

The complaint

Mr and Mrs H are unhappy with what DAS Legal Expenses Insurance Company Limited did after they made a claim on their legal expenses insurance.

What happened

In February 2020 Mr H contacted DAS and said he was in dispute with a roofing firm. He initially discussed matters with the legal helpline offered by his policy and subsequently sought assistance with a claim against him for unpaid invoices. DAS referred the matter to one of its panel solicitors. It appears they advised Mr H in March 2020 the claim didn't have reasonable prospects of success (a requirement of the policy).

Mr H instructed his own solicitors and was successful in having the claim against him struck out. That was because the claim had been brought personally by an employee of the roofing firm (Mr D) rather than the firm itself (the contracting party). He contacted DAS in November 2021 as he thought this showed the advice given by the panel firm on prospects was wrong. He felt it should cover the legal costs he'd incurred and which he hadn't been able to recover from the roofing firm.

DAS said it wasn't responsible for the advice provided by a panel firm. And having reviewed matters it didn't think the claim Mr H had made was covered at all. That was because the claim against him was from Mr D who wasn't party to the disputed contract.

Our investigator thought DAS was right to say the policy didn't cover this claim. Mr H didn't agree. In summary he said:

- Mr D alleged he had a verbal contract with Mr H and the policy covered agreements or alleged agreements. And it didn't say the contract had to be a written one. So he thought the claim was covered by the policy.
- He queried why it had taken until June 2022 for DAS to say the claim wasn't covered by the policy. If it had told them earlier they would have had more time to find a less costly solicitor.
- And he thought DAS were responsible for what the panel solicitors got wrong when carrying out their assessment of the claim's prospects of success.

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.

First, I appreciate Mr and Mrs H believe DAS are responsible for what the panel firm got wrong. But that firm are a separate firm of professionals to DAS with their own set of rules

and a different regulator. So, any complaints about the advice or actions of the panel firm would need to be directed to them in the first instance and then to the Legal Ombudsman. I know in this case Mr and Mrs H have made a complaint to the panel firm and so if they're unhappy with what it's agreed, or hasn't agreed, to do their escalation point is to the Legal Ombudsman.

In this decision I'm considering whether DAS has got anything wrong and, if so, whether Mr and Mrs H have lost out as a result. And in doing so I've taken into account that the relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. And it shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr and Mrs H's policy. I think it's agreed the relevant section of cover relates to contract disputes and says *"we will cover the costs and expenses for the following...your legal rights in a contractual dispute arising from an agreement or an alleged agreement which you have entered into for: the buying or hiring in of any goods or services; or the selling of any goods"*.

It doesn't say the agreement has to be in writing. So I don't think the fact Mr and Mrs H had a verbal agreement with the roofing firm means they wouldn't be covered by this term. The issue is the claim that was brought against them wasn't from the roofing firm with whom they'd entered into that agreement but from Mr D with whom (as subsequently confirmed by the courts) they didn't have a contract.

I recognise Mr D was alleging he had a contract with Mr H. And I appreciate the term does refer to *"an agreement or an alleged agreement"*. But it goes on to say that agreement is one *"which you have entered into"*. 'You' is defined in the policy as *"the person(s) named in the policy schedule as the policyholder"* which in this case is Mr and Mrs H. And although Mr D was alleging he'd entered into an agreement, Mr H's defence of the claim was that he hadn't done so and his agreement was with the roofing firm.

If the policy had referred (as it could have) to *'an agreement which you have entered or allegedly entered into'* then I think the claim Mr and Mrs H made could have been covered. But it doesn't say that and so I don't think DAS acted unreasonably in concluding that, in the circumstances of this case, the claim wasn't covered.

Mr and Mrs H queried why it took DAS until June 2022 to tell them that. From the information I've seen I don't think DAS was provided with full details of the claim that had been made against them at the outset. The claim is recorded in its notes as being against the roofing firm and that's also reflected in the summary it sent to Mr and Mrs H.

I appreciate more detail was then provided to the panel firm. It accepted in response to the complaint Mr and Mrs H made to it that the paralegal who looked at the case didn't pick up on the issue of who the claim was being made by. It also doesn't appear their assessment was sent to DAS at the time. As it's ultimately for DAS to make a decision on whether cover should be provided for a claim, I think DAS should have ensured that happened.

If it had done, DAS would have been entitled to rely on a properly written and reasoned prospects assessment from someone suitably qualified. But in this case the assessment was from a paralegal and it's not clear whether they were appropriately supervised. In any event the opinion failed to identify an obvious issue (who the claim was being brought by) that I think it would have been reasonable for DAS to have picked up on when reviewing it. If it had done it would have realised the claim wasn't covered by Mr and Mrs H's policy and they'd have known that in or around March 2020.

But I don't think they've lost out because DAS didn't do that. They were told by the panel firm cover wouldn't be provided for their claim. So even if DAS had picked up on the issue of policy coverage it wouldn't have changed the underlying position; the claim wouldn't have been funded by the policy and Mr and Mrs H would have needed to instruct their own solicitors at the same point they did. As a result I don't think there's anything DAS needs to do to put things right here.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 23 August 2023.

James Park
Ombudsman