

The complaint

S complains that DAS Legal Expenses Insurance Company Limited (“DAS”) mishandled its legal expenses insurance claim.

The details of this complaint are well known to both parties, so I will not repeat everything again here.

I issued my provisional decision on this complaint in February 2022. I said I was minded to uphold it but intended awarding different redress to that proposed by the investigator. I set out the following reasons:

DAS has already acknowledged that they wrongly declined S’s claim in error on 22 August 2020, and that it then took them until 9 November 2020 to accept the claim. It’s not in dispute that S had no choice but to appoint its own solicitors (whom I’ll refer to as “Firm K”) during this period. And following the first assessment sent by our investigator, DAS have already agreed to cover Firm K’s costs in full up until 23 November 2020. They have also offered £400 compensation for the poor handling of the claim, which I consider to be fair compensation to recognise the inconvenience likely to have been caused to S.

However, the dispute that remains in this case is whether DAS should cover Firm K’s costs after the insurer agreed to cover the claim and appoint panel solicitors (and, if so, at what rate).

I can see that DAS offered to appoint panel solicitors in November 2020, including “Firm D”, who subsequently took over the case, but S wanted to continue instructing its own solicitor due to an upcoming deadline and because it said it hadn’t heard anything from the panel solicitors DAS had appointed.

It’s not in dispute that S was entitled to freedom of choice at the time due to proceedings having been issued. And I note that DAS offered to appoint Firm K so that S could continue instructing them. But they made it clear it would only be at their non-panel rate of £100 per hour as set out in the policy (which is also clearly set out in the policy terms and conditions).

A case management report had been sent to Firm K to complete on 23 November 2020, where DAS also set out what the applicable hourly rate would be. Therefore, while I understand S was keen to continue instructing its own solicitor due to the pressure it was under to file a defence, I don’t think it would be fair and reasonable to now expect the insurer to pay Firm K’s full legal costs up until DWF took over the case, as DAS had already made it clear what amount they would pay if S wanted to continue instructing Firm K. The insurer had also offered the services of their panel solicitors. And while I appreciate Firm D may not have reached out to S within 48 hours of being appointed, I can see that the panel solicitors did contact S on 20 November 2020, but were told that it wished to exercise freedom of choice and instruct its own solicitors. So I’m satisfied S had the choice of either appointing Firm D at that point, or to continue instructing Firm K at the non-panel rate available

under the policy. It accordingly chose to continue instructing Firm K; therefore it can only claim the non-panel rate.

I understand S felt the matter was urgent, but its deadline was not due until 4 January 2021. I acknowledge this was a second deadline after S had managed to obtain an extension, but it would have still left Firm D with enough time to review matters and carry out the necessary work if S had instructed them when they got in contact on 20 November 2020. However, S chose the option of continuing to instruct its own solicitor. So, I consider it would be fair for DAS to cover a proportion of Firm K's costs – even though they were never formally appointed – but only at the policy rate in line with their offer on 23 November 2020.

I appreciate that S considers DAS should reimburse its legal fees in full due to the poor service it has received. But DAS have already offered compensation for the inconvenience caused by their poor handling of the claim, they do not in turn need to also offer something over and above what any other policyholder would be entitled to under the policy terms and conditions. I understand that S had not heard from the panel solicitors DAS instructed within 48 hours, but I don't consider this to reasonably mean that it can then instruct its own solicitors at any cost and expect DAS to cover it.

Therefore, I intend directing DAS to cover S's legal costs incurred at Firm K's full rate from the point the claim was filed on 7 August 2020 until 23 November 2020, and thereafter at £100 per hour up until Firm D took over the claim. I note that despite S agreeing to appoint Firm D on 4 March 2021, the panel solicitors did not reach out to Firm K to request the case file until around a month later. So, I consider it would be fair for DAS to cover Firm K's costs at its non-panel rate up until Firm D requested the case file.

I invited further comments and evidence from both parties. DAS responded accepting my provisional decision, but S disagreed. In summary, it does not think that my decision took into consideration the incompetence of DAS and its panel solicitors, which effectively gave it no choice but to continue instructing Firm K.

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.

I've also carefully considered the submissions S has made in response to my provisional decision. But having done so, it hasn't changed my conclusions on the outcome of this complaint.

I would like to assure S that I have considered everything it has said about how DAS handled the matter. And I note that it has also made comments about the actions of the panel solicitor and the impact they have had. However, this service is unable to consider the acts or omissions of legal professionals, as they do not fall within the remit of regulation by the Financial Conduct Authority. DAS is also not responsible for the failings of any independent legal professionals it appoints, so if S does have any concerns about the panel solicitors and their lack of contact, it would need to direct any such concerns to the Legal Ombudsman.

In terms of DAS's handling of the claim, I set out in my provisional decision that I accepted the claim had been handled poorly by the insurer, which they had also acknowledged. However, I'm not persuaded that any further compensation is warranted in these

circumstances, over and above the £400 already offered by DAS, as it appears that a large part of S's concerns relate to the lack of contact from the panel solicitors to progress the legal claim. I appreciate that DAS has not been without fault throughout the claim, and that their handling could have been better. But I'm satisfied that £400 is fair compensation for the inconvenience caused by the *insurer's* handling of matters in these circumstances.

I accept that the panel solicitors may not have reached out to S within 48 hours of being appointed. But as I've already set out, I do not consider this would mean it could fairly and reasonably appoint its own solicitor at any cost and expect DAS to pay for it, especially when the insurer had already set out the terms and hourly rate applicable if S wanted to continue instructing Firm K. So, I'm still not persuaded that DAS can fairly be held liable for paying Firm K's full rate after it offered to appoint the solicitors on 23 November 2020.

I appreciate this will likely come as a disappointment to S. But the conclusions set out in my provisional decision still stand.

My final decision

For the reasons given above, I uphold this complaint and direct DAS Legal Expenses Insurance Company Limited to:

- Pay S's legal costs incurred between 7 August 2020 and 23 November 2020 at Firm K's full rate, thereafter at DAS's non-panel rate of £100 per hour.
- If S has already paid Firm K's legal fees, pay 8% simple interest per annum on this amount from the date the money was paid until the date of settlement;
- Pay £400 compensation for the inconvenience caused to S (if DAS has not already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 22 March 2022.

Jack Ferris
Ombudsman