

The complaint

The complaint is about a claim Mr N made on his Father's DAS Legal Expenses Insurance Company Limited ("DAS") policy.

Mr N says that DAS unreasonably declined his claim.

What happened

Mr N's Father has the benefit of a DAS legal expenses insurance policy. Mr N made a claim on that policy for cover to bring a claim in another country about breach of his data protection rights.

Mr N wanted DAS to fund his own choice of solicitor in another country. DAS declined and said they weren't able to instruct lawyers in another country under the terms of his Father's policy. They offered him the use of one of their panel firms and their agents instead. Alternatively, Mr N was offered the use of his own lawyer as an agent of a panel firm. Mr N wasn't happy with this as he thought he was entitled to freedom to choose his own solicitor under his Father's policy.

The claim was in any event declined on the basis that DAS said it had no reasonable prospects of success as required by the policy. They based this decision on an opinion from one of their panel firms with input from a lawyer in the country Mr N wanted to bring a claim.

Mr N is unhappy because DAS weren't amenable to appointing his own solicitor and he feels DAS caused considerable delays in dealing with his claim. He wanted DAS to pay him £500 in recognition of this. After Mr N referred his complaint to this Service, DAS objected to our dealing with it on the basis that Mr N is not an eligible complainant under the policy because he is not the policyholder and does not always live with him.

Our investigator considered whether we have jurisdiction to look at this complaint in the first instance. He concluded that Mr N is an eligible complainant under the policy because he is his Father's carer and he does appear to always live with him, but not necessarily in the UK. It's not a policy requirement for the policyholder and his family member to always live together in the UK.

In response, DAS accepted that we did have jurisdiction to consider Mr N's complaint, so the investigator went on to consider the merits of it. He didn't make any determinations in respect of Mr N's freedom to choose his own solicitor because he said DAS were entitled to decline cover on the basis that Mr N's claim didn't have reasonable prospects of success. He also thought DAS had caused a delay in appointing a panel firm to consider the claim, amounting to at least a month so said they should pay Mr N £150 in recognition of this. Mr N accepted the investigator's view, but DAS didn't. They say they don't believe Mr N and his Father have been always living together during the policy period so Mr N isn't entitled to claim under the policy. Because of this the matter was passed to me to determine.

I considered this complaint as well as another complaint made by Mr N and his Father against DAS where DAS declined cover for the same reasons they cited in response to the

investigator's latest view. I sent out my decision about the other complaint and asked the investigator to refer DAS to it. In that complaint I determined that Mr N was entitled to claim under the policy and that I was persuaded that he did always live with his Father, but not necessarily in the UK. The investigator asked DAS if this changed their position in relation to this particular complaint. In response, DAS said it didn't and maintained Mr N isn't eligible to claim on his Father's policy for the same reasons cited in the other complaint.

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 uphold Mr N's complaint. I'll explain why.

I don't intend to make any findings about Mr N's eligibility to claim on this policy within this decision. That issue has already been determined separately by way of a decision I made earlier this month. I refer both parties to that decision should they require further clarity on the issue. And although DAS had previously objected to our considering this particular complaint on its merits, they did accept the investigator's view that we had jurisdiction to consider it. Taken together, I don't follow why this issue has been rehearsed in response to the investigator's view by DAS.

The issues I'm determining in this decision are whether DAS were entitled to turn down Mr N's claim in the way that they did and to consider the delays Mr N has referred to.

The starting point is the policy terms. Mr N's Father's policy, like virtually all other before the event insurance policies requires there to be reasonable prospects of success. We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurance to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. DAS did this. The panel firm took advice from a lawyer in the country in which Mr N wanted to bring a claim and that lawyer's advice was that his claim didn't have reasonable prospects of success.

I appreciate that Mr N might not agree with the advice that's been given but that doesn't mean that DAS were wrong to decline his claim. I haven't seen anything to suggest Mr N has provided an alternative opinion from a lawyer of equal standing which supports his claim. If he is able to do this, I would expect DAS to review things again in light of that.

Because I think that DAS were entitled to decline Mr N's claim in the way they did, I haven't considered his complaint about freedom to choose his own solicitor. The issue has no bearing on the outcome of this complaint so I haven't commented on it further.

I have however given thought to the delay DAS caused in dealing with Mr N's complaint. I think DAS could have instructed their panel firm much sooner to consider the claim. It's clear from the papers I've seen that Mr N had provided as much information as he thought he needed to in order to allow DAS to do that and there didn't appear to be anything outstanding that accounted for the delay. Although DAS acknowledged the delay in July 2021 there was a further delay of about a month before the panel firm was instructed. So, I agree with the investigator that DAS should compensate Mr N for this. The amount of £150

suggested is in line with our approach to awards of this nature so I endorse that that amount should be paid.

Putting things right

DAS Legal Expenses Insurance Company Limited should pay Mr N £150 in recognition of the delay it caused in instructing solicitors to consider his claim.

My final decision

I uphold Mr N's complaint against DAS Legal Expenses Insurance Company Limited and direct him them to put things right in accordance with my award above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 January 2023.

Lale Hussein-Venn
Ombudsman