

The complaint

T's complaint is about a claim it made on its DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy, which DAS declined.

T says DAS were wrong to decline its claim and wants DAS to now accept it.

T is represented in this complaint but in this decision, I shall refer to all submissions as T's own for ease of reference.

What happened

T took out legal expenses insurance cover with DAS in May 2021 and renewed its policy thereafter. In February 2023 T made a claim on the policy for cover to bring a claim against a third party who completed a website project for it. T says this involved the design and development of its new website. Following the completion of the project, T says the third party set up a Google Ad Words account for T then created a second one which resulted in T being found to have circumvented Google's policies. T then received what appeared to be a permanent ban from using Google Ad Words which meant it consequently lost revenue in relation to a particular product it offered.

DAS considered T's claim and declined to cover it. In their final response letter, DAS said the policy excluded:

"Any claim relating to

5. computer hardware software internet services or systems which;

a. have been supplied by You or

b. have been tailored to Your requirements".

DAS thought the claim T wanted to make fell into this exclusion. This exclusion was taken from the 2023 policy T took out. In declining T's claim, DAS recognised that they had caused a 12 day delay in communicating the outcome of their claims decision to T so they offered £50 as compensation for this.

Our investigator considered T's complaint and concluded it shouldn't be upheld. T didn't agree. It has made several detailed submissions about why it doesn't think the exclusion DAS have quoted doesn't apply, including that the 2021 terms are applicable to this claim and the exclusion contained in those terms isn't sufficiently clear so should be interpreted in its favour. As such 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 won't be upholding T's complaint. I'll explain why.

The starting point is the policy terms. The correct policy terms applicable here are the 2023

terms. That's because the claim was made during that policy year, and I'm satisfied that those were the terms applicable to the legal expenses policy DAS had in place at the time.

T says that those terms don't apply because when it took out insurance in 2022 the terms it was given were not the ones DAS have quoted. Rather they're an earlier set of terms that refer to a slightly different exclusion. T has produced a policy schedule for an Office and Surgery policy, which appears to refer to a 2021 version of the policy wording. The policy schedule contains the name of another insurer who is not the underwriter of T's legal expenses insurance policy. T has also provided page 60 of a printout of what purports to be the 2021 terms it says are referred to in the policy schedule. However, having considered these, the schedule refers to policy wording called "*Policy 2021 v1.1*" whilst the printout refers to a set of terms called "*Policy Wording-4460A-PW-INS-2021 v1.1*". From the titles I can't say with certainty they are one and the same but either way they are not the policy terms DAS had in place in respect of legal expenses cover at the time.

I appreciate that T feels the applicability of the terms it took out was something DAS should be held to, but I don't think this is a matter for DAS and I'm not persuaded that DAS should apply those terms in this case because I haven't seen anything to suggest that DAS offered T insurance on an old set of terms at T's 2022/2023 renewal. So, the issue for me to determine is whether DAS were entitled to turn down T's claim in the way that they did based on the correct terms in place at the time. If T was provided with the wrong policy terms by the seller of the policy, then that's something T will need to take up with the seller directly. It's not however a matter I can determine here. As a consequence, I won't be commenting on the 2021 terms and how they should be interpreted at all.

The 2023 policy terms say:

"What Is not Insured under Insured Event 12

Any claim relating to...

5. computer hardware software internet services or systems which;

a. have been supplied by You or

b. have been tailored to Your requirements;"

Like the investigator, I think it's sufficiently clear that claim is in relation to internet services that were supplied to T or tailored to its requirements. The initial contract T entered into with the third party for this and it was incidental to this service that the third party set up a Google Ad Words account for T then created a second one which caused the problems T wants to claim for. So, the claim itself *relates* to internet services which have either been supplied to T or tailored to T's requirements. Because of this I think DAS were entitled to decline the claim in the way that they did.

T has said that DAS quoted the wrong policy terms when they initially declined their claim and referred to the 2021 terms instead. In addition, DAS have acknowledged a 12 day delay in communicating the outcome of the claim to T. I agree that DAS should have referred to the correct policy terms when turning down T's claim, but they did do so in their final response letter to T. That letter represents DAS' final position on T's claim. DAS have offered T £50 in compensation for the delay in communicating the outcome of the claim. I think this is sufficient to cover the inconvenience in T having to deal with both the 12 day delay in receiving an outcome and the wrong policy terms being referred to by DAS in their initial decline of T's claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 22 March 2024.

Lale Hussein-Venn
Ombudsman