

The complaint

Mr C's complaint is about the handling of a claim he made on his DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mr C says that DAS treated him unfairly.

What happened

Mr C made a claim on his DAS legal expenses insurance policy for cover to pursue an employment dispute against his former employer.

DAS accepted the claim and appointed a panel firm to consider it. The panel firm confirmed Mr C's claim had reasonable prospects of success.

Mr C was unhappy with the conduct of the panel firm. He's complained about a number of things including delays in their responding to his claim, which he says was time sensitive. As a result he feels he missed the opportunity to engage in any active settlement discussions with his former employer at an early stage. Mr C was also unhappy that an inexperienced Paralegal was dealing with his claim and the fact that he didn't speak to a qualified Solicitor at all despite his request to do so. He also complained about the percentage figure the panel firm placed on the merits of his claim (51%), as well as value of it and the amount they said reflected a reasonable offer to settle his claim. He feels the values they set out were too low and relies on his own Solicitor's estimate of the value of his claim, which is considerably higher.

Given his concerns, Mr C asked DAS if he could appoint his own Solicitor to act for him. DAS agreed, but said they'd only pay £100 per hour in respect of those costs in accordance with their policy terms so it was up to Mr C whether he wanted to appoint the Solicitor he'd chosen and top up their fees. Otherwise, DAS said he could appoint another Solicitor of his choice who charged £100 per hour. DAS also offered Mr C the option of the use of another panel firm of Solicitors if he wanted this.

Mr C was unhappy with the position that DAS took. He felt that DAS should pay his own Solicitor's costs of £150 per hour, which was lower than the current guidelines for Solicitor's hourly rates. In addition, he said the position DAS had taken had rendered his freedom of choice meaningless.

Our investigator considered Mr C's complaint and concluded it shouldn't be upheld. He set out that we couldn't consider Mr C's complaints against the panel firm as this was outside our remit. He also said that DAS' policy terms allowed them to apply the hourly rate they were offering as long as it didn't render Mr C's freedom of choice meaningless. The investigator felt that the evidence he'd seen supported there were other panel and non-panel firms with suitable experience able to take on a case like Mr C's, so there was nothing to support that his freedom of choice had been prejudiced. Mr C 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 don't uphold Mr C's complaint. I've explained why below.

In reaching this conclusion, I wanted to assure Mr C that I have considered all of the submissions he's made in this complaint, although I haven't addressed them all individually. This reflects the informal nature of the Financial Ombudsman Service.

Mr C has made a number of submissions about his dissatisfaction with the panel firm. He feels that DAS are responsible for these complaints because his contract for insurance was with DAS and so DAS needed to deliver an adequate service. I understand why Mr C feels this way. But as the investigator explained, we can't determine complaints against firms of Solicitors. That's because they are independent professionals with their own codes of conduct and their own regulator. So much of what he's said is outside our remit. If Mr C does wish to pursue a complaint against the panel firm, he can raise this with them directly or with The Legal Ombudsman.

There are however complaints we can consider against legal expenses insurers when a policyholder is unhappy with the panel firm. When a policyholder complains about something- like their conduct or delays for example, I would expect an insurer to look into this or address it. In this case Mr C did raise his dissatisfaction with the panel firm with DAS. DAS then addressed this with that firm. I realise Mr C says he didn't want that to happen and that he wanted DAS to first call him to discuss things, but I haven't seen anything to suggest that he clearly told DAS this is what he wanted before DAS contacted the panel firm. And even if he had, DAS were entitled to raise the issue with the panel firm to ask that they address Mr C's concerns. That's in line with what I'd expect an insurer to do in such a case. So, I don't think DAS did anything wrong here.

Mr C has said that DAS were responsible for delays that meant he lost the opportunity to explore early conciliation with his former employer. From what I've seen, DAS had by that point passed on the matter to the panel firm to deal with. So, I can't say they were responsible for the conduct of the claim. And even if they were, I haven't seen anything in the form of a legal opinion that supports that Mr C was prejudiced by not engaging in early conciliation. This seems to be supported by the current value his own Solicitors have placed on his claim, which is presumably intended to be a realistic reflection of what he might achieve at trial.

When Mr C complained about the panel firm and asked to appoint his own Solicitors, DAS agreed but said they would only pay the rate set out in their policy terms. Those terms say:

"If you choose a law firm as your appointed representative who is not a preferred law firm, we will give your choice of law firm the opportunity to act on the same terms as a preferred law firm ... The amount we will pay a law firm (where acting as the appointed representative) is currently £100 per hour. This amount may vary from time to time."

As the investigator explained, we don't think a term like this is unfair, as long as the hourly rate specified doesn't render Mr C's freedom of choice meaningless. I know Mr C feels that the current guidelines for Solicitor's hourly rates should be applied but we've only considered similar rates in circumstances where insurers haven't applied a specific hourly rate within their policy terms. In this case DAS have specified a rate of £100 per hour so we wouldn't look to apply any other rate unless we thought Mr C's freedom of choice was rendered meaningless.

In determining this issue, we look at whether other panel and non-panel firms are able to take on and work cases of a similar nature to Mr C's at the rate set out by the policy. DAS have obtained advice on the type of claim Mr C is engaged in. They say it's a complex discrimination claim that amounts to a series of allegations over a long period of time and is listed for seven days. This broadly accords with Mr C's own assertions that his claim is particularly involved and requires a firm of Solicitors with relevant expertise to deal with it. Notwithstanding this, DAS have said another of their panel firms could take on the case for the hourly rate set out in their policy.

DAS have also provided information that supports that at least two non-panel firms have also worked similar employment disputes at the same hourly rate. I realise Mr C isn't happy with the appointment of any of the firms DAS have referred to. In particular he doesn't feel the location of some of those Solicitors accords with his preference and he feels that they don't have a proven track record of working cases like his. He's also referred to the vast amount of experience his own Solicitor has in dealing with similar cases and the fact that this firm is appropriately pitched to go up against his former employer's Solicitors. Whilst I understand why he feels this way, I'm not satisfied that his freedom of choice is rendered meaningless. The evidence I've seen supports that other panel and non-panel firms can take on cases similar to Mr C's at the rate offered by DAS. Those firms might not be Mr C's preferences for the reasons he's set out, but it doesn't mean that legal representation at the rates offered isn't available to him. In addition, I've seen nothing that supports that the firms DAS have referred to aren't able to competently represent Mr C in his claim.

For the avoidance of doubt, the evidence I've seen supports that the panel and non-panel Solicitors referred to by DAS have been able to work at these rates since the most recent change to the guidelines on hourly rates for Solicitors in 2021. Taken together with what I've said above, I'm not persuaded that DAS rendered Mr C's freedom to choose his own Solicitor meaningless. And given that DAS have offered Mr C several options for alternative representation, I don't think I can say they did anything wrong.

Mr C has said that DAS' actions forced him to appoint his own Solicitors and he's now incurred costs in doing so which he doesn't think is fair. I'm not persuaded by this. Mr C was clear in his communications to DAS in May 2023 that he was unhappy with the panel firm and was seeking alternative representation elsewhere. Given what he said to DAS at the time, I think it's likely he would have appointed Solicitors himself regardless of anything DAS might have offered him.

Mr C has also said that he had no option but to appoint his own Solicitors because DAS relaying his complaints to the panel firm alienated them and he was told by DAS they might choose to stop acting for him. But that didn't happen in this case. As far as I can see, Mr C obtained his own representation before the panel firm took a view on whether they'd continue to act for him. And given DAS provided Mr C several different options for alternative representation, albeit after Mr C appointed his own Solicitor, I'm not satisfied that the costs he's incurred and is continuing to incur are down to them.

My final decision

For the reasons set out above, I don't uphold Mr C's complaint against DAS Legal Expenses Insurance Company Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 12 February 2024.

Lale Hussein-Venn
Ombudsman