

## **The complaint**

Mr and Mrs S' complaint is about the handling of a claim they made on their DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mr and Mrs S say DAS treated them unfairly.

In this decision all references to DAS include their claims handlers.

## **What happened**

This particular complaint is about Mr and Mrs S' dissatisfaction with how DAS handled a claim they made on their legal expenses insurance policy, following another Ombudsman's decision dated 13 February 2023. That decision was about the level of service Mr and Mrs S received from DAS on the same claim from July to September 2021.

Both parties are familiar with the details of the matters Mr and Mrs S have expressed dissatisfaction with, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision. In doing so I will summarise the issues I will be addressing under the headings in my findings below.

Our investigator considered Mr and Mrs S' complaint and thought it shouldn't be upheld. Mr and Mrs S don't agree so the matter has been passed 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 don't uphold Mr and Mrs S' complaint. Before explaining why, I want to make it clear that whilst I haven't addressed everything Mr and Mrs S have said, I have considered it. That's not intended to be disrespectful, but rather represents the informal nature of the Financial Ombudsman Service. In doing so, I've concentrated on the matters that form the crux of Mr and Mrs S' complaint against DAS.

Mr and Mrs S will see that I haven't addressed some of the issues they've raised after the investigator issued her view, either because they didn't form part of their current complaint against DAS as initially presented to us and them, or because they form part of events that took place before September 2021. If Mr and Mrs S wish to make additional complaints that weren't brought to us as part of the current one, then they will need to raise this with DAS in the first instance before we can consider them further.

### *Changing firm of Solicitors*

Mr and Mrs S were pursuing two claims- one against their neighbour and another against a surveyor. DAS had appointed a panel firm of Solicitors to act for them in respect of those claims (firm A).

Following a history of dissatisfaction about firm A, Mr and Mrs S asked for DAS to appoint

someone else to act for them. They say DAS made it unnecessarily difficult for them to achieve this. In particular they say that they were close to appointing another firm of non-panel Solicitors (firm B) suggested to them by DAS, but DAS didn't agree to the rates proposed and by the time agreement could be reached, firm B said they were no longer prepared to act for Mr and Mrs S.

The starting point here is the policy terms. They say:

*"If you choose a law firm as your appointed representative who is not a preferred law firm, we will give your choice of law firm the opportunity to act on the same terms as a preferred law firm. However, if they refuse to act on this basis, the most we will pay is the amount we would have paid if they had agreed to the DAS Standard Terms of Appointment. The amount we will pay a law firm (where acting as the appointed representative) is currently £100 per hour".*

In January 2023, DAS supplied Mr and Mrs S with details of its panel firms of Solicitors to consider along with its standard terms of appointment. They also explained that if Mr and Mrs S wanted to use a Solicitor of their own choice, their appointment would need to accord with the term I've quoted above. That meant that Mr and Mrs S would need to pay a top up on any fees DAS were not prepared to agree to. Notwithstanding that DAS proceeded to enter into negotiations with firm B at Mr and Mrs S' request about what they were prepared to pay in respect of their fees. DAS said they'd offer £160 per hour plus VAT whilst firm B said they wanted £200 per hour plus VAT. A phone note I've seen records that firm B later changed their position to reflect the claim was complex and therefore £300 per hour plus VAT was more appropriate.

In principle, we don't consider the term I've quoted above to be unreasonable so long as it doesn't render a policyholder's freedom to choose another Solicitor meaningless. At the point in time that Mr and Mrs S were asking to change Solicitors, their claim was being litigated, so they had freedom to choose other Solicitors if they wanted to. I can see that DAS explored both the appointment of another panel firm by supplying a list of those available and a non-panel firm by entering into negotiations with firm B. In this case DAS agreed to pay firm B more than the amount set out within their policy terms, so I don't think I can say that they did something wrong, such that they prevented the appointment of an alternative firm of Solicitors nor that their actions rendered Mr and Mrs S' freedom to choose meaningless. And they didn't for example object to any other firms of Solicitors being appointed outright, so I'm satisfied that DAS didn't obstruct Mr and Mrs S as they maintain. And the fact that firm B said they were no longer available, wasn't in my view something that DAS were responsible for.

In April 2023 I can see that DAS recommended to Mr and Mrs S that their case stay with firm A but that they would make arrangements for the file to be passed to one of their Directors. I don't think this means they insisted the case stay with this firm, but rather that they considered and identified the best option open to Mr and Mrs S at the time. That's because DAS were concerned about the time it might take a new firm of Solicitors to act for Mr and Mrs S given an impending hearing. I don't think this recommendation- at least at this point in time was unreasonable. Changing Solicitors part way through litigation would inevitably have meant that further time would be needed by a new firm to get up to speed, which in turn would have had a cost impact on Mr and Mrs S' indemnity limit. And for the reasons Mr and Mrs S have set out within their complaint form, they were already very concerned about the level of costs already incurred in respect of their claim by firm A. These costs would have been applied to their indemnity limit, if they were unsuccessful in recovering their costs from the other parties they were in dispute with. Equally, instructing Solicitors at a higher hourly rate would have meant that Mr and Mrs S' indemnity limit would have been reduced quicker than if they'd remained with the same firm or another panel Solicitor. So, I don't think DAS'

suggestion meant they'd done something wrong, particularly given Mr and Mrs S' existing concerns about the level of costs incurred.

I understand firm A have now ceased acting for Mr and Mrs S and that DAS are seeking to replace them with another panel firm. I won't be addressing any of the points Mr and Mrs S have raised in respect of this as they don't form part of this complaint.

#### *Difficulties with firm A*

I appreciate that Mr and Mrs S were unhappy with the conduct of firm A. As the investigator explained, I can't comment on this as it falls outside my remit. What I can comment on is what DAS did in response to complaints about firm A. From what I've seen, I'm satisfied that DAS raised Mr and Mrs S' concerns with the firm A each time they were brought to their attention and followed up on issues that Mr and Mrs S remained dissatisfied with. They also asked for regular updates and sought to resolve the problems Mr and Mrs S were complaining about. Because of this I can't safely say that DAS did anything wrong here.

#### *Information given about hourly rate requested by Mr and Mrs S' own choice of Solicitors*

I appreciate Mr and Mrs S have said they wanted a telephone recording of the call note I've referred to above where it's recorded that firm B told DAS the claim was complex and therefore £300 per hour plus VAT was more appropriate than the previous requests they'd made for hourly rates. Mr and Mrs S are not satisfied that the phone note necessarily captures what was said. Whilst I know they're unhappy with how DAS handled things, I'm not satisfied that there's cause for me to question the accuracy of this note. The note was recorded contemporaneously and was dated accordingly and there's nothing in the evidence I've seen that persuades me there is cause for concern that the note doesn't adequately reflect what firm B said to DAS.

To that end I'm satisfied that on balance, firm B were asking for £300 per hour plus VAT by the end of their negotiations with DAS. And even if that were not the case, I don't think this takes Mr and Mrs S' complaint any further anyway- particularly because that firm said they were no longer available to act for them irrespective of what might have been agreed in respect of hourly rates.

#### *Compensation offered for service failings*

DAS have offered Mr and Mrs S £100 for not calling them back when they should have. They attribute this to a mistake when they recorded a call back should take place. They offered Mr and Mrs S £100 for this. I think that's more than adequate in the circumstances and is more than we would usually award for that kind of failing, even taking into account the type of stress and inconvenience this would have caused Mr and Mrs S, who were already dissatisfied with the service they'd received.

I understand Mr and Mrs S have not received this amount. If they wish for this to be paid to them and it hasn't already then should contact DAS directly to request it.

### *Other matters*

Overall, I know Mr and Mrs S are unhappy with the way their indemnity limit has been administered by DAS and the way in which they've sought to direct the handling of costs. I take the view that DAS were entitled to do this. As funders of the claim, it is ultimately up to them to take decisions that will minimise their cost exposure within the parameters of the policy terms. In this case I think they did that fairly. I know this meant that Mr and Mrs S felt they weren't free to make decisions about how their claim should be run but, that wasn't ultimately a decision for them, but rather DAS who are responsible for their legal costs to date.

### **My final decision**

For the reasons set out above, I don't uphold Mr and Mrs S' complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 13 June 2024.

Lale Hussein-Venn  
**Ombudsman**