

complaint

Mr and Mrs B complain that Inter Partner Assistance SA (“IPA”) hasn’t acted fairly or reasonably when dealing with their claim under a legal expenses insurance policy. They want matters put right.

background

Mr and Mrs B had a legal expenses insurance policy with IPA. They were sued by a lender seeking possession of their property, but Mr and Mrs B said that they’d settled the debt and had evidence to prove this. They made a claim to IPA in June 2018, and said that the claim hadn’t been handled fairly or reasonably and been subject to unnecessary delay.

A hearing was due to take place in mid July 2018, and no solicitors had been appointed to deal with the case. Mr B said that IPA told him to appoint his own solicitor and it would pay, but he couldn’t find one. IPA then appointed a panel solicitor, but Mr B said that he was asked to pay in case the case didn’t have reasonable prospects of success. The hearing was adjourned. The panel solicitors and a barrister confirmed that the defence of the possession claim didn’t have reasonable prospects of success.

Mr and Mrs B complained to IPA. It said the claim wasn’t accepted as it didn’t have reasonable prospects of success. A barrister had confirmed this, as had the solicitors on several occasions. IPA also said that the claim wasn’t covered by the terms and conditions of the policy (as the definition of legal proceedings didn’t include defending a possession claim) and the event giving rise to the claim had happened in September 2007 when Mr and Mrs B were first sent a demand for repayment of the debt in a default notice; this was before the policy was in force from June 2013 onwards. IPA noted that Mr and Mrs B hadn’t told it about the claim promptly, but accepted that there was no prejudice suffered by it as a result; it did though explain why it needed time to assess the claim, despite the court timetable.

Mr and Mrs B complained to us. It was explained to them that this service couldn’t look at anything that happened before 25 July 2018 as they’d brought the complaint too late to this service. This service could look at what had happened between 26 July 2018 and 20 January 2020.

The investigator’s view was that IPA wasn’t at fault. She said that arguably the claim was within the period of insurance as Mr and Mrs B only received notice of the court proceedings after the insurance policy started and she didn’t think that the default notice was enough. The investigator also thought that the claim was within the definition of legal proceedings under the policy as it covered “*specific performance*”, and a possession order was an order to do something.

But the investigator said that IPA had been fair and reasonable to refuse cover as it was able to rely on a barrister’s opinion that Mr and Mrs B’s defence didn’t have a reasonable prospect of success, though the amount due might be able to be reduced. IPA was an insurer and the barrister was suitably qualified to give an opinion (and had been chosen by Mr and Mrs B, who had supplied evidence and information to him). She noted that IPA had paid the cost of the barrister’s opinion, despite the negative views of the solicitors of the case.

Mr and Mrs B disagreed. They said that the barrister hadn't been given everything he needed by the solicitor. The investigator said that was a matter between Mr and Mrs B and the solicitor; IPA wasn't responsible for the actions of the solicitor. Mr and Mrs B said that their further queries should be put to the barrister; IPA had refused as they weren't relevant to the issue about the defence of the possession claim. Mr and Mrs B asked for an ombudsman's opinion and instructed the barrister themselves. The investigator pointed out that even if the barrister changed his opinion, it was still reasonable for IPA to have relied on the earlier opinion he gave.

IPA also disagreed with the investigator's view, and said that the first event leading up to the possession claim was the formal demand for repayment made in September 2007, before the insurance policy was in place. It also said that the barrister had considered everything when giving his opinion.

my provisional decision

In my provisional decision, I said:

"When I refer to IPA, I'm also referring to its agents.

The relevant rules and industry guidelines say that IPA has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I note that this service doesn't have jurisdiction to look into the actions of IPA before 25 July 2018, and this hasn't been challenged. And having considered all the evidence available to me, I think IPA has acted promptly and reasonably since that date and sent everything from Mr and Mrs B to the panel solicitors. The reason why cover is still in dispute is because Mr and Mrs B don't accept the legal opinions given and supplied information over a lengthy period of time. That isn't IPA's fault. I also note that IPA paid for a barrister's opinion when it wasn't required to do so, and I can't say that it's unfair or unreasonable for IPA to decline to pay more in the circumstances.

Timing of the insured incident

I don't agree with the investigator about this point. The loan fell into arrears several years before the policy was taken out and a formal demand for repayment was made in 2007. The policy says that the date of an insured incident is the incident happened or when first of a series of incidents which may lead to a claim happened. It also says that this applies to incidents connected by the same cause of action, time or event.

In Mr and Mrs B's case, the first incident relating to the possession claim brought against them is likely to be when they fell into arrears and a formal demand for payment was made (particularly as the date of the demand is relevant to limitation) in 2007. The policy started in 2013 and excludes incidents arising before it started. So I think it's fair and reasonable for IPA to say the claim is excluded for this reason.

Is the claim covered by the policy?

I don't agree with the investigator about this point either. "Specific performance" is a legal term that has a specific legal meaning – in simple terms, it refers to a type of court application when something has to be done as damages wouldn't ordinarily be an adequate remedy, or to complete a contract. It's an equitable remedy. This term doesn't apply to possession claims in my view.

And looking at the terms and conditions of the policy, I'm not persuaded that the defence of a possession claim is covered. Given the reason for the loan in the first place, which Mr B told a solicitor was partly for business reasons, the case isn't a consumer claim. The definition of property claims within the policy refers to nuisance or trespass claims and similar matters, not claims brought by a lender. I think it's fair and reasonable for IPA to say that the claim is excluded on this basis. That said, as I've concluded that the claim pre-dates the policy, this point doesn't make a difference.

Reasonable prospects of success

I do agree with the investigator about this issue, and it's critical – the policy only covers cases with a reasonable prospect of success. The solicitors repeatedly advised that there was no reasonable prospect of success and this was supported by a barrister's opinion. Both the solicitors and barrister were suitably qualified and it's fair and reasonable for IPA to rely on their view. And it's correct that IPA isn't responsible for the actions of the lawyers involved; it carried out its role in instructing them and raising Mr and Mrs B's concerns.

Mr and Mrs B say that the opinions are wrong. Looking at their contents, there's nothing obvious to a layman that they're incorrect and Mr and Mrs B had every opportunity to provide evidence and information. They haven't provided their own legal opinion supporting their position. And the further points Mr and Mrs B make have been addressed by the barrister in his opinion – the issue about the trustee and registration are irrelevant given the fundamental point that money was borrowed and secured on the property and has yet to be repaid. The only point for debate is the amount of interest charged, and the barrister addressed this."

my findings

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

In response to my provisional decision, IPA accepted my view. Mr and Mrs B said that their barrister was still in the process of providing another opinion and this service shouldn't take any action in the meantime. The investigator explained that as I had thought IPA had acted fairly in declining the claim for reasons other than the reasonable prospects of success, any new barrister's opinion wouldn't resolve this complaint. Mr and Mrs B said that I should do what I thought was right, but I shouldn't make a final decision.

This service has a duty to deal with complaints in a timely way and we don't pause complaints unless it's fair and reasonable to do in the circumstances. I note that it's previously been explained to Mr and Mrs B that even if the barrister changes his position and produces a new opinion, it was fair and reasonable for IPA to conclude that the prospects of success weren't good enough at the time that it did based on the opinions it had in its possession at that point in time. In other words, even if the barrister now said the defence in its entirety had reasonable prospects of success, it wouldn't mean IPA had acted unfairly or unreasonably in relying previously on legal opinions which said differently.

And it's fair to point out that Mr and Mrs B haven't responded to my provisional decision about my view that the event predated the inception of the insurance policy and wasn't covered by the terms and conditions of the policy, even if there had been reasonable prospects of success.

Having considered the evidence available to me and what the parties have said in response, I think my provisional decision is fair and reasonable in all the circumstances and will stand as my final decision.

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 20 May 2020.

Claire Sharp
ombudsman