

## **complaint**

M's complaint is about a claim it made on its Euler Hermes trade credit insurance policy.

Mr H, on behalf of M, says Euler Hermes should pay M's solicitors fees in bringing a claim against a debtor.

## **background**

M had the benefit of a trade credit insurance policy. The policy provided cover for insured debts and debt collection services for undisputed debts owed to policyholders.

M made a claim on the policy for a debt of £146,000 owed to it by one of its debtors. Euler Hermes noted the debt was disputed. Although the policy didn't provide cover for disputed debts, Euler Hermes offered to place it with one of its panel firms of solicitors to consider and pursue on the basis that their costs would be collected from a successful claim. There was a delay in the panel firm contacting M. When they did it became apparent that the claim needed Scottish lawyers to be appointed so the panel firm offered to appoint a Scottish solicitor for M. But Mr H said M would prefer to use its own solicitors. Mr H did this and continued with the claim against M's debtor without any further involvement with Euler Hermes or the panel firm.

M eventually settled its claim for £114,000 but incurred legal fees of £30,000. Mr H says Euler Hermes should pay its legal fees because M had the freedom to choose its own solicitors at the point at which it referred the claim to them. On the other hand, Euler Hermes say they don't cover legal costs for disputed debts and although they offered to do so through their own panel solicitors, that didn't mean they were prepared to cover M's own solicitor's fees. In addition, Euler Hermes say they had no control over the litigation or legal fees M incurred so it would be unreasonable to now require them to cover these.

Our investigator considered M's complaint and concluded that it shouldn't be upheld. Mr H, on behalf of M, doesn't agree so the matter has been passed to me to determine.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I don't think M's complaint should be upheld. I'll explain why.

The starting point is the policy terms. They only provide trade credit insurance cover where debts to policyholders are undisputed. In this case I've seen correspondence from M's debtor which disputes the debt M was claiming. Because of this Euler Hermes wasn't obliged to offer M any cover in respect of recovering the debt. That said, I can see that it did offer help in the form of its own panel solicitor. It's not uncommon for panel solicitors to act for insurers on fixed rates or even conditional fee arrangements which means they recover any costs they incur from the other party if they're successful. I don't know what Euler Hermes' charging arrangements were with its panel firm, but I assume it offered M this service because it wasn't going to cost a considerable amount. And what Euler Hermes have said about the panel firm collecting costs from the other party makes me think this was a conditional (no win no fee) arrangement. I know that Mr H wasn't happy with the time it took the panel firm to contact him and that they'd need to appoint alternative solicitors in Scotland to act for M, but I don't think this means M is entitled to the costs of its own solicitor.

Mr H feels Euler Hermes should cover M's costs because M would've had the freedom to choose their own solicitor at the point that proceedings were necessary, but I don't agree. This wasn't a legal expenses insurance policy. Rather it was a trade credit insurance policy. One of the things that type of policy covers is insured debts, subject to its terms and conditions. It also offers debt collection services for undisputed debts. But that doesn't mean it's a pure legal expenses insurance policy. Because of this I don't think freedom for policyholders to choose their own solicitors applies in the same way. And even if it did, we'd expect a policyholder's solicitors to work with insurers to agree costs and next steps in the litigation as matters unfold. In this case Mr H incurred legal costs independently of Euler Hermes and without further reference to it. So, I don't think it's fair for Euler to pay anything in respect of the costs M incurred.

**my final decision**

I don't uphold M's complaint against Euler Hermes SA/NV.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H on behalf of M to accept or reject my decision before 24 January 2020.

Lâle Hussein-Venn  
**ombudsman**