

complaint

Mr H is unhappy that DAS Legal Expenses Insurance Company Limited ('DAS') refused to meet a claim that he made on his legal expenses policy.

background

Mr H made a claim to cover him for legal costs so he could make a claim for loss of earnings against a third party. He says this is because a third party denied him employment and training opportunities.

DAS has refused to meet the claim because it says he didn't have a contract of employment. Mr H doesn't think he needs a contract of employment in order to be able to claim under the policy.

He also says there's other legislation that supports his claim which DAS are not applying correctly.

In addition, Mr H says that DAS failed to produce a copy of the policy terms that they relied upon and so the claim should be met.

The adjudicator who looked into this felt that the wording of the key facts document and the policy document were clear and that Mr H had received the policy terms – although there was a question about whether Mr H had received the most up to date version.

The adjudicator also said that as there is no contract of employment in place between Mr H and the third party, DAS is entitled to refuse the claim. And he also said that the legislation Mr H felt was relevant also wouldn't have a bearing on this claim because there's no contract of employment.

I've also seen that a question came up about some of the policy wording. That's because a letter from DAS said in error that Mr H's legal expenses policy "*does cover all eventualities*." Mr H disagreed that it was a mistake but we've checked with DAS and they've confirmed it's an error in the letter. And I've checked both policy wordings and it's not in either of those.

As Mr H doesn't agree with what our adjudicator said, his complaint's been passed to me for a final decision.

my findings

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

I've decided not to uphold Mr H's complaint and I'll explain why.

Mr H has told us that he's never been employed by the third party. He worked for their agents many years before but this has no connection with his current claim.

He says his dispute is about employment and that the wording of the key facts and policy booklet "pertain to employment". So he says that, despite not having a contract of employment, the policy should cover him.

The key facts document says that policy holders will be covered for *“up to £50,000 of cover for legal assistance in a wide range of disputes including: employment.”*

It doesn't specify that a contract of employment has to be in place. But the purpose of the key facts document is to provide an overall description of the cover provided, whereas the policy document sets out the specific terms of a policy.

The policy document says cover will be provided for *“a dispute relating to your contract of employment.”*

I think this means that you need a contract of employment in place in order to benefit from the cover. I don't think this wording is ambiguous or misleading and so it's reasonable for DAS to have relied on it the way they did.

Mr H says DAS failed to send him the policy terms it was relying on so his claim should succeed. And I've seen that DAS referred to a policy document that was different from the one Mr H actually had.

But I can also see that DAS sent him a copy of the policy document they relied on reasonably soon after he'd asked for it. I've checked and can see that the relevant term is the same in both policies. So whilst it's unfortunate that DAS relied on a different version of the policy document, I don't think this has caused Mr H any disadvantage or that he's been misled about his claim.

Mr H has also asked us to consider some employment legislation. But it doesn't affect whether DAS are required to offer Mr H cover. DAS has to act fairly and reasonably when looking at whether or not he has met the requirements of the policy. Unfortunately, in this situation, I don't think he has.

It follows that I don't think DAS has done anything wrong in not covering Mr H for his claim.

my final decision

For the reasons I've given above, I'm not upholding Mr H's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 January 2016.

Michael Goldberg
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