

The complaint

H, a limited company, complains Hiscox Underwriting Limited mis-sold it a legal protection insurance policy. H is represented in bringing the complaint by its director, Mrs H.

What happened

In November 2022, H took out business protection insurance with Hiscox which included optional legal protection insurance. The following year it claimed on that policy for a contract dispute relating to an unpaid invoice. The insurer of the policy turned down the claim because it involved a German company and the contract was governed by German law. So it fell outside of the territorial limits of the policy. A complaint about the handling of that claim has been considered separately by our service.

H complained Hiscox had mis-sold the legal protection insurance. It said it had been assured during its conversations with Hiscox the policy would cover risks associated with a European Union company and it relied on that assurance when buying the policy.

Our investigator concluded this was a non-advised sale. She accepted in a call with Hiscox H's representative said for ongoing work 95% would be covered by EU law. However, following that Hiscox sent out policy schedules and other information. She thought it was clear from that cover for contract disputes within the legal protection section of the policy was limited to the UK, the Isle of Man and the Channel Islands. So she didn't agree the policy had been mis-sold.

Mrs H didn't agree. In summary:

- She thought linked complaints should be taken into account when considering what Hiscox had done in relation to this matter (including the decisions it had taken on the related claims H made on its policy). And if that was done the requirements of the Financial Conduct Authority's 'Consumer Duty' would apply to the sale of this policy.
- She said H wasn't seeking legal protection insurance from Hiscox when taking out the policy but this had been included by it. And H had been clearly told it covered EU risks which would include the dispute it had with the German company it contracted with.
- It had relied on that assurance and at no point during the call had Hiscox explained the substantial element of its business wouldn't be covered by this policy. It didn't think that should be overridden by the documentation it was subsequently sent which didn't make this clear in any case.
- H accepted it hadn't been seeking legal protection cover when it first approached Hiscox but had made the decision to buy this during the call based on the information it was provided with about the policy. So if Hiscox had properly explained the position on this it would have sought cover that did offer what it needed from it. If that wasn't possible it would have asked for a refund of the premium and obtained a policy elsewhere that did (assuming it was possible to do that prior to its dispute with the German company becoming known).

So I need to reach 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've thought first about the basis of sale for this policy. Hiscox says it was sold on a non-advised basis following telephone calls with advisers in November 2022. H has argued that seeking to sell additional cover (the legal protection insurance) meant it went beyond an 'execution only' arrangement. However, I don't think drawing the attention of a customer to policies that were available and might be of interest to it would constitute an advised sale. And having reviewed the calls between H and Hiscox I'm satisfied this policy was sold on a non-advised basis.

Mrs H says this complaint should be considered alongside the related ones H made about the decisions that had been reached on its claims. However, while I'm aware in general terms of the position on those claims the outcome I'm reaching is solely in relation to whether Hiscox did anything wrong during the sale of the legal protection insurance to H. And if it did whether H has lost out as a result of that and so whether there's anything Hiscox needs to do to put things right.

I don't believe the rules relating to the 'Consumer Duty' would apply to this sale because it took place on 7 November 2022 and the 'Consumer Duty' rules didn't apply until 31 July 2023 (and didn't have retrospective application). Hiscox would nevertheless need to comply with the relevant Insurance Conduct of Business Sourcebook (ICOBS) rules when communicating information. And they say a firm must take reasonable steps to do so in a way which is clear, fair and not misleading.

To decide whether Hiscox did what it should I've reviewed the relevant evidence including the call transcripts H provided and the actual recordings of those calls Hiscox supplied. Mrs H says H was told the legal protection cover did cover EU risks. But I don't think her interpretation of the calls is correct. The reason for H's contact with Hiscox was it wanted to obtain professional indemnity and directors and officers cover. After general discussion about the nature of its business the adviser referenced legal protection cover and gave some general information about what it provided. And after discussing other cover he then returned to that and provided more information about the policy. But there was no discussion about the territorial scope of coverage. In particular the adviser didn't explicitly say the policy covered EU (or German) risks.

I appreciate earlier in the call the adviser had asked H about its contracts and queried "*would they all be written under UK jurisdiction*". In response H said "*Probably 95% EU law, German law and 5% UK*". Hiscox says the reason it asked that was so it could correctly quote a premium based on the risk environment where business activity was being carried out. And I don't think there was any direct connection between that question and information it provided (some time later) about the legal protection cover.

Nevertheless, I accept Hiscox was clearly aware most of the contracts H was carrying out were governed by German law. Given that I think it could arguably have done more to provide information about the territorial limits applying to the legal protection cover when discussing this with H. However, even if I were to conclude that was a failing on the part of Hiscox I'd also need to consider whether there was a causal link between that and any loss to H. I don't think there is in this case. That's because I think it was clear from the other information Hiscox provided to H the basis on which cover would be provided.

I appreciate those details are only set out on page 48 of the policy terms. But they are contained in the policy schedule. That explains the geographical limits of cover for each section of the policy. And for legal protection insurance the one page schedule says for contract disputes that means "*The United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands*". The schedule says "*It should be read carefully with your policy wording(s) and statement of fact detailed elsewhere in this document*".

If Hiscox had explicitly told H the legal protection cover would cover activities governed by German law I understand why it might have paid less attention to this information. But I've already established it didn't do that. And on the basis of the information that was provided I don't think H could reasonably have thought it didn't need to review the documents it was subsequently sent (in particular the policy schedule) to check cover met its needs. So for the reasons I've explained I'm not satisfied there's a causal link between any failings by Hiscox during the sales call and the claim H subsequently made not being covered by its policy. As a result I don't think there's anything Hiscox needs to do to put things right.

Finally, H says if it had known this policy wouldn't cover the work it did that was governed by German law it would have obtained cover that did. I'm not persuaded that necessarily is the case as it didn't approach Hiscox with the intention of taking out this cover in the first place. But given the conclusions I've already reached about other aspects of the complaint that isn't something I need to determine because it isn't material to the outcome I'm reaching.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 8 January 2025.

James Park
Ombudsman