

## **The complaint**

Miss B and Ms H complain about the rate HDI Global Specialty SE offered to pay for Ms H's legal costs following a claim on their legal expenses insurance policy.

Miss B and Ms H are joint policyholders, but the complaint is about a claim Ms H made on the policy so for ease, I'll refer to her throughout.

Where I refer to HDI, this includes its agents and claims handlers acting on its behalf.

## **What happened**

Ms H made a claim for cover for the legal costs of an employment dispute with her former employer. HDI offered to appoint some of its panel solicitors to represent Ms H, but she wanted to use her own solicitors.

HDI said it would pay £160 per hour towards the solicitors' costs, which was higher than the rate it would pay to panel solicitors. Ms H was unhappy with this, as her solicitors' rates were higher, and complained that HDI was restricting her freedom to choose her solicitors.

In its response to the complaint, HDI said the policy terms were clear that it would not pay more than the rate paid to panel solicitors, but it had offered £160 per hour, which was higher than the panel solicitor rates, and had given details of six panel firms that would act for a lower rate. HDI said it would not go above that.

Ms H referred the complaint to this Service. Our investigator's initial view was that a rate of £160 per hour was fair but after considering further comments, she said:

- Ms H had raised issues about delays, but she couldn't consider that until HDI had the opportunity to consider it first.
- Where the policy doesn't specify an hourly rate, the rate offered must be reasonable. Taking into account the guideline rates, the location of Ms H's solicitors and the nature of her case, a reasonable rate would be £398 and Ms H's solicitors had offered £373, which was reasonable.
- So HDI should pay costs at £373 – and add 8% interest on any amounts Ms H had already paid to top up the fees.

HDI disagrees and has provided further comments, including:

- It has shown that six panel firms would be willing to act at rates between £100 and £125 per hour, but agreed to pay £160.
- It is entitled to limit costs, as long as this doesn't mean Ms H's freedom of choice is meaningless. The rate offered does not restrict her freedom of choice so much as to make it meaningless.
- The proposed rate of £373 per hour is much higher, because the investigator has suggested a Grade A fee-earner is reasonable and applied rates for central London, when the rates for another area would be reasonable. While the former employer is

based in central London, the relevant factors are where the claim will be dealt with and where the insured lives. That would mean an hourly rate of £301 or £247, depending on the experience of the solicitor.

The investigator considered these points but didn't change her view.

Ms H also raised concerns about the rate HDI had offered to pay for her barrister's fee. She said the proposed rate was below any reasonable assessment on the standard basis.

The investigator said it was unusual for a barrister to work on an hourly rate; they would usually work to a fixed fee. She didn't think it was fair for HDI to restrict the barrister's costs to an hourly rate and, even if it was, it was for HDI to show that what it had offered was reasonable, which it hadn't done. She didn't think HDI had offered a fair rate.

As no agreement has been reached, I need to make a 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.

Ms H has referred to delays by HDI. As she hadn't complained to HDI about that, our investigator explained it would not form part of this complaint and she would need to raise it with HDI first, so it has the chance to respond before a referral is made to this Service. So I won't comment on that. My decision concerns the rates HDI should pay for Ms H's legal costs.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly. Information about the policy should be clear, fair and not misleading.

The relevant law says that, where proceedings are necessary, a policyholder has the freedom to choose their own solicitors. But an insurer may 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.

HDI has agreed to provide cover, and that Ms H is free to choose her solicitors, but the rate it has offered to pay her solicitors is lower than the rate they charge. I've considered whether that's fair.

The starting point is the policy terms. HDI says the rate it will pay to non-panel solicitors will not be more than the rate it pays to its panel firms, and this is set out in the policy terms: *"Where the insured chooses to use their preferred representative, the insurer will not pay more than we agree to pay a solicitor from our panel."*

Where the policy terms significantly restrict cover, this needs to be made clear and I don't think this is sufficiently clear. A consumer wouldn't know what rates HDI pays its panel solicitors. Where a policy doesn't specify an hourly rate the insurer will pay towards a legal case, the amount offered needs to be reasonable. So I've considered what a reasonable rate would be.

The policy terms define costs as *"Reasonable legal costs and disbursements reasonably and proportionately incurred by the appointed advisor on the standard basis and agreed in advance by us. The term "standard basis" can be found within the Courts' Civil Procedure Rules Part 44"*.

On a standard basis test of assessment, the court will have regard to the guideline hourly rates for assessment. The factors I would expect an insurer to take into consideration when negotiating the hourly rate include the nature of the legal case, the seniority of the solicitor required, the standard rate for a solicitor in the area the case is being considered and the court guideline hourly rates.

HDI has given details of panel firms that will act at rates lower than the guideline rates. But, while they may take cases at lower rates, HDI hasn't shown they would deal with this case at the rates suggested. I'd expect an insurer to be able to show it has had claims with similar circumstances where non-panel firms have acted under the policy rates, without asking the customer to top-up the difference. HDI hasn't done that. It says Ms H's solicitors have previously acted on another case at a rate of £160 per hour, but I don't have details of the nature of the case or how it compares to this one.

Ms H and her solicitors have provided information about the nature of her legal case. It relates to an employment dispute with numerous issues including disability discrimination and other discrimination. She has also explained that it relates to post-traumatic stress following an incident at her workplace and the effect this had on her mental health. I'm satisfied her legal case involves significant and complex subject matters, which require an appropriate level of expertise. And she has explained the importance of the support she receives from her chosen representatives.

The case is being dealt with by an experienced solicitor. The firm agreed it would lower the usual hourly rate for this type of work to £373 (plus VAT). I appreciate Ms H does not live in central London but, taking into account her particular circumstances, the location of her employment, the complexity of the case, the requirement of a solicitor with over eight years' experience, and the court guideline rates, I think an hourly rate of £373 is reasonable in the circumstances.

With regard to the barrister's fees, I agree they would more typically work to a fixed fee, and this was the case here. It wouldn't be fair for HDI to restrict the barrister's costs to the hourly rate that it offered.

### **My final decision**

I uphold the complaint and direct HDI Global Specialty SE to:

- Pay Ms H's solicitors' costs at the hourly rate of £373; and
- if Ms H has already made payments to the solicitors to top up their fees, pay interest on the amounts she has paid towards the fees from the date Ms H paid them to the date of payment at 8% a year simple.\*
- Pay her counsel's fixed fees on the standard basis.

\*If HDI Global Specialty SE considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms H how much it's taken off. It should also give Ms H a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B and Ms H to accept or reject my decision before 7 April 2025.

Peter Whiteley

**Ombudsman**