

The complaint

B's complaint follows a decision of another Ombudsman of the Financial Ombudsman Service dated 22 November 2021.

B says DAS Legal Expenses Insurance Company Limited ('DAS') caused unnecessary delays in progressing its claim and that this led to it incurring losses.

In this complaint B's complaint is brought by Mr A, but I shall refer to all submissions as being B's own for ease of reference.

What happened

On 22 November 2021 another Ombudsman at the Financial Ombudsman Service determined a complaint by B against DAS in respect of costs B was claiming in a dispute with a group of people. In that dispute B was successful in obtaining an order against the group of people to vacate a property and return it to B and another Claimant. A costs order was made by the Court accordingly.

The Ombudsman in that complaint determined that:

- B was one of two Claimants. The other Claimant was not insured under B's policy, so DAS was only liable to pay 50% of the unrecoverable reasonable legal costs applicable to the claim.
- B was only entitled to 80% of the costs of the repossession proceedings as that was in line with what the Court had ordered.
- DAS was not required to settle B's claim for costs until all enforcement and recovery options against the group of people had been exhausted and that had not happened yet.

B's present complaint is that it was forced to take enforcement action itself against the group of people as DAS didn't ensure this action occurred and that DAS caused considerable delays in furthering B's claim. B says DAS should reimburse it for the costs it had to expend in pursuing enforcement, amounting to £25,000, which was ultimately unsuccessful because the group of people were able to set aside the action against them. B also wants DAS to pay the costs previously awarded to it by the Court and to be compensated for the impact DAS' failure to properly provide assistance, when required, had on B. B has described the impact this had on its business more specifically.

Our investigator considered B's complaint and issued two views on it, both upholding it. Her latest view recommended that DAS:

- Pay B compensation of £950.
- Consider B's claim for legal expenses under the term of the policy.
- Consider B's claim for legal costs incurred following its own attempts to enforce the judgment obtained in its favour.

DAS agreed to the first two recommendations but not the third. They said that B had acted outside the scope of the policy by seeking enforcement action itself and incurring costs

without reference to them and that those costs weren't recoverable because they had not been authorised by them and they had not been incurred by an authorised representative. The investigator remained of the view that it was reasonable for DAS to cover these costs because she thought that B took these steps because DAS failed to assist it. Because of this the matter was passed to me to determine.

I issued a provisional decision in October 2024 in which I said:

"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 B's complaint, but I will be departing from the findings of the investigator in this decision and making a different award.

It's no longer in dispute that DAS caused significant delays in progressing B's claim to enforcement from 22 November 2021, which was the date of the other Ombudsman's final decision. The investigator recommended DAS pay B a total of £950 for those delays and set out the impact of them on B in her first view. DAS accepted the position. B made some further submissions in response to the investigator's view setting out that the level of compensation should be increased to take account of the financial and emotional impact DAS' delays caused it. The investigator addressed those submissions by explaining that she could only address the delays caused between 22 November 2021 and the date of DAS' final response letter in October 2023 and that she couldn't make an award for emotional distress as B is a limited liability company.

For the avoidance of doubt, I agree with all of the assertions made by the investigator in respect of the compensation she directed in her views. I think £950 adequately addresses the delays DAS caused in progressing matters properly, which amounted to a total period of 14 months. And although I appreciate the impact of enforcement not progressing as B expected on it, I can't hold DAS solely responsible for this. Some of those delays were not down to DAS but rather the Solicitors they appointed and as the investigator explained, I can't determine complaints against that firm as they do not fall within my remit. B is entitled to complain to that firm directly or to the Legal Ombudsman if it is unable to resolve things with them. In addition, I endorse the investigator's view that I can't make awards for emotional distress to B as B is a commercial entity and so isn't capable of suffering emotional distress.

The investigator also recommended DAS consider B's claim for legal expenses under the terms of the policy. These were the same expenses the other Ombudsman determined did not have to be settled by DAS in November 2021 until all enforcement and recovery options had been exhausted. DAS has now agreed to take this course of action which I endorse. I have directed them to comply with this below as it formed part of B's complaint to this Service.

I am not however in agreement with the investigator's view that DAS should consider or settle B's costs in enforcing the judgment against the group of people themselves. I say so for a number of reasons. First, although I appreciate there were significant delays on DAS' part in arranging for enforcement to take place, and that this did not in fact take place, I'm not persuaded that it was reasonable for B to go off and do this without further reference to DAS as a result. DAS' policy terms set out that it will only pay reasonable and necessary costs chargeable by a representative (as defined by the policy) on a standard basis that they have agreed to. In this case DAS didn't agree to those costs being incurred and they weren't incurred by a lawyer or other suitably qualified person appointed by DAS.

Whilst I can quite understand why B went off and pursued this alone, I would have at least

expected B to put DAS on notice of its intention to do so in advance and request that they fund B's costs of pursuing matters accordingly. B didn't refer to DAS in respect of this. The sum it incurred was not agreed by DAS, nor was it for the costs of someone appointed by DAS on a standard basis. In addition, the action B took was unsuccessful. The costs B is claiming for amount to £25,000. By denying DAS the opportunity to have any input into them in advance of their being incurred, including allowing DAS some control over how enforcement should be pursued, I think B prejudiced DAS' position. As a result, I don't think it's reasonable for it to now seek to recover these from DAS after the event. For this reason, I won't be directing DAS to pay these costs.

Putting things right

DAS should:

- *Pay B £950 for the delays it caused in handling B's claim to include the offer of payment already made;*
- *Assess and settle B's legal costs that were the subject of the other Ombudsman's decision date 22 November 2021."*

I asked both parties to provide me with anymore comments or evidence in response to my provisional findings.

Both parties have now responded. DAS has said they don't have any additional points to add whilst B has said it objects to my findings in respect of my not requiring DAS to settle its costs in enforcing the judgment against the group of people itself. B says that DAS' failure to provide it with timely legal assistance and their panel firm's lack of response left it with no option but to proceed with enforcement independently. B says that the costs it incurred could have been avoided had DAS and their panel firm provided the necessary support.

B has referred to multiple attempts to communicate with DAS and the panel firm but received no reply. B says that the ongoing delays placed it under significant financial strain and that it was forced to act at its own expense. It has asked for the full details of the panel firm and confirmation that DAS communicated with them regarding their instructions at the time. B has also indicated that it will pursue a formal complaint to the panel firm if I don't direct DAS to reimburse the enforcement costs they incurred.

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 remain of the view that B's complaint should be upheld in the way that I set out within my provisional decision.

B's main point of contention is that I haven't directed DAS to reimburse them for B's enforcement costs. The submissions B has made here are largely the same as those it made when bringing its complaint to the Financial Ombudsman Service. I addressed those more fully in my provisional findings, so I won't do so again here, save to repeat that I understand why B took the course of action it did. But in this case, I haven't seen any evidence that B put DAS on notice that it intended to take matters into its own hands given the lack of support from DAS or request funding of that action by DAS. As B took this action without DAS' knowledge or involvement, and contrary to the policy terms, I don't think it's fair for DAS to pay its costs in doing so. And for the reasons I've mentioned, B seeking these costs after unsuccessful enforcement action without DAS' involvement would prejudice DAS' position. So, I don't agree that these should be payable.

B has asked for the full details of the panel firm and confirmation that DAS communicated with them regarding their instructions at the time. B has also indicated that it will pursue a formal complaint to the panel firm if I don't direct DAS to reimburse them for their enforcement costs.

As I understand it, B has the same contact details for the panel firm that the Financial Ombudsman Service has. So, B is free to complain to them about their actions should it wish to do so. I know B has requested confirmation that DAS communicated with the panel firm to instruct them to take enforcement action on its claim. From what I've seen this did take place and the panel firm were instructed in August 2022 which B was informed about by email. B was aware of this because it initially objected to their instruction then agreed for them to proceed. As such I'm not sure why B is questioning the instruction of the panel firm now. Either way it makes no difference to the outcome of B's complaint.

Putting things right

DAS should:

- Pay B £950 for the delays it caused in handling B's claim to include the offer of payment already made.
- Assess and settle B's legal costs that were the subject of the other Ombudsman's decision date 22 November 2021.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 19 November 2024.

Lale Hussein-Venn
Ombudsman