

The complaint

Mr B's complaint is about a claim he made on his DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mr B says DAS treated him unfairly.

What happened

Mr B's complaint is about a claim he made on his DAS legal expenses insurance policy for cover to defend a claim under the employment section of his policy.

DAS declined the claim because it took the view that the dispute Mr B was involved in didn't relate to a breach of his rights under his contract of employment, as required by the policy.

Mr B disagreed. After he brought his complaint to this Service, he provided an email from his own Solicitor, who'd successfully defended his claim to conclusion, setting out that the claim related to Mr B's employment contract. As a consequence, DAS agreed to reconsider the claim retrospectively.

Mr B also complains about the service he received from DAS. He said that DAS delayed considerably in providing an answer on his claim and that he had to chase them on several occasions and didn't receive a meaningful response for over a year. After Mr B's complaint was brought to this Service, DAS offered to pay £450 to compensate him for the poor service he'd received.

Overall Mr B wants DAS to pay the legal costs he incurred in defending the claim against him and at least £1,000 in compensation for the poor service he received, including delays.

Our investigator assessed Mr B's complaint. He said that based on the information Mr B had provided to DAS when he made his claim, it was reasonable for DAS to conclude the matter wasn't covered under the policy. But he also thought that DAS should have offered him compensation for the poor service he received before the complaint was brought to us and that the £450 it later offered was adequate. As such he said the complaint should be upheld for this reason. Mr B doesn't agree. He also wants the matter to be determined as a whole after DAS have made their claims decision. As such the matter has been passed to me to decide.

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 B's complaint for broadly the same reasons as the investigator. I'll explain why.

The starting point is the policy terms. In this case Mr B's policy under the Employment Disputes section says:

“The Company will negotiate for the Insured Person’s legal rights in a dispute arising from their contract of employment”

I’ve reviewed this in relation to the information Mr B gave to DAS about his claim when he made it. Based on what I’ve seen, I’m not satisfied that it was clear this was a claim that would fall within negotiating legal rights in a dispute arising out of Mr B’s contract of employment. I say so because the claim, as it was initially made, arose out of the other party’s plan to develop a business to the point of it being saleable. This involved several business Partners, of which Mr B was one. There’s reference to Mr B being allowed to take the lead on discussions to advance the business being saleable and that this was the contract entered into, which Mr B says represented his contract of employment. The other party in the dispute was alleging that Mr B had received secret profits and that was the claim he was seeking cover to defend.

Whilst I appreciate that Mr B felt the agreement he’d entered into with the other party was a contract of employment, and that he told DAS that, I don’t think he provided enough information to support that was the case. The agreement itself doesn’t appear to fall into a traditional contract of employment and there’s nothing that makes me think DAS were wrong to reject the claim on the basis that there wasn’t a situation in which Mr B’s legal rights needed to be negotiated under one.

It wasn’t until Mr B made a complaint to this Service that he provided an email from his Solicitor setting out that they acted for him in relation to a dispute concerning his contract of employment. When the investigator provided this information to DAS, it agreed- as I would expect it to- reconsider the claim again. Until that point however, I don’t think DAS were wrong to decline the claim as it did. I appreciate Mr B thinks this is wrong but given the matter didn’t appear to fall within cover, it’s reasonable that DAS would require something more than Mr B’s own opinion to reconsider things. In this case something from his Solicitor is what was needed as an initial starting point. DAS may well require more information beyond that including a legal analysis on whether the agreement amounts to a contract of employment and that the claim was one for negotiating Mr B’s legal rights under it- but that’s up to DAS to consider as appropriate.

I know Mr B wants this Service to decide the outcome of his claim once that decision has been made by DAS. As the investigator explained, we can’t do that now. We have a specific statutory remit which requires financial businesses to be given at least 8 weeks in which to reply to a complaint after it’s been made before we can look into things. Although Mr B’s complaint relates to the same claim, we can only decide the complaint as it’s been brought to us after the relevant referral time has expired. As such I’m only able to determine Mr B’s complaint on this basis. If he remains unhappy with DAS’s stance after it’s reassessed his claim, he can refer the matter to us again as a fresh complaint.

Turning now to the level of Service Mr B has complained about, I agree that there were delays in his claim being dealt with that shouldn’t have occurred. DAS have also accepted that was the case since this complaint was brought to us. Therefore, the issue that remains for me to determine is whether the level of compensation offered is adequate. Mr B says the level should be at least £1,000, if not more. I don’t agree. At present, I don’t know whether his claim is one that is capable of cover. But for the reasons I’ve mentioned, I don’t think Mr B provided DAS with enough information to determine this anyway- particularly in the form of something from his Solicitor- setting out why the claim should be covered. So, I can’t say that DAS’s delay in handling things would’ve made a difference to the action he took, namely, to defend the claim himself. As such I can’t say that the impact of DAS’ actions was so considerable that he should be compensated for anything beyond poor claims handling at this point. DAS’s offer of £450 is intended to compensate him for this and given the specific complaint points Mr B has made- poor claims handling and delays- I think the amount

offered is adequate and in line with what we'd award in these circumstances. For that reason, I don't intend to award any more.

Putting things right

DAS should pay Mr B £450 in recognition of the way it handled his claim in recognition of the delay in dealing with it.

My final decision

I uphold Mr B's complaint and direct DAS Legal Expenses Insurance Company Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 October 2023.

Lale Hussein-Venn
Ombudsman