

complaint

This complaint arises from DAS' decision to decline Mr C's legal expenses insurance claim.

background

Since 2008 Mr C had been in dispute with his bank over the outstanding debt under a credit card agreement. Mr C refuted the allegation and wished to take legal action against the debt collection agency instructed by the bank. He notified DAS of a potential claim under the policy he held with it.

The policy covered contract disputes for goods or services where the agreement or alleged agreement was entered into within the period of insurance. The policy also excluded contract disputes claims arising from a loan, mortgage, investment or borrowing. DAS felt a credit card agreement was neither a good nor a service. Further, DAS said Mr C's entry into the credit card agreement and his awareness of the alleged default predated the start of the legal expenses cover. DAS declined the claim.

Mr C said the policy exclusions relied upon by DAS did not apply because he did not incur the debt that was the subject of the dispute, nor did he receive a loan. He also highlighted that neither the bank nor the debt collection agency had provided any evidence to support that he was responsible for the alleged debt. Mr C said the proposed defendant was the debt collection agency (not the bank) and his dispute with it began within the period of insurance with DAS. Mr C said he never entered into a contract with the debt collection agency so DAS could not state that such an agreement predated his policy. He ultimately referred a complaint to us.

Our adjudicator did not recommend the complaint be upheld. He took the view that the relevant policy exclusion applied to Mr C's claim because it related to an "alleged" agreement for a loan or borrowing. He also did not accept that Mr C's dispute with the debt collection agency could be considered separately from his credit agreement with his bank as these matters were linked.

Mr C rejected the adjudicator's findings and made the further point that the debt collection agency was not acting on behalf of the bank but in its own interest.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

DAS agreed to indemnify Mr C for his legal costs and expenses subject to the policy's terms and conditions. Mr C's claim was considered under the following policy section:

- "What IS covered
2. Contract Disputes.

We will negotiate the following:

- 2.1. You and your family's legal rights in a contractual dispute arising from an agreement or alleged agreement which you and your family have entered into for:
 - (a) The buying or hiring in of any goods or services...

PROVIDED THAT:

you and your family have entered into the agreement or alleged agreement during the insurance period...”

I do not accept DAS’ argument that a credit card agreement cannot be considered a good or service. A business’ offer to provide credit to its customer is a service, so in principle I believe Mr C’s claim can be considered under the contract disputes section of the policy. However, it still does not follow that I consider Mr C’s complaint should be upheld, as I believe that his claim has been fairly excluded for other reasons.

Mr C states he does not have a contract with the debt collection agency and therefore there is no contract that predates the start of the legal expenses cover. However, if Mr C’s claim does not involve a contract for the provision of a service, then arguably there is no cover available under the policy for his legal costs.

However, I am mindful that the contract disputes section covers contractual disputes which arise from an agreement or alleged agreement for the buying of services. The debt collection agency’s letter to Mr C in May 2011 states it had no reason to believe that the information supplied by the bank was incorrect. It said Mr C repeatedly stated he did not owe any monies to the bank but had not provided any reasons why he believed that to be the case. The agency said it would continue to report the above account to the Credit Reference Agencies.

If Mr C had not been in dispute with his bank over the alleged debt under the credit card agreement, it would not have passed the matter to a debt collection agency. I am therefore satisfied that Mr C’s dispute with the debt collection agency arises from the alleged default of the credit agreement with his bank. As such, I consider DAS is entitled to assess Mr C’s claim with reference to the credit card agreement he had with his bank.

I understand Mr C entered into the credit agreement with the bank in 2003, approximately six years before the start of his legal expenses cover. Even if the date of the credit agreement was not sufficient to invalidate Mr C’s claim, Mr C was apparently aware of the dispute over the alleged default back in January 2008. Further, the debt collection agency’s involvement in the collection of the debt began in July 2009. These events predate the start of Mr C’s policy in November 2009.

I also note that DAS cited a specific exclusion to the contract disputes section which states:

“What IS NOT covered

A claim relating to...

5. A dispute arising from any loan, mortgage, pension, investment or borrowing.”

The bank allegedly provided credit to Mr C on the understanding that he would repay any sums borrowed. It is generally accepted that the credit provided under a credit card agreement is a form of loan or borrowing. The fact that Mr C denies he owes such a debt simply forms part of the subject matter of the dispute against the debt collection agency. In the light of this, I am satisfied that Mr C’s claim against the debt collection agency relates to a dispute over a credit agreement and borrowing. Consequently, I consider the policy exclusion also applies to Mr C’s claim.

my final decision

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

Nimish Patel
ombudsman