

The complaint

A company, which I'll refer to as D, complains about the way HDI Global Specialty SE dealt with a claim on D's legal expenses insurance.

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

Mrs D, who is a director of D, brings the complaint on D's behalf. She says after initially declining the claim, HDI agreed to provide cover when she provided a positive legal opinion but then withdrew cover again.

What happened

D had a dispute with some customers. When they instructed solicitors and threatened legal action, Mrs D made a claim on D's legal expenses policy.

HDI obtained a legal assessment from one of its panel solicitors, which said D did not have reasonable prospects of defending the case. HDI told Mrs D if she wished to challenge this, she should provide a positive assessment from a barrister.

Mrs D instructed solicitors to act for D and they corresponded with the other party. When Mrs D provided a copy of their correspondence to HDI, it agreed to provide cover, and reimbursed some costs D had paid to the solicitors. But HDI instructed another of its panel solicitors, saying D did not at that point have the right to choose its own solicitors.

The new panel solicitors reviewed the case and said D did not have reasonable prospects of success. So HDI withdrew cover again.

Mrs D complained on behalf of D. In its final response to this complaint, HDI said it had asked Mrs D to provide a counsel's opinion and shouldn't have accepted the correspondence from D's solicitor (which wasn't an assessment of prospects of success), so there had been an error. To put things right, it would now obtain counsel's advice.

Mrs D remained unhappy. She said D had been forced to agree an unfavourable settlement with the other party and pay them £20,000, because it couldn't risk incurring further legal costs. She referred the complaint to this Service.

Our investigator said HDI should obtain counsel's advice, based on the evidence available at the time, to confirm whether the claim would have had reasonable prospects. If the advice was that D did not have a reasonable chance of success, HDI didn't need to do anything further. But if the advice was favourable, counsel should also advise on what the likely outcome would have been, if cover had been in place. HDI should then compensate D for any loss.

On behalf of D, Mrs D says she accepts the investigator's recommendation, but if D incurred further costs in relation to obtaining counsel's advice, these should be reimbursed.

HDI says:

- It agrees to obtain counsel's advice and will ask panel solicitors to suggest three barristers. Mrs D or her solicitors can provide any information they wish counsel to consider, and they will be given a copy of the instructions to counsel.
- The opinion should be limited to the question of prospects of defending the claim. It doesn't agree counsel should be asked to consider any further issues regarding the settlement of her case.

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.

The policy terms say cover will be provided if the claim has reasonable prospects of success, which is defined as *"a greater than 50% chance of the insured successfully pursuing or defending..."*

It's a requirement of almost all legal expenses insurance that cover will only be provided if a claim is likely to be successful. I think that's reasonable – it wouldn't be fair to expect an insurer to cover a claim if it's unlikely to succeed. Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. They are entitled to keep this under review as a case progresses.

When HDI referred the claim to panel solicitors to assess, their advice was that D was not likely to successfully defend the claim. Mrs D complained about that assessment at the time, but didn't refer that complaint to us within the time limit. So I'm not considering how that initial assessment was dealt with. In any event, it has been overtaken by later events.

Mrs D made a further complaint about what happened after she provided the correspondence from D's solicitors, which HDI addressed in a final response sent in March 2025. It's that complaint I'm considering.

HDI has acknowledged that it should not have accepted the correspondence from D's solicitor and reinstated cover at that point. What it should have done was obtain counsel's advice. To put things right, both parties agree HDI should now instruct counsel to advise.

The dispute is the scope of that advice – whether it should be limited to whether the claim had prospects of success, or (if the advice is positive) should also consider whether the outcome of the case might have been different, if D had been covered.

Where something has gone wrong, the aim as far as possible is to put the complainant back in the position they would have been in, if the error hadn't occurred.

In this case, HDI should have obtained counsel's advice. So it needs to do that now. But I do need to consider what would have happened, if that advice had been obtained at the time.

If the advice is that D's case did not have reasonable prospects of success, there is no loss; cover would never have been provided. So the position D was in – having to deal with the case without the benefit of cover – is no different from what would have happened.

But if the advice is that D's defence did have reasonable prospects of success, D would have been covered. So I need to think about whether things would have been different.

Mrs D says if D had had the benefit of cover, it would have been able to pursue the defence and would have been in a position to either defend the case at court or negotiate a better settlement.

So it's fair that counsel advises on this and considers whether D's position was prejudiced because it didn't have the benefit of cover under the policy. If the advice is that D would have been able to defend the claim, or negotiate a better settlement, it has lost out. In that case, HDI should compensate for the difference between the amount D actually paid - £20,000 - and the amount it would have paid.

HDI offered compensation to D of £350 for the inconvenience caused. The complainant is D, a limited company, so I can't award compensation for any distress Mrs D may have suffered. I'm satisfied the offer of £350 was fair for the inconvenience caused to D's business activities. From what I can see, Mrs D didn't accept the offer so the compensation was not paid, in which case it should be paid now.

Putting things right

To put things right, HDI needs to do the following:

- Instruct counsel to advise on whether D had reasonable prospects of successfully defending the case. D (or its solicitors on its behalf) may provide any information it wishes counsel to consider, and is to receive a copy of the instructions to counsel.
- If the advice is that the case did not have reasonable prospects of success, no further action is needed.
- If the advice is positive, counsel is to advise on the likely outcome if cover had been provided – whether D would have successfully defended the claim, or would likely have settled on better terms, and:
 - If the advice is that the claim would have been defended with no payment made to the other party, or that a reasonable settlement would have been less than £20,000, pay the difference between any amount that would have been paid and the £20,000 that D paid.
 - Pay any reasonable and necessary legal costs D incurred (subject to D providing evidence of the costs it has incurred).
 - Pay interest on any sum due to D at a rate of 8% simple per year from the date D paid the settlement of £20,000 or the date it paid the legal costs, as appropriate, until the date of reimbursement.

The offer HDI has already made to pay £350 for the inconvenience caused to D is fair in all the circumstances. So HDI should pay £350 in any event.

My final decision

I uphold the complaint and direct HDI Global Specialty SE to take the steps and pay the compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 7 May 2026.

Peter Whiteley
Ombudsman