

The complaint

B complains about the service DAS Legal Expenses Insurance Company Limited (DAS) provided in relation to a claim under its legal expenses insurance policy.

B is represented in this complaint by one of its directors. I'll refer to him as Mr I.

What happened

B is a company providing security training. In 2018 B agreed with a third party abroad to carry out some training the following year. But the third party stepped down from his position, the training wasn't arranged, and B treated the contract as cancelled. In around November 2019, B raised an invoice for a cancellation fee of around £46,800, which the third party failed to pay.

Mr I appointed solicitors to chase payment but their letters in August and September 2020 weren't answered. Mr I made a claim on behalf of B under its legal expenses insurance (LEI) policy with DAS to cover B's costs of taking further legal action against the third party.

Some issues arose initially about which court had jurisdiction over any legal claim and which panel solicitors should act. Counsel advised in December 2020 the claim should be brought in Scotland. DAS agreed B could instruct its own solicitors going forward and they were appointed in mid-December 2020. At around this time, Mr I complained to DAS about the handling of B's insurance claim so far. DAS responded on 5 January 2021. They agreed their communication hadn't been of the quality they'd expect and offered B £250 compensation.

In mid-January 2021 the solicitors advised on the prospects of B's claim against the third party succeeding. In summary they said:

- It was reasonable to argue the Scottish courts had jurisdiction and that Scottish law governed the contract with the third party
- It was clear the third party owed the sum B was claiming
- Serving court proceedings on the third party might not be possible under the law of his country of residence; if he couldn't be served, it wouldn't be possible to sue him in Scotland
- Prospects of success depended on serving the proceedings; if that was possible, they exceeded 51%. To establish that they needed advice from lawyers in the third party's country of residence
- Enforcing a judgment abroad was generally difficult; Mr I thought there may be assets in the UK so that should be investigated

DAS agreed the recommendations subject to costings for the foreign lawyer advice. The solicitors obtained those by the end of March 2021. Foreign lawyers were appointed in around April, and their advice was available by mid-July. Mr I raised concerns about delays and conflicting updates from DAS and the solicitors during that time.

In July 2021, having heard from the foreign lawyers, the solicitors advised:

- B could sue the third party in Scotland and the prospects of success would be more than 51%
- No assets belonging to the third party had been found in the UK; the law in the third party's country of residence prevented a judgment being enforced against any assets he might have there; so the prospects of enforcing a judgment were poor
- Mr I thought the third party may have assets in another country; to establish that it would be necessary to get advice from lawyers there on enforcing a Scottish judgment and to establish if any assets existed

DAS didn't agree to meet the additional costs of obtaining the further advice on grounds it related to action outside the territorial limit set out in B's LEI policy. They said they'd made a mistake in covering the costs of the enquiries abroad so far and B would need to fund the costs of any further investigations. Even if assets could be found abroad, and there were reasonable prospects of enforcing a judgment there, DAS wouldn't cover the costs of anything beyond obtaining judgment in the UK. They paid the costs incurred so far.

Mr I decided not to go ahead. He was unhappy the claim had been going on for almost a year before DAS withdrew cover. He felt B's position had been prejudiced as a result. DAS didn't accept that. They said when Mr I made the claim, an insured event had occurred as there was a dispute about a contract governed by Scottish law. They'd withdrawn cover since B's claim against the third party didn't have reasonable prospects of success. And DAS had met the costs of an asset trace they weren't responsible for, to B's benefit. DAS agreed communication had fallen below their own quality standards and upheld B's complaint in part, offering £150 compensation.

Mr I was unhappy with the outcome of the complaint so brought it to the Financial Ombudsman on B's behalf. Our investigator considered what had happened since DAS's response to B's previous complaint on 5 January 2021. She felt DAS should have declined the claim when the solicitors first said advice from a foreign lawyer was needed to determine prospects of success as the territorial limit provision in the policy wasn't met; and funding the investigations had given B the wrong impression, over several months, that its case would proceed. To put things right she thought DAS should pay a total of £300, including the £150 they'd already offered, for the poor communication and inconvenience caused to B. B didn't accept our investigator's view, so I've reviewed everything afresh to come to a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I acknowledge Mr I's strength of feeling. I understand it was frustrating and disappointing when DAS withdrew cover for B's legal claim. But since this is B's complaint, I need to think about whether any mistake DAS made impacted B rather than Mr I as an individual. I'm only concerned here with what happened after 5 January 2021 since B didn't bring its earlier complaint to this service within relevant time limits.

Under the LEI policy DAS provided B with cover for up to £100,000 of legal costs and expenses incurred by lawyers appointed to act for B in relation to any "insured incident" provided:

- a. the date of occurrence of the insured incident happened during the period of insurance and within the territorial limit; and
- b. any legal proceedings would be dealt with by a court, or other body which DAS agreed to, in the territorial limit; and
- c. reasonable prospects existed for the duration of the claim.

DAS accepted an insured incident had occurred within the period of insurance.

For B's claim, the territorial limit was the United Kingdom, the Isle of Man, The Channel Islands and any other extension agreed with DAS. I'm not aware any extensions were agreed. The policy required the insured incident to have occurred within the territorial limit and any legal proceedings to be dealt with by a court, or other body which DAS agreed to, in the territorial limit.

When the solicitors advised in January 2021, they broadly agreed with Counsel's earlier advice that a contract dispute arose in Scotland and came within the Scottish courts' jurisdiction. So, it was reasonable for DAS to continue to think the insured incident had happened within the territorial limit. The issue that arose was whether the requirement that any legal proceedings would be dealt with in Scotland was met.

The parties disagree about what DAS knew about the third party and the location of his assets at the outset of the claim in October 2020. Mr I says he made it clear the third party was overseas and DAS led him to believe any action was covered under the policy. DAS had set out clearly in writing to Mr I when he reported the claim that prospects would be kept under review and the initial assessment of cover could change. So, B ought to have understood cover could be withdrawn as the claim progressed. I'm not aware of any evidence from 5 January 2021 onwards that DAS told B they'd cover the costs of proceedings outside the territorial limit.

Generally, DAS were entitled to rely on the advice the solicitors gave. There's nothing obviously wrong or factually incorrect in the advice that DAS ought to have questioned. I think DAS could probably have withdrawn cover based on the January 2021 advice. DAS said later they were wrong to have agreed to instructing the foreign lawyers because of the territorial limit provision. I'm not sure DAS, or our investigator, were right about that. But, in any event, I don't think that changes things as DAS were entitled to withdraw cover on grounds there weren't "reasonable prospects" of the legal claim succeeding.

Reasonable prospects under the policy meant there was more than a 50% chance of B not only getting a favourable judgment, but also recovering its losses. In January the lawyers were optimistic about getting a favourable judgment but only if proceedings could be served on the third party and the judgment enforced. Since both were unknown, there weren't reasonable prospects under the policy at the time. DAS could have given B the option of funding the overseas investigations. But instead they agreed to meet the costs. I don't think that was unreasonable. And B benefited from further enquiries being funded that technically it wasn't entitled to. B says its position's been prejudiced. I'll address that below.

I think it was reasonable for DAS to review and withdraw cover based on the solicitors' July 2021 advice. The enquiries had established it was possible to serve proceedings on the third party in his country of residence and the prospects of successfully suing the third party in Scotland were more than 50%. But the prospects of enforcing a judgment were poor since no UK assets had been found. So, the policy definition of reasonable prospects wasn't met.

I can understand it was frustrating for Mr I that DAS declined cover after the investigations had been carried out, and before anyone knew if the third party had assets to enforce a judgment against - particularly when the prospects of getting a judgment seemed good.

Mr I's suggested he would have made alternative arrangements to try and recover the money from the third party if he'd known sooner DAS wouldn't continue to cover B's claim. He says DAS's late decision put B's chance of recovering the money at risk. I'm not aware of what alternative arrangements were possible or how DAS's actions have affected recovering

funds. There was nothing to stop Mr I from looking at other action while the investigations into a legal claim were ongoing. I'm not persuaded anything DAS did or failed to do put B in a worse position. The steps DAS took benefited B in terms of establishing the prospects of a legal claim succeeding at no cost to B. And DAS said, fairly, they'd meet the costs of UK court proceedings if B established there were reasonable prospects of enforcing a judgment abroad. But B chose not to take that further.

I can see Mr I contacted DAS several times between January and July 2021 to raise concerns about progress and conflicting information from DAS and the solicitors. The policy allowed DAS to pay the value of the claim if the costs would exceed it. So, it was reasonable for them to know how much the advice from overseas would cost. DAS delayed a short time after quotes were received, before confirming how the solicitors should proceed. But beyond that, the time things took was outside their control. When Mr I complained about conflicting information, DAS explained their position. And they passed on Mr I's concerns to the solicitors as I'd expect. Any complaint about the solicitors would need to be made to them direct - B's contract for legal services was with them. But, I acknowledge DAS gave Mr I conflicting information about why they withdrew cover and inaccurate information about some of the legal work carried out. And I accept this will have added to his concerns and the time B spent dealing with the claim.

In summary, I don't think DAS mishandled the insurance claim. But I think they've provided B with some inaccurate explanations that have led to confusion; and they've caused a short delay. That's impacted the time Mr I's spent on B's behalf dealing with the claim - time which could have been spent on management issues.

Putting things right

Bearing all of the above in mind, I think it's fair and reasonable for DAS to pay B £300 as compensation for inconvenience.

My final decision

I direct DAS Legal Expenses Insurance Company Limited to pay B £300 compensation for inconvenience inclusive of the £150 they've previously offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 22 April 2022.

Julia Wilkinson
Ombudsman