

The complaint

Mr S is unhappy with what DAS Legal Expenses Insurance Company Limited did after he made a claim on his legal expenses insurance policy.

What happened

In June 2023 Mr S sought assistance from his policy with an employment claim after he was made redundant. After obtaining further information DAS referred the matter to panel solicitors for an assessment of its prospects of success (a requirement of the policy). Mr S raised concerns about the progress of the claim and other issues which DAS responded to in a final response dated 21 July 2023.

The following month the panel firm advised that information Mr S had provided would be passed to counsel for her to review. Mr S asked DAS if he could use a solicitor of his own. It said that could be considered once counsel's opinion had been obtained. The following month counsel said, having reviewed the further information Mr S provided, she didn't feel the issues raised were ones she could advise on. The panel firm said it had an alternative who could assist. Or it could obtain a quote from Mr S's preferred counsel.

Mr S raised concerns with DAS about the time taken and how the panel firm were dealing with his claim. And he asked again for the case to be transferred to an alternative firm. DAS said given the circumstances and the value of the claim it would agree to that firm providing an assessment of the claim. And it contacted them for details of their costs. It took time for discussion with that firm to conclude but they were appointed to carry out the assessment at the start of November (I understand that assessment was provided the following month).

In a final response to Mr S's further complaint at the end of November DAS didn't agree there had been delays in progressing the claim for which it was responsible. And while it recognised Mr S was under pressure to deal with Employment Tribunal (ET) deadlines the panel firm had provided him with advice about this and had drafted the relevant form to enable him to issue protective proceedings. It confirmed the limit of indemnity on the policy was inclusive of VAT and that the cost of the carrying out the prospects assessment formed part of that limit.

Our investigator agreed there hadn't been significant delay by DAS in dealing with the matter (and the actions of the panel firm weren't something it was responsible for). And he didn't think DAS should be responsible for legal costs Mr S incurred prior to acceptance of the claim. He didn't think it was unreasonable the policy allowed DAS to recover the cost of legal fees from the third party (and didn't agree this made the insurance pointless). And if costs DAS incurred included VAT those amounts would form part of the indemnity limit. However, he didn't think it was right the costs of the merits assessment should be deducted from that.

DAS didn't respond to his assessment. Mr S asked for an Ombudsman to review matters but didn't provide any further comments. So I need to reach a final 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 relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I'm not considering in this decision the issues DAS considered in the final response it issued on 21 July 2023. That's because the complaint doesn't appear to have been referred to us within six months of that response. What I can consider are the issues raised with and responded to by DAS in the subsequent final response it issued on 23 November 2023.

I don't think it's in dispute this claim is one Mr S's policy could potentially cover (given it includes as an insured event "*a dispute relating to your contract of employment*"). But it's a condition of cover that "*reasonable prospects (51% or more), exist for the duration of the claim*". The policy says that means "*for civil cases, the prospects that you will recover losses or damages (or obtain any other legal remedy that we have agreed to...*"

As a result I think it was right (and in line with the policy terms) DAS referred matters to the panel solicitor so that could be assessed. I appreciate there does then appear to have been a delay because the counsel the panel firm initially approached said she wasn't able to advise on all aspects of it. But the actions of the panel firm when carrying out its legal role aren't something DAS is responsible for (and aren't something we can consider either). So, while Mr S can of course raise his concerns with the panel firm, any delays here aren't something for which DAS is responsible.

However, where a policyholder raises concerns about an appointed solicitor, we do expect an insurer to take some action even if that's limited to ensuring they are aware of the concerns and respond to them. In this case I can see Mr S did ask DAS on 8 September 2023 whether an alternative panel firm could deal with his case because of its complexity. But, as counsel's opinion was still awaited at that point (and she hadn't at that stage said the claim wasn't one she could advise on), I don't think it was unreasonable of DAS to say that opinion would need to be considered before Mr S's request could be considered.

Once the position on that became clearer it did agree to consider the appointment of his preferred firm which I think was appropriate. I recognise it then took some time for that to be agreed but I think it was reasonable DAS wanted to understand the costs that firm would charge for carrying out the assessment and then progressing the case. And having reviewed the correspondence between DAS and that firm I don't think there were any delays for which it was responsible; it was proactive in requesting information and chasing that up when it wasn't received. And once agreement was reached on the terms of appointment DAS confirmed that firm could progress the merits assessment within a reasonable timeframe.

I appreciate this will nevertheless have been a difficult time for Mr S and he was under pressure to make decisions about his claim given the deadlines for ET proceedings to be lodged. However, I can see advice about this was provided to him by the panel firm (which provided a draft form for Mr S to submit if he wanted to take protective proceedings).

Given that I don't think there was more DAS could reasonably have been expected to do in relation to this matter and I don't think he lost out on the ability to take these proceedings because of anything it got wrong. And while Mr S has referenced having to get legal advice "*because DAS process failed*" the invoice he's provided is for advice prior to him being made redundant and before he made a formal claim on his policy. So even if there were failings by

DAS in handling the claim (and for the reasons I've explained I don't think that is the case) I don't see this is a cost which it would need to reimburse Mr S for.

Mr S has also referenced making significant efforts in emails and phone calls to try and move his claim forward. However, it does appear that much of that contact was to the panel firm and not to DAS (an email he sent to DAS in September 2023 refers to calls to the solicitor not being answered). That isn't something DAS would be responsible for. Nevertheless, I accept on occasion Mr S may also have not received a response from DAS within a reasonable timeframe. But, overall, I think DAS did respond appropriately to the contact he made and I don't think there's anything it needs to do to put things right here.

Turning to the other points Mr S raised I don't think it's unusual that DAS 'Terms of Appointment' effectively say they won't pay costs and expenses that could have been recovered from the other side and weren't. And given Mr S's claim remains in progress that isn't something which has impacted him at this stage in any case. Nor do I think it's unreasonable the limit of indemnity includes VAT. The terms say "*the most we will pay for all claims resulting from one or more event arising at the same time or from the same originating cause is £100,000*". So if costs for which DAS are responsible include VAT I think that would count against the indemnity limit.

But I don't think it fair costs relating to a prospects assessment should count against that limit. The policy says "*Following an insured incident we will pay an appointed representative to act on your behalf. This includes any costs and expenses incurred...*". But in carrying out the prospects assessment the appointed representative is primarily providing information so the insurer can decide whether the claim is one that meets the policy terms. I don't think that's something to which the indemnity limit should fairly apply.

Finally, I appreciate Mr S also has concerns about what DAS did following its 23 November 2023 final response. I understand it responded to some of those points in a further final response dated 2 May 2024. But, as that response was provided after this complaint was referred to us, I think it's right that if Mr S wants us to consider those points that would need to be done as part of a separate complaint. If Mr S does want to do progress that he should let our investigator know.

My final decision

I've decided to uphold this complaint in order to direct DAS Legal Expenses Insurance Company Limited to ensure costs relating to the prospects of success assessment aren't included within the calculation of Mr S's indemnity limit.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 January 2025.

James Park
Ombudsman