

## **The complaint**

Mr M has complained that DAS Legal Expenses Insurance Company Limited trading as DAS acted unfairly when it declined a claim he made under his legal expenses insurance policy.

For the sake of clarity when I mention 'DAS' I mean the underwriter or any agents working on its behalf.

## **Background**

Mr M has legal expenses insurance cover through his home insurance policy with DAS. He contacted DAS in March 2021 to make a claim under his policy. He explained to DAS that he had invested in five casks of whisky through a whisky distillery I'll call 'S' but had never received proof of ownership of the casks. So he wanted to make a claim under his policy as it provides cover for disputes about goods and services.

DAS considered Mr M's claim but declined it on the basis that the policy doesn't provide cover for investment disputes. It says the wording of the policy is clear on this point and that all of the information on S' website clearly indicates Mr M was investing in the five whisky casks and wouldn't receive direct ownership of them for at least ten years. Therefore, it argued the policy didn't provide cover for Mr M in his dispute with S.

Mr M disagreed with DAS' interpretation of the policy wording and said that he would own the physical goods at the point of purchase and that he intended on using the whisky, once it had fully matured, for personal reasons primarily. He did concede that he may sell some surplus supplies once the whisky had been bottled, but insisted the dispute shouldn't be excluded under the terms and conditions of the policy. He explained that he wasn't treating the whisky as an investment, but rather a personal purchase, and ultimately his claim was about S' failure to deliver ownership of the goods and the policy provided cover for that.

DAS continued to view Mr M's case as one based on a failed investment and refused to provide cover for his claim under the policy and so Mr M brought his complaint to us to consider.

I issued a provisional decision on Mr M's case on 18 May 2022. In it I said that although the policy wording did exclude claims relating to investments, the intention behind the exclusion was to protect DAS from claims relating to investments which failed to provide expected returns. As Mr M's claim was actually about S failing to provide ownership of the goods he had invested in, I felt a strict application of the exclusion was unfair. As such I thought DAS should reconsider Mr M's claim without applying the exclusion to it.

DAS responded to the provisional decision repeating that Mr M had invested in the whisky, and investments were excluded under the policy's terms and conditions. So, it believed it was entitled to decline the claim.

Mr M responded to the provisional decision agreeing with the outcome I reached and asking if DAS could also be required to appoint his preferred solicitors and reimburse any legal fees he has accrued to date as well as any future costs linked to his claim.

## My Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As DAS has raised no new arguments regarding why the claim should be excluded under the policy's terms and conditions, I find no reason to change my original findings. I will repeat them here for the sake of clarity.

In order to make a finding on whether or not DAS has applied the exclusion regarding investments fairly to Mr M's claim it is necessary to both set out what the exclusion says and what risk it was intended to mitigate against.

The policy sets out that claims involving investments are excluded in the section relating to contract disputes. It says the following:

*We will not pay for any claim relating to:*

- *A dispute arising from a loan, mortgage, pension, investment or borrowing...*

Looking at the information from S' website it is clear that the company advertised to potential clients by stating it was providing an investment opportunity for consumers to invest in its whisky. In fact, the word 'invest' is mentioned numerous times throughout the website, at one point it even compares the limited risk in this sort of investment (i.e. whisky investment) over more traditional forms of investment such as stocks and shares.

Mr M has repeatedly said his intention was to use the whisky for personal use. He's said there were a number of family occasions he envisioned using the whisky for, and that while he may have sold some of the whisky to cover the bottling costs, he was ultimately buying it for personal use and that it wasn't an investment in the traditional sense. He also noted that the exclusion wording placed 'investment' within a list of various sorts of financial enterprises, which he said were clearly very different in nature from what he was doing with S; buying five casks of whisky which he would take physical ownership of.

DAS responded by saying S' website was very clear that this was an investment opportunity and that investments weren't covered under the policy's terms and conditions. It also disputed that Mr M would take physical ownership of the whisky, noting it would stay in situ with the whisky distillery until it was ready to be bottled.

In order to understand the purpose of the above exclusion I asked DAS to clarify what risk the investment exclusion was trying to mitigate against. It responded by saying the purpose of the exclusion was to prevent claims relating to projected returns on investment products. This was because, by their nature, a lot of investments are inherently risky and there could be a high chance of any linked legal actions failing.

This makes sense to me and I don't think DAS was being unreasonable when it set out the exclusion to protect itself and its policy holders in regard to claims of that nature.

However, Mr M's claim isn't about the failure of the whisky to produce the expected investment return. Rather it is about S' failure to deliver proof of ownership of the five casks of whisky that he paid for.

Looking at what is covered under contract disputes I note the policy says it will provide cover for:

*A contractual dispute arising from an agreement or an alleged agreement which you have entered into in a personal capacity for:*

- *Buying or hiring goods or services...*

In this instance Mr M was buying five casks of whisky, albeit as a type of investment, and he didn't receive proof of ownership of the goods as expected. I don't think it's relevant that he didn't expect to use the whisky for 10 years or that when he did, he was hoping to sell some of it and make a profit at that point.

Instead what is relevant is that Mr M's claim is about the fact he paid for five casks of whisky and never received proof that he owned them.

Mr M has also confirmed that the case he and his solicitors intend on bringing against S is for breach of contract and non-delivery of goods and is not based on anything to do with the expected returns or potential resale value of the whisky.

Therefore, while I accept that a strict application of the policy's wording regarding excluding investments could be applied here (it does seem as though the whisky was purchased with at least some sort of time dependent investment in mind), it feels inherently unfair to do so.

The actual reason Mr M is bringing a case against S is because he paid for goods he didn't receive and not because the sale of those goods failed to provide the expected return.

So, for that reason DAS should reconsider Mr M's claim without applying the investment exclusion to it.

Mr M has asked that DAS allow him to continue using his preferred solicitor and that it cover the legal costs he has paid to date as well as any future legal costs that may arise from this matter.

It is important that I clarify that my directions to DAS are that it reconsiders Mr M's claim without applying the investment exclusion to it. That doesn't automatically mean the claim will be accepted by DAS. There are a number of stages it must go through first, including DAS checking to ensure no other exclusions apply and also that it has reasonable prospects of success if it is brought forward.

Assuming the claim is accepted by DAS after these additional checks are run Mr M will then be able to speak to it about his legal representation. I note that his policy does allow for him to use a solicitor of his own choosing but there are caveats around this, and he should refer to his policy document to better understand what these are.

For these reasons I am unable to direct DAS as Mr M has asked me to.

### **Putting things right**

DAS Legal Expenses Insurance Company Limited trading as DAS should reconsider Mr M's claim without applying the investment exclusion to it.

### **My final decision**

For the reasons set out above I uphold Mr M's claim against DAS Legal Expenses Insurance Company Limited trading as DAS

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 June 2022.

Karen Hanlon  
**Ombudsman**