

The complaint

Mrs D and X complain about DAS Legal Expenses Insurance Company Limited (“DAS”) and their decision to decline the claim X made on their Legal Expenses (“LE”) insurance policy.

X has acted as the main representative during the claim and complaint process. So, for ease of reference, I will refer to any comments made, or actions taken, by either Mrs D or X as “X” throughout the decision.

What happened

The claim and complaint circumstances are well known to both parties, so I don’t intend to list the events chronologically in detail. But to summarise, X made a claim on his LE insurance policy underwritten by DAS, relating to an employment dispute. This policy was included as part of the joint home insurance policy he held with Mrs D.

DAS referred X’s claim to a panel solicitor, who I’ll refer to as “P”, to undertake a legal assessment of the merits of the claim. And DAS felt P’s assessment stated there were no reasonable prospects of success. So, DAS declined X’s claim under the terms of the policy. But X remained unhappy about this, so he raised a complaint.

X didn’t think P’s assessment stated clearly there were no reasonable prospects of success. And X questioned the suitability of P to reach this assessment. So, X wanted DAS to appoint a new solicitor to complete another legal assessment, which he felt would most likely support the prospects of his claim.

DAS responded to the complaint and didn’t uphold it. They thought they were fair to interpret P’s assessment as stating there were no reasonable prospects of success. So, they thought they’d acted fairly, and in line with the terms and conditions of the insurance policy they provided, when declining the claim. But they also explained X could seek his own legal opinion from counsel and that, if it stated there were reasonable prospects, they would reconsider the claim. To date, this hasn’t been provided and so, the claim has remained closed. X remained unhappy with this response, so he referred his complaint to us.

Our investigator looked into the complaint and didn’t uphold it. They explained the remit of our service, and why we couldn’t consider the conduct of P. And they explained why they thought DAS had declined the claim fairly, based on the assessment P provided. So, they didn’t think DAS needed to do anything more.

X didn’t agree, providing additional comments and information explaining why. This included, and is not limited to, his belief that P’s assessment didn’t state explicitly what percentage prospect they felt the claim held of being successful. And his testimony explained why he didn’t think it was fair to expect him to provide evidence to P, before they made this assessment. Our investigator considered all of X’s points, but their view remained unchanged. X continued to disagree and so, his complaint has been passed to me for a 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.

Having done so, I'm not upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I explain why I've reached this decision, I think it would be useful for me to set out exactly what I've been able to consider, and how. It is my role, and the role of our service, to consider the actions DAS have taken as the underwriter of the insurance policy as they are the regulated financial business. It is not to consider, or challenge, the conduct or actions taken by P, who as a solicitor are regulated by an entirely separate regulator in another industry. So, they will not be considered, or have an impact, on the decision I've reached.

And when our service considers the actions taken by DAS, our service considers it fair for an insurer to ensure a claim has reasonable prospects of success before agreeing to cover it, And to do this, we would expect an insurer to obtain an opinion from a suitably qualified legal professional.

This falls in line with the policy terms, which sets out clearly that reasonable prospects must exist for the duration of the claim. And, that reasonable prospects are determined as there being at least 51% chance of a successful defence. We think this approach is fair, as court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

In this situation, that legal professional is P. And having read the assessment, I'm satisfied it was provided by a solicitor within P, who I think is a suitable legal professional, with a fair and reasonable level of experience and expertise in the relevant area.

And I'm also satisfied that it's properly written and reasoned, to the standard our service would expect. I think it directly addresses the claim and concerns raised by X, and while a specific prospect percentage isn't provided, I think P makes it reasonably clear that, based on the evidence available to them, they didn't think the claim had reasonable prospects of success.

I think this is made clear where P states *"you would struggle to persuade a court that there was actually a course of conduct as required by PHA 1997"*, which is essentially what X would need to do for the claim to be successful. And I note the assessment is ended stating *"I am sorry that I cannot be more positive about your prospects of success"*. I wouldn't expect P to apologise to X if they were agreeing that the claim has a reasonable prospect of being successful, which is what X was hoping for.

So, as P were the qualified professional, I think DAS were fair to rely on P's expert opinion. And I've seen within the terms of the policy DAS make it reasonably clear that they will *"pay an appointed representative, on your behalf, costs and expenses for the insured incidents in the section as long as reasonable prospects exist for the duration of the claim"*. In this case, as P's opinion was that there was not a reasonable prospect of success, I think DAS acted fairly, and in line with the policy terms, by not agreeing to cover the claim. So, I don't think they need to do anything more on this occasion.

I understand this isn't the outcome X was hoping for. And I want to reassure X I've considered all the comments and representations he's made, which include his reasoning for

not providing P with additional evidence that may or may not have impacted the assessment they reached.

But as I've explained above, it is not my role, nor the role of our service, to comment on the actions of P. And this includes any requests P made before reaching their legal assessment. But I do want to make it clear that, within the policy terms and conditions DAS provided, it does make clear that X *"must co-operate fully with us and the appointed representative"*. So, I do think DAS are fair to expect X to act within this condition and I can't agree with X that DAS have in any way breached this term when reaching their claim decision.

I also want to make it clear that I don't dispute or discredit X's clear belief in the prospects of his claim. DAS have made it clear that should X be able to provide a conflicting counsel opinion that sets out why his claim has reasonable prospects of success, then they would reconsider their approach at this point. While I don't think the policy terms stipulate a conflicting opinion must be provided by counsel, I do think it's fair for DAS to expect X to provide a fair legal challenge from a suitably qualified lawyer. And it is X's decision whether he wishes to take up this option moving forwards.

My final decision

For the reasons outlined above, I don't uphold Mrs D and X's complaint about DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D and X to accept or reject my decision before 12 March 2024.

Josh Haskey
Ombudsman