

## The complaint

Mr and Mrs M are unhappy with what Liverpool Victoria Insurance Company Limited (LV) did after they made a claim on their legal expenses insurance policy.

## What happened

In June 2023 Mr and Mrs M contacted LV seeking assistance from their legal expenses policy with a claim that had been brought against them. The matter was considered by panel solicitors. However, as cover hadn't been confirmed by the end of June Mr and Mrs M instructed their own solicitors to lodge a defence. The panel firm then said it would need Mr and Mrs to sign their terms of appointment prior to progressing an assessment of whether the claim had reasonable prospects of success (a requirement of the policy).

As that would mean they had to de-instruct their existing solicitors (who were progressing the underlying claim) Mr and Mrs M complained to LV. Having reviewed matters it advised in August the claim didn't fall within any of the insured events the policy contained so cover wasn't available at all. It also thought a policy exclusion would apply. And it said it wasn't responsible for any concerns they had about the handling of their claim by the panel firm.

Our investigator agreed the policy didn't cover Mr and Mrs M's claim. So she didn't need to consider whether LV had fairly concluded a policy exclusion would also apply. However, she thought LV was responsible for the actions of the panel firm when it was claims handling on its behalf. And it should have considered whether the claim was covered by the policy regardless of whether Mr and Mrs M had signed its terms of appointment. If that had been done Mr and Mrs would have been told much earlier their claim wasn't covered.

However, she didn't think they'd have acted differently if that had been done. In particular she didn't think they'd have done anything different in relation to their legal claim. But she accepted what LV got wrong caused Mr and Mrs M some avoidable distress and inconvenience and said LV should pay them £100.

LV accepted her outcome (though provided some comments from the panel firm in which it disputed it was acting a claims handling agent for LV). Mr and Mrs M didn't agree. In summary they said:

- When they first contacted LV they'd already contacted a different insurer on whose policy they initially thought the claim should be made. The same panel firm had said the claim did have reasonable prospects of success. So if they hadn't insisted on terms of appointment being signed the claim would have progressed.
- They only instructed a different firm because they were waiting to hear about whether LV could progress the claim under its policy and there were imminent court deadlines that couldn't be missed. But given the previous assessment they believed when doing so that cover would be provided under this policy.
- They also said the relevant complaints body covering the panel firm suggested when carrying out a prospects assessment they were required to issues engagement

paperwork which the firm had done in this case. And the panel firm told them cover had been approved and it was only the prospects assessment which needed to be carried out for this to be confirmed.

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.

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

For cover to be available for Mr and Mrs M's claim it needs to fall within one of the insured incidents set out in their policy. And the onus is on a policyholder to show their claim falls within one of those sections. I understand Mr and Mrs M's claim relates to a guarantee they gave for a business loan which the lender was seeking to enforce against them through court proceedings.

I've reviewed the terms and conditions of Mr and Mrs M's policy and I think LV are right to say this isn't a claim that would fall within any of the insured events it covers. Those events relate to 'personal injury', 'contract disputes', 'protection of property', 'employment' (pursuing a claim directly resulting from a breach of your contract of employment) and 'identify fraud'.

I think the only event Mr and Mrs M's claim could conceivably fall within is 'Contract Disputes'. But that would only apply to the defence of a claim where the contract was "*for the sale of goods you have owned and privately sold*". And it would in any case only apply to the pursuit of a claim where the contract was "*to buy or hire goods or services for your private use*". I think it's clear that wouldn't apply to a guarantee Mr and Mrs M gave to their lender for what I understand were liabilities owed by their business. So I think LV has correctly and fairly concluded the claim isn't one their legal expenses policy covers.

I've gone on to consider the handling of Mr and Mrs M's claim. There's been some dispute over the capacity in which the panel firm were acting. But I don't think that's material to the outcome. Either the panel firm were acting as claims handlers in relation to assessing policy coverage (which is what LV's final response says they were doing). If so it's responsible for their actions. Or they weren't doing that in which case LV should have established the coverage position prior to referring the matter to that firm for a prospects assessment.

I think either scenario leads to the same conclusion; LV should have properly considered the coverage position at the outset. Because that wasn't done Mr and Mrs M didn't find out their claim wasn't covered until 9 August 2023. They should have been told that soon after making their claim to LV on 22 June.

And that would be the case regardless of whether they needed to sign the terms of appointment in order for a prospects assessment to be completed. Establishing whether a claim is covered by a policy isn't in itself a legal question and is something LV (or its claims handlers) should be able to decide.

I've gone on to consider the impact on Mr and Mrs M of that failing by LV. I appreciate as that wasn't made clear to them they might reasonably have thought cover would be provided under their policy if it had reasonable prospects of success. But at the point they contacted LV they already had a fixed deadline to respond to the proceedings which I understand expired on 3 July 2023. And because of that imminent deadline they instructed their own

solicitors to provide a defence to that claim on or around 29 June 2023. That was prior to any claim outcome being provided to them (and before any issue became apparent over the need for terms of appointment to be signed).

I've also listened to a call between Mrs M and the legal helpline which I understand was on 29 June. In that she queried whether instructing her own solicitor would impact the assessment of her legal expenses claim. She was correctly advised the costs of doing so might not be covered but the claim assessment could still progress. Mrs M confirmed that she'd protect their position by instructing solicitors to lodge a defence and acknowledged "*I do appreciate that they [LV] might decide [the claim] is not covered for any reason*". That suggests to me that even if LV had made clear to Mr and Mrs M their claim wasn't covered at an earlier stage they'd then have progressed the defence of the claim through their own solicitors. I say that because Mrs M was clear in the call they needed legal assistance in order to do so and went ahead having recognised the policy might not cover their claim.

I do accept that what LV got wrong will have given Mr and Mrs M a raised expectation their claim would be covered and it will have been disappointing for them when they were informed around six weeks later that wasn't the case. And I also accept that will have caused them some avoidable inconvenience in then pursuing matters with LV. But taking into account that didn't impact their ability to defend the legal claim against them I think the compensation of £100 our investigator recommended is appropriate in the circumstances of this case.

### **My final decision**

I've decided to uphold this complaint. Liverpool Victoria Insurance Company Limited will need to put things right by paying Mr and Mrs M £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M and Mrs M to accept or reject my decision before 2 April 2025.

James Park  
**Ombudsman**