

The complaint

Ms L is unhappy DAS Legal Expenses Insurance Company Limited turned down a claim she made on her legal expenses insurance policy.

What happened

Ms L has legal expenses insurance with DAS (provided as part of her annual travel insurance policy). Following an injury while on a cruise she sought assistance on her policy to bring a claim against the cruise operator. DAS turned down the claim because it said the policy excluded “a claim against us, our agent, tour operator or travel agent”.

Our investigator didn't think that term was clear because it could be read as only applying to a tour operator acting on behalf of DAS. And he thought this was in any case a significant term which DAS should have brought to Ms L's attention when the policy was taken out and didn't. As a result he didn't think it was fair of it to rely on this exclusion to turn down the claim she made. He said DAS should reconsider the claim against the remaining terms and pay Ms L £150 in recognition of the distress and inconvenience it caused her.

Ms L agreed with his outcome. DAS didn't. It thought the exclusion was clear that claims against tour operators weren't covered and it had been correctly applied in this case. And if Ms L wanted to pursue her claim she'd need to seek alternative ways of doing so. So I need to reach a decision.

I issued a provisional decision on the complaint earlier this month. In summary I said:

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

I've looked first at the terms and conditions of Ms L's policy. This can cover legal costs to recover losses or damages against negligent third parties following death or bodily injury. But it excludes “a claim against us, our agent, tour operator or travel agent”.

I've considered whether that's clear. Ms L argues it would only cover a tour operator or travel agent if they were either owned by, or were affiliated, to DAS. But in interpreting policy terms I think in principle the words of the policy should be given their ordinary meaning and reflect the intention of the parties and the commercial sense of the agreement. A key point is how the words would be understood by a reasonable person – in other words, the ordinary policyholder.

In this case I appreciate the references to tour operator or travel agent are referenced in the same clause as claims against “us” or “our agent”. But they are separated by commas and I don’t think the meaning of tour operator is therefore constrained by the previous reference to “us” or “our agent”. I think that’s supported by the need for the agreement to make commercial sense; DAS is an insurer and doesn’t (and wouldn’t be expected to) have tour operator’s or agents working for it. Given that I don’t think it’s reasonable to interpret the exclusion as only covering a tour operator which was owned by or affiliated to DAS. And I think it would apply in this case because Ms L’s claim is against the company which provided her cruise who I think would reasonably be classed as a tour operator.

I’ve gone on to think about whether it’s fair to apply that exclusion in this case. It might not be if this was a significant term of the policy that wasn’t brought to Ms L’s exclusion in the documentation DAS was responsible for when she took out the policy. But I’d also need to be satisfied that if she had been aware of that she’d likely have taken out a policy that would have covered her.

I don’t think that’s the case here. Taking into account the relevant rules, I think a significant exclusion is one that would affect the decision of customers generally to buy. I’m not persuaded the exclusion in this case meets that test. I appreciate it does limit the coverage of Ms L’s legal expenses policy but that only forms one part of the broader annual travel insurance cover she was taking out.

I think most customers would take out travel insurance for the other benefits it provides (such as cancellation cover or emergency medical and repatriation expenses). As a result I don’t think more information on this exclusion which only applied to the legal expenses element of the policy would affect the decision of a customer generally to buy. So I’m not persuaded more information about this should have been provided to Ms L.

Even if Ms L had understood more about this, the policy was sold prior to her knowing she would have any issues on her cruise. So I think it’s unlikely further information would have led her to take out an alternative policy. I also think Ms L might have struggled to find a policy that would have covered a claim against a tour operator at a price she’d have been prepared to pay. Exclusions like this are common to other similar policies I’ve seen. Given all that I don’t think it’s unfair of DAS to rely on the exclusion in turning down her claim. I’m sorry to bring Ms L what I appreciate will be disappointing news.

Responses to my provisional decision

DAS didn’t respond. Ms L did provide further comments. She said:

- In response to her initial contact an adviser had suggested she was covered for what happened. And DAS accepted in response to her complaint the clause could be interpreted to read “*our tour operator*” and said that would be brought to the attention of its underwriting department. So she didn’t accept the exclusion was clear and thought DAS should rewrite this to make it more easily understood.
- Had she known about the exclusion prior to purchase she could have opted to buy a different policy or purchase a separate legal expenses policy.

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.

I've reviewed the correspondence Ms L has mentioned. I appreciate the email she received on 5 July 2023 does reference legal expenses cover being available for up to £25,000. But that wasn't sent by DAS but by the administrator of her travel insurance policy. And the email said she needed to contact DAS and *"we can cover you for up to £25,000 for the costs and expenses of an appointed representative"*. That reads to me as a general comment rather than one based on any detailed analysis of the policy terms as they relate to Ms L's claim.

And I don't think DAS did accept in its final response that the clause could be interpreted to only cover *"our tour operator"*. The reference in its letter was to what Ms L had said about this. DAS's overall conclusion was *"in the full context of the policy wording, I do feel it is clear that claims against tour operators and travel agents are excluded..."*

I appreciate DAS did agree to review the clause to see if it could be made clearer in future. But the fact wording can be improved doesn't in itself mean the existing wording can't be understood. And for the reasons I explained in my provisional decision I don't think a reasonable interpretation of the current clause is that the exclusion is limited to tour operators that are owned by or affiliated to DAS. I think it covers tour operators more generally and so would exclude cover for the claim Ms L was seeking to bring.

Ms L has suggested if she'd know about this clause prior to purchase she might have sought alternative cover elsewhere. But for the reasons I've explained I'm not persuaded this is something DAS should have brought to her attention in the information it was responsible for. Even if it had she didn't know at that point she'd have any issues on her cruise so I don't think this would have been a significant concern for her. And I'm not sure she'd in any event been able to find a policy without this exclusion at a price she'd have been prepared to pay.

So for the reasons I've explained it remains my view that DAS hasn't acted unfairly in relying on this exclusion to turn down her claim.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 22 March 2024.

James Park
Ombudsman