

The complaint

The complaint is about a claim Mr N made on Mr T's DAS Legal Expenses Insurance Company Limited ("DAS") policy.

Mr N and Mr T have brought the complaint jointly. They say that DAS unreasonably declined Mr N's claim.

What happened

Mr T has the benefit of a DAS legal expenses insurance policy. Mr N made a claim on that policy for cover to bring a claim against his employer for failing to make reasonable adjustments, which he says resulted in an injury at work.

DAS declined to cover the claim. They said Mr N wasn't eligible to claim under the policy because he wasn't living with the policyholder, Mr T, and this is a requirement of the policy.

Our investigator considered Mr N and Mr T's complaint and concluded that it should be upheld. He said that Mr T's policy did cover Mr N because it extended to his family members who always live with him and the evidence he'd seen convinced him that Mr N and Mr T did always live together, albeit not necessarily in the UK. He also concluded that Mr N is Mr T's carer as well as his son and there was nothing in the policy terms that suggested they needed to be living in Mr T's UK property, as long as that property continued to be occupied by another family member.

DAS don't agree. They say that they've been given conflicting accounts by Mr N on where each party was residing throughout the claims process and on other claims that Mr N has made. Because of this the matter has been passed to me to decide.

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 uphold Mr N and Mr T's complaint. I'll explain why.

The starting point is the policy terms. They cover:

"The person who has taken out this policy (the policyholder) and any member of their family who always lives with them. This includes students temporarily living away from the home and unmarried partners.

Anyone claiming under this section of cover must have the policyholder's agreement to claim."

There's no dispute here that Mr N has Mr T's permission to make a claim on the policy. Indeed, I've seen confirmation from Mr T that he agrees to Mr N making the claim that is the subject of this particular complaint. The issue in dispute is whether Mr N always lives with Mr T. For the sake of completeness, I'm satisfied that there's nothing in the policy that means

Mr N and Mr T had to be resident in the UK together- but rather that they were always living together, wherever that may be.

DAS have relied on several pieces of correspondence which they say supports their position. Conversely Mr N has provided a detailed account of where he and Mr N have been living since as far back as 2011, as well as testimony that Mr N is Mr T's carer as a consequence of his age and health conditions.

I've thought about what both parties have said and, in particular, the evidence Mr N has provided. I find his testimony together with the items he's provided to support it to be persuasive and I'm satisfied that although Mr N and Mr T weren't always living in the UK, they were living together, albeit in various different countries. I accept there were periods of time when Mr N was not in the same country as Mr T. He's explained there were occasions in which he needed to travel to a different country apart from Mr T to spend time with his Partner who was residing at Mr T's UK address for example or to attend medical appointments himself, but these trips tended to amount to less than a week in duration on each occasion.

I know that DAS feel that there were times when Mr N and Mr T were living apart. But they haven't demonstrated any specific instances in which this took place. And I'm not persuaded that the short trips Mr N took away from Mr T meant that he was no longer living with him. The evidence DAS have referred to only demonstrates that Mr N and Mr T have a home in another country as well as one in the UK and that they lived in another country during the Covid-19 pandemic. So, what they've said essentially seems to support Mr N's account of his and Mr T's movements around Europe since 2011.

I note the investigator asked DAS to comment on the detailed account Mr N provided about his and Mr T's living arrangements since 2011 as well as the documents Mr N supplied to support his testimony. DAS didn't comment on that. In the absence of anything specific that disproves Mr N's account of things, I'm not satisfied that DAS are entitled to decline cover for Mr N's claims on the basis that he and Mr T weren't living together.

I've also thought about DAS' suggestion that they'd be entitled to decline cover for Mr N's claim on the basis that Mr T didn't notify them of a change of address, particularly during the Covid-19 pandemic when he was staying in another country. DAS say this would apply if Mr T stayed in another country for 30 days or more and didn't tell them about this.

The policy does require policyholders to confirm if they are going to change address or a policyholder's home is going to become unoccupied for more than 30 days in a row. It also requires policyholders to confirm if someone other than the policyholder and his/her family is going to live in their home. Mr N has said that before he and Mr T set up their second home in another country, they asked their home insurer whether they needed to report this issue to them. He says they were told that as long as they were keeping their UK home and that that property wouldn't remain unoccupied for longer than a month there was nothing for them to report. As I understand it Mr N's Partner, who would be defined as Mr T's family for the purposes of this policy was staying in Mr T's UK property throughout the time Mr T was staying abroad. Because of this and in light of the information Mr T and Mr N say they were given by their insurer, I'm not and persuaded that the policy was conditions were breached. In particular I don't think having a second home meant they were changing address necessarily, particularly given Mr N's testimony that he and Mr T continued to maintain Mr T's UK home, which was occupied by family.

Putting things right

DAS Legal Expenses Insurance Company Limited should reconsider Mr N's claim for cover

to bring a claim against his employer in respect of an alleged failure to make reasonable adjustments under the remaining terms of the policy on the basis that he is eligible to claim on Mr T's policy because he is considered to always live with him.

My final decision

I uphold Mr N and Mr T's complaint against DAS Legal Expenses Insurance Company Limited and direct them to comply with my award of fair compensation set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N and Mr T to accept or reject my decision before 11 January 2023.

Lale Hussein-Venn
Ombudsman