

## 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 mid-2022 Mr S sought assistance from DAS with a claim he wanted to make against his employer. He said he'd agreed to take early retirement but thought his employer was in breach of contract as it wouldn't provide share and stock options unless he signed a settlement agreement. He also wanted to bring a claim for constructive dismissal.

Once DAS was satisfied a dispute existed it referred the matter to a panel solicitor who obtained counsel's advice. I understand that advice said the constructive dismissal claim didn't have reasonable prospects of success (a requirement of the policy). And while the breach of contract claim did that should be pursued through the civil courts as the value of the claim was over the Employment Tribunal limit and the respondent was a business (T) which wasn't Mr S's direct employer (he had been employed by a subsidiary of T who I'll refer to as O). The panel firm said the civil claim wasn't one they were able to progress.

Mr S made a complaint about delay in progressing matters which DAS responded to in a final response in December 2022. It accepted there had been failings in its handling of the claim and awarded compensation for that. The claim was allocated to an alternative firm of panel solicitors to progress. Having reviewed matters and sought counsel's advice on prospects and jurisdiction that firm advised DAS in November 2023 the claim would need to be brought against T in the United States under the governing law of the relevant state (Delaware). DAS said the claim therefore fell outside of the territorial limits covered by Mr S's policy and it wouldn't be providing further funding for it.

Our investigator thought counsel's opinion was clear the claim should be brought against T and the law of Delaware would apply to it. And having reviewed the policy terms she thought DAS had acted correctly and fairly in withdrawing cover for it. She also thought it had been proactive in seeking updates from the panel solicitor about its progress. She didn't think DAS had done anything wrong.

Mr S didn't agree. In summary he said:

- He explained the background that had led to his claim including why he didn't feel it was necessary or appropriate for him to sign the settlement agreement with his employer. He said DAS should have accepted his claim when he first contacted it about the case.
- He said the barrister who initially gave advice about his claim had quoted case law (*Oni vs Unison*) and said the case should be heard through the civil courts And she'd agreed O and T were one and the same company. He thought the 'man in the street' would have regarded his employer as T and that was who his contact had been with.
- He didn't accept the second counsel said the case needed to be heard in the US and had said advice should be sought on next steps from a solicitor with knowledge of

Delaware state law. In any case counsel hadn't been provided with all relevant information about the case (including the previous opinion that had been issued).

- He thought this was a case involving a breach of UK employment law and queried why the panel solicitors hadn't commented on the fact his employer had failed to follow due process (for example in seeking to change his contract following his early retirement).
- And he set out concerns with how the second panel firm had handled matters (which had been supported following the complaint he made to them). He thought DAS should have ensured that firm progressed it on the basis of the legal advice and precedents that had already been provided.

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.

I appreciate Mr S strongly feels he didn't need to sign a settlement agreement with his employer and I understand his reasons. But that's an issue which relates to the underlying merits of his legal case. That's not something I can consider. Nor am I looking at the concerns Mr S has set out about the actions of the panel firm.

That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. "Carrying out a contract of insurance" is a regulated activity. But when acting in its legal capacity the panel firm aren't carrying out that regulated activity (and their actions aren't covered by any of the other activities we can consider). So concerns about the actions of the panel firm including the legal advice it provided aren't something I can consider; that firm has its own complaints process which I can see Mr S has already made use of.

What I'm looking at is whether DAS got anything wrong following the claim he made on his legal expenses insurance. But I'm not able to consider the issues DAS considered in the final response it issued on 16 December 2022. That's because the complaint wasn't referred to us within the 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 8 February 2024.

And in relation to that the relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Looking at the terms and conditions of Mr S's policy I don't think it's in dispute his claim is, in principle, one the policy could cover. The insured incidents it contains include "*a dispute relating to your contract of employment*". However, the policy says "*a dispute is deemed to have occurred once all employer's disciplinary hearings and internal grievance procedures have been completed*". And it excludes a claim relating to "*a settlement agreement while you are still employed*".

At the point Mr S first contacted DAS he was still employed and was still in discussion with his employer about the settlement agreement. So I think DAS was right to say a dispute covered by the policy hadn't arisen at that point. Once that had taken place the matter was referred to panel solicitors (and the delays which then occurred for which DAS is responsible were covered in its December 2022 final response).

The key issue is that DAS then said it would no longer provide cover for the claim after it was sent the second counsel's opinion in November 2023. And relevant here are the policy terms

which say insurance is provided on condition that “*any legal proceedings, or any other proceedings to resolve the insured incident will be dealt with by a court, or other body which we agree to, within the countries covered*”. The countries covered are defined in the policy and don’t include the United States.

I’ve reviewed counsel’s opinion to decide if DAS acted reasonably in saying the claim Mr S was seeking to bring would need to be dealt with by a court in the United States. Counsel identified Mr S’s primary position as that he was entitled to “*accelerated vesting of his shares in [T]*”. And he went on to consider where any claim against T should be brought. Having considered relevant contractual evidence in relation to that he said “*I struggle to see how the Claimant could pursue an action...in the courts of England and Wales as the Stock Unit Agreement is explicit that the agreement itself is governed by the law of Delaware*”. And he goes on to conclude “*the Claimant’s primary cause of action lies against T, and that any such claim needs to be brought in Delaware.*”

I appreciate when commenting on next steps he suggested advice should be sought from a lawyer with knowledge of contract or equivalent law in Delaware. But he was clear the case would nevertheless need to be pursued in that state. This isn’t a question as to whether Mr S’s claim is likely to be successful; counsel suggests it does have merit. But it needs to fall within the territorial limits the policy contains for legal expenses funding to be provided. And the policy terms are clear that proceedings in the United States aren’t covered. So I think DAS acted reasonably in withdrawing cover on that basis (though was also right to confirm it would pay costs that had been incurred up until that point).

Mr S says the advice from counsel went against the previous opinion that had been provided on his case. It’s not clear to me that is the case. Mr S says the initial counsel advised in September 2022 the claim should be pursued against T through the civil courts (on the basis the jurisdiction of the ET only extended to a breach of contract against his direct employer and in any event the value of his claim was in excess of the ET award limit).

I don’t think that’s disputed. The further counsel’s opinion concluded the agreements in questions were clearly with T and so that’s who the claim should be brought against. And it’s accepted matters need to be progressed through the civil courts. The question is which courts the claim needed to be pursued through. I’m not clear that’s something on which the first counsel expressed a clear opinion.

In any event matters had progressed since her advice was provided. In particular in June 2023 the respondent’s solicitors specifically raised issues of jurisdiction and said the claim needed to be pursued against T in the Delaware courts. So I think it was reasonable DAS agreed counsel’s opinion needed to be sought on whether that was the case.

Counsel did acknowledge he hadn’t had sight of the ‘UK Sub Plan 2013’ and accepted that might make reference to matters specific to employees living in the UK. But he thought more significant was the ‘Stock Unit Agreement’ as that’s what gave Mr S the right to accelerated vesting of shares. And that said the governing law was that of the State of Delaware. I think it was reasonable of DAS to place weight on this opinion (which I think is properly written and reasoned) when deciding Mr S’s claim didn’t meet the terms of his policy.

If Mr S provides further evidence or an alternative legal opinion of his own (from a lawyer of equivalent standing) which shows that isn’t the case I’d expect DAS to review matters. Similarly, if he can evidence he has an employment claim which could be pursued in the UK, then he can let DAS know about that. But I don’t think DAS acted unreasonably in deciding the claim which had been made wasn’t covered by his policy based on the evidence (in particular counsel’s opinion) that was available to it.

Finally, I appreciate it did take some time for the claim to progress following the final response DAS issued in December 2022. And the panel firm has acknowledged delays on its part. But that isn't something DAS is responsible for. I haven't seen evidence of significant delay in its handling of the claim; it appears to have responded promptly to requests the panel made for costs authorisation and was proactive in seeking updates from it. So I can't say it did anything wrong here.

### **My final decision**

I've decided not to uphold this complaint. 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**