

## **The complaint**

Mr and Mrs O complain that DAS Legal Expenses Insurance Company Limited trading as DAS delayed their legal expenses insurance claim and didn't agree to pay a court fee, as a result of which they missed the deadline to issue court proceedings.

## **What happened**

Mr and Mrs O had a dispute with someone they had employed to carry out building work. They made a claim on their legal expenses insurance to cover the costs of pursuing the case.

DAS accepted the claim and appointed one of its panel firms of solicitors to act for Mr and Mrs O. In 2021 cover was withdrawn because DAS said the legal advice didn't confirm they had reasonable prospects of both winning the case and recovering any award made against the builder.

Mr and Mrs O complained to DAS and obtained their own legal advice. After reviewing this, DAS reinstated cover and agreed to appoint Mr and Mrs O's own choice of solicitor to act. It agreed terms of appointment with the solicitors.

In January 2023 the solicitors asked DAS if it would need to authorise the court fee needed to issue proceedings and DAS said this would need to be authorised. It gave authority for the fee to be paid in April. The solicitors then asked DAS to make an interim payment to cover the court fee, but DAS said it would be paid at the end of the claim.

Mr and Mrs O questioned this and there was further correspondence with them and their solicitors. DAS said it would consider making an interim payment but needed more information about the claim.

In March 2024 Mr and Mrs O said the claim was now out of time. They complained that DAS' refusal to pay the court fee had prevented them from pursuing their case.

In its response to the complaint, DAS said it couldn't reconsider matters that had been complained about in 2021 and was only reviewing the further issues that had arisen since then. DAS accepted there had been some miscommunication but said it had needed further information from the solicitors to consider paying the court fee and that had never been received. DAS paid compensation of £250 in respect of the poor communication.

Mr and Mrs O referred the complaint to this Service but our investigator didn't think it should be upheld. He said:

- It was fair for DAS not to agree the court fee initially, given the terms of appointment with the solicitors. DAS was prepared to review this, but needed information from the solicitors which it didn't receive, despite making reasonable efforts to contact them
- There was some onus on Mr and Mrs O to protect their position if there was a danger of the legal case being out of time.

Mr and Mrs O have requested an ombudsman's decision. Amongst other thing, they say:

- They entered into a legal agreement with DAS, as set out in the policy terms and conditions, which needs to be complied with.
- DAS entered into a separate contract with the solicitors, which contradicted what's in the policy terms, and so is in breach of its obligations to them.
- DAS initially agreed to pay the court fee, which should have been covered by the policy, but has failed to keep to the terms set out in the policy.

### **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 industry rules and guidance say insurers must deal with claims promptly and fairly, support a policyholder to make a claim, and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

In this decision I'm only considering events after May 2021, when cover was reinstated and DAS agreed to appoint Mr and Mrs O's choice of solicitors. The crux of the matter is whether it was reasonable for DAS to wait for the further information requested from the solicitors before agreeing to pay court fee and that's what I have focused on.

The policy terms say cover will be provided as long as "*...in civil claims it is always more likely than not that an insured person will recover damages (or obtain any other legal remedy which we have agreed to)...*"

Legal expenses usually have a term like this; cover is only provided where a claim is likely to be successful – and that means not just obtaining judgment, but being able to enforce that judgment and recover damages. It wouldn't be reasonable to expect an insurer to incur the costs of pursuing a case where there's little prospect of recovering anything from the other party.

The policy terms don't set out details of how or when costs will be paid but they do say solicitors will be appointed according to DAS' standard terms of appointment. Mr O was told his solicitors would need to agree the terms of appointment and that costs would be paid at the end of the claim.

The solicitors signed the terms of appointment in July 2021; DAS confirmed in August they were appointed to act. While the policy sets out the terms of the insurance between the policyholder and DAS, terms of appointment need to be agreed with the solicitors to confirm the arrangements with them.

The policy covers costs and disbursements, including the court fee, but that doesn't necessarily mean they will be paid as they are incurred – costs are paid at the end of the claim. That's set out in the terms of appointment and is in line with standard industry practice. So DAS wasn't obliged to pay the court fee as an interim payment, but it did agree to consider this.

The solicitors confirmed in a letter dated 7 July 2021 there were high prospects of success (significantly above 50%), as the defendant had admitted not completing the contract. But they didn't confirm the prospects of recovery. They advised it wasn't certain whether the contract was with the defendant personally or his limited company, and were unable to advise fully on recoverability at that stage; it might be necessary to issue proceedings against both.

Mr O has provided evidence that he says shows they always intended to pursue both the individual and his limited company. However, it was reasonable for DAS to seek confirmation from the solicitors of the position and how likely it was that any damages awarded by the court could be recovered.

Prospects of success and recovery will always be kept under review, and it's standard practice to review them before proceedings are issued – this is a key stage in any claim and leads to costs being incurred. So it was reasonable for DAS to seek further comments from the solicitors about this before agreeing to pay the court fee.

There were times where the solicitors and DAS had failed to contact each other, but the solicitors knew what was required and ultimately it was for them to provide the information. Without this, it was reasonable for DAS not to make an interim payment (which it wasn't obliged to do) where there was no confirmation the claim had prospects of recovery, as required by the policy terms.

Mr and Mrs O say they ended up being unable to issue court proceedings by the deadline, so lost the opportunity to pursue the case. I appreciate that must have been very frustrating for them, but there was some onus on them to protect their position. In the circumstances, I don't consider DAS was responsible for the fact proceedings were not issued in time.

### **My final decision**

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr O to accept or reject my decision before 3 February 2025.

Peter Whiteley  
**Ombudsman**