

The complaint

Mr L is unhappy with what DAS Legal Expenses Insurance Company Limited did following a claim on his legal expense insurance policy.

What happened

Mr L had a long running dispute with his neighbours relating to trespass and nuisance. He claimed for assistance on his legal expenses policy and DAS provided funding for that. Mr L made a previous complaint to our service about the indemnity limit which applied to the claim. However, he decided not to pursue that as successful mediation with his neighbours led to the court issuing a Tomlin Order in April 2023.

Mr L subsequently contacted DAS and asked it to appoint a firm of conveyancing solicitors who could finalise the matter and deal with the elements of the Tomlin Order which required their input. DAS contacted the panel firm who had previously dealt with the matter which advised the case had been settled and, unless there was a breach of the Order, there was nothing further it could assist with.

Mr L raised further concerns and DAS sought advice from the panel firm on whether an application to enforce the Tomlin Order would have reasonable prospects of success. In December 2023 the firm advised it wouldn't. It thought a court would look unfavourably on the fact Mr L had made a Land Registry application without the express consent of his neighbours. It said if that was rectified and the neighbours still refused to engage then it might be possible for his policy to assist.

In response to the complaint Mr L made DAS didn't agree further funding should have been provided. But it accepted there had been some delays in responding to him and offered to pay £150. Our investigator thought that was fair. Mr L didn't agree. In summary he said:

- His neighbours had contravened obligations set out in the Tomlin Order and so he hadn't reached settlement with them. And he thought the preparation of deeds as set out in the Order was contentious and something that should be covered by his policy.
- He explained why he disagreed with the panel solicitor's assessment on the prospects of enforcing the Order and said in any event the other side had now accepted the Land Registry application he made. The issue was that he couldn't find a firm of conveyancing solicitors willing to deal with the outstanding issues. He linked that to a failure by the panel firm to include a clause in the Order requiring the appointment of a joint conveyancing firm.
- He highlighted the impact this long running dispute had on his health and his wish to move so he could spend time with his elderly father. And he thought the compensation offered by DAS didn't recognise the impact on him of that.

So I need to reach a final 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 rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr L's policy. It provides cover for the insured incidents set out in it. And that includes property protection. The policy says "*we will a) cover the insured person's legal rights in a civil action and / or b) arrange mediation for a dispute relating to material property....*". So for cover to be provided there needs to be a dispute. Clearly there was in relation to the initial claim Mr L made because he was concerned at nuisance and trespass by his neighbour.

But I don't think that was the case when Mr L contacted DAS after the Tomlin Order had been agreed. That said the parties had agreed the terms set out in the Schedule it contained "*in full and final settlement of all matters in the proceedings*". And the Order stayed further proceedings in relation to the claim (and counterclaim). So that brought the existing dispute to a conclusion pending implementation of the terms of settlement. I don't think it was unreasonable of DAS to say costs associated with implementation (including Mr L's request for a conveyancing solicitor to be appointed) weren't something his policy covered because they didn't relate to a dispute.

I appreciate Mr L had difficulties in finding a conveyancing solicitor who would act for him but I don't think that makes a difference here. DAS's responsibility for this claim ended at the point a settlement was reached. I don't think it would be fair to expect it to provide further funding for something Mr L's policy doesn't cover.

If his neighbour didn't then comply with the terms of the Order that could give rise to a further claim under the policy because there would then be a dispute. However, it's also a requirement of the policy that a claim must have reasonable prospects of success. It says that means "*the prospects that the insured person will recover losses or damages (or obtain any other legal remedy that we have agreed to, including an enforcement of judgment), make a successful defence or make a successful appeal or defence of an appeal, must be at least 51%*".

So once Mr L raised his further concerns with DAS I think it was right it referred the matter to the panel firm for them to assess whether that was the case or not. Their opinion was that it didn't. I appreciate Mr L disagrees with that opinion and he's explained his reasons for doing so. But an insurer isn't a legal expert and our long standing approach is that it's entitled to rely on a properly written and reasoned legal opinion from a suitably qualified and experienced legal professional.

In this case I can see the opinion was provided by a solicitor who does appear to have relevant experience. I think it is properly written and reasoned. I don't see any reason why DAS shouldn't have relied on that opinion. And if Mr L had wanted to challenge it, he'd need to have provided a contrary legal opinion of his own. I appreciate he's made reference to advice given by a solicitor at the Land Registry but as that doesn't appear to have been provided to DAS I don't think there was further action it needed to take here.

In any event I understand matters have now moved on and the next step is for a property transfer form to be filed with the Land Registry. I understand Mr L again feels DAS should provide him with support from a conveyancing solicitor. But for the reasons I've already explained I don't think costs relating to that are something his policy covers. And if Mr L

believes a further dispute has now arisen that's something he'd need to raise with DAS in the first instance so it can consider if this falls within the policy terms and, if it does, whether it meets the requirement to have reasonable prospects of success.

I recognise Mr L believes the panel firm was at fault in not including a clause within the Tomlin Order to address the conveyancing issue. But the actions of a panel firm when carrying out their legal role aren't something we can consider. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. '*Carrying out a contract of insurance*' is a regulated activity. That's why we can consider what DAS did here.

However, the actions of the solicitors when acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules. So that isn't something we can look at; the solicitors are independent professionals with their own regulator and complaints procedures. And DAS isn't responsible for the actions of the panel firm when carrying out their legal role. I think that role would encompass the question of what the Tomlin Order should contain and the other concerns Mr L has raised in relation to the panel firm's actions.

Turning to the compensation DAS has offered I appreciate this matter has been ongoing for many years. I was sorry to learn of the impact on Mr L's health and the difficulties it has caused with his longer term plans and understandable wish to be nearer to his father. But I'm only considering in this decision the issues that have arisen since the Tomlin Order was agreed in April 2023.

I don't think it's in dispute there were some failings by DAS in responding to Mr L's correspondence about that. I also agree with him DAS got things wrong when it did respond; it incorrectly thought he was seeking assistance with the costs of a surveyor and the panel firm were continuing to provide assistance to him. I appreciate that will have been frustrating for Mr L and caused him avoidable inconvenience in clarifying the position. But I think the £150 DAS has already offered is a reasonable way of recognising the impact on him of that.

My final decision

DAS Legal Expenses Insurance Company Limited has already made an offer to pay £150 to settle this complaint and for the reasons I've explained I think this offer is fair. So my decision is that DAS should pay Mr L £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 31 July 2024.

James Park
Ombudsman