

## **The complaint**

Ms R complains about the hourly rate DAS Legal Expenses Insurance Company Limited (DAS LEI) said it would pay her preferred solicitors when she made a claim on a legal expenses insurance policy.

## **What happened**

Ms R holds legal expenses insurance with DAS LEI. She made a claim as she was taking action against her former employer for unfair dismissal. Ms R has an ongoing claim with DAS LEI in relation to a separate claim against that employer. DAS LEI has accepted that claim and has been funding her legal action since 2019, including payments to Ms R's preferred solicitors.

DAS LEI initially said that Ms R's claim for unfair dismissal should be considered as part of the original claim, so one indemnity limit would apply for all the legal expenses. When Ms R complained about this, DAS LEI said it should be considered a new claim. It said that it had updated its policy wording since the first claim and the policy now said the most it would pay Ms R's preferred solicitors was £100 per hour.

When DAS LEI declined to increase the amount it would pay Ms R's preferred solicitors, she referred her complaint to our service. Our investigator thought the relevant terms and conditions for Ms R's claim, based on when the event that gave rise to the claim occurred, didn't include the £100 per hour limit, and so DAS LEI should pay £250 per hour.

DAS LEI didn't agree, and asked for an ombudsman's 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 precise details of Ms R's claims against her former employer aren't directly relevant to my decision, but I do think a brief summary of some of the salient points is helpful to provide context here.

Ms R had self-funded her original claim against the employer until 2019. Her claim included allegations of victimisation, harassment and discrimination. She'd approached DAS LEI in 2019 following appeals against various previous judgements of an employment tribunal and appeal tribunal. The claim was accepted by DAS LEI and the matter is ongoing. The actions which resulted in Ms R's claim had occurred before, and during, a period of maternity leave.

Ms R was made redundant in 2020. Her claim is that, over a 2 year period starting in early 2018, she was subjected to unreasonable behaviour from her employer, who removed her responsibilities and changed reporting structures. She said these actions led to her being made redundant when the area she worked in was transferred to a new employer, and she was informed there was no role for her with either the new or original employer.

DAS LEI had originally said the second claim was a continuation of the first claim, but now seems to accept that they should be considered separately. The two claims should have two distinct indemnity limits applied. It's noted an employment tribunal considered the unfair dismissal claim should be held separately from the first claim. As that point is now settled, I won't go into this further. All of my conclusions are based on the premise that there are two, distinct claims, albeit both relate to claims of unreasonable and discriminatory behaviour by Ms R's employer.

The question I need to address in this decision, therefore, is on what date did the event that gives rise to the second claim occur. This is relevant because the policy terms and conditions say cover's provided for an event which occurs during the period of cover, with the date of occurrence being defined as *"the date of the event which may lead to a claim. If there is more than one event arising at the same time or from the same cause, the date of occurrence is the date of the first of these events. (This is the date the event happened, which may be before the date you first became aware of it."*

This definition has had a consistent meaning over the various terms and conditions which are relevant to my decision – in effect the date of occurrence is considered to the first date on which a claim could arise – not when the claim is made. That's important for determining which terms and conditions a claim should be considered under.

In order to establish which terms and conditions should be relied on when assessing this claim, I need to make a decision when the event which gives rise to the claim occurred. DAS LEI says the event that gives rise to the second claim is when Ms R was dismissed, in March 2020.

I don't agree with that assessment. Ms R's submissions to the tribunal and DAS LEI (prepared by her legal representatives) detail many incidents of inappropriate behaviour from colleagues, management and her employer's HR department, starting in February 2018. This was when her workspace was moved to a different floor of the building to the rest of her team. I haven't seen anything from DAS LEI which disputes the conclusions or reasoning outlined in these submissions.

The submissions then go on to detail a pattern of behaviour, victimisation and exclusion by Ms R's employer. I know these are disputed by the employer but for the purposes of determining when the relevant date of occurrence was, Ms R's submissions are relevant and certainly indicate that the first date an event which occurred which did lead to this claim being made – it's her position that this was the first step towards her being made redundant by her employer.

I conclude the date of occurrence for this claim to be in February 2018.

### **Putting things right**

Having established that the date of occurrence for this claim should be February 2018, it follows that the relevant terms and conditions which apply to Ms R's claim are those which were in effect at that time.

DAS LEI hasn't to date pointed to any exclusions or conditions of the policy which mean that Ms R's claim isn't covered. My assessment below is therefore based on an assumption that the claim, as currently presented, is considered to be covered by the policy.

It's accepted that DAS LEI didn't amend the policy terms and conditions to limit the amount it would pay non-panel solicitors to £100 per hour until 2019. The policy terms and conditions don't place any obligation on Ms R to use panel solicitors.

Ms R's preferred solicitors are proposing to charge £250 (plus VAT) per hour. Given the complexities of Ms R's claim, that figure seems to be reasonable and in line with accepted rates for this type of work, and I note that DAS LEI hasn't suggested the amount being charged is excessive – their position has simply been that the policy only covers for a rate of £100 per hour.

So to put things right here, DAS LEI needs to consider the claim in accordance with the terms and conditions of the policy which were in effect in February 2018. It should pay Ms R's preferred solicitors a rate of £250 (plus VAT) per hour.

### **My final decision**

It's my final decision to uphold this complaint. In order to put things right DAS Legal Expenses Insurance Company Limited must assess Ms R's claim in accordance with the policy terms and conditions which were in effect in February 2018. It should pay a rate of £250 (plus VAT) per hour to Ms R's preferred solicitors.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 4 January 2023.

Ben Williams  
**Ombudsman**