

The complaint

This complaint is about the refusal of a claim made by the estate of X under legal expenses insurance cover with Acromas Insurance Company Limited.

Acromas is the underwriter of this policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Acromas has accepted it is accountable for the actions of the agent, in my decision, any reference to Acromas includes the actions of the agents.

The estate of X is represented by his daughter, Ms V, and Mr T. As Ms V has been the main correspondent on the complaint, I will refer to her throughout.

What happened

Ms V's father held a policy with Acromas. In October 2023, Ms V contacted Acromas as she wanted to bring a claim for medical negligence against the hospital that treated her father and for the cost of legal representation at the inquest in relation to his death.

Acromas instructed one of its panel of pre-approved solicitors to assess the claim. They did not think there were reasonable prospects of any clinical negligence claim succeeding. Acromas therefore said that the policy would not cover the claim. Acromas also said that the cost of representation at an inquest would only be covered if it was to assist in pursuing a clinical negligence claim and, as there are not reasonable prospects to pursue such a claim, it would not cover the inquest.

Ms V is very unhappy with this. She says the policy provides cover for representation at an inquest and nothing in the policy suggests that an inquest is classed as a legal claim or is dependant on a claim that has reasonable prospects of success being brought. Ms V also says that Article 2 of the Human Rights Act 1998 – the right to life - should be considered.

Acromas does not accept it has done anything wrong. It told Ms V that if she could obtain a favourable legal opinion it would reconsider but it would not provide cover for the inquest as a separate matter.

Ms V therefore brought the complaint to us. She provided an AI analysis of the policy that she says supports that Acromas's position, that any representation at an inquest is dependent on there being a legal claim for negligence, is not correct. Ms V has also provided written advice from a barrister that, while a clinical negligence claim might have prospects, any assessment would not be fully informed until after the inquest and that they think this should be covered by the policy.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld as she was satisfied that Acromas was entitled to rely on the panel solicitor's advice about the clinical negligence claim and, as it is a pre-requisite of cover that any claim has reasonable prospects of success, Acromas was entitled to reject this claim. With regard to the inquest, the Investigator agreed with Acromas that there is no cover under the policy for the inquest as an isolated matter.

Ms V does not accept the investigator's assessment. She has made a number of points in response. I have considered everything she has said but have summarised the main points below:

- A proper evaluation of prospects of success of the clinical negligence claim can only happen after the inquest, which is likely to reveal crucial information and evidence.
- The inquest process itself is distinct and can be crucial in determining whether any subsequent legal action is warranted or advisable.
- Representation at inquest is specifically mentioned in the policy wording and there is no explicit statement in the policy wording that it is a condition of cover for inquests that a legal claim is brought.
- The cover for inquest representation is in the same section of the policy as the cover for Inland Revenue inquiries and not in the section relating to claims for personal injury. This arrangement of the policy wording strongly suggests that the policy does not inherently anticipate or require the bringing of a legal claim in all circumstances where cover is provided.
- Given this, the bringing of a claim should not be imposed on a policyholder as a condition for providing representation at an inquest.
- Acromas's position is in breach of several general principles of contract law and relevant regulations, including that any ambiguous or unclear terms should be interpreted in favour of the policyholder; that a policy should be interpreted in accordance with the reasonable expectations of the policyholder as to the cover provided; the insurer's duty of good faith to not unfairly refuse claims; and the Unfair Terms in Consumer Contracts Act, which in this case would mean that Acromas is imposing a condition that is not clearly stated in the policy, which could be considered an unfair term.

As the Investigator has not been able to resolve the complaint, it has been passed to me.

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.

The starting point for my consideration of this matter is the policy wording. The policy provides cover for various legal disputes, which are set out under the heading "*Home Legal Expenses Cover*". These are numbered 1-6 and are: employment, contract, protection of property, tax protection, defence of legal rights and the one that is agreed is relevant to this complaint: "*Death, personal injury and clinical negligence*".

There is no section of cover for inquests as a separate event that would be covered under the policy.

The "*Death, personal injury and clinical negligence*" section of the policy says:

"We cover the following:

We will cover legal costs for you, or in the event of your death for your personal legal representatives, for pursuing a legal claim that arises from an event which causes death or bodily injury to you."

The policy defines a "*legal claim*" as being: "*Preparing work for negotiating or defending your legal rights in a civil court, tribunal or arbitration in the territory including negotiating a settlement and any hearings.*"

I think it is sufficiently clear in the terms set out above that cover is provided for pursuing a claim – defined as being “*negotiating or defending your legal rights in a civil court, tribunal or arbitration* – for clinical negligence. I also think it is sufficiently clear that to have a valid claim under the policy, it has to fall within one of the listed sections of cover; and as stated above, there is no separate section of cover for inquests as a stand-alone process.

The only mention of an inquest in the policy is in the glossary section of the policy document, which says:

“Inquiry

An inquest held in a Coroners Court into your death; a police investigation into an allegation made about you which may lead to you being prosecuted in a magistrates or crown court; civil action being taken against you under sections 168 and 169 of the Data Protection Act 2018; or civil action being taken against you for unlawful discrimination.”

It is this definition that Ms V says makes clear that a claim for cover for an inquest is provided and is not linked to bringing a claim. She also says that in accordance with the relevant rules and regulations, as well as the general principles of contract law, this should be interpreted in the way that is most favourable to the consumer.

I do not agree that this could have different meanings. I think it is clear it is a definition of the term “*inquiry*” and do not think it can reasonably be interpreted as meaning that there is cover for inquests.

Ms V also says that the definition of inquiry is in the same section of the policy as cover for tax enquiries and so suggests that this supports that not all claims under the policy would have to be for pursuit of a court claim. There is a definition of “*full enquiry*” in the glossary section of the policy but there is also a separate section of cover for tax protection providing cover for proceedings following a full enquiry into the policyholder’s tax affairs.

I do not agree that the fact there is a definition of “*full enquiry*” in the glossary section, changes the fact there is no section of cover for inquests in the “*cover*” section.

Acromas is not therefore seeking to impose a condition, in my opinion, there is simply no cover for inquests on their own. And, for the reasons give, I do not agree that the reference to inquests in the glossary section of the policy can reasonably be interpreted as meaning that inquests are covered as a separate matter.

As well as there not being any specific section of cover for inquests, I have also considered the rest of the policy to determine if it would be reasonable for Acromas to provide this cover to Ms V. Having done so, I do not think there is any reason that it should do so. I will explain why.

While Ms V says she does not want a decision about the rejection of the clinical negligence claim, the circumstances around that are relevant to my consideration of the issue she does want determined: whether there should be cover for the inquest.

In line with all other legal expenses insurance policies of which I am aware, the cover is subject to various terms and conditions. These are set out in the “*Home Legal Expenses Conditions*” section of the policy as follows:

“What we will do:

a) we will review the fully completed legal expenses claim form and consider in its entirety. the total value of the claim, the complexity of the issues, the importance of the issue. the financial positions of the parties involved and the legal costs involved;

b) if there are reasonable prospects of pursuing your claim and of enforcing any judgment or award, we will advise you of the most suitable action ...

Representation

If your legal claim has reasonable prospects we will choose an appointed representative to act on your behalf. The arrangement we have with our appointed representatives does not restrict their independence and you will at all times receive the best advice for you.” This is defined in the policy as:

Reasonable prospects are defined as being:

“Where we consider there is a 51% and above chance of succeeding with your claim and enforcing any award and that it would be reasonable to advise any private paying client in the same circumstances to pursue the claim.”

I think this is sufficiently clear that, as is common to all legal expenses insurance policies, this one requires the matter for which the policyholder wants cover to have reasonable prospects of success and Acromas will only appoint a representative if there are reasonable prospects of any legal claim succeeding.

Acromas did ask the panel solicitors whether they would advise a private paying client to pay for legal representation at an inquest. They advised they would not do so as there was no chance of recovering any costs. I think it was reasonable for Acromas to make that enquiry and the panel solicitors advice further supports its position.

Ms V also says that it is unfair to refuse cover for the inquest when, as her barrister has said, *“it would not make sense to make the bringing of a claim a prerequisite to representation at inquest, given that an inquest is a fact-finding mission that not only generally precedes the bringing of a claim, but, also, usually determines whether or not a claim will be brought.”*

I do not disagree that it would be sensible from a legal standpoint to see what evidence comes to light at the inquest before deciding whether to pursue a clinical negligence claim. However, I do not think this in itself means that Acromas should fund representation at the inquest. It is clear from the policy terms set out above that the matter for which representation is sought must have reasonable prospects of success before cover can be provided, that cover is for the pursuit of a legal claim, and the policy cover is not available for speculative claims or *“fact-finding”* missions.

If the inquest does provide evidence that would support a clinical negligence claim, then Ms V can present that to Acromas and ask it to reconsider the claim for clinical negligence.

Finally, Ms V has also referred to the right to life provided for under the Human Rights Act. I do not consider that this provision means that Acromas should meet a claim that is not covered under the policy terms.

Having considered everything carefully, I am satisfied for the reasons set out above that the policy does not cover representation at an inquest as a separate matter and would only do so if it was advised to assist as part of a clinical negligence claim. Therefore as, at present,

there is no valid clinical negligence claim, Acromas is not obliged to fund representation at the inquest.

Despite my sympathy for Ms V's position, I therefore consider Acromas has acted fairly and in line with the policy terms.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of X to accept or reject my decision before 2 May 2025.

Harriet McCarthy
Ombudsman