

## The complaint

Mrs B and Mr E complain about delays by DAS Legal Expenses Insurance Company Limited handling a claim on their legal expenses insurance policy which they say prevented Mr E from pursuing a legal claim.

## What happened

Mrs B and Mr E are joint policyholders of a home insurance policy which includes cover for legal expenses. This complaint concerns a claim that Mr E made on the legal expenses section of cover. As it's Mr E's claim, I will refer to him throughout.

Mr E made his claim in July 2021. He wanted to pursue a case for negligence against a government agency. It had admitted failing to send files to his solicitors in 2019. This led to him having to deal with his case in person and Mr E said as a result of not being represented he wasn't successful. He was seeking compensation for this.

DAS accepted the claim and referred it to their panel solicitors to assess whether the claim had reasonable prospects of success, as required under the policy terms, but the solicitors said they couldn't deal with it due to a conflict of interest.

DAS didn't act on this at the time. When Mr E chased DAS in October 2021 it was then passed to another firm of panel solicitors. These solicitors said:

- A negligence claim didn't have reasonable prospects of success.
- The correct course of action for Mr E would be to pursue a judicial review claim. It was now too late to issue a judicial review claim but even if it were possible, the remedy would be to review the decision, not to award damages. This wouldn't achieve the outcome he wanted and so there was no merit in pursuing this.
- Judicial review claims were not covered by the policy.

Mr E complained that DAS' delays meant he didn't have the opportunity to present his case for judicial review.

DAS accepted it had caused a delay and offered £250 compensation for the distress and inconvenience caused. Mr E didn't think the offer was fair. He says he has suffered financial losses and would like an arbitrator to determine what financial compensation should be paid for this.

Our investigator said:

- the delay caused a loss of opportunity – Mr E missed the chance to pursue a judicial review case
- the offer of £250 compensation for delay was fair
- but if Mr E could show his claim would have had prospects of success, DAS should reconsider it.

Mr E disagrees and has requested an ombudsman's 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 industry rules and guidance say insurers must deal with claims promptly and fairly and should not unreasonably reject a claim.

The policy provides cover for certain legal claims, including employment disputes, breach of contract claims and personal injury claims. There's no cover for judicial review proceedings, which are specifically excluded.

There's no dispute that DAS caused a delay by not passing the papers to a second panel firm of solicitors when the first solicitors said they couldn't carry out the assessment. The issue I need to decide is whether DAS' offer of compensation is fair. Mr E doesn't think it is; he says he's suffered a large financial loss and should be compensated for that.

It's for Mr E to prove his loss. He says:

- he had civil claims that were struck out because the government agency didn't send the papers to solicitors, and he should have been compensated for these losses, which happened as a result of the agency's negligence;
- he can't pursue it now as he missed the deadline for making a judicial review claim;
- even if the policy wouldn't have covered a judicial review claim, if he'd been told this at the time he would have obtained legal aid to pursue a case.

I've considered what the consequences were of DAS not sending the papers to another panel firm until October 2021. The delay meant the solicitors didn't assess the papers until some months later. But after reviewing everything, they advised that Mr E didn't have a case for negligence. While there was a potential claim for judicial review, he was out of time and that would not achieve the outcome he wants anyway.

A judicial review application would not have been covered under the policy. Thinking about what Mr E has lost, if he'd known the correct position at the time, he might have been able to get legal advice elsewhere. He lost the opportunity to do that. I can't say what the outcome might have been. But what he wants is compensation and the panel solicitors have explained that a judicial review claim wouldn't give him that. From the information we have, if he has suffered a loss it wasn't due to any delay by DAS.

It was a shock for Mr E to find he had missed the deadline for making a judicial review application and this would have been upsetting. Thinking about the impact of that upset, I consider the offer of £250 is fair.

If Mr E provides legal advice showing he has suffered a loss as a result of the delay then I'd expect DAS to reconsider but in the absence of that (and bearing in mind the advice from the panel solicitors) I don't think DAS needs to do anything other than pay the compensation it offered.

## **My final decision**

DAS Legal Expenses Insurance Company Limited has already made an offer to pay £250 to 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 £250.

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 20 March 2024.

Peter Whiteley  
**Ombudsman**