

complaint

Mrs L complains about DAS Legal Expenses Insurance Company Limited's ("DAS") decline of her three legal expenses insurance claims.

background

Mrs L sought funding under her policy to pursue three claims arising from her cat breeding activities:

- against a purchaser of a kitten for failing to produce evidence of neutering;
- against a veterinary surgeon for alleged negligence leading to birth defects in her kittens;
- against a cat registration body whose alleged failure to conform to relevant rules caused her financial loss.

DAS initially declined cover for the first two claims on the grounds that they lacked prospects of success. It declined the third claim on the basis it fell within a policy exclusion as it related to Mrs L's business. Mrs L complained, stating that her cat breeding was not a business but an expensive hobby which cost more than any income generated. DAS maintained its stance and confirmed that the earlier claim against the purchaser should have been declined for the same reason. The intention of the policy was to assist with legal disputes arising from personal domestic issues – commercial risks were rated differently because someone who entered into contracts regularly (such as those involving the sale of kittens) had a higher risk of being in dispute.

Mrs L referred a complaint to us. Our adjudicator considered that Mrs L's cat breeding was an ongoing process by which she bred and sold kittens for financial gain and that this constituted a business. He considered DAS was entitled to decline cover.

Mrs L appealed. Her submissions included:

- She had never bred cats for gain. Showing cats had been a hobby for many years and she bred cats to show, only retaining those of outstanding quality. It was impossible to keep every kitten and the money from the kitten sales went towards the costs of keeping and showing her cats; those costs greatly exceeded any money received from the kitten sales.
- She took the welfare of all kittens sold seriously and ensured customers signed an agreement that the kittens would be neutered; she sold them all at substantially reduced prices to ensure they lived their life as a family pet and were not kept for breeding purposes.
- She had been informed by a private solicitor that her cat hobby was not a business.
- She did not continually sell kittens and make money from them. She only sold kittens sporadically.

my findings

The policy provides, among other things, the following cover for contract disputes:

"We will negotiate for the following:

- (i) *You or your family's legal rights in a contractual dispute arising from an agreement or an alleged agreement which you or your family has entered into for:*
- *The buying or hiring in of any goods or services; or the selling of any goods; or the selling of any goods."*

In common with most if not all legal expenses policies, DAS also provides that the proposed claim must have reasonable prospects of success:

"We will cover the insured incidents in this section as long as...for civil claims it is always more likely than not that you or your family will recover damages (or obtain any other legal remedy which we have agreed to) or make a successful defence."

It appears that, further to notification of the first two claims, DAS appointed panel solicitors who advised that the claims did not have prospects of success of at least 51%. We generally take the view that it is reasonable for a legal expenses insurer to rely on expert legal opinion when making a decision on cover. I am satisfied that it was reasonable for DAS to decline the claims on that basis.

Notwithstanding that, the policy also states DAS will not cover:

"Any claim relating to...a contract regarding you and your family's profession, business or employment."

DAS said the claims should not have been covered as they related to Mrs L's business.

I have considered very carefully the submissions made by Mrs L as to the nature of her cat breeding activities and why she does not believe she is running a business. It seems to me, however, that her kitten selling is for commercial purposes. I note that she informed DAS in March 2009 that she produced about 20 kittens every year which she sold for between £350 and £550 each.

In her letter of January 2012, Mrs L gave her income and expenditure figures for 2011 – both of which totalled several thousands of pounds – and said that the recent decline of her specialist breed had had a drastic effect on her financially. The fact that her expenditure exceeds her sales income does not persuade me that her cat breeding should not be regarded as a business. Commercial enterprises are not always profitable. The evidence available to me indicates on balance that Mrs L has been selling kittens for some time and in a capacity that cannot reasonably be described as a mere hobby.

In all the circumstances, I believe DAS was entitled to decline the claims either because there were insufficient prospects of success or because they arose from a contract regarding Mrs L's "profession, business or employment".

my final decision

For the above reasons, my final decision is that I do not uphold this complaint. I make no award against DAS.

Nimish Patel
ombudsman