DRN-5630545

The complaint

Miss D is unhappy with what Accredited Insurance (Europe) Ltd did after she made a claim on her legal expenses insurance policy.

What happened

In June 2023 Miss D contacted Accredited via the legal helpline provided as part of her policy. She said trees on a neighbouring property had caused damage to her outbuilding. Accredited asked for further information and says on receipt of that it asked a panel firm to assess whether the claim had reasonable prospects of success.

The firm subsequently advised that wasn't the case because there wasn't enough evidence to show the trees rather than wear and tear were the cause of damage to the outbuilding. And it suggested further evidence Miss D might want to obtain in support of her position. Accelerant said it wouldn't be providing funding for the claim but would arrange for a reassessment if Miss D was able to provide the requested information.

Our investigator thought the prospects assessment had been carried out by someone suitably qualified and experienced and it was reasonable for Accelerant to rely on that when declining cover for Miss D's claim. She didn't think there was further action it needed to take in the absence of evidence to show the claim did have prospects of success.

Miss D didn't agree. She said her neighbour (a school) had accepted liability after obtaining its own arboricultural report. She thought that along with the other evidence showed the claim did have reasonable prospects of success. So I need to reach a final 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.

The relevant rules and industry guidelines say Accredited has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

Accredited appears to have accepted that the claim Miss D made would fall within one of the insured events her policy covers. However, it's also a requirement of the policy that for cover to be provided "*there is at least a 51% chance of you achieving a favourable outcome and the costs of the legal action are less than the value of any damages that are likely to be awarded as a result".*

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So I think it was right that on receipt of further information from Miss D about her claim Accredited asked one of its panel firms to review matters.

That firm appears to have accepted there was damage to the outbuilding (which is supported by photographs Miss D provided). However, it didn't think the claim was likely to be successful because the evidence didn't show the trees were the cause of the damage rather than this resulting from, for example, wear and tear. I can see that assessment was carried out by a qualified solicitor who specialises in property claims (funded through legal expenses insurance). So I think in principle it's something Accredited could rely on.

However, Miss D said the school had accepted responsibility for the damage and had obtained its own arboricultural report. And I can see she referenced that in correspondence with Accredited prior to the prospects assessment being carried out. But the assessment doesn't make any reference to those issues. I've thought about whether this is something Accredited should have followed up with the panel firm.

I don't think it did need to do so. Miss D has helpfully provided us with copies of the relevant emails. Those don't indicate the school had accepted responsibility for the damage. An email from April 2017 refers to reducing the height of the trees (and that appears to be based on advice from an arboriculturalist). But that email doesn't make any reference to the school having responsibility for damage caused to Miss D's property (and was in any case a response to one of her neighbours).

There was then further correspondence on behalf of Miss D in March 2023 which specifically raised concerns about damage to the outbuilding. In response the school confirmed the matter had been passed to its insurers. But the response from those insurers didn't accept liability for the damage; in fact they said "*we should also point out that even if you are able to prove causation, we would have to consider whether there has been any breach of duty, and whether any damage was reasonable foreseeable".*

I don't think this evidence provided grounds for Accredited to challenge the assessment carried out by the panel firm. I appreciate Miss D also sent a repair estimate from a building firm which referenced a concreate slab being impacted by tree root damage. But that doesn't include any supporting argument and it's not clear whether that's something the firm was qualified to advise on in any case.

For the reasons I've explained I don't think there was further action Accredited needed to take. I think it was fair of it to rely on the assessment from the panel firm and advise Miss D that if she wanted to progress her claim she'd need to provide evidence from a building surveyor or arboriculturalist showing the trees caused the damage to the outbuilding.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 28 August 2025.

James Park
Ombudsman