

## The complaint

This complaint is about DAS Legal Expenses Insurance Company Limited's handling of a legal expenses claim made by Mr N. Mrs S is executor of the estate of her late father Mr N and has brought the complaint on behalf of the estate.

## What happened

In 2017, Mr N made a claim under his legal expenses policy with DAS in relation to work done by his neighbours that was causing damage to his property. Mr N wanted to pursue a claim for nuisance against his neighbour.

DAS asked one of its panel of pre-approved solicitors to assess the claim. They asked Mr N to provide a report on the property issue to support his claim. Once the solicitors reviewed the report, they agreed the claim had reasonable prospects of success, a pre-requisite of cover under the policy. DAS therefore agreed for them to act on Mr N's behalf and offered to refund the cost of the report.

Mr N sadly passed away in January 2023. The claim continued but not long afterwards the panel solicitors said there were no longer reasonable prospects of the legal claim succeeding. I understand this was following receipt of another report on the property. DAS therefore said cover for any further legal fees would be withdrawn.

Mrs S says the report contradicts the earlier report on the property and the case did still have reasonable prospects of success. She is unhappy with DAS's handling of the matter and complained. Mrs S says the solicitors had the case for several years and had not made any real progress with it and DAS is liable for the solicitors actions.

Mrs S obtained further legal advice at her own expense (£1,905) which she wants DAS to reimburse. Mrs S also wants DAS to pay the costs of the necessary repairs (£4,500) and to pay compensation for the emotional distress and detriment caused by its handling of the claim.

DAS does not accept it did anything wrong and does to agree that any payment is due to Mr N's estate.

DAS says Mr N raised a concern about delays in his claim in November 2020 and it asked the panel solicitors to respond. DAS said in its final response letter that the solicitors had written in February 2020 the solicitors said they were on the "*cusp of settlement*" and it did not hear anything further from the panel solicitors until July 2023, when they said that following advice from an expert there were no longer prospects of success. As the policy requires there to be reasonable prospects of success for the duration of the claim, it was entitled to rely on the legal opinion of the case provided by the panel solicitors and to withdraw cover.

Mrs S remained unhappy with this and so brought the complaint to us. She has made a number of points in support of her complaint. I have considered everything she has said but have summarised her main points below:

- The claim was not progressed properly and the solicitors incurred excessive costs (around £16,500) given the lack of progress on the case.
- The £16,500 claimed from his policy by the solicitors belongs to Mr N as he paid the insurance premiums and excess and complied with the terms of the policy.
- The Consumer Rights Act 2015 means DAS is responsible for this, as it had a contract with Mr N. The Act says that services must be provided with reasonable skill and care. The Consumer Duty and the Financial Conduct Authority “FCA” Principles are also relevant.
- Her father had to chase for updates and information from the solicitors repeatedly. He also asked DAS for a proper review of the matter in 2020.
- There was no effort by DAS to monitor the panel solicitors or take action to prevent failures despite the fact there were large gaps between contact from the solicitors which should have alerted them to an issue.

One of our Investigators looked into the matter. The Investigator explained that the Consumer Duty came into force in July 2023 and did not apply to Mr N's claim. She also explained we have no jurisdiction over the solicitors and how the legal case was run and can only consider the actions of DAS in relation to the insurance claim. In any case, Mrs S has made a separate complaint about the solicitors to the Legal Ombudsman.

The Investigator said that DAS had passed all relevant information on to the solicitors when necessary and contacted the solicitors in late 2020 when Mr N raised concerns about the conduct of the case. DAS was informed in February 2022 that the claim was “*on the cusp of settlement but this is taking longer than planned...*”. This email confirmed that the likelihood of settlement in the next three months was very unlikely, but that the claim still enjoyed good prospects of success at 75%.

The Investigator also noted that in May 2022, there was some correspondence between DAS and Mr N, as DAS had asked for payment of the excess, and Mr N had reiterated some concerns with the claim and the length of time it had been ongoing, but said his solicitor was drafting an instruction to another surveyor and that he was hopeful this would lead to resolution of the matter.

The Investigator said that DAS is entitled to trust the information provided by the solicitors and none of this correspondence was enough to prompt DAS to take any further action.

Mrs S did not accept the Investigator's assessment. She has made a number of points in response. Again, I have considered everything Mrs S has said but have summarised her main points below:

- DAS was aware of significant issues and concerns in November and December 2020.
- The letter regarding being on the “*cusp of settlement*” was sent to DAS in February 2020, not February 2022.
- Other than passing Mr N's concerns to the solicitors, DAS took no further action to protect his rights and satisfy its duties.
- The solicitors may be separate but Mr N dealt with both them and DAS and they are intrinsically linked, so the complaint with the Legal Ombudsman is still relevant.
- If DAS had provided a proper duty of care, it would have reduced the costs and helped fairly resolve the claim in a timely manner.
- There was no consideration of alternative solutions and DAS abandoned any audit procedures for the entire three plus years despite being told the claim was on the cusp of settlement in February 2020.
- DAS's website says that its panel solicitors are “*monitored and audited by us to make*

*sure they are providing our customers with the highest quality of service". It is not unreasonable to say any audit is necessary and this would have identified failings.*

- DAS never explained the claim stages in detail and when Mr N received the documents from the solicitors he believed his claim would be resolved in line with the stated time frames.
- She is now been time-barred from the Small Claims route against the neighbour.
- Both the panel solicitors and DAS are responsible, so it is appropriate that they share the costs equally due to failings in their own individual capacities.
- However, DAS should potentially bear the cost as if it had audited and monitored the solicitors properly it would have identified failings earlier, kept costs to a minimum and assisted the solicitors to resolve the claim in a much more cost effective and timely way.

As the Investigator was unable to resolve the complaint, it has been passed to me.

### **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.

In reaching a decision that I consider is fair and reasonable I'm required to take into account, amongst other things, relevant law and regulations.

This includes the High Level Principles for Businesses contained in the FCA Handbook. Mrs S has specifically referred to Principle 12, which says: "*A firm must act to deliver good outcomes for retail customers.*"

Mrs S has also referred to provision in the Consumer Rights Act 2015 ('CRA'), which says that "*every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.*"

As the Investigator explained the Consumer Duty is not relevant to this complaint.

I will address each of these requirements and how they affect this matter below.

Most legal expenses insurance policies work in the same way, with insurers having a panel of pre-approved solicitors. The insurers will usually have pay agreements with these pre-approved solicitor firms, which is aimed to make this more cost effective and they will have been audited and checked for their suitability to deal with certain legal issues.

We expect legal expenses insurers to take care to appoint solicitors that are suitably qualified and experienced to deal with the legal case in question, however, it has no duty to oversee how they run the case and it isn't responsible for any action or omission on the solicitor's part. Solicitors are independent professionals, subject to their own regulation. This is the case whether the solicitor is on the insurer's panel of preferred solicitors or not. Panel solicitors will have some agreements in place with insurers but it does not change that their primary duties are to the courts and their clients (in this case Mr N). The solicitors acted on behalf of Mr N as a result of a contract between them and him and were not acting as sub-contractors of DAS.

DAS's responsibility under the Consumer Rights Act is to perform its service – *i.e.* provision of insurance and agreement to indemnify legal costs for Mr N - with reasonable care and skill. It does not mean it is vicariously liable for how the solicitors perform their service under their separate agreement to act on Mr N's behalf

In addition, this service has no jurisdiction over solicitors. I have no power therefore to make any finding about the complaints Mrs S has made about how long the solicitors took to manage the case, the costs incurred or any other aspect of their handling of the legal matter.

As Mrs S is already aware, any issues about the quality of the legal representation and the service the panel solicitors provided, can be addressed to the Legal Ombudsman.

In November 2020 Mr N wrote to DAS asking for a fresh review of his claim by a suitably qualified assessor. DAS would not be able to review the legal position itself and I do not think it was obliged to get a second legal opinion at that stage. The policy provides reasonable legal costs of pursuing a valid claim and DAS was paying a solicitor to act for him. DAS's agents are experienced in handling legal expenses insurance, and some of its staff might have legal qualifications, but they have no right to assess the legal advice or legal handling of a legal case.

DAS passed Mr N's concerns to the solicitors and asked them to address them. I think that was appropriate, as Mr N's concerns were about the actions of the solicitors. Mr N wrote to DAS again in December 2020 with some further information but again I do not think it was obliged to get a second legal opinion or do anything more than pass this on to the solicitors.

In its final response letter, DAS said the solicitors had told it in February 2020 that the claim was on the "*cusp of settlement*". However, this appears to be an error. The file shows this expression was used in an email from the solicitors dated 15 February 2022. The email seems to have been sent as a result of a standard reporting requirement, as the solicitors said the case would shortly exceed 100 hours work and the case had been open for three years. They said there was still 75% chance of success but the likelihood of settlement within the next three months was unlikely.

There was some further communication with Mr N in May 2022 and he said the solicitors were instructing a surveyor.

I agree with the Investigator that DAS's actions were not unreasonable and I don't think there was anything in these communications that would have meant it should have taken any further action. It was entitled to rely on the solicitor's advice and trust they were handling the legal case in accordance with their own professional standards.

In any case, as stated, DAS has no right to interfere with the running of a legal claim. And while it will monitor and audit generally the solicitors on its panel, this does not mean it will monitor or audit the conduct of each legal claim as it is in progress.

DAS withdrew cover in 2023 based on the solicitor's advice about prospects of the legal claim. It relies on the policy term that requires any case to have reasonable prospects for the duration of the claim. This is not an uncommon term in legal expenses insurance policies and is not unreasonable.

Mrs S disputes that there were no longer reasonable prospects of the claim against the neighbour succeeding and says she got her own advice from a barrister following this. However, I have not seen any independent expert evidence that would mean the advice of the panel solicitors was incorrect and should not have been accepted as such by DAS.

As explained above, I can only address whether DAS has acted fairly and reasonably as an insurer providing indemnity for Mr N's legal costs and I think it did. There is no evidence that DAS did not act in Mr N's interests or that they caused any unnecessary or avoidable delays in his legal claim.

While Principle 12 in the FCA Handbook says "*a firm must act to deliver good outcomes for retail customers*," this does not mean that good outcomes to a legal dispute are guaranteed. And does not require DAS to act outside its terms. I do not therefore consider this means DAS was required to interfere with the solicitor's handling of the legal case, or take any other action.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr N to accept or reject my decision before 6 January 2025.

Harriet McCarthy  
**Ombudsman**