

The complaint

Mr W has complained about the handling of a claim under the legal expenses insurance section of his home insurance policy, provided by DAS Legal Expenses Insurance Company Limited.

What happened

In May 2020, Mr W made a claim under his policy with DAS for legal expenses cover to pursue an employment dispute. Mr W had already issued tribunal proceedings in March 2020.

DAS accepted the claim in principle and agreed to appoint Mr W's chosen solicitor to assess the claim. However, they could not act so DAS appointed a panel solicitor to assess the claim for prospects. The panel solicitors said some heads of claim didn't have prospects but it was likely others did. There was a dispute about the prospects of success of the claim and Mr W was unhappy with the panel solicitors. Mr W said he'd incurred costs compiling evidence for the solicitors.

Mr W brought a complaint to us about the solicitors, the costs he'd incurred and the costs being charged by the panel solicitors. He was unhappy that he was not kept up-to-date with their costs.

Another Ombudsman issued a final decision on that complaint in October 2022. He determined that DAS was not responsible for any dispute about the way the solicitors were handling the case, and there was no obvious problem with the solicitors' actions that DAS should have been aware of. The ombudsman also concluded that DAS was not responsible for the costs to Mr W in time and money in providing evidence to the solicitors.

Since that first complaint was brought to us matters have moved on.

In August 2021 the solicitors said only around £17,000 of the indemnity limit was left and that the costs of pursuing the claim to trial would far exceed the limit of indemnity, leaving Mr W vulnerable to costs and there was also a risk of adverse costs.

DAS said there was still no proper assessment confirming that the claim had reasonable prospects of success, so the policy condition for ongoing cover had not been satisfied.

In view of this, and as the solicitors said the claim would be worth £15,000, DAS offered Mr W the sum of £15,000 in lieu of pursuing the claim. DAS also said that it would pay Mr W the remainder of the indemnity limit, so he could pursue the claim if he wished himself. DAS said it had to finalise with the panel solicitors what their final bill was before confirming what this additional amount would be. This was all put to Mr W in a final response letter dated June 2022 and the £15,000 was paid to Mr W.

Mr W complained about the time taken to confirm the final costs and the amount left of the indemnity limit. In September 2022, DAS provided its final response letter to this complaint about the time taken to get the final bill from the solicitors.

One of our Investigators looked into the matter. He did not recommend that it be upheld, as he considered DAS was entitled to make the offer it did and that it was reasonable to do so in all the circumstances.

The Investigator sent Mr W a copy of the bill the solicitors sent to DAS in July 2022. The Investigator also said that DAS had made an offer to the solicitors for their costs in December 2022 and was negotiating with them about their costs. The Investigator said that DAS's enquiries with the panel solicitors were reasonable and it is not responsible for any delays.

Mr W does not accept the Investigator's assessment. He has made a number of points in support of his complaint and in response to the Investigator's assessment. I have considered everything he has said but have summarised the main points below:

- The panel solicitors have charged around £35,000 and he has no idea what this has been spent on.
- He should have been getting a monthly costs update. This was his money.
- He did not appoint the solicitors, DAS did. So it is responsible for them.
- £4,000 was spent by the panel solicitors on printing out emails; this is embezzlement.
- The solicitors have wasted money and he has spent £5,000 of his own money, while the solicitors did nothing and DAS ignored him.
- DAS said his claim had still not been assessed as being covered by the policy but it has had the claim for three years.
- The solicitors kept asking him for information which was not necessary
- We are consumer unfriendly and biased, and have allowed DAS to dictate to us and three years to show a bill is not acceptable.
- The Legal Ombudsman has told him it is for us to deal with the issue but the Investigator has made excuses and told him to go elsewhere.
- The Investigator is suggesting that DAS can take as long as it likes to sort out the bill and there's nothing he can do.
- The Investigator told him he'd need to make a third complaint about the bill when it happens but this is unfair.

As the Investigator was unable to resolve the complaint, it was passed to me.

In the meantime, the Investigator asked for an update from DAS.

DAS confirmed that in July 2023 it paid the panel solicitors a final payment of £22,140 (reduced from £36,258).

DAS also recently provided a copy of the final judgment on Mr W's employment claim, which was part heard in September 2021 and December 2022 and concluded in January 2023. The final written judgement, dated March 2023, confirmed that Mr W's employment claims were dismissed. DAS says that comments made by the Judge on the veracity of Mr W's evidence cast doubt on the continuation of any cover.

DAS said that in light of the judgement, cover was withdrawn and it was also withdrawing its offer to pay Mr W the residual amount of the indemnity limit. DAS also said that as the Judge had said part of Mr W's complaint against his employer and the evidence in support had been created, it would also be entitled to void the cover and recoup the costs it has already paid on the basis it was a fraudulent claim.

Mr W said he has appealed the employment tribunal decision and in any case, he had no cover for the hearings so it is wrong to say cover is now withdrawn.

For the avoidance of doubt, I am only looking at the complaint about the decision to make the £15,000 offer in June 2022 and refusal to fund any further costs with the panel solicitors or any other solicitors (other than in dealing with the drop hands offer with the third party); and the time taken to resolve the bill with the panel solicitors and make an offer with regard to the remainder of the indemnity limit.

I am not looking at the panel solicitor's actions or advice. So most of the points raised by Mr W and listed above I cannot look at. And I am not looking at whether the decision to withdraw the offer of payment of any residual indemnity is fair or not.

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.

Mr W's policy provides cover for costs and expenses of an appointed representative in relation to a number of potential legal disputes, including disputes about a contract of employment. However, it is a pre-requisite of cover that "*reasonable prospects exist for the duration of the claim*".

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success. However, it is usual in legal expenses policies for the insurer to appoint panel solicitors to assess the prospects of a legal claim (in cases where its in-house staff are unable to do so) at its own cost, rather than insist on policyholders doing so at the outset of a case.

The policy also says:

"We may decide to pay you the reasonable value of your claim, instead of starting or continuing legal action."

I note that in August 2021 there was a meeting between Mr W, DAS and the solicitors. It was agreed that the solicitors would discuss settlement with the employer. Mr W said he'd accept £15,000.

Mr W also raised concern about the costs to date. DAS said it would look into the costs and a few days after that meeting, DAS offered Mr W £15,000 and the solicitors would try and negotiate a 'drop hands' settlement with the former employer (whereby both parties would walk away from the proceedings and be responsible for their own costs).

It seems that this was not progressed and between August 2021 and April 2022 the solicitors continued working on the case.

In May 2022, DAS asked the solicitors for a costs update and in June 2022 Mr W accepted the £15,000 payment but not in full and final settlement of his insurance claim. He still wanted funding to pursue the tribunal claim.

Given the potential costs and risk of Mr W being made to pay his former employers costs too, I do not think DAS's decision to pay Mr W the value of the claim was unreasonable. The solicitors advised that £15,000 would have been a reasonable settlement and I have not seen anything to persuade me that it was worth more.

In addition, there is no legal assessment of Mr W's chances of achieving a successful outcome to his tribunal claim. The solicitors had not been able to complete any such assessment as at June 2022. The solicitors gave a number of reasons why this was the case. I am not able to determine why this took the solicitors so long but the fact remains that Mr W's claim had not been established under the policy. So I am satisfied there was no obligation on DAS to make any further payment of legal costs.

I consider the offer in June 2022 to be reasonable and do not think that DAS was required to agree to another solicitor under the policy or paying for the panel solicitors to do any other work (other than exploring a drop hands agreement with Mr W's former employers).

The indemnity limit of £50,000 is not a pot immediately available to the policyholder, rather if all the policy conditions are met for a valid claim, DAS will indemnify legal costs up to that amount. For the reasons given, I consider it made a reasonable offer to pay Mr W in lieu of further costs. However, in its final response to Mr W in June 2022, DAS also said it would pay him the remaining balance of the indemnity limit, after the panel solicitor's costs had been paid.

Mr W thinks the solicitor's charges were excessive and that it has taken DAS too long to determine its offer.

The panel solicitors provided a copy of their bill on 29 June 2022 and DAS arranged for it to be assessed by its costs team. Having done so, DAS shared Mr W's concern about the solicitor's charges— it pointed out that five barristers had been instructed and questioned how the costs were so high when they said they had only provided supervisory support for Mr W in the proceedings. DAS challenged a number of charges, including: 86 hours for printing and converting documents to PDF amounting to £8,600, charging for internal communications between fee-earners and communicating with DAS.

I can see that between end June and December 2022, DAS chased the solicitors around three times and made reasonable queries about the costs being claimed. As DAS is only responsible for reasonable costs, it was entitled to assess the costs claimed.

DAS accepted it didn't send Mr W a copy of the bill until around a month after it was received and should have done so sooner. It also accepts it could have chased the solicitors more proactively and apologised for this.

Since then, DAS has confirmed that it has reached a final agreement with the panel solicitors and a final payment of £22,140 for their fees and has now said it is not making any further payment to Mr W.

As explained, I cannot make any determination as to whether it is fair for DAS to not make any further payment to Mr W. This will have to be raised as a separate complaint by Mr W if he wants that considered and as yet he has not done so, as far as I am aware.

DAS was entitled to properly assess the costs but it has taken a year to get to this point and I think DAS could have moved this forward quicker than it did.

I can appreciate the delay in DAS finalising its position will have been frustrating for Mr W. However, I do not think that Mr W has acted in any different way in reliance on DAS's offer in June 2022. Mr W was not entitled to legal cover for representation under the policy. And DAS had in my opinion, met its liability under the cover by paying Mr W the £15,000 in lieu of further costs. Mr W continued his legal claim, which had already been part heard and was concluded in January 2023, when his claim was dismissed. I think Mr W's legal position

would therefore have been the same, even if DAS had been able to confirm its position sooner.

Sometimes things go wrong, which can be annoying and frustrating, but it doesn't mean compensation is always warranted. Having considered everything, I do not consider that any compensation is warranted for the time taken to finalise the costs position with the solicitors and make its final decision about any further offer.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 October 2023.

Harriet McCarthy
Ombudsman