

The complaint

Ms R has complained about the handling of a claim under her legal expenses insurance with HDI Global Specialty SE.

HDI is the underwriter of this policy, i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As HDI has accepted it is accountable for the actions of the agent, in my decision, any reference to HDI includes the actions of the agents.

What happened

In January 2024, Ms R contacted HDI to make a claim in relation to a dispute with a client who had issued proceedings against her. She wanted cover to defend the claim and counterclaim for unpaid wages. HDI arranged for one of its panel of solicitors to assess whether the claim had reasonable prospects of success, which is a pre-requisite of cover. However, Ms R was not happy that they asked her to sign terms of appointment with them. She also said her case needed an employment specialist and the panel solicitors did not have anyone qualified in employment law.

HDI referred the matter to another panel firm in early February 2024, but they were unable to take the case on, so a third panel firm was appointed. However, Ms R was not happy that they also wanted her to sign terms of appointment with them and wanted copies of bank statements for an identity check before they would assess the claim. Ms R was concerned that they were asking for money from her. Ms R was also not happy with the online reviews she had read about the third panel firm and did not think they had the right experience to deal with her case either.

Ms R made a formal complaint about the handling of the claim up to that point and HDI issued a final response letter at the end of February 2024, saying it had responded promptly to all communications and there had not been any delays on its part.

HDI then agreed that Ms R could choose her own solicitors to assess the claim and obtain a barrister's opinion but it says she did not choose one for HDI to contact. Ms R says that HDI told her it would only pay her chosen solicitors £120ph and she could not find anyone to act for that amount. There was no other communication until Ms R wrote to HDI in September 2024, to ask it to pay her some costs. HDI responded to Ms R confirming again that it had not refused her claim but it could not meet any costs incurred until the claim had been assessed as meeting the policy criteria.

Ms R is very unhappy with HDI's handling of the matter and referred her complaint to us in August 2024. Ms R has told us her young son is very ill with cancer and she has to pay for his treatment and this matter has caused her significant stress and financial burden. Ms R has made a number of points in support of her complaint. I have considered everything she has said but have summarised her main points below:

- HDI failed to refer her case to a suitably qualified solicitor to assess. HDI offered only property or contract lawyers. Three panel solicitors refused the case because

they were not specialised in employment law.

- HDI failed to assess the prospects of success of her case within 20 working days and it still has not been assessed.
- She was entitled to choose her own solicitor, as a result of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 and as confirmed in the case of *Brown-Quinn & Another v Equity Syndicate Management Limited & Another* (2011) EWHC 266.
- Our website also confirms that HDI is not entitled to refuse all cover just because the non-panel solicitors do not accept the hourly rate offered by the insurer.
- HDI can only restrict the hourly rate offered if it does not render her freedom to choose her own solicitor meaningless but the rate offered has done this, as she can find no solicitors that will act for £120ph.
- The claimant had tried to have her defence struck out but the court didn't do so. If her claim had no merit the court would have dismissed her defence and counterclaim.
- HDI suggested she pay for representation herself to protect her position but her child is receiving cancer treatment, which she has to pay for.

Ms R told us she wanted immediate access to a solicitor of her choice with an agreed rate of £300-350ph and £25,000 compensation for HDI's failure to progress her claim in a timely manner.

One of our Investigators looked into the matter. He recommended the complaint be upheld because he thought the panel solicitors could have been instructed to consider prospects without a signed terms of appointment and that HDI could have done more to help find a solicitor that would act either for the panel rate offered or at a reasonable rate, especially given Ms R was vulnerable due to her circumstances at the time.

The Investigator recommended that HDI should get an assessment of the prospects of success and arrange representation if prospects were confirmed. However, as a court hearing in the matter was due to take place in December 2024, if cover could not be put in place before then, he said HDI should assess if the outcome of the hearing was hindered due to its failings and put this right, by paying damages if appropriate. The Investigator also said that it should reimburse any legal costs incurred by Ms R, together with interest. In addition, the Investigator said HDI should pay £1,100 for distress and inconvenience.

HDI does not accept the Investigator's assessment. It says the panel solicitors would not assess prospects without signed terms of appointment and all the relevant information. It spoke to the panel solicitors and advised of Ms R's vulnerable situation but they insisted on terms being signed, otherwise they could not take the instruction. HDI says it was trying to help Ms R. In addition, it says that while it told Ms R that it would be looking at an hourly rate of £120, it also told her that it would negotiate an hourly rate with the solicitor once it had contact details. HDI also says it told her that it could discuss the hourly rate if a barrister's opinion was obtained. However, it says Ms R never provided any one firm and it could not pick one at random from her list to instruct. HDI also says it did not hear from Ms R from May to September 2024, so it could not do anything to assist her during this time.

HDI says that as Ms R would not engage with one of the panel solicitors and would not give it details of a solicitor of her choosing, it could not move the claim forward. It says it is entitled to establish the claim had prospects and it has been prejudiced by the fact the claim has gone ahead without it having any control over the costs incurred.

Ms R did not accept the Investigator's assessment either, as she does not think it is fair to assess the claim for prospects now and the compensation the Investigator recommended does not cover her costs. Ms R says HDI should pay her the damages she was seeking and

put her in the position she would have been in had she won her legal case by paying her the £12,000 unpaid wages, as well as costs and damages and “*very high compensation*” for the distress caused to her. Ms R says it is unfair that because she was forced to act as a litigant in person, she may have made mistakes in the process that might have been held against her. It is not entirely clear but it appears from what Ms R has said that the legal case has concluded.

Ms R also says that her son is having medical treatment and being out of pocket has meant he has missed essential treatment. The stress of preparing the court case unrepresented and with a very ill child has been immense. Ms R has also said she had to pay around £900 in court fees and the compensation the Investigator proposed barely covers that with nothing left for her son.

As the investigator was unable to resolve the complaint, it was passed to me. I issued a provisional decision on the matter in February 2025. I did not consider the complaint should be upheld. I have copied the main parts of my provisional decision below:

“Ms R’s policy provides cover for various legal disputes but in line with all other legal expenses policies the cover is subject to various conditions, the most important of which is that the claim have reasonable prospects of success. The policy says:

*“Following an Insured Event the insurer will pay legal costs & expenses...for all claims related by time or originating cause including the cost of appeals: subject to all the following requirements being met...
The claim: Always has reasonable prospects of success.”*

Reasonable prospects of success are defined in the policy as being:

“... a greater than fifty percent (50%) chance of the insured person successfully pursuing or defending the claim and, if the insured person is seeking damages or compensation, a greater than fifty percent (50%) chance of enforcing any judgement that might be obtained.”

This clause in the policy requiring a claim to have reasonable prospects of success is common to all legal expenses insurance policies and is not considered to be inherently unfair or unreasonable as it protects the insurer from having to incur the costs of pursuing or defending litigation which does not have any prospect of succeeding.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case.

HDI offered to do just that. It appointed three different panel solicitors to assess Ms R’s case for prospects of success. The first returned the case, as Ms R had said it needed to be dealt with by an employment specialist and they did not deal with employment law. The second panel firm could not take it on. Ms R says the third panel solicitors were not suitable either but I have seen no convincing evidence to support that.

Ms R says they needed to be employment specialists but the dispute was with regard to a contract for her services and the evidence provided by Ms R is that the claim

made against her was lodged as a civil money claim. There may be elements of employment law involved but I cannot criticise HDI for appointing contract lawyers at that stage. They would have advised if they thought other expertise were also required. I do not therefore consider I can make a reasonable finding that the solicitors were not suitable.

She has provided a number of negative online reviews but I do not think it was unreasonable proposal that they assess the claim.

The panel solicitors asked Ms R to sign terms of appointment and they also said they needed some further information in order to assess the claim.

Ms R refers to guidance that an insurer cannot refuse all cover just because the non-panel solicitor does not agree terms with the insurer. That is correct but here it is Ms R that is required to sign terms with the solicitors and until there has been an assessment of her claim there is no cover.

I do not consider it unreasonable that the solicitors asked Ms R to enter an agreement with them about the terms under which they will act. However, I can understand why the wording of the terms of agreement concerned Ms R.

The Investigator said the panel solicitors could have been asked to assess the claim without terms being signed. HDI says it did ask the third panel solicitors to do so but the solicitors insisted terms needed to be signed. I have not seen a copy of any such communication. It might have been possible for HDI to ask the solicitors to advise on the claim without a signed terms of appointment but I do not think it was obliged to do so. I also bear in mind that Ms R would have had to sign similar terms with her own solicitor in any case and would likely have had the same concerns about any such terms.

In response to her concerns HDI said, in an email of 31 January 2024, that the panel firm was suitably qualified and with regard to her concerns about the terms of business, it said *"to clarify we will cover legal expenses and fees for the claim, provided there are prospects of success"* and to discuss any further the concerns with the solicitors.

On 7 February 2024, HDI wrote again to say that Ms R would need to sign the terms of agreement before the claim could move forward but *"the legal costs and expense will be covered under your policy ...so please rest assured we will help with this. If you would like I can review the documents the solicitors have sent you"*.

On the same day HDI also wrote that the panel *"solicitors I have instructed should be able to assist and I suggest you liaise with them, therefore there is no need to instruct your own solicitors at your own expense."*

I think HDI made sufficiently clear that there was no risk of Ms R being responsible for any costs involved in the panel solicitors assessing her claim.

Having considered everything, I think the panel solicitors were entitled to ask for terms of appointment to be signed and, in any event, HDI gave sufficient reassurances to Ms R that this would not mean she would be liable for any costs.

In February 2024, as an alternative as Ms R was not happy with the panel solicitors, HDI said it could instruct another panel firm or would deal with a firm of Ms R's choosing and ask them to obtain a barrister's opinion on her case. It also wrote

another email the same day, again in response to an email from Ms R that she was concerned about having to pay for a barrister's opinion, that confirmed it would pay for and arrange the barrister's opinion on the merits of the case. It would be arranged via the solicitor she chose. I think this was reasonable.

Ms R provided the name of a solicitor she said she had spoken to about her case and HDI asked for contact details for them and that they would need to get a barrister to advise on prospects of success and if there was cover they would agree an hourly rate with them.

I acknowledge HDI said it would only pay them a panel rate and Ms R would have to cover any difference between that rate and the solicitor's charging rate. However, it did also say that it would discuss the rate with any non-panel solicitors. And on 20 February 2024, HDI wrote and said: *"with regard to the hourly rate, this is discussion for later in the process if the barristers confirm that the case has prospects"*.

Ms R did not provide the contact details for the solicitor she had spoken to and provided a list of a number of London solicitors that she said charge £300 –£350ph.

Ms R also referred to legislation and case law, as well as our own published guidance, on the right of policyholders to choose their own legal representation. She is correct that we do not consider it reasonable to limit the hourly rate payable such that it renders any freedom of choice meaningless and that any restriction on the hourly rate should be clearly set out in the policy. We also do not consider an insurer can refuse all cover because a solicitor has not signed terms of appointment with the insurer. However, Ms R's right to choose her own representative, and therefore this guidance, is only triggered once it has been established that there is a valid claim under the policy. Ms R's claim has not yet been assessed as meeting the policy requirement that it has reasonable prospects of success, so her right to choose her own solicitor and be indemnified for their reasonable costs has not yet been triggered.

I do not therefore think HDI was obliged to pay the rate Ms R asked for solicitors she chose.

There was then an impasse, as Ms R did not identify one particular solicitor from her list that HDI could contact to discuss any compromise on its hourly rate, and she did not want to proceed with a panel solicitor.

Even if I thought it was fair that HDI pay a higher hourly rate for Ms R's chosen solicitor to assess the claim (which I don't), I think HDI was in a difficult position because it did not have details of any one solicitor to contact. And I bear in mind that it was not obliged to offer to pay Ms R's own solicitors to assess the claim, given there was no valid claim under the policy at that stage.

I do acknowledge that Ms R 's circumstances mean she was in a vulnerable position and was under enormous strain at the time, and still is, but HDI did try and assist and I think it did act reasonably taking into account her particular circumstances by offering to pay her own solicitors to assess the claim.

Having considered everything carefully, I do not think HDI acted unfairly or unreasonably. It offered various panel solicitors and gave assurances that Ms R would not be responsible for any costs incurred in assessing the claim. Ms R states strongly they were unsuitable because they were not employment specialists but this has not been established. When she was still unhappy with this, HDI offered to pay

Ms R's own chosen solicitor to obtain a barrister's opinion. While I can see there was debate about the hourly rate of any solicitor, Ms R did not provide information so it could proceed with this and perhaps have reached an agreement; and for the reasons set out above, I do not think HDI was obliged to offer more than its panel rate at that stage. I do not therefore think HDI caused the delay in assessing the claim. It follows that I do not consider it is responsible for the fact Ms R was unrepresented at any hearing or when preparing her defence and counterclaim."

Responses to my provisional decision

I invited both parties to respond to my provisional decision with any further information or arguments they want considered.

Ms R does not accept my provisional decision. She says:

- I said she told us her case had concluded and insinuated she lost, which is absurd. She has provided copies of correspondence from the court stating a hearing is listed for later in 2025.
- I said three different panel solicitors were appointed but this is not correct, as they all refused to be appointed. If they were appointed, this would mean they accepted the case.
- Our guidance says that prospects of success should be assessed by a "*suitably qualified lawyer (i.e. a solicitor, barrister, legal executive) and they should have knowledge of the relevant area of law.*" This was not done in her case.
- One of the solicitors provided was only experienced in commercial property construction and not in contract dispute or employment.
- Panel solicitors have a commercial relationship with HDI, they use paralegals and trainees and will not provide as good a service and their use mean an insured's chances of winning their case are reduced.
- Once the claim has reached a stage where legal proceedings need to be started, she has a statutory right to choose her own solicitor. But this never happened in her case.
- In saying I do not think it HDI was obliged to offer more than its panel rate, I am denying her statutory rights. This is illegal discrimination and extremely abusive especially given she is a vulnerable customer.
- I said that she would have had to sign similar terms with her own solicitor in any case as a reason why she had to use the panel. In so doing, I am deciding for her what she thinks and decides.
- The panel firm's terms of agreement said that they would be expected to act for her going forward, which was misleading and trying to prevent her from exercising her freedom of choice and also indicated she would be fully liable for their costs
- I said that the hourly rate offered by HDI was negotiable but this is a lie.
- Even HDI's panel solicitors would not work for the £120ph it was offering.
- She provided names of solicitors she wanted to act for her but HDI refused to work with any of them.
- HDI did contact one of the solicitors she nominated and was offensive and abusive.

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.

I said in the summary of the background of this matter that it was not entirely clear but it appeared from what Ms R had said that the legal case had concluded. Ms R has now confirmed this is not the case. However, this does not impact the outcome of this complaint.

Ms R is correct that policyholders have a statutory right to choose their own solicitor at the point that proceedings are necessary and a legal expense insurer cannot restrict the amount they will pay a policyholder's own solicitors such that it makes that freedom of choice meaningless.

However, that right is only in relation to claims that have been accepted under the policy, or "*where under a legal expenses insurance contract recourse is had to a lawyer*" (Chapter 6, The Insurance Companies (Legal Expenses Insurance) Regulations 1990).

As it stands, it has not yet been established that Ms R has a valid claim under the policy. Therefore, HDI is not obliged to pay any costs on behalf of Ms R.

HDI has however offered to pay for the assessment of prospects that would establish if there is a valid claim under the policy. And it did offer and appoint three panel solicitor firms. Ms R says they were not appointed because they did not proceed with the assessment but they were offered and instructed by HDI to do so.

The most recent panel firm did not proceed because Ms R would not sign the terms of appointment. She has raised a new point that the terms they asked her to sign said they would be expected to act for her going forward and this would have been in breach of the legislation around freedom of choice. I don't think this was raised previously and it is apparent from Ms R's correspondence to HDI at the time that her concern was that she thought it would mean she would be liable for their costs. In any case, as stated if there is a valid claim under the policy then Ms R would have a right to choose her own solicitor. I am not persuaded that Ms R refused to sign the terms of appointment because she thought she would not be able to exercise this right later. The evidence is that Ms R was concerned about being liable for their costs. As set out in my provisional decision, I think that the solicitors were entitled to ask for terms of appointment to be signed and that HDI gave sufficient reassurances to Ms R that this would not mean she would be liable for any costs incurred in assessing her claim.

In considering whether it was reasonable to expect Ms R to sign terms of appointment, I also commented that Ms R would likely have to sign similar terms with her own solicitors and therefore would likely be concerned about being liable for their costs as well. Ms R objects to my comments but it still seems to me likely that she would have had the same concerns.

Ms R also says panel firms would not offer as good a service as non-panel firms because of their relationship with HDI. We do not consider that the use of panel solicitors causes any disadvantage to policyholders. Solicitors are independent professionals, subject to their own professional regulation. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not.

Ms R also says that she is entitled to assessment of her claim by suitably qualified lawyers but none of the panel firms offered were suitably qualified. The first panel firm did return the instructions because Ms R told them it needed an employment law expert. I do not think this means that they agreed it needed an employment specialist, as they had not looked at the case at that stage. I set out in my provisional decision why I did not think HDI can be criticised for instructing contract specialists. In short, the claim made against Ms R was a money claim and was not brought in the employment tribunal. The third panel solicitors offered is a large firm and has employment and contract specialists. There remains no evidence, as far as I can see, that they were unsuitable.

When none of the proposed panel solicitors were able to proceed with the assessment, HDI offered to find another panel solicitor or pay a non-panel solicitor of Ms R's choice to do so. I

think this was reasonable. HDI has no obligation to pay non-panel rates to these solicitors, given it has not been established there is a valid claim to be met. HDI did say initially that it would restrict the rates but when Ms R told it she was having difficulty finding a solicitor to do the assessment for those rates it did indicate that it would negotiate the rates for the assessment. I think HDI made it sufficiently clear it would also negotiate the rates if Ms R's own solicitors were instructed under the policy going forward.

I do not think it did anything wrong here and as stated the legislation, case law and our guidance about freedom of choice of solicitors only applies to cases where it has been established there is a claim to be met under the policy and in Ms R's case, it has not been established that her claim meets the policy requirements for cover yet.

Ms R also says she provided 30 names of solicitors she would have been happy with but, as stated, HDI required contact details of one to contact and discuss terms with. She says they did contact the first firm she referred to but the documents on file only show that they asked for contact details for him and there is no record of any phone call or her providing the contact details as far, as I am aware.

Having considered everything again, I remain of the opinion that HDI has not acted unfairly or unreasonably. HDI is not obliged to pay any legal costs until it has been established that Ms R's claim meets the policy requirements, including that it has reasonable prospects of success. HDI tried to assist Ms R and offered to pay a non-panel solicitor to do the assessment but given it has panel solicitors able to do the assessment, I do not think it can reasonably be required to pay more than the panel solicitors would have charged.

I also remain of the opinion that HDI has not caused any unnecessary delays and is not responsible for any issues due to Ms R being unrepresented.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 24 April 2025.

Harriet McCarthy
Ombudsman