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The Importance of In-House Legal Services in Legal Protection Insurance

In this article, the author discusses the claims handling framework in European legislature, describes factors which influence in-house claims handling and elaborates on the organisation of in-house legal services. He explores the effectiveness of customer protection which EU regulation intends to offer in the area of in-house legal services. He concludes that the Solvency II Directive equips in-house lawyers with a set of effective and tested measures to deal with (potential) conflicts of interest.

He further evaluates the benefits of in-house claims handling and the potential it has for access to justice.

Keywords: Legal Protection Insurance, Claims management, Legal services.

Introduction

In many countries of the European Union, legal protection insurance companies provide customers with legal services performed by lawyers they employ, in addition to the more classic approach of reimbursing legal costs. This type of in-house legal services is vital if companies wish to keep legal protection affordable to customers.

In addition, in-house lawyers have the potential to offer good customer experience with reliable, quality, legal services, thus creating opportunities for LPI companies to distinguish themselves positively in the market.

In the Netherlands, in-house claims handling is practiced on a large scale and the author provides several examples from this practice to illustrate the possibilities offered by using the services of in-house lawyers for legal protection insurance and access to justice.

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The contents of this article represent his personal opinions and do not necessarily represent the opinion of the company.

Legal framework

The legal framework for legal protection insurance in Europe began with the EC Directive on legal expenses insurance (*Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance; Official Journal L 185, 04/07/1987 P. 0077 – 0080*), which came into effect on 4 July 1987.

On 1 January 2016, the Solvency II Directive came into effect. It regulates the insurance industry as a whole, including legal protection insurance (*Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II); Official Journal of the European Union L 335/1, 17.12.2009*). The provisions of the 1987 Directive were incorporated in the Solvency II Directive.

The Solvency II Directive defines legal expenses insurance as insurance “to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

- (a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;
- (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.” (Art. 198)

Member States are obliged to implement the Directive into domestic law and regulations. The Directive itself has no direct effect on European citizens.

Though EU regulation uses the term “legal expenses insurance”, most insurers prefer the term “Legal Protection Insurance” (LPI), which I will also use in this paper.

It is customary in LPI that the insurance company itself, to some extent, also provides legal services to its insured customers. The extent to which it is possible for an insurance company to provide legal services directly to customers varies, depending on domestic regulation. In Germany, for example, the strict lawyers’ monopoly completely prohibits insurance companies from providing legal services. Therefore, in Germany, LPI companies only reimburse legal costs, whereas in several other countries, such companies provide “legal protection”: legal assistance by an in-house legal specialist, as well as reimbursing the costs when it is necessary to contract an external legal specialist. Thus, the term “Legal Protection Insurance” is more representative of the value this type of insurance has for customers.

Articles 198–205 of the Solvency II Directive regulate LPI. The objective of the original 1987 Directive was to bring an end to the discussions among EU Member States about mandatory legal separation of LPI from other insurance classes. Germany advocated for LPI to only be provided by insurance companies which did not cover any other insurance classes but LPI. This mandatory separation was, according to Germany, the best guarantee for avoiding conflicts of interest. Before the Directive came into effect, it was prohibited in Germany for a legal protection insurance company to operate in other insurance classes.

The issue at stake was how to avoid a situation in which an insurance company can influence the handling of LPI claims against the company itself. An example of this could be a situation in which an insurance company is in a dispute with a customer regarding a motor insurance claim covered by that company, the customer also has an LPI with the same company and asks the

company for legal assistance. Similarly, if the LPI company is covering both parties in a dispute, a conflict of interest must be prevented. In the wording of the Preamble to the 1987 Directive:

“Whereas, in order to protect insured persons, steps should be taken to preclude, as far as possible, any conflict of interests between a person with legal expenses cover and his insurer arising out of the fact that the latter is covering him in respect of any other class of insurance referred to in the Annex to Directive 73/239/EEC or is covering another person and, should such a conflict arise, to enable it to be resolved.”

Within that framework, the 1987 Directive aimed to prevent both potential influencing of in-house lawyers and that of external lawyers working for the insurance company regularly.

To bring an end to the discussions among Member States, it was decided that insurance companies should take measures to avoid conflicts of interest as much as possible and when such conflicts do occur, mitigate them to the best of their abilities. Because of this solution, all Member States were able to abolish provisions prohibiting insurance companies from pursuing LPI and other classes of insurance at the same time (now Article 205 of the Directive: abolition of specialisation of legal expenses insurance).

In the Solvency II Directive, the following measures to prevent and mitigate conflicts of interest regarding LPI can be found:

- a) Separate LPI contract (Article 199)
- b) Set methods of claims management (Article 200)
- c) Free choice of lawyer (Article 201)
- d) Arbitration (Article 203)
- e) Duty to inform the person insured about their rights in case of conflict of interest (Article 204).

Measures a), b) and c) regarding Article 201(1)(a) are meant to prevent conflicts of interest, whereas c), regarding Article 201(1)b), as well as d) and e) are meant to mitigate and regulate conflicts, once they occur. I will elaborate on measures b), c), d) and e) as they regard claims handling.

Set methods of claims management

Article 200 of the Directive allows for three methods for the management of LPI claims:

- 1) Separate claims management (Article 200(2))
- 2) Claims management by a separate legal entity (Article 200(3))
- 3) All claims handled by a lawyer of choice of the insured (Article 200(4)).

These measures ensure that claims handling staff don't encounter conflicts of interest between insurance classes. Whichever solution is adopted, according to the Directive, the interest of the person insured shall be regarded as safeguarded in an equivalent manner.

Re: 1) Separate claims management

Measures are taken by the company to ensure that staff concerned with LPI claims handling can never be involved with claims handling in another insurance class simultaneously.

Re: 2) Separate legal entity

When this method is employed, each LPI claim is handled by a separate claims handling organisation. The Directive requires such an organisation to have separate legal personality and prohibits members of staff from handling claims in other insurance classes.

Re: 3) Lawyer of choice of the insured

This method gives the insured person the right to instruct their own lawyer from the moment they have a claim under the LPI contract. Therefore, every claim is handled by an external lawyer and the insurance company does not provide any legal services, only reimburses the costs of the lawyer. This method of claims management has to be well distinguished from the free choice of lawyer under Article 201.

Free choice of lawyer

There are three types of “free choice of lawyer” provisions in the Directive.

Firstly, free choice is featured as a method of claims management (as described above), where free choice is granted by the LPI contract from the start of every (covered) claim (Article 200(4)).

Secondly, there is the right of the insured person to choose a lawyer whenever “recourse is had to a lawyer” in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings (Article 201(a)). Therefore, when in a covered LPI claim a legal procedure before a court is started, the insured person is entitled to name the lawyer who shall be their legal representative. This can be an external lawyer but also an in-house lawyer, if domestic law allows such representation and if the client chooses to avail of it.

Thirdly, there is the right to choose a lawyer “whenever a conflict of interests arises” (Article 201(b)). This can occur when both parties to a conflict are covered by the same insurer for LPI or when there is a conflict between the insured and the insurance company itself (though in most LPI contracts this situation is excluded from the cover).

The first two types of provisions are intended to serve as a means of prevention of conflicts of interests, the third intending to mitigate a conflict of interest that has already emerged.

The free choice of lawyer is not limited to lawyers but also to any other persons appropriately qualified, according to national law, to defend, represent or serve the interests of the insured person in any inquiry or proceedings.

In recent years, important jurisprudence has come from the Court of Justice of the EU regarding the free choice of lawyer. Judgments in cases C-199/08 (*Eschig*; 10 September 2009), C-293/10 (*Stark*; 26 May 2011) and C-442/12 (*Sneller*; 7 November 2013) clarified that the free choice of lawyer under Article 201(1) is considered a general and autonomous right of the insured person which cannot be limited by an insurance contract. However, the Court acknowledged that “*limitations may be imposed on the costs to be borne by the insurer*”, “*on condition that that freedom is not rendered meaningless*”. According to the Court,

“that would be the case if the restriction imposed on the payment of those costs were to render de facto impossible a reasonable choice of representative by the insured person. In any event, it is for the national courts, if an action is brought before them in this regard, to determine whether or not there is any such restriction.”

This jurisprudence is especially important for countries where claims are often handled by in-house lawyers, as I explain further in this paper.

Arbitrary procedure

In case a dispute arises between the LPI company and the person insured, there must be a possibility of arbitration or other procedures offering comparable guarantees of objectivity, to settle the dispute. This possibility must be included in the LPI contract but does not exclude the right of both parties to go to court.

Duty to inform the person insured about their rights whenever a conflict of interest arises

Article 204 obliges the LPI company to inform the person insured, whenever a conflict of interest arises, about their right to freely choose a lawyer to serve their interest. In practice, this is most frequently applicable in situations in which both parties to a dispute are covered by the same LPI company and situations where a [covered] dispute with the LPI company itself occurs.

And when there is a disagreement between the person insured and the insurance company on how to settle the dispute, the LPI company shall inform the person insured about their right to use the arbitration procedure under Article 203.

External and internal claims handling

Terminology concerning “lawyers”

By “in-house lawyers” I mean employees of the LPI company or claims settlement office who perform legal services directly for the person insured who has a covered LPI claim. When I refer to “other lawyers”, I refer to any person outside the LPI company entitled to give legal advice or to – to some extent – represent a client in court. I will use the term “solicitor” to refer to lawyers who are members of the official Bar Association in a given country, are qualified to fully represent clients before courts in all cases and are subject to the official regulation of the Bar and to appropriate disciplinary courts.

Cost advantages of using in-house lawyers

Working with in-house lawyers can have significant cost advantages.

As the insurance company has to pay Value Added Tax (VAT) on invoices issued by external lawyers, handling claims by in-house staff results in lower costs as these are VAT-exempt. It is important to bear in mind that VAT paid is not deductible for an insurance company and is therefore included in the total claim costs. Claim costs are part of the insurance premium. In most countries, insurance tax has to be paid on top of this premium. Therefore, the person insured pays tax (insurance tax on the total of the premium, including claim costs) on tax (VAT on external lawyers' costs), in fact, which is to the benefit of governments but questionable if one is of the opinion that access to justice should be kept affordable.

Moreover, naturally, external lawyers need to make a profit while in-house lawyers don't, which makes in-house lawyers' services always cheaper by comparison. Depending on the organisation

and the scale, even further cost advantages can often be achieved by insurance companies through efficient processes, IT, knowledge management, etc.

Lower costs are therefore an important driver for using in-house lawyers but not the only one, as I will explain further in this paper. Lower costs of in-house lawyers are also to the benefit of the persons insured as they result in premiums being much lower. In the Netherlands, for example, customer premiums would be approximately 300% higher if it was not possible at all to work with in-house lawyers.

Several differences between countries

There are many differences between EU Member States in terms of legal services regulation, as well as regarding the culture on settling conflicts and the ways in which local legal services markets work. As a result, there are also many differences between Member States in terms of the environment that influences claims management in the LPI industry. In some countries, in-house legal services are of no importance at all, whereas in others, they are crucial for the insurability of the legal protection.

We can distinguish the following relevant factors influencing the model for in-house legal services as opposed to externally procured ones.

Extent to which in-house lawyers are permitted to handle cases

Lawyers' monopoly on representing clients before courts is of course the most relevant issue influencing the extent to which in-house lawyers can deliver legal services to their companies' insured clients. Other regulatory issues can have an impact as well. An example of this is the French regulation obliging LPI companies to give their insured customers the free choice of lawyer in case the opposing party in a conflict has an (external) lawyer, notwithstanding that a legal procedure before a court may have started.

In some countries (e.g. the Netherlands), in-house lawyers are permitted to provide almost every legal activity, from advising to representing clients in court, whereas in other countries (for instance Germany) insurance companies' employees are not permitted to provide legal services at all. In the Netherlands, this results in approximately 95% of claims being resolved by in-house lawyers, trained legal specialists, often with many years of experience in a specific legal area. In Germany, the claim staff can solely give instructions to external lawyers and after that, as much as check and pay the invoice.

But the mere possibility for in-house lawyers to handle claims is not the only factor determining to what extent in-house lawyers will actually handle claims. This is also dependent on other factors, on which I elaborate below.

Costs of external lawyers

As outlined above, external lawyers operate in very different environments throughout the EU. In some countries, prices are high (e.g. the UK, the Netherlands) and in other markets, services of lawyers are relatively inexpensive (Germany, Belgium). In some countries, external lawyers' fees are regulated, whereas in others, these are left entirely for the market to determine. When fees are regulated, costs can be predicted more accurately, which in itself is an advantage in insurance. When external lawyers' services are relatively affordable and predictable, it might not be

attractive for LPI companies to employ in-house legal staff, or it may make more sense to do so only in limited numbers.

Extent of recoverability of legal costs

When legal costs (such as lawyers' and court fees) can be recovered by the winning party after a court procedure, this results in lower claims costs for LPI companies. Normally, the LPI company is entitled, under the insurance contract, to receive these cost reimbursements. Therefore, the extent to which the company can recover the costs has an impact on the actual costs of external lawyers for the insurance company.

In some countries full costs can be recovered so the costs of external lawyers which the company has to actually pay will be relatively low if the case is won. In addition, under most LPI contracts, recoverability of costs (to a certain extent) is a precondition for coverage of the claim.

Settlement culture

In many countries, in-house lawyers handle claims in which a settlement can be reached before going to court. They are often very successful in this, as many parties do not want to take their dispute to court because of the length of the proceedings and the personal stress involved. It is not unusual for 80% of cases to be resolved this way, to customers' satisfaction.

However, this requires an environment in which an out of court settlement is socially acceptable as an effective and "honourable" way of dispute resolution. This culture does not exist everywhere to the same extent. If the culture is more litigious, the number of court proceedings will be higher and – depending on domestic regulation – the number of cases in which an external lawyer is needed will also be higher.

Geographical situation and insurance density

When a country covers a large area it is not always possible to work with in-house lawyers as they might be too far away from where their customer lives. This is also connected with cultural issues, such as whether it is customary to meet the lawyer to discuss a claim in person. When many people are insured and using their LPI coverage frequently, it is easier for the insurance company to open offices in different cities and thus provide their customers with access to in-house lawyers nearby.

Online services and modern communications, however, are changing these concepts rapidly. However, the need for clients to meet with in-house lawyers in person, cannot be neglected.

Influencing factors in practice

We can conclude that sometimes, there are indeed large differences in the environment in which LPI companies operate. Consequently, there are many differences in claims handling practices in various Member States. Below, I provide an example of how the environment influences claims handling, comparing Germany and the Netherlands.

Germany versus the Netherlands

In Germany, we see a situation in which legal assistance is almost exclusively the domain of solicitors, while in the Netherlands the solicitors' monopoly is very limited. There are twice as many solicitors per 1,000 inhabitants in Germany as there are in the Netherlands. German solicitors'

fees are strictly regulated, whereas in the Netherlands, fees are not regulated at all. This results in very high solicitors' fees in the Netherlands and relatively low fees in Germany. In Germany, the winning party in a court case is entitled to reimbursement of legal costs by the losing party, to the extent of the percentage of the defeat.

Due to existing regulation, German LPI companies have to outsource all claims to external lawyers but the predictability, the relatively low prices and the recoverability of legal costs, allows insurers to calculate insurance premiums that are relatively high among European states but still relatively affordable to customers in Germany.

In the Netherlands, solicitors' fees are difficult to predict and are high on average. Dutch law allows the winner in a court case only a small reimbursement of costs, covering a small percentage of total costs only. This results in high average costs in cases in which a solicitor represented the client before court.

The relatively limited solicitors' monopoly, however, allows Dutch in-house LPI lawyers to handle all legal cases in which out of court settlements can be reached, as well as enables them to represent clients in court in most cases. The Netherlands is a small country and clients do not mind travelling to meet their in-house lawyer in person. Some companies have offices throughout the country, for even easier access. The culture in the Netherlands fully accepts out of court settlements and the role of in-house lawyers in court procedures is appreciated. As a result, only 3 to 5% of claims in the Netherlands have to be outsourced to external lawyers. Unfortunately, the costs of this small share of claims are very high. As mentioned above in this paper, premiums for customers in the Netherlands would be around 300% higher without the possibility of working with in-house lawyers. In-house claims handling is therefore essential in the Netherlands for keeping premiums affordable to customers.

Role of in-house claims handling in access to justice

As outlined above, in-house lawyers are often able to settle disputes out of court. This is also done reasonably fast, as opposed to most court proceedings. This allows premiums to stay affordable to most customers and thus allows many customers to take LPI covers and to ensure access to justice. But they also enjoy prompt out of court dispute resolution by in-house lawyers. When in-house lawyers can also represent clients in court, financial advantages in terms of premium costs are even larger.

To give another example from the Netherlands, as solicitors' services are rather expensive, it is widely acknowledged in this country that most people cannot afford professional legal help from them. In addition, court fees were considerably raised by the Dutch government in recent years. However, to compensate for some of these setbacks, the government has, over the years, reduced the type of court procedures in which it is compulsory to be represented by a solicitor. The idea was initially that citizens would be able to represent themselves (it did not turn into reality) or that they could be represented by lawyers other than solicitors, for instance trade union lawyers, customer organisations or LPI lawyers (which was in turn successful). Therefore, LPI has benefited from these extended possibilities for in-house lawyers to represent client before courts.

This underlines the importance of in-house lawyers for access to justice in many countries. In the Netherlands, without LPI, most disputes would never be handled by legal experts or courts because litigants would not have the funds to access legal help, nor would they qualify for state legal aid either.

Impact of jurisprudence on free choice of lawyer in the Netherlands

As mentioned above, the recent rulings of the Court of Justice of the EU regarding free choice of lawyer have had significant impact in Member States where claims are often handled by in-house lawyers. However, these rulings' impacts differ from country to country and have not yet stabilised and are, therefore, difficult to assess fully at this stage. In the scope of this paper, I do not intend to analyse the jurisprudence of the Court in detail. But I will relate in short what happens in the Dutch market momentarily as an example of impacts of the above-mentioned rulings.

In the Dutch LPI market, since the *Sneller* ruling (see above paragraph "Free choice of lawyer"), claims in which clients demand a solicitor instead of an in-house lawyer, also able to handle their court procedure, have been on the rise. But we also see an increasing number of court procedures. Nowadays, external solicitors are actively looking for clients with LPI covers, in order to increase their turnover and the only way they can get their full costs reimbursed under LPI, is to take the case to court as soon as possible. So it seems that the possibilities of out of court settlement are not as extensively explored as they used to be.

This not only leads to higher LPI costs but also to a higher workload for the judiciary, who are already under stress due to cost-cutting by the Dutch government. And, as I have illustrated, the quality of in-house lawyers' work is good and their customer satisfaction high, and consequently, these extra costs paid by customers for insurance and borne by society more generally, represent no added value.

LPI companies are struggling to keep premiums affordable to as many people and businesses as possible and are therefore forced to take measures to mitigate the risk of increasing costs of solicitors as a result of the jurisprudence of the Court of Justice of the EU. Every LPI company now has a mitigation policy conditions in place, using deductibles and lower maximum reimbursement amounts of external lawyers' costs. These limitations are necessary, but do not, of course improve the situation for customers.

We are facing a situation in which a relatively low number of clients prefers to avail of a freely chosen lawyer but this low number leads to high costs. The many clients who prefer an in-house lawyer suffer the consequences of high costs, brought about by only a small group of customers, as policy advantages are reduced and premium costs increase.

Therefore, in the Netherlands we have also experienced a downside to the Directive due to the fact that it does not allow LPI companies to benefit fully from the limited compulsory representation by a solicitor, the very measure the government had taken to keep access to justice affordable.

Organisation of claims handling

Providing in-house legal services can be undertaken by a professional organisation comparable to a law firm. Most of the time, LPI companies provide these services on a larger scale, however. To illustrate how such an organisation may look, I will describe the situation in the Netherlands, where in-house claims handling is practised on the largest scale in the EU.

Dutch LPI market

Over 50% of households and around 25% of (small) businesses in the Netherlands are covered for LPI. There are two single-branch and over thirty multi-branch insurance companies covering LPI.

For every LPI cover, claims handling by in-house lawyers is the starting point. But Dutch law does not allow multi-branch insurance companies to handle LPI claims themselves. Therefore, Dutch regulation is more strict on this issue than the Directive itself. However, as this is seen as even better protection for the persons insured, such divergence from the Directive is permissible. Multi-branch companies use separate legal entities, specialised in providing legal services for LPIs (LPI claims settlement offices). At times, multiple insurance companies work with one claims settlement office; sometimes they work with a single-branch LPI company in claims handling.

As a result, there is a concentration of claims handling within five large organisations. The management of these organisations does not perform claims handling activities for other classes of insurance. In terms of claims handling by single-branch LPI companies, this is in accordance with Article 200(2) of the Directive and in terms of management of claims settlement offices, Article 200(3) applies, as illustrated above.

Hundreds of in-house lawyers per organisation

These organisations employ large numbers of in-house lawyers, ranging from somewhat over 100 to over 500 FTE (full-time employees). As mentioned above, the majority of claims can be fully handled by these employees.

The organisation I work with employs over 500 in-house lawyers, who all specialise in a specific area of law. There are five main areas: road traffic claims, personal injury, contract law, real estate, administrative law and labour law. Within these main areas, there are over forty smaller sub-specialities. Each in-house lawyer is a specialist in one of the main areas, meaning he or she only handles cases in this area. Many of these lawyers are also specialists in one of the sub-areas. Very experienced lawyers are sometimes able to master two main areas. Dutch law allows our in-house lawyers to represent clients before court in most cases. Our in-house lawyers handle over 100,000 legal claims per year.

Because of this and because of the fact that the majority of people are covered by an LPI, in-house LPI lawyers provide legal services for approximately the same amount of customers as solicitors do in the Netherlands.

Role of external lawyers

When it is necessary to have recourse to an external solicitor (because of the solicitors' monopoly) or when a client wishes to access the service of an external lawyer when a legal procedure is necessary, the cases are transferred by the in-house lawyer to a different department within the claims handling organisation. These are external legal services departments, which then consult with the client as to which external lawyer the client prefers and then refer the case to them. External lawyers' invoices are checked and paid by these departments. Only 3–5% of the total number of claims have to be referred to external lawyers.

Legal information and prevention

LPI companies in the Netherlands are actively providing legal information to persons they insure, in order to help them prevent legal disputes, or mitigate conflicts in their early stages. This is of course both in the interest of customers and LPI companies, as better informed customers have fewer or less severe claims to report. Nowadays, a lot of information is provided by LPI companies online, making it more accessible to everybody as opposed to being available only to LPI covered customers.

Clients with a conflict or a potential conflict can call a legal advice desk. In-house legal specialists man this service desk and provide clients with answers and practical solutions on how to avoid, solve or mitigate legal problems. Customer satisfaction from using this service is high as it is easy accessible and provides information and solutions fast, which clients find very useable. In the company I work for, we help around 150,000 clients a year with our telephone legal advice service.

Nowadays, LPI companies in the Netherlands are improving their online services for prevention and legal advice. We see various experiments being tested in the market, using innovative online legal intelligence systems to assist clients.

Employed solicitors

Throughout Europe, solicitors were normally obliged to work independently on a self-employed basis and could only be employed by another solicitor or by a law firm, which was an organisation of solicitors only. Now we see this historic landscape changing and LPI companies using the new possibilities these changes offer.

In the UK, it is now permissible for other parties to join law firms. LPI companies can (and some do) join these.

In the Netherlands, it is permitted for solicitors to be employed by certain organisations like trade unions and LPI companies, in order to work exclusively for their clients. This underlines the importance of LPI felt broadly in the Netherlands and shared by the Dutch Bar Association, and demonstrates the level of trust that LPI companies' in-house legal services enjoy.

The employed solicitor is allowed to represent clients before courts in all types of cases. He or she is only permitted to take instructions from a supervisor who is an employed solicitor himself or herself and is subject to all regulations and disciplinary procedures of the Dutch Bar Association. In-house lawyers who are themselves not employed solicitors are not allowed to handle cases or assist clients of colleagues who are solicitors.

It is important to mention that if a case is handled by an employed solicitor of an LPI company, the client still has free choice of lawyer in case of legal proceedings. Some organisations in the LPI industry do use these employed solicitors (sometimes in relatively high numbers) and some do not use them at all. This is a matter of policy and vision and LPI companies do differ in this area.

Quality assurance

Regulatory framework

Quality assurance of legal services departments is of highest importance to LPI companies. Quality assurance systems are embedded in insurance companies' overall quality management systems.

The Solvency II Directive requires all insurance companies to have an effective system of governance in place, providing for sound and prudent management of the business. Proper governance, risk management and internal control must be of a high standard and needs to be tested and reviewed on a regular basis.

Professional qualifications, knowledge and experience of all persons who effectively run the company or have other key functions must be adequate to enable sound and prudent management ("fit") and must

be of good repute and integrity (“proper”). Continuity of business must at all times be guaranteed, to the benefit of the persons insured. Strict demands regarding solvency have been formulated for these purposes.

Such regulation of course also applies to LPI and is also relevant to claims handling and the provision of legal services by LPI companies. Sound and prudent management of in-house legal services demands quality policies that are well executed, transparent on results and regularly audited.

Code of conduct for in-house lawyers

LPI companies in the Netherlands provide legal services in accordance with a special LPI code of conduct drawn up by the Dutch Association of Insurers. For members of the Association, the code is compulsory. As each LPI company is in fact a member of the Association, this code of conduct is accepted by the entire LPI industry. It ensures the independence of in-house lawyers, focuses on customer interest and on warranties regarding in-house lawyers’ legal skills. Compliance is regularly tested by independent auditors and the outcomes are published.

Legal skills

In-house lawyers of LPI companies in the Netherlands are highly educated and trained and keep developing their knowledge and skills. They have to have proper legal training before they are employed. Employees are recruited either directly from law schools or have had experience working for other professional legal services providers (e.g. solicitors’ offices, governments, corporate in-house counsel). As in-house lawyers’ salaries are up to standards in the legal professionals’ market or even higher, lawyers do like to work for LPI companies. Apart from the remuneration, they appreciate the opportunities to specialise and like the fact that they do not have to spent time looking for paying clients.

LPI companies keep training and developing the legal skills of their in-house lawyers during employment. The company I work with has its own “Legal Academy” for training purposes, which works with highly specialised internal trainers as well as trainers from other legal organisations. And we cooperate with legal faculties of several universities. Experienced LPI lawyers are obliged to spend a defined number of working hours on their continuous professional legal development each year. Young lawyers, who just graduated from law school, have to complete a three-year internship. During this period, they take part in various courses (both legal theory and practical advice skills) and have a tutor who trains them how to be a good and effective lawyer. They have to pass tests before being able to practice without supervision.

The quality of legal work undertaken by experienced in-house lawyers is checked through peer review. In addition, every lawyer belongs to a team of lawyers which provides additional support. They always keep an eye on each other’s work, as does the manager of the team, who himself is also a lawyer.

Legal information is easily accessible in the large legal community of several hundreds of in-house lawyers. Knowledge and experience are easily interchanged. As mentioned before, most in-house lawyers are highly specialised, to a degree that most solicitors never reach. This makes them respected legal professionals. Clients are very satisfied with their legal knowledge and many legal professionals acknowledge LPI lawyers’ skills and experience.

Leadership based on performance measurement and customer satisfaction

Sound quality management demands that processes are well defined and clear and that performance is measured in a way that allows constant tuning of these processes in order to get the pre-defined outcome.

In the organisation I work with, all legal services processes are defined and monitored. Key performance indicators exist for reaction speed in contacts with clients, from the time needed to answer the telephone to the time needed to provide the client with an outline of how their in-house lawyer will handle the case.

Customer satisfaction is measured. Clients are very satisfied with their in-house lawyers. In-house lawyers distinguish themselves not only as legal experts but are also appreciated for the way they communicate with clients and make them feel that their problem and they themselves are important. Surveys show that customer loyalty is high among clients who have had experience with our in-house lawyers, higher than among clients without a claim.

Complaints

Handling client's legal problems is not easy and is often sensitive. Therefore, clients are not always satisfied with the claims handling. It is vital to have good complaints management in place. Dutch regulation obliges LPI companies to have a complaints policy and an effective complaints management process. The company I work with has a department working solely on client complaints. The most important thing is to restore the relationship between the in-house lawyer and the client as soon as possible. If that is the case, often clients who originally had a complaint, turn out to be very satisfied in the end. If the client is still not satisfied, he or she can take their complaint to the independent complaints commission of the insurance industry or take it to court. And last but not least, it is of course very important to analyse complaints and learn from them.

Professional liability

If a client is of the opinion that his or her in-house lawyer has made a professional mistake, the case is not treated as a complaint but as a liability claim against the LPI company itself. These types of claims should never be treated by the claims department itself so in most companies the corporate legal department handles them, sometimes together with another insurance company who has covered the risk of professional liability. Most LPI companies as a matter of fact have professional liability insurance. This protects the LPI company if in case of professional mistake large damages would have to be paid by the company, thus assuring the company's continuity. In-house lawyers are contractually safeguarded by their employer against such professional liability claims.

Quality mark customer-oriented insurance

In the Netherlands, there is the possibility to achieve a "quality mark customer-oriented insurance" when an insurance company complies with very strict standards on customer centricity, on products, services and quality management. The quality mark process is run by an independent organisation with no ties to the insurance industry.

Although this is self-regulation, all large companies are proud holders of this quality mark, including most LPI companies. This quality mark is a guarantee of good products and services to customers. For LPIs, there are additional requirements for claims handling. Every quarter, each holder of the mark is audited.

Benefits of in-house lawyers

Affordable insurance premiums

As explained above, lower costs are an important driver for LPI companies to use in-house lawyers as this allows for keeping premiums affordable.

Legal services as a unique selling point

Because in-house lawyers use uniform work processes and IT systems, clients experience a more or less uniform level of services, which helps them recognise the style and image of the specific LPI company. Ultimately, the company is able to distinguish itself in customer experience, thus creating a unique selling point, which is very hard, if not impossible to achieve, when using only external lawyers.

High customer satisfaction

In-house lawyers in the Netherlands focus on good customer experience, as well as achieving the best possible result for the client. They distinguish themselves from external lawyers in giving more personal attention to clients, which is highly appreciated, and combine this with decisiveness and effectiveness. They are also better valued as true legal specialists than external lawyers. Surveys show that customer loyalty is high among clients who have had experience with our in-house lawyers, even much higher than among clients who had their cases handled by external lawyers.

Legal quality

The concentration of many lawyers in one organisation and the extensive development opportunities, as well as the possibility to exchange legal skills in this type of a professional community are all advantages that LPI lawyers have over most other legal professionals. Combined with strict processes, peer review and legal specialisation, these advantages translate into LPI lawyers being respected and effective professionals. Customers can expect legal services whose quality is up to professional standards and which, because of the level of specialisation most in-house lawyers have, can be classified as good.

Quality management and transparency

As illustrated in the previous paragraph, regulations on quality management and control are very strict for LPI companies. As a result, rules on quality management are much stricter for in-house lawyers in the Netherlands than for solicitors who are members of the Dutch Bar Association. The Dutch Bar will only implement a quality management system in 2017. Over 50% of solicitors in the Netherlands work alone (i.e. not in partnership with other solicitors) and of course for such small businesses it is very hard to put in place their own quality policies, handbooks, management systems and audits.

Quality systems are made transparent by most LPI legal service providers on their websites. On the other hand, there are no such obligations for solicitors and almost no public information can be found regarding performance or client satisfaction with solicitors' services in the Netherlands. For customers, therefore, it is easy to compare LPI companies on their performance on claims handling but hardly possible to compare such performance with solicitors or to compare solicitors' services as such.

Warranties for clients

Focus on customer's interests is guaranteed

There have been discussions about whether in-house lawyers really put the interest of their clients first, since – it is said – as employees, the interest of their employer (the LPI company) comes first.

In the Netherlands, LPI companies are obliged by the Association of Insurance Companies to adhere to a Code of Conduct for in-house claims handling, where the interest of the customer is the most important provision. Of course, one can argue, this is only self-regulation and not regulation imposed by the government but we have to remember that the warranties laid down in the Directive are also very effective in this field. If a client disagrees with his or her in-house lawyer on how to proceed in the client's dispute, he or she has the right to use the arbitration procedure of Article 204 of the Directive. In the Netherlands, this means that he or she can ask any external lawyer for a second opinion on how to handle the dispute and the LPI has to pay the costs of this lawyer's opinion, which is binding for the insurance company.

Objective dispute resolution

If a customer is not satisfied with the quality of the in-house claims handling, he or she can file a complaint with the LPI company and ultimately can take this complaint to the Independent Complaints Commission for Financial Services, which is also able to give judgment on the quality of in-house lawyers' services. Following the Complaints Commission's findings is compulsory to all insurance companies by law. The Commission's stance on LPI lawyers is that their services should be up to the level of standards for solicitors who are members of the Dutch Bar Association. All Complaints Commission's costs are paid by the insurance industry, the complaints procedure is free of charge to the customer. And there is a right of appeal.

Effective customer protection

The Directive's provisions turn out to be very effective warranties for customers. LPI companies prefer to avoid second opinions and complaints procedures, of course. And in-house legal professionals themselves take immense pride in what they do and try to avoid conflicts of this type as well. Dissatisfied customers actively use social media these days and the press are always interested in insurance companies' mistakes. Being aware of this keeps both LPI companies and in-house legal professionals focused on serving customers' interests first and providing good quality legal services.

In effect, customer protection in the Netherlands is much more effective for in-house LPI lawyers than it is for other (external) lawyers. The Dutch Bar Association does have a complaints procedure but it is only voluntarily and not compulsory. Of course, there is disciplinary law for members of the Dutch Bar Association, which is important, but not a very effective means for settling disputes with solicitors for dissatisfied customers. Although a solicitor can be penalised by the disciplinary institute, this will not offer compensation for bad services or professional misconduct to the customer. Access to a regular court can still be necessary after the disciplinary procedure, to settle a dispute with the solicitor.

Solicitors also have non-parallel interests

My conclusion is that the provisions of the Directive concerning LPIs, offer effective protection to customers using in-house LPI lawyers.

In addition, I want to point out that where one could argue that there is a potential conflict of interest for in-house LPI lawyers, this also is the case for any other lawyer. Even solicitors who are members of the Bar Association experience non-parallel interests with the interests of their clients. Solicitors, after all, are mostly also entrepreneurs, who have to make a living and have a significant interest in their own turnover. The more hours they can bill a client in one case, the better it is for the turnover and the profit of the lawyer.

The question is, therefore, not whether there are non-parallel interests with clients. These exist for all types of lawyers. The real question is how one deals with potential and real conflicts. LPI lawyers are very well equipped for such challenges as the Directive provides them with a set of effective and tested measures to deal with [potential] conflicts of interest.

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