claimants were bringing action against their employer for broadly the same reasons and decisions made on one or more of the claims would impact the other ones. So he was satisfied the exclusion LV had relied on applied and thought it had fairly turned down Mr K's claim.

Mr K didn't agree. He said

- The term 'Class Action' wasn't defined under UK law and its origin and meaning was from the United States legal system. Based on case law from the US he thought it should be interpreted as a specific and precisely defined lawsuit where the interests of a sometimes unspecified and large group of people were represented by a representative. That wasn't the case for his claim where there were only several dozen people involved.
- His claim had now been settled and the outcome hadn't been linked to the decision on others within or outside of his group. His solicitors would have continued to represent him if he'd been unhappy with the proposed settlement. They'd also opposed the involvement of others who weren't party to the proceedings giving their agreement to it. So while there were separate claimants the matters had been addressed individually. And other claimants had had their claims covered by their legal expenses insurer.

## **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.

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 looked first at the terms and conditions of Mr K's policy. This does provide legal expenses funding for "*pursuing a claim directly resulting from a breach of your contract of employment*". So it could in principle assist with Mr K's employment dispute. But the policy contains a general exclusion which says it won't pay any legal expenses if "*your claim is part of a class action or will be affected by or will affect the outcome of other claims*".

As Mr K has said the term class action isn't defined in the policy. And I note the points he's made about the definition of that term which would apply in the US. But I think the term has been given a technical meaning under UK law which is collective proceedings brought in the Competition Appeals Tribunal (CAT) for loss or damage caused by an infringement of competition law. I think it would be reasonable to interpret the policy wording in that context and clearly that definition doesn't apply to the claim Mr K made.

However, the policy doesn't just exclude claims that are part of a class action but also ones that will be affected by or will affect the outcome of other claims. I don't think it's in dispute Mr K's claim formed part of a number of similar claims being pursued by his solicitors. And the ET1 form submitted by those solicitors said within a section headed 'Multiple Cases' "*additionally to those listed above, we expect there to be an additional 23 affected employees*". They went on to say "*we would like this claim to be treated as a Group Claim*". And they included details of other affected employees (including Mr K) in a section of the form which said "*please use this form if you wish to present two or more claims which arise from the same set of facts*". The solicitors also said to LV in December 2023 "*your insured is part of a group claim*".

I appreciate individual settlements might differ between the participants in a group claim (and Mr K's solicitors might have progressed matters if he was unhappy with the offer made in his case). But the policy wording references the outcome of a claim. I think it was reasonable of LV to conclude in this case that as there were a number of employees bringing claims that arose from the same set of circumstances then the outcome of one claim would likely affect the others. That's supported by the fact the ET1 form was submitted on a collective basis (and wasn't in Mr K's name but in the name of one of his colleagues).

I recognise other claimants may have had their claims covered. But those decisions will have been based on the wording of their policies. For the reasons I've explained in this decision I don't think it was unfair of LV to decline to provide cover for Mr K's claim.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 27 March 2025.

James Park  
**Ombudsman**