

## **The complaint**

Ms G and Mr R complain about the way DAS Legal Expenses Insurance Company Limited dealt with a claim on their legal expenses insurance policy.

## **What happened**

Ms G and Mr R's property insurance policy includes legal expenses insurance. Mr R made a claim on the legal expenses cover in relation to an employment dispute. They are joint policyholders but this claim only concerned Mr R and he has dealt with all the correspondence so I'll refer to him throughout.

Mr R contacted DAS in February 2023 about making a claim. DAS accepted the claim and after a number of phone calls with Mr R, offered two panel firms of solicitors. Mr R chose one of the firms.

The panel firm assessed the claim and said it had reasonable prospects of success, which is a requirement for cover to be provided. Mr R had a query about one aspect of the claim. And he said while the advice referred to a deadline in October 2023 for issuing an unfair dismissal claim, there was a more urgent deadline in April for making a whistleblowing claim. He said the individual dealing with the case didn't appear to be qualified to deal with it.

Mr R asked if his own solicitors could be appointed but DAS said that wouldn't be possible until proceedings were about to be issued, and said the solicitor at the panel firm was suitably qualified to act for him. Mr R continued to dispute this.

In May 2023 the panel solicitors questioned whether they should continue to act as Mr R didn't appear to have confidence in them. DAS then agreed to negotiate terms with Mr R's own solicitors but said it might not meet their charging rate.

DAS agreed to Mr R's solicitors acting at an hourly rate in line with the guideline rate for the area where Mr R lives, which was £232. This was around half their normal rate. It offered two other panel firms as alternatives. Mr R contacted both firms and spoke to a solicitor at one of them. He told DAS he might consider appointing that solicitor in future but couldn't change solicitors at that point as there were urgent deadlines to meet.

DAS wouldn't increase the hourly rate offered so Mr R complained but DAS said its offer was fair. It did accept there had been some delays and offered compensation of £150 for that, which Mr R didn't accept.

When Mr R referred his complaint to this service our investigator didn't think it should be upheld. She said:

- DAS had appointed a panel firm, which was reasonable, and acted quickly to appoint the firm Mr R requested;
- it had clearly explained to Mr R he could instruct his own choice of solicitors once proceedings were necessary, which was in line with the policy terms;
- the policy terms don't specify an hourly rate, so there needs to be a reasonable rate;
- the County Court guidelines are an appropriate guide and the rate offered was fair;

- DAS offered Mr R options and tried to negotiate a reasonable rate with his solicitors.

The investigator said if Mr R wanted to continue with his solicitors, they would need to agree the rates offered by DAS.

Mr R didn't agree. He provided further comments which the investigator considered, but these didn't lead her to change her view so he requested an ombudsman's decision.

Mr R has provided detailed comments in support of his complaint. I won't set them out in full but the key points include:

- his case needs specialist knowledge of both employment law and financial services regulation;
- the key point in his complaint is that the panel firm didn't meet the definition of a "preferred law firm" and DAS never offered anyone who did;
- none of the restrictions on hourly rates are set out in the policy terms;
- there were lots of delays and £150 doesn't reflect the level of delay;
- the guidelines refer to hourly rates for where the solicitor is based, not where he lives, and say an insurer can't offer a rate that renders his choice meaningless;
- DAS did just that – offering one firm that wasn't suitable and another firm two months after his request and only seven working days before a deadline.

### **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 industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

The policy provides cover for the type of claim Mr R wished to make, provided his claim was likely to succeed. That's not unusual - almost all legal expenses policies require a claim to have reasonable prospects of success for cover to be provided.

Where cover is provided, the policy terms say DAS will appoint a "*Preferred law firm*", which is defined as

*"A law firm or barristers' chambers we choose to provide legal services. These legal specialists are chosen as they have the proven expertise to deal with your claim and must comply with our agreed service standard levels, which we audit regularly."*

They are appointed according to the standard terms of appointment. The policy terms also say:

*On receiving a claim, if legal representation is necessary, we will appoint a preferred law firm as your appointed representative to deal with your claim. They will try to settle your claim by negotiation without having to go to court.*

*b. If the appointed preferred law firm cannot negotiate settlement of your claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest, then you may choose a law firm to act as the appointed representative.*

*c. If you choose a law firm as your appointed representative who is not a preferred law firm, we will give your choice of law firm the opportunity to act on the same terms as a preferred*

*law firm. However if they refuse to act on this basis, the most we will pay is the amount we would have paid if they had agreed to our standard terms of appointment.*

*In the event of a claim, if you decide not to use the services of a preferred law firm, you will be responsible for any costs that fall outside our standard terms of appointment and these will not be paid by us.*

Insurers will seek legal advice on whether the claim is likely to succeed. They are entitled to rely on the legal advice unless it's obviously wrong. DAS did that and the panel firm confirmed the claim had reasonable prospects of success.

The panel firm's advice was detailed and properly reasoned so, on the face of it, DAS was entitled to rely on that. But as Mr R raised some queries, I would expect it to review his questions. That doesn't, however, mean he had freedom of choice at that stage.

DAS did look into Mr R's concerns but Mr R says it should then have agreed to appoint his chosen solicitors and pay their hourly rate. While Mr R has raised various issues, the crux of the matter is whether the hourly rate offered was reasonable. I've considered carefully whether DAS should have offered to pay Mr R's own solicitors at the rate they requested.

Once Mr R got to the point where proceedings were to be issued, he was entitled to choose his solicitors. But that doesn't mean DAS had to pay whatever rate they charged. Insurers are entitled to limit the amount of costs they will agree to pay, provided they don't restrict the policyholder's choice so much as to make it meaningless.

The policy terms don't specify an hourly rate to be paid. Where that's the case, I need to decide what's a reasonable rate. In doing that I'll take into account the County Court guideline rates, as they are a helpful guide.

I appreciate Mr R was unhappy with the panel solicitors. The panel firm has a department that deals with this type of work, including a partner and experienced solicitors. And solicitors have professional responsibilities, including to consider whether they have the relevant expertise to take a case on. So if they weren't able to act for Mr R it was reasonable for DAS to expect the panel firm to say so. I'm satisfied that, on the face of it, it was reasonable for DAS to appoint them. So I don't agree it never appointed suitable solicitors as a preferred law firm.

When Mr R raised concerns DAS took on board his comments and agreed that if the panel firm missed a deadline or took too long to reply, that was unacceptable. DAS agreed to discuss terms with his solicitors and entered into negotiations with them.

DAS didn't offer any other solicitors at that point - but that was because it had agreed to his choice of solicitors and was negotiating terms with them. DAS did offer alternatives in May 2023. I think the way DAS dealt with all of this was reasonable.

The key point here is that DAS wouldn't agree to pay the hourly rate requested by Mr R's solicitors. He says this isn't a typical employment case and he needs solicitors with the appropriate expertise. He doesn't agree that the rate for solicitors in the area where he lives is appropriate as it should be based on where the solicitors are, not where he lives. And his solicitors are in central London. So he says DAS should pay their rates (London 1 – the highest rates in the guidelines).

The standard court guideline hourly rates provide a starting point on reasonable hourly rates for different levels of experience and in different areas of England and Wales. There are

different categories of fee earner. DAS says Mr R doesn't need to use his solicitors and is only prepared to pay the relevant rates for the area where he lives.

Once he got to the point of needing to issue proceedings, Mr R was entitled to choose his own solicitors. And they need to be capable of dealing with the relevant area of law. Mr R and his solicitors argue that this is a complex area of law that requires a specialist.

I agree the nature of Mr R's case means he needs solicitors with relevant experience, but that doesn't mean it has to be a 'London 1' firm. Mr R says the rate should be based on where the solicitors are based. But the rate needs to be reasonable. If someone chooses to instruct solicitors in central London whose rates are at the highest level, in a case that doesn't require that level of expertise, it wouldn't be reasonable to expect an insurer to pay those rates.

London 1 rates are described as being for "very heavy commercial and corporate work". Mr R is essentially arguing that only a central London firm that carries out very heavy commercial and corporate work is capable of representing him. I don't consider his employment dispute required that level of work. As he has himself said, this type of case needs to be a London firm or a national firm with relevant experience.

There are national firms who would be able to deal with this type of case. Indeed, DAS provided details of two other firms. I don't accept that only a central London firm dealing with very heavy commercial and corporate work would be able to handle his case.

Mr R said the partner he spoke to at one of the firms offered appears capable but he preferred to use his solicitors. I can see why he may have wanted to stick with his solicitors at that point, given the deadlines he had to meet, but he could have explored this more once those immediate deadlines had passed. Instead, he seems to have taken the view that only his solicitors could deal with the case.

DAS offered London 3 rates. These include rates of £282 per hour for a Grade A fee earner and £232 for Grade B. These are a little higher than National 1 rates. Taking all the circumstances into account I consider these are reasonable.

DAS agreed to cover the claim and gave Mr R the option of:

- accepting the rates offered and agreeing to top up his solicitors' charges;
- nominating another firm which would act at those rates without the need for a top up; or
- agreeing to alternative panel solicitors suggested by DAS (in addition to the two firms put forward initially).

He didn't take up any of these options and said he wished to continue with his own solicitors but with DAS paying the full hourly rate. As a result, DAS said Mr R's solicitors would need to agree terms at the rate offered and said it would be open to including costs he had already incurred with them in the costs to be paid at the end of the case.

In the circumstances I think the options offered by DAS were fair. Mr R was given a number of options and his choice wasn't restricted so much as to be meaningless. If he wants to accept the rates offered, it's open to him to contact DAS about that.

There was some delay and no doubt that would have been frustrating for Mr R. But DAS has acknowledged that and offered £150 compensation, which I think is a fair reflection of the upset caused to him at the time.

### **My final decision**

DAS Legal Expenses Insurance Company Limited has already made an offer to pay compensation of £150 settle the complaint, and I think this offer is fair in all the circumstances.

So my decision is that DAS Legal Expenses Insurance Company Limited should pay £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G and Mr R to accept or reject my decision before 28 December 2023.

Peter Whiteley

**Ombudsman**