

The complaint

H, a company, made a claim on its DAS Legal Expenses Insurance Company Limited ('DAS') Trades and Professions legal expenses insurance policy, which was declined.

H says DAS were wrong to decline its claim and should now cover the costs of it.

H's complaint is brought by Mr G, but I shall refer to all submissions as being H's own for ease of reference.

What happened

H made a claim on its DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy for cover to defend a claim against it.

DAS considered the claim and concluded that it didn't fall within cover because the party pursuing the claim wasn't in a direct contractual relationship with H and this was excluded by the policy terms.

H doesn't agree. It says that DAS are exercising a loophole to get out of paying its claim and that this is unfair. H also says that the party bringing the claim is in a tri party contractual relationship with it and its customer so the claim should be covered.

Our investigator considered H's complaint and concluded it shouldn't be upheld. She said that the policy didn't extend to covering the situation H found itself in so DAS were entitled to turn down cover. H doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding H's complaint. I'll explain why.

The starting point is the policy terms. Under the contract section, they provide cover for:

“a contractual dispute with a party you have a direct contractual relationship with arising from an agreement or alleged agreement which has been entered into by you or on your behalf for the purchase, hire, sale or provision of goods or services”.

H's claim for legal expenses cover is to defend a claim against a Bank that it has no contractual relationship with. That's because H's former customer made a Section 75 claim to their Bank for the service they contracted with H for rather than claiming against H directly. The consequence of this is that the customer's Bank settles their claim against H pursuant to statute. As a result, the Bank are now seeking reimbursement from H. But that doesn't mean that the Bank has a contractual relationship with H or that a tri party contractual relationship exists like H says. Rather the claim against H arises out of statute and that's not something the policy covers.

I appreciate that H feels this position is unfair and allows DAS to turn down its claim because the claim is being brought by its customer's Bank rather than its customer, but I don't think this means DAS have done something wrong here. DAS are entitled to decide the level of risk they're prepared to take on when underwriting their policies, and in this case the term they're relying on excludes contract disputes with parties that policyholders don't have direct contractual relationships with. Because of this DAS were entitled to decline H's claim.

When considering H's complaint, I have reviewed the policy terms in their entirety but there don't appear to be any other sections of cover under which H's claim for legal expenses might be capable of being considered. I appreciate that this will be disappointing for H, but I hope I've provided it with a thorough explanation of why I won't be upholding its complaint.

My final decision

For the reasons set out above, I don't uphold H's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 8 March 2024.

Lale Hussein-Venn
Ombudsman