

Legal Costs Insurance

The recent case of **Pine v DAS Legal Expenses Insurance Company Ltd** considered, not for the first time, the issue of an individual's (or company's) right to retain their own solicitor under a legal expenses insurance policy.

Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 states:-

- Where under a legal expenses insurance contract recourse is to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any enquiry or proceedings the insured shall be free to choose that lawyer (or other person).
- The insured shall also be free to choose a lawyer (or other person having such qualifications as may be necessary) to serve his interests whenever a conflict of interest arises.
- The above rights shall be expressly recognised in the policy.

Notwithstanding the terms of the regulations, disputes frequently arise when insurance companies insist on appointing solicitors from their approved panel rather than the insured's chosen solicitor. Insurance companies generally interpret Regulation 6 as meaning that the insured has a right to choose his lawyer from the moment proceedings are issued by which point, if previously advice has been provided by the insurer, the individual may feel concerned about changing lawyers mid-stream. Further some insurers require policy holders to meet the new solicitor's costs for updating themselves with the work done by a previous firm.

However, in the **Pine v DAS** case the High Court made clear that, other than in exceptional circumstances (which were not established in the case), the insurance company was required to indemnify the policy holder for the reasonable costs of the lawyer she wished to act for her.

Many of the organisations that we support take the view that legal expenses insurance is a sensible precaution against the unfortunate event of an employment claim arising. However they frequently cross swords with their insurers over the issue of continuing to instruct their regular advisers rather than a solicitor appointed by the insurance company. If organisations find themselves in this position both Regulation 6 and this recent case provide support.

Pine v DAS Legal Expenses Insurance Company Limited [2011] EWHC 658

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