

The complaint

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

Mr Q feels DAS treated him unfairly.

What happened

Mr Q was engaged in an employment dispute, which DAS agreed to fund under his legal expenses insurance policy.

The subject of this particular complaint is DAS' decision to stop funding Mr Q's claim shortly before he went to trial. Mr Q says DAS should have funded his costs in going to trial and that their decision not to do so, combined with delays in communicating with him generally, caused him considerable stress and impacted on his health.

Mr Q says he proceeded to trial without DAS' help and that he paid £7,000 plus VAT for a Barrister to represent him. He wants DAS to reimburse him for this amount, provide him with an apology as well as compensation for the stress caused.

DAS on the other hand have said that they weren't obliged to continue to fund Mr Q's claim after he rejected a reasonable offer to settle the dispute, based on advice from Mr Q's Barrister, and that's what happened here. Despite that they said they offered to fund £600 in costs for Mr Q to obtain a second opinion from another Barrister. Mr Q didn't take DAS up on this offer and instead proceeded to trial and was unsuccessful. In reviewing their own actions, DAS accepted they'd done some things wrong. They said they should have ensured a Barrister reviewed Mr Q's settlement offer and that matters were unduly complicated, that correspondence went unanswered and the costing unit (instructed to assess the fees Mr Q had incurred) was prematurely instructed. They offered Mr Q £200 in respect of these failings.

Unhappy Mr Q referred his complaint to the Financial Ombudsman Service. Our investigator considered his complaint and concluded it shouldn't be upheld. He said that DAS were entitled to withdraw cover if a reasonable offer wasn't accepted by a policyholder and the offer they made was reasonable in the circumstances.

Mr Q 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 Q's complaint. This is why.

The starting point is the policy terms. They say:

"If you do not accept a reasonable offer to settle a claim we may refuse to pay further legal

costs”.

That's not uncommon in legal expenses insurance policies. Litigation can be both risky and expensive. A privately paying customer wouldn't want to bear the risk and associated costs of proceeding to trial (and potentially achieving a less favourable outcome) if advised that a reasonable offer to settle their claim has been made. We wouldn't expect an insurer to do so either. We don't think this is unfair. Litigation can be both expensive and uncertain.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the legal advice given. Instead, we look at whether the insurer has acted fairly. So long as they have got advice from a suitably qualified lawyer, 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'm satisfied that the Direct Access Barrister that advised on the offer made to Mr Q was experienced in the areas of law he was asking for help with, and I've seen nothing that suggests the advice was based on factual mistakes. I appreciate that Mr Q didn't want to accept this advice, but that didn't mean that DAS had to continue funding his claim. I also understand why Mr Q says he didn't get a second opinion from another Barrister. He felt he was too close to trial and didn't have time to organise that and ensure he was prepared. But again, that doesn't mean that DAS needed to do anything differently.

The possible different outcomes of the litigation at the time the offer was made had no bearing on DAS' actions either. That's because DAS were entitled to minimise their cost risk by bringing matters to conclusion as soon as they received legal advice to say the offer Mr Q received was reasonable. Mr Q was unsuccessful at trial, which is very unfortunate. This was precisely the kind of situation DAS were trying to avoid by requiring him to accept the offer. In doing so they reduced their risk of incurring further costs in proceeding. I consider that to be fair and wouldn't look behind their decision to do that.

I'm pleased that DAS are now funding the costs of Mr Q's appeal. I don't know enough about that claim for cover as it doesn't form the subject of this complaint. But irrespective of that, DAS' decision to fund it has no bearing on whether it's fair them to fund the costs that Mr Q went on to incur himself to pursue his original claim, after DAS said they wouldn't fund them.

DAS have accepted that there were failings in their communications with Mr Q and that they should have contacted him for an update. But this doesn't mean they should pay his costs in proceeding to trial. DAS didn't approve those costs in advance, which is a policy requirement, and as far as they were concerned, they'd told Mr Q there was no further funding in place. It's of note that it wasn't until a year after Mr Q was in contact with DAS that he got in touch with them to ask to fund his appeal and for his fees to trial to be covered. It's of note that DAS weren't even aware that he'd proceeded to trial with alternative representation until that time.

Taking everything into account, I don't think DAS did anything wrong. And although I appreciate Mr Q's submissions that DAS' conduct had an impact on his health, I don't think their service failings (including delays) warrant any more compensation than they've offered. I appreciate that Mr Q's state of health has suffered but I think that's more to do with the underlying dispute he was pursuing and his decision to continue with the litigation himself and the subsequent outcome, rather than because of something DAS did. And DAS' offer is in line with awards we've made for similar failings, so I don't think they should pay Mr Q anything more.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 18 December 2023.

Lale Hussein-Venn
Ombudsman