

complaint

Mr K has complained to us about the way DAS Legal Expenses Insurance Company Limited ('DAS') has handled his legal claim.

background

Mr K and his family were involved in a car accident in 2009 in which they suffered personal injuries. The third party driver couldn't be traced. Mr K tried to make a claim under his motor insurance policy but the insurer withdrew cover because it had some concerns about the claim. So Mr K contacted DAS to help him make a legal claim against the insurer and the other driver.

DAS instructed solicitors to deal with Mr K's claim. In late 2010 the solicitor DAS had instructed told DAS that there were no reasonable prospects of its succeeding. However, in early 2011 DAS agreed to pass the claim to another firm of solicitors. When this firm reviewed Mr K's claim it said Mr K's claim had a less than a 51% chance of succeeding at court. The solicitor then withdrew from the claim but Mr K asked DAS to reinstate the solicitor, which it agreed to do. But the solicitor later withdrew again. Mr K was unhappy about this.

DAS asked a barrister to look at Mr K's claim. The barrister also concluded that Mr K's claim had poor prospects of succeeding if the claim went to trial. The barrister also said that there were aspects of Mr K's claim that meant it would be unlikely to succeed at a trial. There was also a risk of an adverse finding against Mr K and possibly other family members.

Mr K believes that the solicitor shouldn't have withdrawn from the claim. He also feels that he was forced into using a panel solicitor rather than one of his choosing who he says thought the claim had better prospects. Similarly, he says he wasn't able to choose the barrister he wanted to use in the claim. Mr K also feels that DAS ought to have provided him with the support to investigate his claim further to improve its chances of succeeding.

Lastly, Mr K has complained about a number of mistakes DAS made in dealing with his claim.

The claim ended when Mr K and his family accepted an offer of settlement.

Our adjudicator didn't think that DAS had done anything wrong in its handling of Mr K's claim so wasn't able to uphold his complaint. Mr K disagreed with our adjudicator's finding and so his complaint has been passed to me for a final decision.

Before writing this decision, I spoke to Mr K on the telephone to discuss his complaint. Mr K also helpfully highlighted for me certain aspects of the claim and flagged some written communications and call recordings.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've seen that early in 2011 DAS told Mr K that the solicitors it asked to represent him in his claim would need to be able to say that his claim has a reasonable chance of succeeding –

that is, a likelihood of 51% or more. DAS also told Mr K that if at any time the prospects of succeeding dropped lower than 51%, the solicitors must tell DAS so that it can reassess the cover.

From what I've seen, two of the firms of solicitors that looked at Mr K's claim thought it didn't have reasonable prospects of success. For the second of these, their recommendation to DAS not to continue funding was also supported by a number of opinions on liability provided by barrister. The barrister's final opinion came after she'd looked at the medical records of Mr K and the family members who were involved in the accident.

I've also seen that Mr K was advised by the solicitors and the barrister to accept an offer in settlement from the defendants. This meant he could withdraw his claim without any risk on costs or of an adverse finding against him if the claim went to trial.

I've also noticed that DAS agreed to instruct the barrister to try to address Mr K's concerns about the solicitor's view that his claim had poor prospects of success.

When Mr K told DAS he wasn't happy about the way the solicitor was dealing with his claim, it told him that he could make a formal complaint about them. So it seems to me that DAS was taking steps to respond to Mr K's concerns. This suggests to me that it was acting fairly and reasonably and in accordance with the policy terms.

I've also taken into account that DAS made a few mistakes in dealing with the claim. This included the important question of whether Mr K had cover to bring his claim. But it soon discovered its error and changed its position. So I don't think this had a negative impact on Mr K's being able to bring his claim.

Mr K also had concerns about the way DAS organised its file and in particular that it set up a file for Mr K's wife without her consent. I've looked at this aspect but I don't think DAS did anything wrong in deciding to organise its files in a particular way.

I've also seen that Mr K has made a generalised complaint about how DAS and other legal expenses organisations operate. He's also questioned the extent to which solicitors instructed by DAS can be relied upon to do their job properly.

In looking at Mr K's complaint, it isn't my role to make findings about how the insurance industry operates, or to question the processes used by DAS. Rather, my role is to look at whether DAS acted fairly and reasonably in dealing with Mr K's claim, and in accordance with the policy terms, so as not to have put Mr K at a disadvantage.

Overall, based on everything I've seen about Mr K's claim, I don't think that DAS has done anything wrong. I think it's acted fairly and reasonably in appointing solicitors to deal with Mr K's complaint and in accepting the recommendations that firm provided, as well as the views of the barrister. I also think that it has acted fairly and reasonably in the way it's handled Mr K's claim and in trying to look at all his concerns.

I know that my decision will come as a disappointment to Mr K. However, I am grateful for all the time and effort he has taken in explaining his claim to me and my colleagues at the Financial Ombudsman Service.

my final decision

For the reasons I've given above, I won't be upholding Mr K's complaint against DAS Legal Expenses Insurance Company Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 November 2015.

Michael Goldberg
ombudsman