

The complaint

Mrs M's complaint is about a claim she made on her DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mrs M says DAS treated her unfairly.

Mrs M's complaint is brought by her representative in this complaint, but I shall refer to all submissions as being her own for ease of reference.

What happened

Mrs M made a claim on her DAS legal expenses insurance policy to pursue a matter relating to damage to her property.

DAS initially said they'd need to wait for the outcome of her liability insurer's review of the damage complained of before they could decide whether her policy would engage. The liability insurer concluded that they couldn't assist because the damage was less than the policy excess.

Following this DAS took on the claim. They appointed their panel firm to consider it accordingly. Mrs M made a complaint about the level of service she'd been offered by DAS up to that point, but DAS denied they'd done anything wrong.

Seven months after the panel firm were appointed, Mrs M asked DAS if she could appoint her own choice of Solicitors because the panel firm told her they didn't have capacity to deal with her claim.

DAS contacted the panel firm to clarify the position with Mrs M's claim. They told DAS it had reasonable prospects of success, as required by the policy, but the matter wasn't at the point of proceedings being necessary. As such DAS took the view that Mrs M wasn't entitled to her own choice of Solicitor at this stage.

There was then a delay in anything progressing after a second panel firm was appointed. Some of the delay was down to Mrs M refusing to provide her consent for the first panel firm to transfer her file of papers. The matter was later resolved, and the file was transferred to the second panel firm two weeks after Mrs M's initial request to instruct her own Solicitors.

Mrs M then contacted DAS and raised a complaint about their decision not to allow her to choose her own Solicitor. She also said she'd not heard from the second panel firm and said she'd been asked to pay £630 for an expert report requested by the first panel firm, which she was seeking reimbursement for.

In reply DAS said they weren't able to progress things with the second panel firm, so at that point offered Mrs M her own choice of Solicitor. The Solicitor that Mrs M wanted to appoint offered a fee estimate of between £7,500 and £10,000 to review her papers and complete a claims management report for DAS which didn't accord with their standard terms of appointment. Nevertheless, DAS tried to agree terms with them.

In the meantime, the second panel firm came back with a review of Mrs M's claim. They said the damage exceeded Mrs M's liability insurance excess based on expert evidence. DAS asked them to obtain quotations for repair so they could refer the matter back to Mrs M's buildings insurers. DAS also authorised the fees of the expert providing a full survey of the damage. Mrs M then consented to the second panel firm acting for her and says she's happy with the progress that Solicitor has made on her claim.

But Mrs M remained unhappy with the handling of her claim overall by DAS. She felt there were unreasonable delays in her matter, that DAS hadn't returned her calls and that she'd paid for the cost of an expert's report which she said DAS had yet to reimburse her for. DAS accepted that there had been delays and that they'd failed to call Mrs M back. As such they offered her £400 for this. They didn't however offer to reimburse her for the expert report she'd paid for because this wasn't something they'd agreed to, and it didn't in any even take Mrs M any further forward in resolving her claim.

Our investigator considered Mrs M's complaint and concluded it should be upheld. He thought that the compensation DAS had offered should be increased to £750 for the delays and failures to call Mrs M back when they said they would. But he didn't uphold the remaining aspects of Mrs M's complaint. DAS have agreed to this, but Mrs M hasn't. As such the matter has been referred to me to determine.

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 Mrs M's complaint in part for broadly the same reasons as the investigator. This is why.

Mrs M has made a number of detailed submissions in respect of her complaints about DAS. I won't be citing these individually. Rather I'll stick to the main points she's unhappy with, which is reflective of the informal nature of the Financial Ombudsman Service.

DAS have accepted that they caused unnecessary delays and failed to return Mrs M's calls when handling her claim. So, I don't need to determine whether DAS did anything wrong in respect of these issues. Rather, I'm considering the impact of their actions on Mrs M. Like the investigator, I agree that this payment doesn't go far enough. Given Mrs M's age, and the level of stress and inconvenience the underlying dispute was causing her, I'd have expected DAS to keep a closer eye on her matter to ensure everything was progressing as it should have.

I understand that Mrs M's health has deteriorated since she made her claim to DAS. Whilst I can't say this was due to DAS' actions- there was after all an underlying dispute she was dealing with, and I haven't seen anything that explains her medical condition and whether it was likely to worsen anyway- I think things would've been difficult for her. As such DAS should've been sensitive to this and done as much as possible to ensure their actions didn't cause her any unnecessary distress. Because of this, I think an award of £750 is appropriate to compensate her for the delays DAS caused and their failure to return her calls as requested. I know Mrs M doesn't feel this is enough, but my role isn't to punish DAS for their actions, but rather to compensate her for the impact they had on her in accordance with our award and the scales we apply to them. I'm satisfied this amount accords with that. Since the investigator issued his view, I understand DAS have agreed to pay this amount. I will be making a direction for them to pay this in this decision in any event.

Mrs M is unhappy with the actions of both panel firms. She feels DAS should be responsible

for those and that their fees shouldn't eat into her indemnity limit. I appreciate what she says but DAS aren't responsible for the actions of the Solicitors. They are independent professionals with their own codes of conduct and their own regulator. So, whilst they were instructed by DAS to consider her claim, they are separate entities, and it wouldn't be fair for DAS to be responsible for their fees outside of the indemnity limit applicable to the policy. Mrs M can refer her complaints to those firms directly, or the Legal Ombudsman (as I understand she has) if she remains dissatisfied.

I can however hold DAS responsible for the actions they took once she made them aware of her dissatisfaction with both panel firms. Other than the actions I've noted above (delays and failing to call her back) I'm satisfied that DAS did follow up with the panel firms when Mrs M complained to them. In the case of the second panel firm's appointment, DAS even offered to fund Mrs M's own choice of Solicitors to help move things along, when they weren't obliged to do so.

I appreciate that Mrs M isn't happy with the fact that DAS didn't appoint her own choice of Solicitor when she initially asked them to, but they didn't have to. I've been provided with a copy of Mrs W's policy. It says:

"Your legal representation

- On receiving a claim, if legal representation is necessary, we will appoint a preferred law firm as your appointed representative to deal with your claim. They will try to settle your claim by negotiation without having to go to court.*
- If the appointed preferred law firm cannot negotiate settlement of your claim and it is necessary to go to court and legal proceedings are issued or there is a conflict of interest, then you may choose a law firm to act as the appointed representative. If we accept your claim, we will choose a preferred law firm to try to settle the matter without having to go to court."*

It's common for legal expenses insurance policies to contain such a term and it's consistent with the relevant laws applicable to freedom of choice. Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 says:

"where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)"

The phrase *"any inquiry or proceedings"* means when it becomes necessary to issue court proceedings, or proceedings in another formal place of inquiry, such as a tribunal. Mrs M's claim wasn't litigated. That means proceedings were never issued. And there isn't a conflict of interest that we would consider applies here. For the avoidance of doubt, Mrs M being unhappy with either of the panel firms wouldn't amount to a conflict of interest. Because of this, the freedom to choose her own Solicitor doesn't apply. So, I don't think DAS needed to appoint them when she asked for this.

Mrs M is unhappy that DAS haven't reimbursed her for the cost of the report she funded from the outset. She said the report was obtained whilst the first panel firm was instructed. From what I've seen, the report was dated 15 March 2022, but the panel firm were only appointed 11 days before that. The instruction of an expert and delivery of a report usually take more than 11 days, which suggests the expert was appointed by Mrs M before the panel firm were appointed. That might not be correct, but I simply don't have enough evidence before me to decide why the report was commissioned and whether this was on the first panel firm's direction or not. What I can tell however is that DAS didn't authorise these costs and as such they've said they can't agree to them. That accords with their policy

terms which require them to have agreed to costs before they're incurred. Because of this, I don't think DAS are obliged to reimburse Mrs M for this amount. As I understand it, Mrs M is pursuing a complaint against the first panel firm in respect of this issue. From what she's said, she feels there was some indication the cost of this report *could* be reimbursed by DAS. Whether or not that's the case, I can't say that DAS were obliged to fund these costs given they didn't agree to them in the first instance.

Putting things right

DAS should pay Mrs M £750 in compensation for the distress and inconvenience caused to her as a result of delays and failing to return her calls. This amount is inclusive of the offer made by DAS to pay Mrs M £400 in compensation.

My final decision

For the reasons set out above, I uphold Mrs M's complaint against DAS Legal Expenses Insurance Company Limited and direct them to put things right as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 November 2023.

Lale Hussein-Venn
Ombudsman