

The complaint

C, a limited liability company, complains about a claim it made on its Hiscox Insurance Company Limited ('Hiscox') professional indemnity insurance policy.

C says that Hiscox treated it unfairly.

In this complaint C is represented by Mr S but I shall refer to all submissions as being C's own for ease of reference.

What happened

C made a claim on its Hiscox professional indemnity insurance policy to defend a claim against it. During the course of the claim it was explained to C that Hiscox would not pay for the VAT element on the legal costs associated with the defence of the claim because C was VAT registered and therefore the VAT WAS reclaimable by C from HMRC.

C was unhappy with this and after various exchanges of correspondence referred its complaint to the Financial Ombudsman Service.

Our investigator considered C's complaint and concluded it should not be upheld. C does not 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 don't uphold C's complaint for the same reasons set out by the investigator. Before I explain why I wish to acknowledge the volume of submissions C has made in this complaint. Whilst I've reviewed everything, I would be addressing it all. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service. Rather I will focus on the crux of this complaint, namely whether Hiscox treated C unfairly.

The starting point is the policy terms. They say:

"We will pay up to the limit of indemnity for this section shown in the schedule unless limited below or otherwise shown in the schedule. We will also pay for defence costs incurred with our prior agreement...."

"Any amounts to be paid by us shall not include or be calculated based on any of your overhead expenses, your liability for debt, taxes, lost costs or profits, salaries or wages, or any future cost of doing business, including but not limited to the cost of any future licence or royalty or costs of improving your security, or performing audits."

C confirmed to Hiscox that it was VAT registered. On that basis I think it's clear that Hiscox was not liable to pay the VAT element of its legal costs because those are reclaimable by C

from HMRC. I appreciate that C doesn't agree with this, but this is a very standard policy term and it is common practice for business protection insurers not to fund costs that are otherwise recoverable by limited liability companies. C has also said that his accountant doesn't agree with the position, but I haven't seen any credible evidence from C's accountant to explain why the VAT element of legal costs could not be recovered by C from HMRC. So, I'm not persuaded by this.

C has said that Hiscox should have done more to assist it. I've considered various email exchanges between C and Hiscox and I think that Hiscox has provided C with clear explanations for the position it has taken and attempted to assist C as far as it can. Ultimately Hiscox is not liable under the policy to pay the VAT applicable to C's legal costs so I'm not persuaded it needed to do anything more, like source Solicitors who are not VAT registered, particularly where such firms are not available on their panel.

C has said that Hiscox should have considered the matter under a separate element of its business protection cover. That's not for Hiscox to do. C made a claim on its professional indemnity insurance policy. If it wanted the claim to be considered under separate cover, it would need to claim on that policy specifically, although I suspect that any alternative policies would be unlikely to cover C if insurance is already in place to protect it from the claim brought against it.

C has complained about example invoices Hiscox sent it to help C understand the VAT position. It's referred to those invoices being fraudulent. It's not for us to determine whether these documents are fraudulent. I can only look at whether Hiscox treated C fairly and from what I've seen Hiscox has done what I would reasonably expect it to, to properly explain the position to C. I appreciate that C doesn't accept this but that's a matter for C and my findings are that Hiscox has treated C fairly here in taking the position it has on costs payable by it.

C has made some further submissions in response to the investigator's view which were not received as part of its complaint against Hiscox. I won't be addressing those specifically but for the sake of completeness I am not persuaded that they make any difference to the outcome of C's complaint.

My final decision

I don't uphold C's complaint against Hiscox Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 28 August 2025.

Lale Hussein-Venn
Ombudsman