

The complaint

G and X, a company, complain that DAS Legal Expenses Insurance Company Limited ('DAS') unreasonably turned down a claim they made on their business legal protection insurance policy.

What happened

G and X brought a claim against a debtor at Court. They obtained judgment in their favour. They then approached DAS for cover to enforce that judgment. DAS declined. They said the claim breached the policy terms which required the claim to be made within 90 days of the debt becoming due and there was a general exclusion requiring the claim to be made within 180 days of the insured event- in this case DAS said that was the date of the debt becoming due.

G and X thought DAS should help them because they had the benefit of cover for this type of situation. Our investigator considered their complaint and concluded it shouldn't be upheld. He said that the claim was excluded under the terms DAS relied on and it wasn't fair for DAS to take on the claim because G and X had prejudiced their position by litigating the matter without DAS' involvement. He also said that DAS weren't obliged to fund the claim for enforcement of the debt given the policy terms in relation to this type of action only provided cover for successful claims made under the policy. As G and X hadn't pursued the original claim under the policy, the investigator said the claim for enforcement was also not covered.

G and X don't agree. They say they pursued the claim themselves because there was urgency for them to do this quickly- the debtor was about to go into liquidation so they needed judgment and the Court processes were already moving slowly due to the impact of the Covid-19 pandemic. They've also talked about contacting DAS several times. In addition, they've referred to having the benefit of indemnity insurance which should cover the losses they've incurred as a result of the debt owed to them by the debtor.

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 G and X's complaint. I'll explain why.

The policy G and X have claimed on is a legal expenses insurance policy. That provides cover for legal expenses in certain situations, but it doesn't cover the debt owed to G and X by the debtor. They might have cover for this under another commercial policy they hold but the policy they've claimed on here doesn't extend to this. G and X should review the policies they hold and if appropriate pursue a claim accordingly.

On the question of legal expenses, I agree that G and X aren't covered for the legal costs they've incurred to date in pursuing the debt because these weren't first agreed with DAS before they were incurred, and the claim itself wasn't notified in time. The policy terms specifically require DAS to agree to a claim being pursued before it will consider funding a

claim and that the claim itself needs to be reported within 90 days of the debt becoming due. There is also a separate policy exclusion requiring the claim to be made within 180 days of the insured event- in this case I agree with DAS that this would have been the date of the date of the debt becoming due.

I appreciate G and X say they contacted DAS several times, but I haven't seen anything that supports the claim for cover was actually made before G and X pursued the claim at all.

In order to determine that DAS should consider their costs incurred in pursuing the claim, I would need to be satisfied that there was a good reason why the claim couldn't be reported by G and X before it was pursued. In this case I don't think the urgent nature of judgment being needed (because the debtor was about to become insolvent) or delays in the court processes meant that DAS shouldn't have been notified or that a claim shouldn't have been made.

But even if I were to leave that aside, the policy has clear reporting requirements which G and X didn't comply with. And although they say they did contact DAS several times, I've seen nothing that confirms the claim was actually made until judgment was obtained against the debtor. To cover the costs of a claim in a situation like this would undoubtedly prejudice DAS. That's because DAS didn't have had the opportunity to assess the claim properly under their policy terms to satisfy themselves it met the threshold required on prospects of success. Equally they had no control over the costs incurred in the matter, which they could well have limited if the claim was covered. As such I don't agree that it's fair for DAS to cover those costs now.

I've also thought about whether DAS need to cover G and X's costs going forward. The policy terms say they will pay for:

"enforcement of a judgment to recover money and interest due to you after a successful claim under this policy, we must agree that reasonable prospects exist".

As such it's a requirement that any enforcement action follows a successful claim made under the policy. Because I've determined that G and X didn't make a successful claim under the policy- rather they pursued it directly themselves- I don't think that DAS need to cover the costs of any enforcement action on their behalf.

As I understand it, the debtor is or was about to become insolvent when G and X applied for judgment against them and they are now no longer in existence. In light of this, I think it's unlikely that DAS would have agreed to pursue enforcement action anyway, even if the claim had been covered. That's because any claim under the policy would've needed to have reasonable prospects of success and recovery. So, DAS might have thought the debtor's insolvency was reason enough for this policy requirement not to have been met.

Overall and for the reasons I've set out, I can't say that DAS have done anything wrong.

My final decision

I don't uphold G and X's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask G and X to accept or reject my decision before 8 September 2023.

Lale Hussein-Venn
Ombudsman