

## **complaint**

Mr and Mrs H's complaint is in respect of information provided to them by Philip Williams & Company Insurance Management (PWCI) as intermediaries of a legal expenses insurance policy.

They say that the information they were provided with was misleading and led to them being deprived of cover for the defence of a criminal claim against Mrs H.

## **background**

I issued a provisional decision on this matter in February 2016, part of which is copied below:

*"Mr H subscribes to a group insurance scheme. His employer is the policy holder of the insurance policy but Mr H derives benefit from the policy as a subscriber of to it. PWCI is the intermediary of the legal expenses insurance and manages the policies on behalf of Mr H's employer. Mr H says he has subscribed to the policy for 24 years.*

*PWCI says it prepares summary booklets which are distributed by Mr H's employers to its members who subscribe to the insurance. Mr H says the information prepared by PWCI, which was provided to him was misleading because it didn't explain that legal expenses insurance was available for his wife to defend a criminal prosecution. He also says that had he known the policy provided cover for Mrs H, he would've made a claim as soon as he became aware of the proceedings against her rather than after they concluded.*

*The underwriter of the policy declined the claim because it said it had been made too late and that it had been prejudiced by not being able to assess the merits of Mrs H's defence from the outset. Had the claim been made as soon as Mr and Mrs H became aware of it, it said it would've been able to do this to determine if cover could be provided.*

*Mr and Mrs H say they've incurred around £34,000 in legal costs and feel they wouldn't have done so if the information provided by PWCI had been clear that Mrs H could claim for the costs of defending the prosecution.*

*Our adjudicator considered Mr and Mrs H's complaint and concluded that it shouldn't be upheld. Mr and Mrs H have disagreed so the matter has been passed to me to determine.*

## **my provisional findings**

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*As an intermediary of the insurance, PWCI had a duty to provide clear, fair and not misleading information about the policy. PWCI say they supply policy summaries to Mr H's employer which are distributed to its subscribers, such as Mr H.*

*I have considered the policy booklet in detail and am not convinced that it does offer clear information about cover for a beneficiary's spouse. PWCI accepts this but considers that Mr H should've followed the instructions noted within the policy summary, which contains the following:*

*“Legal Expenses*

*Some important facts about the Professional Fees policy are summarised below. This summary does not describe all of the terms and conditions of the policy. All references below to the cover provided are contained within the full policy wording. Please note that a full policy wording is available for your inspection at the Federation Office upon request.”*

*The information presented within the policy booklet suggests there is cover for criminal prosecution defence for the defence of criminal court legal proceedings brought against a beneficiary, but the policy doesn't explain whether the beneficiary includes spouses and there is no reference to the possibility of this. This is information I would've expected to see within a policy summary. Without it, I see no reason why a policyholder would think the insurance might cover their spouse. So I'm not persuaded that the information Mr H saw was enough to suggest the full policy wording might have more to offer than the information contained within the summary in terms of the availability of cover for Mrs H.*

*PWCI says the policy summary only refers to beneficiary because of the complex and varying nature of what this means. It says it would've been too complicated and potentially misleading to say the member, partner or family might be covered because cover varies according to the policy section. I agree with this to the extent that the legal expenses insurance policy doesn't offer cover for spouses for every type of claim. But I don't think that means the summary should exclude all references to this because it's too difficult to explain exactly what cover is available for spouses. It would've been just as easy for PWCI to insert a section into the policy summary to explain that cover might be available for others but that policyholders should refer to the full policy document for further details of this. Had it done so I might've been more inclined to agree with what it says.*

*But the fact that the information given wasn't clear enough doesn't automatically mean that PWCI should cover the claim. I have to consider what would've happened if PWCI had given Mr and Mrs H enough information to make clear that cover was available for criminal defence proceedings for Mrs H.*

*Mr and Mrs H made a claim on the legal expenses insurance policy after the criminal proceedings concluded. They haven't provided any information to explain what made them think that cover might be available for Mrs H at that point. The underwriter of the policy declined the claim on the basis that it was notified too late, and that its position had been prejudiced because it couldn't assess whether Mrs H's defence had reasonable prospects of success. I understand that Mrs H was eventually convicted of the crime for which she was being prosecuted and that she is currently appealing that conviction. This in itself doesn't show that her claim didn't have reasonable prospects of success. It may well have done on the balance of probabilities, but that's not something I can determine without the benefit of a suitably qualified lawyer's opinion which the underwriter would've sought at the outset of the claim. If the claim didn't have reasonable prospects of success, it's likely that the underwriter would've declined to cover Mrs H's defence, so she and Mrs and Mrs H (sic) would've incurred the sums they are claiming against PWCI in any event.*

*And I'm concerned that Mr and Mrs H didn't make a claim on the policy until the end of the proceedings. Something must've prompted them to do this but I don't have any information about what this would've been. In the absence of any persuasive evidence I think it's possible that even if Mr and Mrs H had known about the fact that cover might've been available for the claim, they might've sought to defend the claim themselves and make a retrospective claim for their costs. That's not something the policy would've allowed so I don't think they would've been covered for their claim in any event. And because I can't say*

*what the merits of Mrs H's defence would've been I can't say that the underwriter would've covered the claim in any event. And at this stage it would be difficult, if not impossible to revisit the merits of the claim at the date at which Mr and Mrs H would've made it because it's not known what evidence they would've had at their disposal to defend the prosecution in line with the time they would've made the claim. Because of this it follows that I can't uphold Mr and Mrs H's complaint."*

## **developments**

I asked both parties to provide any other comments or information they wanted considered in response to my provisional decision.

Mr and Mrs H have responded. They say:

- They didn't know Mrs H was covered for her claim under the terms of the policy because this wasn't made clear in the documents provided to them by PWCI.
- Mr H had a conversation with a colleague in June 2015 who was a representative of the federation who subscribe to the policy. This caused him to contact the federation who confirmed that cover was available for Mrs H.
- After this Mr H took prompt action to make a claim for Mrs H but the claim was declined.
- Mr H has made several claims under his legal expenses insurance policy in the past. This shows that had he been aware that the policy covered Mrs H, they would've made a claim on it from the outset.
- There is no possibility they would've chosen not to make a claim on the policy, had they known it would cover Mrs H because they wouldn't have wanted to incur the costs they did themselves. They only did this because they didn't know cover would've been available for Mrs H.
- The firm of solicitors instructed by Mrs H says that she would've had reasonable prospects of success at trial.
- They are happy for me to contact Mrs H's solicitor for any information I need in respect of the current action she is involved in.

PWCI has also responded. It says:

- There are a number of technical inaccuracies in what Mr H has said; he is not obliged to be a member of the federation – his subscription is voluntary.
- Mr H's employer and the other employers that PWCI provide insurance for don't think it has a cavalier attitude. PWCI is well respected. This is confirmed by a letter from Mr H's employer.
- The legal expenses insurer who administers the policy doesn't think that Mrs H had reasonable prospects of success. Their opinion differs to Mrs H's previous firm of solicitors. This may be because they use a different threshold.
- The policy is designed to cover matters which directly affect Mr H in the course of his employment. Anything outside of this may be considered by the insurer. This would be subject to the claim having prospects of success and a cost benefit analysis being carried out.
- Because of the nature of Mr H's employment, he would've been under a duty to report Mrs H for the matters she was being investigated and then convicted of. Mr H would've been aware of this because he has also been investigated and arrested for matters related to the charges brought against Mrs H.

- Mr H made a claim under his legal expenses insurance policy for legal advice about being investigated for the matters Mrs H was charged with. It's inconceivable that he wouldn't then have become aware that she was also covered under the policy when he did this.
- There was significant evidence against Mrs H's case. This is borne out by the fact that she was convicted by a jury and the court then told her to accept her punishment when she sought to challenge this at the Court of Appeal. This supports the fact that her claim had no reasonable prospects of success.

### **my findings**

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 remain of the view that Mr and Mrs H's complaint shouldn't be upheld.

I've taken into account what Mr H has said about a discussion with a federation member in June 2015 and the actions he and Mrs H took after that. But I'm not persuaded that I can say what the merits of Mrs H's claim would've been had they made a claim when it arose. I appreciate that Mr H has provided a letter from the firm of solicitors instructed by Mrs H but that letter notes that her own solicitor has now left the firm. The letter is from another solicitor of that firm who says he has reviewed the file. I agree that a review of the file at this stage might suggest Mrs H's claim may have had reasonable prospects of success but I don't think this is conclusive.

Revisiting the merits of Mrs H's claim at this late stage is very difficult. I say so because it's not possible to know what evidence Mrs H would've had at her disposal at the time they would've made the claim; this is because we simply don't know when Mrs H would've made her claim. I appreciate that Mr and Mrs H believe this would've been when it first arose but I'm not persuaded by this. This is because I take on board what PWCI has said about Mr H making a claim on his policy when he became subject to investigation. I think that given the number of claims Mr H says he's made on his policy, it's likely he would've asked whether Mrs H would also be covered by it.

And I agree with PWCI that an assessment by a solicitor instructed by the legal expenses insurer may not have reached the same outcome as the firm of solicitors instructed by Mrs H. The legal expenses insurer would've been entitled to instruct a panel firm to assess the merits of Mrs H's claim and to have relied on that advice, even if it allowed Mrs H to use her own solicitors during the proceedings. The panel firm would have assessed both the prospects of success of the claim as well as whether defending Mrs H would've been a reasonable avenue to pursue, whilst balancing the likely cost to the insurer with the outcome for Mrs H. As I've said, it's not really possible to say what that panel firm would've said at this stage. For those reasons I don't think Mr and Mrs H's complaint should be upheld.

**my final decision**

I don't uphold Mr and Mrs H's complaint against Philip Williams & Company Insurance Management.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 8 April 2016.

Lâle Hussein-Doru  
**ombudsman**