

The complaint

C, a company, complains about a claim it made on its DAS Legal Expenses Insurance Company Limited ('DAS') commercial legal expenses insurance policy, which was declined.

C says DAS treated it unfairly.

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

What happened

C made a claim on its DAS commercial legal expenses insurance policy for cover to pursue a debt recovery claim against a third party. DAS declined the claim on the basis that the date the dispute occurred was within the first 90 days of the policy and this wasn't covered.

C said the 90-day waiting period didn't apply to its claim because it took the policy out in July 2021 and the claim it wanted to make was in June 2022. DAS said this made no difference as the event giving rise to the claim took place within the 90-day period. They did however explore whether C had equivalent insurance in place immediately before it took out cover because the policy terms allowed DAS to cover the claim in these circumstances. DAS accepted that it hadn't been clear when making enquiries with C about this and that it could have resolved the issue by calling C and that it hadn't responded to the claim in line with its service standards, so it offered to pay £100 in compensation for this.

Unhappy, C referred its complaint to the Financial Ombudsman Service. Our investigator considered C's complaint and concluded it shouldn't be upheld. C doesn't 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. I'll explain why.

The starting point is the policy terms. For clarity the terms that apply are the legal expenses insurance terms and not the business interruption insurance terms as that is the section of the wider policy that C claimed on. Under the contract disputes section of the legal expenses insurance cover, the policy excludes:

"any dispute arising from an agreement entered into prior to the start of the policy if the date of occurrence was within the first 90 days of the section unless equivalent legal expenses insurance was in force immediately before."

"Date of occurrence" is defined as "For civil cases, the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of occurrence is the date of the first of these events."

In this case C wanted to bring a claim against a third party for a debt owed to it, but I'm not persuaded that the date of occurrence fell after the 90-day period set out in the terms I've quoted. That's because the third party failed to pay an invoice issued to them by C in August 2021 and they cancelled their contract with C in October 2021. Both events took place within the 90-day period. As such it makes no difference which of them gave rise to the claim. Either way, one of those events would amount to the event leading to the claim itself. So, although I understand why C thinks its claim should be covered because it sought to bring its claim after the 90 days, I can't say it's fair for DAS to do so because its policy terms exclude this situation, unless C had equivalent cover in place immediately before it took the policy out.

I can see that DAS did make enquiries with C about whether it had an equivalent legal expenses insurance policy in force immediately before, but C hasn't confirmed whether it did. In the absence of that I can't say that DAS need to cover its claim.

C has said the term DAS is relying on to turn down cover is unfair. I understand why it feels this way, but this was a commercial legal expenses insurance policy intended to cover claims that weren't likely to be reasonably known to a policyholder within the first 90 days of cover unless it had equivalent continuous cover before the policy was taken out. The term isn't unusual in policies of this nature. I understand C is now pursuing a complaint about the information it was given by the seller of the policy to it about this term when it took it out. That's not something I can determine in this decision as I'm looking at whether DAS were entitled to rely on this term. For the reasons I've set out above, I think they were.

I understand C has not yet received the £100 offered by DAS for the lack of clarity of communication surrounding their queries about whether C had continuous cover and for failing to respond to the claim within their service standards. For the sake of completeness, I take the view that the offer made by DAS was reasonable in the circumstances and adequately compensates C for any inconvenience it might have suffered in respect of this. I understand that C didn't accept that amount. It's up to C whether it now wishes to do so. If it does, it should contact DAS directly.

My final decision

For the reasons set out above, I don't uphold C's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 30 November 2023.

Lale Hussein-Venn
Ombudsman