

The complaint

Mr H complains as a director of T, a limited company, that DAS Legal Expenses Insurance Company Limited rejected a claim T made on its legal expenses insurance.

What happened

T made a claim on its policy to cover the legal costs of pursuing a case to recover a debt. DAS referred the claim to one of its panel solicitors to assess but the solicitors advised that T did not have reasonable prospects of successfully recovering any money from the other party, so DAS declined the claim.

T disagreed and complained about the decision but DAS didn't change its position.

When Mr H referred the complaint to this service our investigator didn't think it should be upheld. She said it was reasonable for DAS to rely on the legal advice and if Mr H wanted to contest that, he would need to provide his own legal opinion that confirmed there was a reasonable chance of recovery from the other party.

Mr H disagrees and on behalf of T has requested an ombudsman's 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 policy terms say that for cover to be provided “... *the prospects that the person insured will recover losses or damages... make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%.*”

Legal expenses policies usually include a term like this and will generally only provide cover where a claim is likely to succeed. I'd expect an insurer to obtain legal advice on whether the case is likely to be successful and it's reasonable for them to rely on that, provided it's a properly reasoned opinion from someone suitable qualified to give the advice.

DAS did obtain suitable legal advice, and the advice was that it was unlikely T would be able to recover any money from the other party. This advice was based on a review of the other party's poor financial position, including information from its accounts, the fact it was considered a maximum credit risk and that it had an outstanding county court judgment that had not been paid.

Mr H raised a number of points but the solicitors considered these and didn't change their advice. Indeed, in later correspondence they reported that the other party's financial position had got worse; the balance sheet showed a large negative balance and there were now two outstanding court judgments.

Mr H has questioned why the comments all relate to the other party's financial status when the policy wording talks about whether the claim has a 51% chance of succeeding in court. And he's referred to advice he obtained from his own solicitor.

The policy term set out above has two requirements – there needs to be at least a 51% chance that T will win the case (in other words, get a judgement against the other party) *and* successfully enforce the judgment and recover money from them. The advice in this case is clear that even if T wins the case it's unlikely to be able to enforce the judgment and recover any money.

While the advice from T's solicitors did say the case had a better than 51% chance of winning it was nevertheless "risky"; enforcement could be difficult; and the prospects of recovery were unclear. The solicitor said was that there was "*some prospect of making a partial recovery...*" That isn't enough to satisfy the requirement that recovery is more likely than not to be possible. And since that advice was given, the other party's financial position has got worse so the risk is only likely to have increased.

In these circumstances I think the decision not to provide cover is in line with the policy terms and is fair.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 10 October 2023.

Peter Whiteley
Ombudsman