

The complaint

Mr E made a claim on his Accredited Insurance (Europe) Ltd ('AIE) legal expenses insurance policy for cover to bring a claim in relation to a problem affecting his property, which AIE declined.

Mr E is unhappy with AIE's decision and the way they handled his claim generally. He feels AIE treated him unfairly.

In this decision all references to AIE include their claims handlers.

What happened

Mr E made a claim on his AIE legal expenses insurance policy for cover to bring a claim in relation to a problem he felt was affecting his property.

AIE accepted the claim in the first instance and sent it to their panel firm of Solicitors to consider. The panel firm considered the course of action they thought Mr E could bring under the policy terms and determined that it didn't have reasonable prospects of success, as required in order for AIE to fund it. As such AIE declined to cover the claim further.

Mr E doesn't agree with either the panel firm's assessment of his claim or the way in which AIE considered it under the policy terms. He's also unhappy with the way in which his claim was handled generally. Unhappy he referred the matter to the Financial Ombudsman Service to consider.

Our investigator considered Mr E's complaint and thought it shouldn't be upheld. Mr E doesn't agree so the matter has been passed to me to determine.

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 won't be upholding Mr E's complaint. I'll explain why.

The starting point is the policy terms. They provide cover for:

"4. Protecting property from damage

Professional fees to:

- 1. take legal action relating to an event which causes or could cause physical damage to your home or personal possessions that you own or are responsible for (the damage must have been caused after you first bought this insurance);*
- 2. take or defend legal action relating to a legal nuisance; or*
- 3. take or defend legal action relating to a claim that your legal rights relating to owning, living in and using your home have been broken (someone trespassing in your home)."*

The claim Mr E has said he wanted to bring was in relation to problem with a right of way. He wanted to take legal action against the owner of neighbouring land either for interference

with his right of way or to take some other action to formalise the right itself. From the evidence I've seen, Mr E doesn't have an express right of way registered against his title or on the neighbouring landowner's title. The panel firm of Solicitors have advised that the right of way in question is one he's acquired by prescription. The specific issue Mr E is unhappy with is an interference with his ability to park on the land in question.

Given the nature of Mr E's claim, it's clear to me that it doesn't fall into points 1 and 3 listed in the policy terms above. Point 1 requires there to be physical damage and that isn't a feature of Mr E's claim. Point 3 covers fees to take or defend legal action relating to a claim for legal rights relating to owning, living in and using your home that have been broken. The words "*(someone trespassing in your home)*" follow this but I don't think it makes a difference whether the term at point is interpreted as relating solely to trespass or not. That's because the only alternative claim Mr E might want to bring is to register his right of way at the Land Registry. If the owner of the adjoining land objects to that registration, then the matter is referred to a Tribunal. But that claim doesn't relate to breaking Mr E's legal rights- rather it's intended to establish whether he's entitled to an express right of way. Because of that I'm not persuaded that sort of claim would fall within cover of point 3 here. As such I haven't considered Mr E's submissions about the clarity of point 3 in relation to the issue of trespass because it isn't relevant here.

Mr E's claim is for an interference with his right of way to fall under point 2 above. I'm satisfied that in this case that is the only section of the policy applicable to his claim, which is essentially in nuisance. The panel firm assessed that claim and determined it doesn't have reasonable prospects of success as required by the policy. AIE said they wouldn't fund Mr E's claim as a result of this. We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. AIE did this. They also referred Mr E's further queries back to the panel firm to consider. This didn't change their assessment of the merits of his claim.

I'm satisfied that the person advising Mr E was supervised by someone who was suitably experienced in the area of law Mr E was asking for help with. And although Mr E doesn't agree with that advice, I've seen nothing that suggests that it was based on factual mistakes or was obviously wrong. Mr E feels the advice, he was given should have been different, but that's not something I can consider. If he was to provide an alternative reasoned opinion from a comparable firm of Solicitors (and not something summarising any advice he might have been given), then I would expect AIE to consider that. Equally, if Mr E provided AIE with any new evidence or information that has now come to light that might change the outcome of his assessment, I would expect AIE to refer that back to their panel firm. But as matters stand, I can't say AIE did something wrong by relying on the legal opinion they received.

For the avoidance of doubt, I wouldn't expect AIE to provide timesheets showing how much supervision the person who advised Mr E at the panel firm received from the person who was suitably qualified at that firm. If Mr E remains unhappy with the advice given, he can complain to the panel firm directly.

Finally, I understand Mr E isn't happy with how AIE and the panel firm conducted his claim. I can't look at the actions of the panel firm- they simply don't fall within my remit. But I can consider what AIE did. Looking at everything in the round, I don't think AIE unnecessarily

delayed dealing with Mr E's claim and they appear to have responded to everything Mr E has raised, even if he doesn't agree with the responses he was given. Because of this I can't say they did anything wrong.

My final decision

For the reasons set out above, I don't uphold Mr E's complaint against Accredited Insurance (Europe) Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 5 April 2024.

Lale Hussein-Venn
Ombudsman