

## **The complaint**

Mr E and Mrs B have complained about the handling of a claim made under their legal expenses insurance with DAS Legal Expenses Insurance Company Limited. As this relates to a claim made by Mr E, for ease I will only refer to Mr E in this decision.

## **What happened**

Mr E has made a number of claims under his policy all arising out of employment and personal injury claims he wanted to pursue against his former employer. DAS provided cover for one of its panels solicitors to deal with his legal case but the cover was withdrawn in 2019, following advice that the case did not have reasonable prospects of succeeding. Mr E has made complaints about the decision to withdraw cover and a number of other issues around the handling of his claim. These have been, or are being, considered separately. However, Mr E had ongoing claims, including against two solicitors that had been involved in his claim and against his union.

In November 2021, Mr E made a complaint that the panel solicitors acting in relation to the ongoing claims had discriminated against him, on the basis of his disability. Mr E says he had asked for a different fee earner to deal with his claim and this was a reasonable adjustment, as his mental health was suffering having to continue with the same legal representative. Mr E says that by not making the reasonable adjustment, the solicitors were discriminating against him. He also wanted a barrister's opinion on his claims.

DAS said that any complaint about the solicitor's conduct would have to be referred to their regulatory body – the Solicitors Regulation Authority ("SRA") but that it would also look into what he had said. There was further communication between DAS and Mr E over the next few months. DAS offered to move the claims to another panel firm, but Mr E said there was a conflict of interest with the alternative firm. He wanted the panel solicitors to continue with his claim but to agree to his reasonable adjustment and place the matters with another caseworker. DAS contacted the panel solicitors but they said they were unwilling to continue to represent Mr E, as they felt the professional relationship had broken down. DAS asked the panel solicitors if they would nevertheless get counsel's opinion (which it would fund). DAS also asked the panel solicitors to provide a copy of its response to Mr E's complaint. In the end, as the panel solicitors did not agree to continue acting, the claims were referred to another panel firm.

In February 2023, DAS issued a supplementary final response to this complaint (and some other complaint issues) in which it said that it had referred the solicitor's response to Mr E's complaint to its Strategic Supplier Relationship Partner to consider and if, in their view, the solicitor has not properly addressed his complaint, they would raise it with the solicitors. The letter also set out again that DAS could not comment on the solicitor's conduct as that was a matter for the SRA and Mr E would have to complain to them about the solicitor's conduct or the quality of their work. It did not therefore uphold Mr E's complaint about this issue.

Mr E remained unhappy with DAS's response and so referred the matter to this service. Mr E has made a number of submissions in support of his complaint. I have considered everything he has said and have summarised his main points below:

- DAS referred him to a panel solicitor that discriminated against him, so it has a duty of care and should have protected his interests by insisting the reasonable adjustments he had asked for were made.
- DAS failed to protect his interests and refused to consider a disability discrimination claim against the panel solicitors on his behalf.
- DAS asked him for documentation and evidence in support of his complaint but has not told him the outcome of its investigation into the solicitor's conduct.
- He was told "*the well-being of customers is of paramount importance*" so he should have been told the outcome; he was never told the investigation would be for DAS's internal purposes only.

DAS says it did not tell Mr E that it would investigate the allegation of discrimination but rather, in its final response letter of February 2023, that it would look into whether the panel solicitor had responded to Mr E's complaint and whether they had addressed it properly, and if not it would raise this with the panel solicitors. DAS says it also regularly audits its panel solicitor firms but this would not be directly as a result of Mr E's complaint and any such audit would be a commercial/contractual matter between it and its panel firm and would not be shared with Mr E. DAS says it also made clear it was not responsible for any panel solicitor's conduct.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he did not think that DAS had done anything wrong. The investigator concluded that DAS had correctly advised that solicitors are regulated by their own professional body and so could not comment on the solicitor's conduct but that it would refer the matter to be looked at and will raise with the solicitors if they do not think they have addressed Mr E's complaint properly. He thought DAS had tried to assist Mr E in reasonable way and did not think that there was any obligation for it to tell Mr E the outcome of any review.

Mr E does not accept the Investigator's assessment. He says that the Investigator has not understood that DAS was not happy he'd raised a complaint of discrimination against the solicitors it appointed; DAS wanted all the evidence about this from him; DAS voluntarily investigated the allegations and he - the victim of the discrimination - has still not heard the outcome of that. He assisted with DAS's investigation and it is distressing not to know the outcome. Mr E also says that while he accepts that DAS did not have to investigate allegations of discrimination by panel solicitors, DAS voluntarily decided to investigate his complaint about this and so he should now the outcome of that investigation. Mr E also wanted it noted that he was not expecting a response from DAS customer relations.

### **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.

We expect legal expenses insurers to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, however, it has no duty to oversee how they run the case and it isn't responsible for any action or omission on the solicitor's part. Solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not.

In addition, this service has no jurisdiction over solicitors. I have no power therefore to make any finding about whether they should have made the adjustment Mr E asked for or not. As he has already been advised, Mr E would need to raise any issues he has about the quality of their legal representation, and any allegation of discrimination, directly with the panel firm (which he has done) and thereafter the SRA.

Mr E wanted a different casehandler to deal with his case and said this would be a reasonable adjustment, due to his disability. DAS would have no power to require the panel solicitors to change the way it saw fit to deal with the legal claim. It would be for the solicitors to decide what was necessary and appropriate and if it decided this was not warranted (whether that decision was discriminatory or not) DAS – nor I – have the power to require the solicitors to do anything different.

It also means DAS has not power or obligation to formally investigate whether Mr E had been discriminated against. And, even if he had proven that it was, DAS is not responsible to investigate that or to take any action about it. Having said that, I would expect DAS to contact a panel solicitor if a policyholder raises an issue about their conduct and make sure the solicitors had addressed it to try and assist the solicitor and the policyholder resolve any issue. This is what DAS has done in this case. It offered an alternative panel firm, it made enquiries about counsel's opinion and checked that the solicitors had responded appropriately to Mr E's complaint. I think these were all reasonable steps to take. DAS did say it would look into his complaint and would ask the Relationship Partner to consider if they were satisfied that the panel solicitors had responded appropriately but there was no obligation to carry out a formal investigation and report any findings to Mr E. And I think it made clear that it could not comment on the solicitor's conduct. DAS also had no obligation to make a legal claim for discrimination against them on Mr E's behalf.

Mr E told the Investigator he wanted it noted that he was not expecting a response from the customer services adviser when he complained. I am not sure what he means by this. I think he may mean he was not expecting DAS to refer the matter to its Relationship Partner but having done so, it should update him. For the reasons given above, I do not agree. I do not think there was anything wrong with the response from DAS.

Having considered everything provided to me, I do not therefore consider that DAS has done anything wrong in relation to Mr E's complaint about the panel solicitors and I do not think it needs to do anything more here.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr E to accept or reject my decision before 14 November 2023.

Harriet McCarthy  
**Ombudsman**