

## The complaint

Mr T complains about delays by DAS Legal Expenses Insurance Company Limited in dealing with a claim under legal expenses insurance cover.

## What happened

Mr T is represented by a family member but for clarity I'll refer to Mr T throughout.

Mr T is the policyholder of a home insurance policy. DAS underwrites the legal expenses cover within that policy. A separate entity underwrites the main policy, and an agent of that entity is the party that sold the contract to Mr T.

The legal expenses cover includes (but not limited to) cover as follows:

*Your or your family's legal rights in a contractual dispute arising from an agreement or an alleged agreement which Mr T or his family has entered into:*

*for the buying or hiring in of any goods or services; or the selling of any goods*

*...*

*Provided that:*

*You and your family has entered into the agreement or alleged agreement during the insurance period*

*...*

Other relevant parts of the policy include the legal expenses cover definitions of 'You, your':

*The person who has taken out the policy (the policyholder) and any member of their family who always lives with them. This includes students temporarily living away from the home and unmarried partners.*

There is a detailed background including previous complaints made by Mr T to DAS but this complaint centres on delays in appointing suitable legal advisors to progress a claim. The claim Mr T wishes to bring concerns work done and / or damage to a property owned by his representative abroad.

DAS previously accepted the claim was covered (after wrongly declining it) and had instructed various panel solicitors to try and deal with the matter. Around September 2021 solicitors were again appointed but this was some ten months or so after Mr T initiated his claim with DAS. Mr T says he's suffered distress and inconvenience because of the delay and the lack of engagement from DAS in effectively moving the claim forward. And he doesn't think DAS' offer of £300 compensation fairly reflects that distress and inconvenience.

Our investigator thought DAS should have been able to confirm legal representation much sooner than it did, and in the absence of this she was satisfied it had an impact on Mr T, not least because the claim wasn't able to progress. She explained that Mr T regularly contacted DAS for updates on progress and was satisfied this too contributed to the distress and inconvenience suffered. And as the claim didn't progress the issues with the property

remained unresolved and this included no heating, which was inconvenient. Overall, she thought it fair that DAS pay Mr T an additional £450 to the £300 already offered (total £750).

DAS didn't agree making the following points:

- The property is owned by the representative and not Mr T.
- The representative isn't entitled to use Mr T's policy to pursue a claim relating to his own property.
- Mr T hadn't lived at the insured address in the UK for some time and hadn't notified this change.
- DAS has now revoked indemnity for all claims made by Mr T or his representative.

In response, Mr T pointed out that DAS had accepted and funded the claim (and others) until it believed he wasn't living with the representative. While the property in question is owned by the representative it's still covered by the policy. The claim has been suspended by DAS and the continuing denial by DAS is adding to the stress and inconvenience.

Our investigator provided DAS with a bundle of documents (by email) that Mr T provided to show that he and the representative lived together at different addresses in different countries since 2019 as he was dependant on the representative given his health. DAS hasn't provided a response to this information on this complaint that I can see. As the parties can't agree the matter has been referred to an Ombudsman.

### **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 context of this complaint has changed during our investigation given DAS' new position that it has withdrawn indemnity not just on this claim, but all current claims made under the policy. I'm only focussed on this complaint about Mr T's claim in relation to litigation regarding the contract dispute regarding the damaged property. As matters stand on that, it doesn't appear the claim has proceeded now almost two years on from when Mr T initiated the claim (November 2020). The fact that DAS is now refusing all indemnity would unfortunately need to be the subject of a separate complaint as it's distinct and separate from this complaint brought to us in August 2021.

As mentioned earlier, the decision to withdraw indemnity wasn't part of Mr T' complaint and of course I recognise it couldn't be as notification came around 18 months after the claim was initiated. Therefore, I won't be looking at this aspect. If DAS maintains that position it would need further investigation including obtaining information from the main home insurer and that's more appropriately done under a separate complaint should that be made.

For this complaint, industry rules, among other things, require DAS to handle claims promptly and fairly and not unreasonably reject a claim. The handling of the claim in DAS' own view didn't meet what's required of it under industry rules right up until the point it decided to withdraw indemnity on this claim, which it indicated to Mr T in a letter dated 3 May 2022 and informed us of in June 2022. DAS' position before this is that after realising its initial reason for refusing indemnity was wrong, it then instructed panel solicitors to progress Mr T' claim. Panel solicitor after panel solicitor advised DAS that it was unable to act because the proposed legal dispute was in another country's jurisdiction, and they didn't have the expertise to manage such litigation or be able to advise on the merits of the case.

It's important to note that the first main step under the policy is that any claim must have reasonable prospects of success, and ordinarily that's what panel solicitors will advise on initially. However, in the 18 months to the point DAS refused all indemnity, such an assessment hadn't been done. While I acknowledge DAS attempts to instruct panel solicitors, it was patently obvious from the outset that DAS needed to specifically confirm any intended solicitors could deal with litigation in the country of jurisdiction for the proposed action. I'm not satisfied DAS took reasonable steps to ensure this and as such the promptness with which it was required to handle the claim fell far short of what should be expected.

From looking at all the information it's apparent that Mr T was left in a vacuum of knowledge and certainty about the prospects and process of his claim. And the constant chasing of updates and communication with DAS demonstrates the distress and inconvenience being suffered as a result. Early in the claim process DAS acknowledged this and offered £300 compensation but the uncertainty, frustration and inconvenience continued because DAS couldn't secure an appropriate panel solicitor to advise on prospects of success. And then, quite unexpectedly DAS decided to withdraw cover altogether.

The length of time until complete withdrawal in May 2022 was around eighteen months and this delay, as acknowledged by DAS, caused Mr T distress and inconvenience. It's fair to take into account that if things had progressed as they reasonably should the initial step of assessing prospects may have taken several weeks. Documents would need to be translated and some extra time to find appropriately competent lawyers capable of advising on the law of the relevant jurisdiction. However, the absence of progress and appropriate instruction of panel solicitors led to several months of needless delay for Mr T. He's had to spend significant amounts of time waiting and instigating communication and complaints with DAS about how it has handled the claim to try and move it forward. I'm satisfied DAS will need to take steps to put things right.

For the avoidance of doubt, I haven't considered or determined the issue of DAS' position to withdraw all indemnity which it communicated to Mr T in May 2022. That's a separate issue that would require detailed investigation not just with DAS but with the underwriter of the main home insurance policy. Mr T would need to raise the specific issue with DAS if he hasn't done so already.

### **Putting things right**

I'm satisfied DAS' poor handling of the claim has caused significant distress and inconvenience and that £750 is fair compensation.

### **My final decision**

I uphold this complaint and require DAS Legal Expenses Insurance Company Limited to pay Mr T £750 compensation. DAS is entitled to deduct the initial offer of £300 if it has already paid this to Mr T.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 November 2022.

Sean Hamilton  
**Ombudsman**