

The complaint

N, a limited company, complains about what DAS Legal Expenses Insurance Company Limited did after it made a claim on its legal expenses insurance policy.

What happened

In October 2021 N entered into a contract with another business (S) to provide the services of an IT Support Technician. The contract was ended early by S. N contacted DAS in January 2023 as it wanted legal assistance with a breach of contract claim. DAS said the contract was entered into prior to cover being taken out with it and so wasn't covered.

N complained to us and as part of our investigation provided a policy schedule which showed the policy with DAS was taken out prior to it entering into the contract with S. DAS accepted cover was therefore in place but thought the claim was caught by an exclusion in the policy for the *"sale or provision of computer hardware, software, systems or services"*.

Our investigator agreed that did exclude the claim N was making and thought DAS had acted correctly and fairly in turning it down. N didn't agree. It accepted the contract it had with S related to the provision of services of an IT support technician. But it didn't accept the exclusion DAS had quoted applied to this. So I need to reach a final decision.

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.

The relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

It's no longer in dispute N had cover in place with DAS when it entered into the contract with S. And the terms and conditions of its legal expenses policy do cover costs and expenses for *"a contractual dispute arising from any agreement or alleged agreement which has been entered into by you or on your behalf for the purchase, hire, sale or provision of goods or services"*. As it's agreed the contract N had with S was for the provision of services this is something the policy could cover.

But the provision of cover is subject to the other terms and conditions of the policy including relevant exclusions. And within the 'What is not covered' section of 'Contract Disputes' the policy says it doesn't cover *"a dispute which arises out of the: sale or provision of computer hardware, software, systems or services"*.

The question is whether that exclusion applies to the dispute with S which N is seeking cover for. I think it does. I can see a Certificate of Insurance issued by N's broker describes its trade or business as "Computer Hardware and Software Installation". And the contract it had with S says it's a contract for services to undertake *"the Assignment for the Client"*. The Assignment is described in the contract as an *"IT Support Technician"*.

I appreciate the contract doesn't go into detail about how that role is to be performed but I don't see how an IT technician could reasonably be regarded as doing anything other than providing computer services. In fact, although in its comments N disputed this role was caught by the policy exclusion, it also said "*the contract relates to the provision of services as an IT Support Technician. As IT Support Technician to deliver the services of Hardware & Software Installation*". N goes on to say that as part of providing internet security services in that role "*this involves both Hardware and Software installations to secure the company computer systems*".

So, on the basis of N's own description of the work covered by the contract, I think this would reasonably fall within the exclusion for the provision of computer hardware, software, systems or services. As a result I agree DAS acted correctly and fairly in concluding the exclusion applied and there was therefore no cover for the claim N wanted to make.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 15 December 2023.

James Park
Ombudsman