

The complaint

Mrs B and Mr E are unhappy with what DAS Legal Expenses Insurance Company Limited did in relation to claims made on their legal expenses insurance policy.

Although the policy benefits both Mrs B and Mr E, as the claims only concern Mr E I'll refer to him in this decision.

What happened

Mr E made claims on his legal expenses policy relating to an employment tribunal claim and a personal injury claim. Issues relating to those matters have been considered by us as part of separate complaints. Subsequently Mr E sought assistance in bringing claims against two of the solicitor's firms involved in his case and his union. DAS agreed in January 2022 to obtain counsel's opinions on whether those claims would have reasonable prospects of success (a requirement of the policy).

It approached a panel firm (M) familiar with Mr E's case but they didn't think it would be appropriate for them to act given concerns he'd previously raised about their conduct. Another panel firm (D) agreed to progress one of the claims but said it was conflicted in relation to the other two. DAS said Mr E could appoint his own firm. He said he wasn't well enough to do that. So it decided to approach panel firms again to see if they'd be prepared to draft instructions to counsel (rather than being instructed on the case).

D initially indicated it would do that but then confirmed it was conflicted. But DAS was able to agree terms with another firm (L). Matters progressed and they subsequently drafted instructions to counsel. Mr E complained to DAS at the start of August 2022. He said he'd been told a barrister would provide advice and he'd have a conference with them. But he was told in a phone call with DAS on 13 June that D would be considering the matter and no conference would be taking place. And he explained why he did need to discuss matters with the barrister reviewing the claim.

Our investigator acknowledged there had been some confusion over the information given to Mr E by DAS. But he thought it was acting on the basis of what the panel firms had told it. And he didn't think it acted unfairly when it spoke to him. Mr E didn't agree. He highlighted in particular the phone call he had with DAS which he said caused a flare up in his anxiety. And he said a complaint he made on 21 June hadn't been dealt with. 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.

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 appreciate Mr E has raised a number of issues in correspondence with us. However, some of those points have already been addressed in previous complaints to our service. Others are currently being considered as part of separate complaints. Our investigator explained to Mr E that the issue he was considering related to the period from February to August 2022 and covered his concerns about the changes to the assessment of his legal claims and what he was told in June 2022 about this.

In response Mr E suggested our investigator had misunderstood the complaint and highlighted the points he'd made about his telephone conversation with DAS on 13 June 2022. Our investigator confirmed he'd taken that information into account and asked Mr E to let him know if there was anything else he hadn't considered. Mr E didn't provide any further comments. So I've focussed in this decision on the issues which our investigator summarised in his previous correspondence with Mr E.

In common with other legal expenses policies Mr E's requires that for claims to be funded they must have reasonable prospects of success which it defines as *"For civil cases the prospects that you will recover losses or damages (or obtain any other legal remedy that we have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal must be at least 51%"*

As an insurer isn't legally qualified we think that assessment should be carried out by a suitably qualified lawyer with relevant experience. In this case DAS agreed in January 2022 to obtain counsel's opinion on the merits of Mr E's claims (and as part of that process to put to counsel questions Mr E had raised).

I appreciate there were then difficulties in obtaining a panel firm to carry out that assessment. And I accept that caused delay in matters being progressed. But I don't think that's something DAS is responsible for. When M and then D confirmed they couldn't act it agreed Mr E could appoint his own firm. As his circumstances meant he was unable to do that it made further attempts to appoint a panel firm. I think that was reasonable in the circumstances.

Mr E has highlighted in particular the telephone call he had with DAS in June 2022. I don't think it's in dispute he was told in that call D would be the solicitors involved with these claims. I appreciate that will have been confusing for him given they'd previously told him (and DAS) they were conflicted. But I can see the information he was given was based on what D had told DAS. And it was only after that call that D said it wouldn't be able to act for the same reasons it had previously given. It's unfortunate it didn't make that clear earlier but that isn't something DAS is responsible for. I don't think it did anything wrong here.

Mr E is also unhappy DAS suggested in the call he wouldn't be able to have a conference with counsel. DAS's call notes say he was told this would be for the counsel involved with the assessment to decide. Either way I can understand why Mr E came away from the call thinking that DAS was going back on the commitment it had previously given (in a call in May 2022) that he would be able to speak with the counsel reviewing the case.

However, I can see when confirming instructions to L, DAS made clear the quote it obtained should include a conference between Mr E and the barrister. And it confirmed that to a different contact at that firm (who was already in contact with Mr E) in early July. I can see the need for a conference is then referenced in subsequent correspondence between Mr E and D. I do think DAS could have been clearer about this when it spoke to Mr E and I appreciate this will have caused him anxiety. But given DAS hadn't in fact changed position on this and that appears to have been clarified (to L who were in contact with Mr E) relatively quickly I don't think there's more it needs to do to put things right here.

Mr E has also expressed concern the concerns he raised in a letter of 21 June weren't treated as a complaint. DAS's file suggests that in a call on 29 June Mr E said he didn't wish to raise a complaint at that time (but might consider doing so subsequently).

In any case we can only consider the covered activities set out in our rules (the Dispute Resolution Rules – DISP). Those activities include regulated activities but complaint handling isn't a regulated activity. So Mr E's concerns about how his complaint was dealt with aren't something I can consider in isolation. I could look at that when thinking about the overall customer service DAS provided but I could only make an award for complaint handling if I was also doing so for something related to customer service more generally. That isn't the case here. So I won't be considering this issue further.

My final decision

I've decided not to 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 21 February 2024.

James Park
Ombudsman