

## **The complaint**

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

Mr W says DAS treated him unfairly.

Mr W is represented in this complaint but for ease of reference I shall refer to all submissions as being his own.

## **What happened**

Mr W made a claim on his DAS legal expenses insurance policy for cover to deal with a claim about the sale of his property. The history that follows that claim is well known to both parties, so I won't repeat it here. Instead, I'll focus on the issues that are relevant to this specific complaint.

In this complaint Mr W is unhappy that DAS have refused to cover his own Solicitor's costs which he says amount to over £2,000. He wants DAS to discharge those fees and fund his legal costs going forward. He also wants an apology and compensation for the way in which his claim has been handled by DAS.

DAS addressed Mr W's complaint about the specific issues he's complained about here in their final response letter dated February 2023. I'm aware of previous final response letters and complaints about other aspects of Mr W's claim, but I won't be addressing them here. In this decision, I'll be focussing on the specific complaints Mr W made which were addressed by DAS in the final response letter I've mentioned. In that letter DAS acknowledged a breakdown in communication to Mr W's queries about the payment of his own Solicitor's costs on two occasions in December 2022 for which they apologised, but otherwise they didn't uphold his complaint.

DAS also explained that although they'd agreed for Mr W's own Solicitor's to assess the merits of his claim, the funding of the claim was subject to that firm providing them with a completed case management report confirming whether his claim had reasonable prospects of success, as required by the policy. DAS said this was explained to Mr W before and that they weren't prepared to consider funding his Solicitor's fees until the report was received. DAS also offered a contribution of £1,000 towards the Solicitor's fees once the case management report had been completed, whilst making clear that their usual position was that they wouldn't pay any legal costs before accepting the claim.

Unhappy, Mr W referred his complaint to the Financial Ombudsman Service. Our investigator considered that complaint and concluded it shouldn't be upheld. She said that although there were delays in the case management report being completed by Mr W's own Solicitors, these weren't down to DAS and DAS weren't obliged to pay Mr W's costs in submitting the report before the claim had been accepted by them. Despite this DAS made an offer to pay up to £1000 of Mr W's Solicitor's costs which she said was reasonable and should be paid on receipt of the report. The investigator also said that DAS should consider the appointment of Mr W's Solicitors if the report is positive, in line with DAS' usual terms of

appointment.

Mr W didn't agree with the investigator's view, so the matter was 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 won't be upholding Mr W's complaint. I'll explain why.

The issue for me to determine in this case is whether DAS need to pay Mr W's own Solicitor's costs for completing a case management report for him. This has come about because Mr W instructed that firm to undertake that work on his behalf. Before submitting the report to DAS, the Solicitors asked Mr W to pay their fees, which I understand amounted to over £2,000. Mr W feels DAS should be responsible for those fees.

The starting point is the policy terms. They exclude "*costs and expenses incurred before (DAS) written acceptance of a claim.*" So, DAS aren't obliged to pay any costs until and unless they accept Mr W's claim. DAS did however agree for Mr W's own choice of Solicitors to consider the merits of his claim in principle. In doing so they sent them a claims management report for that firm to complete and they confirmed the following to Mr W:

*"The next step is for your lawyer to provide further details about your legal case. We have therefore asked they complete and return our Claims Management Report (CMR) within the next ten days. This will enable us to ensure all policy criteria have been met, in particular, your case has a reasonable chance of succeeding in law (i.e over 50%).*

*Once we have completed our review, we will be able to confirm the position and any further steps to be taken. This will include, where applicable, agreeing Terms of Appointment with your lawyer".*

A month later Mr W contacted DAS to chase the position on cover. DAS had yet to receive a completed case management report so chased Mr W's own Solicitors for this. It was after this that Mr W was invoiced by his Solicitors for the work they'd completed and was asked to pay the invoice. When Mr W presented this to DAS, they explained that legal fees are only covered from the point that Solicitors are appointed under the policy. This is consistent with the terms I've quoted above. Notwithstanding this, DAS agreed to contribute £1000 towards Mr W's costs once a completed case management report was received.

I don't think DAS did anything wrong by declining to cover the costs Mr W's own Solicitors were asking for. Mr W had entered into a retainer with those Solicitors himself, so the question of their fees was something between him and them. DAS wasn't involved in that agreement, nor did they agree to fund that firms' costs from the outset. So, it wasn't down to DAS to explain what would be payable to them and when. Rather DAS acted in line with their policy terms and from the correspondence I've seen, I'm satisfied they made the process clear enough to Mr W. They also agreed to a contribution of £1000 towards his legal fees which they weren't obliged to do, once they received the case management report. I think this was reasonable in the circumstances.

I've also considered whether there were any delays that DAS were responsible for. DAS did acknowledge they hadn't responded to two of Mr W's emails and apologised for this, but looking at things in the round, I think they'd made the position clear to him from the outset in terms of what would happen once the case management report was sent to the Solicitors to complete. And given the delays in the case management report weren't down to DAS, but

rather Mr W's own Solicitors, I don't think I can say that DAS did anything wrong. They chased the firm for their report when Mr W got in touch with them and offered to consider funding their costs if the report proved positive. I'm not sure what more DAS could have done beyond this. So, I don't agree that Mr W should be awarded compensation either for delays to his claim or in lieu of payment of his legal costs.

I know Mr W remains unhappy with a number of other things- the fact that panel firms said they had conflicts of interest and that they couldn't act for him, and when sold to him, the policy wasn't presented as one where he might have to pay potential legal costs. But those aren't matters I'm considering in this complaint. Mr W will need to raise any concerns he has with DAS' panel firms directly and any complaints about how the policy was presented to him when he took it out are matters for the seller of the insurance. So, he'll need to address his concerns about the information he received with the seller accordingly.

Mr W has asked me to direct DAS to appoint a panel Solicitors to act for him without further charge to him. Given the history of this claim, I don't know if that's possible but it's not something I'm considering as part of Mr W's complaint as presented to the Financial Ombudsman Service and DAS. If Mr W wants DAS to appoint a panel firm to represent him, he will need to ask DAS for this in the first instance. If they don't agree and he remains unhappy, he'll be entitled to complain about this to them directly and then to the Financial Ombudsman Service.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 April 2024.

Lale Hussein-Venn  
**Ombudsman**