

## **The complaint**

Mrs H's complaint is about a claim she made on her DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mrs H feels that DAS treated her unfairly.

## **What happened**

Mrs H made a claim on her DAS legal expenses insurance policy for cover to pursue a claim in clinical negligence. DAS appointed a panel firm to consider her claim, but they declined to act due to a conflict of interest.

DAS instructed a second firm to act for Mrs H instead. They assessed her claim and reported that it had no reasonable prospects of success. As a result, DAS withdrew funding. Unhappy, Mrs H complained. DAS investigated her complaint and accepted there were some service failings and that she should be compensated for these. They offered her £250 in respect of them. DAS also offered for Mrs H's claim to be reconsidered by a third firm of Solicitors.

The third firm of Solicitors considered Mrs H's claim and determined that it had no reasonable prospects of success based on the expert evidence it had seen. They did however ask DAS for funding for a conference as Mrs H fundamentally disagreed with the evidence of the latest expert. DAS took the view that given the history and the fact that there were now two expert reports which didn't support the claim had reasonable prospects of success, they weren't prepared to fund anything further. DAS withdrew funding following this.

The subject of this complaint is DAS' decision to withdraw funding after the third firm provided its assessment of the merits of Mrs H's claim.

Our investigator considered Mrs H's complaint and thought that it shouldn't be upheld. Mrs H doesn't agree. She says the latest expert in the claim made lots of mistakes and that DAS have jeopardised her position as she is now litigating her claim alone and is therefore at risk of costs in continuing without representation.

Because of this 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 Mrs H's complaint. I'll explain why below. Before I do, I want to clarify that I'm only considering Mrs H's complaint that was brought to us in November 2023 which is specifically about DAS's decision to withdraw funding of her legal costs based on the third firm's advice. I appreciate that Mrs H has made a number of additional complaints since then, but I can't address those unless DAS has been given the

opportunity to do so. If Mrs H remains unhappy about further matters, she will need to raise those with DAS directly before they can be raised with the Financial Ombudsman Service.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mrs H's policy is no exception. That means her claim needed to have over 51% prospects of succeeding in order for DAS to cover it.

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, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers on the merits of the claim itself, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. DAS did this. I appreciate that Mrs H has said there were mistakes in the expert's report, but I can't see that this has had an impact of the expert's advice that Mrs H is unlikely to be able to establish causation in this case. So even though there is a dispute about some of the facts set out in the report, I'm not satisfied that either the expert or the third firm's advice was based on evidence that would alter the merits of the claim. Indeed, their advice is consistent with the second firm's advice and another expert that was funded by DAS to comment on Mrs H's claim.

I'm satisfied that the person advising Mrs H was suitably qualified and had experience in the area of law she was asking for help with. I appreciate Mrs H doesn't agree with the advice she's received or some of the things the expert has said, but that's not something I can consider. If she were to provide an alternative reasoned opinion from a comparable Solicitor or alternative expert evidence, then I would expect DAS to consider that. Equally, if she was prepared to fund the third firm's costs in going back to the expert to address the problems she has raised, such that they changed the outcome of their assessment of the merits of her claim, then I would expect DAS to consider this. But as matters stand, I can't say DAS did something wrong by relying on the legal opinion they received.

I appreciate that Mrs H doesn't agree with the way in which her claim was handled, and that DAS have left her in a difficult position because she is currently in litigation and has decided to continue alone. I don't doubt the amount of stress this has caused her but for the reasons I've set out, I think that DAS were entitled to decline covering her claim when they did. As such I can't tell them to do anything further.

**My final decision**

I don't uphold Mrs H's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 4 June 2024.

Lale Hussein-Venn  
**Ombudsman**