

The complaint

Mr G complains that DAS Legal Expenses Insurance Company Limited rejected a claim on his legal expenses insurance policy.

What happened

Mr G had a burglary at his home where a large quantity of jewellery and other items were stolen. He made a claim on his home insurance policy and received a payment but this didn't cover the full value of the items that had been stolen.

The burglars had gained entry to his flat by climbing on scaffolding that had been put up outside the building. Mr G and his home insurers decided to pursue legal action against the person responsible for this, saying they should have ensured the scaffolding had safety measures in place and had failed to do that.

DAS considered the claim under the section of the policy providing cover for contract disputes but said Mr G wasn't a party to the contract with the person concerned, so wouldn't cover the claim.

Mr G said he should be covered under the property protection section of the policy but DAS didn't agree he was covered under that section either. It said the intention of the property protection section of the policy is to rectify damage and/or avoid damage to property. And it said his claim appeared to be about negligence which resulted in loss rather than damage.

Mr G complained but DAS didn't change its position. When he then brought the complaint to this Service, our investigator didn't think it should be upheld. She agreed that the claim was for loss of property rather than damage.

Mr G has been supported in this complaint by his solicitors and they challenged the investigator's view. They said that to establish an entitlement to cover under this section Mr G must show the following conditions are met:

- there is a civil action for a dispute;
- the dispute relates to material property owned by Mr G;
- there has been an event;
- the event caused or could cause physical damage to Mr G's material property forming the subject of the dispute; and
- the amount in dispute exceeds £100.

And they said he has shown each of these conditions is met.

The investigator considered these points but didn't change her view. So the complaint was passed to me to decide.

I issued a provisional decision saying I intended to uphold the complaint. I set out my reasons as follows:

An insurer must deal with a claim promptly and fairly, and should not unreasonably reject a

claim. I need to consider whether the decision DAS made to reject the claim is reasonable, taking into account the policy terms.

The relevant section of cover says

“We will pay costs and expenses for your legal rights in a civil action and/or arrange mediation for a dispute relating to material property you own, or for which you are responsible... following:

1. any event which causes or could cause physical damage to such material property, provided that the amount in dispute is more than £100...”

I agree that to be entitled to cover, Mr G must show his claim meets the criteria set out above and I think he has done so, for the following reasons:

- *There is a civil action for a dispute – he is bringing a civil action for negligence.*
- *The dispute relates to material property owned by Mr G – it relates to items belonging to Mr G and stolen from his home.*
- *There has clearly been an “event” – namely, the burglary.*
- *The event caused or could cause physical damage to his material property forming the subject of the dispute. The solicitors have explained that, on balance, it’s likely some of the possessions were damaged – jewellery and other items contained within safes were damaged when they were thrown from the first-floor balcony onto the ground below. It’s also likely gemstones were removed and metal was melted down, which would amount to “damage”*
- *The amount in dispute exceeds £100.*

I appreciate this may not be the type of dispute DAS had in mind in relation to this section of cover. However, although the claim may be for a loss rather than damage, on the plain meaning of the words as set out above, I’m satisfied Mr G has shown his dispute fits within the policy term as written. He’s taking legal action about a dispute following an event which caused or could cause damage to his property. On that basis it’s covered by the policy term.

If DAS wished to restrict cover, for example to say it was limited to claims specifically for damage, it could have done so.

For these reasons I think the claim does fall within this section of cover. Having said that, there may be other terms or conditions that apply, for example that the claim has reasonable prospects of success and is proportionate to pursue. I understand there may have been advice on the prospects previously but DAS is entitled to review that and consider if any other terms might apply. DAS should provide cover for the claim subject to any other terms or conditions that apply.

Replies to the provisional decision

Mr G has accepted the provisional decision and has no further comments to make, while DAS says it has nothing further to add.

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.

There are no further comments for me to consider and in the absence of anything new I see no reason to change my provisional decision. It remains my view that DAS should provide cover for the claim, subject to the remaining policy terms.

My final decision

I uphold the complaint and direct DAS Legal Expenses Insurance Company Limited to cover the claim subject to the remaining policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 July 2023.

Peter Whiteley
Ombudsman