

The complaint

Mrs K complains that DAS Legal Expenses Insurance Company Limited is responsible for poor service and damage in connection with her home emergency insurance policy.

Where I refer to DAS, I include employees, contractors and others insofar as I hold DAS responsible for their acts or omissions.

What happened

Mrs K had a home emergency insurance policy under which DAS was responsible for dealing with claims.

Mrs K had some health and mobility issues. Her house has a lower ground floor and a raised ground floor, with a small lobby. All of that has matching wood flooring. In the small lobby, there is a drainage inspection chamber with a lid, covered by the wood flooring.

On 18 November 2020, Mrs K noticed a leak of water from an upstairs bathroom into the sitting room below. She contacted DAS to ask for help.

DAS made several visits. It replaced a waste trap. But Mrs K still had a problem. On 2 December 2020, DAS sent a workman who said the drain wasn't blocked but needed cleaning (for which Mrs K says he asked £180.00). Mrs K didn't agree.

On 16 December 2020, Mrs K got a company to do a CCTV drain survey at her own cost. This showed that the drain was blocked. DAS later reimbursed Mrs K.

On 19 December 2020, DAS lifted the lid of the inspection chamber. Mrs K complained to DAS about the damage to the surrounding flooring.

By a final response dated 8 January 2021, DAS offered compensation of £125.00 for delays and breakdown in communication.

By a final response dated 10 February 2021, DAS apologised for a further lack of communication. It said it was paying Mrs K the amount of £125.00, plus £290.00 to reimburse Mrs K for invoices she'd paid and £150.00 further compensation.

In March 2021, Mrs K got a quote from a flooring company. Mrs K brought her complaint to us in late April 2021.

our investigator's opinion

Our investigator recommended that the complaint should be upheld in part. He didn't think that DAS's offer was enough given Mrs K's vulnerabilities and being without accessible bathroom facilities for around a month. He thought that the DAS plumber didn't apply due care and attention and he used incorrect tools to remove the manhole cover.

The investigator recommended that DAS should:

1. pay Mrs K a further £600.00; and
2. make arrangements to repair the floor and to cover the cost of making good the damage caused by the plumber using incorrect tools.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mrs K and to DAS on 21 January 2022. I summarise my findings:

Without evidence of an alternative and better way of lifting the cover, I wasn't persuaded that the DAS engineer was careless and did unnecessary damage.

And I had to keep in mind that the policy excluded damage caused by gaining access.

So – unlike the investigator – I wasn't minded to find it fair and reasonable to direct DAS to repair the damage (or to pay for the repair of the damage).

DAS's final responses acknowledged some shortcomings. And I found that DAS didn't respond quickly enough to the drain blockage. Also, DAS didn't communicate with Mrs K as well as it should've done.

She was finding it difficult to use the stairs to get to the alternative facilities in her home. At times, she felt that DAS was ignoring her although it knew of her issues. And the DAS file noted that Mrs K had become tearful.

Subject to any further information from Mrs K or from DAS, my provisional decision was to uphold this complaint in part. I intended to direct DAS Legal Expenses Insurance Company Limited to pay Mrs K – in addition to its previous payments - a further £600.00 for distress and inconvenience.

DAS accepted the provisional decision. It says, in summary, that:

- Faced with an emergency, the engineer had to use the tools he had available.
- Regrettably whilst this may have caused minor damage, DAS cannot be held responsible for damage which was caused carrying out emergency assistance.

Mrs K disagreed with the provisional decision. She says, in summary, that:

- The lower ground floor covered in the same wood represents an approximate area of 90 square metres.
- The drain cover has 4 holes meant for lifting of the cover.
- About six years ago and about three years ago, there were two prior occasions when workmen had to lift the drain cover. On both occasions the engineer lifted the cover by using appropriate lifting keys. They did not damage the floor.
- Clause 11 excludes "*Damage caused where it is necessary to gain access to carry out repairs*". The insurer should not be allowed to refer to clause 11 as an excuse for

not exercising care it is obliged to exercise by law.

- The damage clause in the policy refers to the damage caused by trace and access, where the source of a leak is not identifiable.
- In relation to the leak, the DAS workman had asked her permission to open up her drawing room ceiling in order to establish the source of leak. Even though he did a very clumsy job, she accepted the damage done to the ceiling and paid for the repair to the ceiling to be done.
- The drain had no leak and no need for trace and access.
- As it did with the ceiling, DAS should've warned her about damage to the flooring or asked her permission.
- The drain engineer used an inappropriate tool to lift the cover.
- If he had been more careful and not in such a hurry, he could have protected the surrounding wood.
- There are definitely better, and more appropriate and industry acceptable ways of lifting the cover. In order to establish this she reviewed various drain engineer websites and spoke to a couple. They all assured her that using the correct lifting key or if necessary, special lifting tools are the right and professional way. They also confirmed that they would not use a crowbar or anything similar to force the opening. She emailed the image of the drain to one of the companies, who responded that they would use appropriate lifting keys and if necessary a lifting tool.
- With the slightest amount of care and professionalism, access could and should have been made without causing the damage to her floor.

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.

Mrs K has said that the flooring was a few years old. From what she has said, Mrs K had a loose piece of matching wood flooring to fit over the cover to the inspection chamber.

She has told us that other workmen had been able to lift the cover in order to gain access to the inspection chamber without causing damage.

The policy terms excluded the following:

“damage caused where it is necessary to gain access to carry out repairs”

I don't consider that to be an unusual exclusion. I've seen similar exclusions in many other home emergency insurance policies. I don't share Mrs K's view that the exclusion applies only to tracing and accessing hidden leaks. I consider it clear that the exclusion applies to repairs including unblocking a drain.

From mid-November 2020, Mrs K was recovering from an operation. DAS took several visits to fix the leak from the upstairs bathroom. In the meantime, Mrs K found it difficult to use stairs to get to other bathroom facilities in her home.

After DAS fixed a waste trap upstairs, there was still a problem with drainage and foul smells. And the DAS visit in early December left Mrs K having to pay another company to do a CCTV survey to prove that the drain was blocked.

Before the DAS visit on 19 December 2020, Mrs K removed the loose piece of floor covering. But it was still necessary for the DAS engineer to lift the cover from the inspection chamber in order to gain access to unblock the drain.

The photographs show that the cover had four holes. From her recent emails with a drainage company, I accept that the holes were for inserting a tool to lift the cover.

After the investigator's opinion, Mrs K sent us a photograph that appears to show the DAS engineer on 19 December 2020 levering the edge of the cover using a couple of different tools. Mrs K has described one of them as a crowbar. But it looks to me as though it has a grip handle, so I consider that it's best described as a lever.

I've also seen photographs of damage to the edge of the surrounding floor. And the March 2021 quote was for a total of £3,254.00 excluding the supply of floor panels. Mrs K got a separate quote of £428.66 for that supply. So the total was £3,682.66. The quotes related to fitting two square metres from a supply of four square metres of flooring. So I accept that the quotes related only to the small lobby affected by the damage.

I've considered Mrs K's recent exchange of emails with a drainage company. She sent it an image of her drain cover. From the emails, I accept that there are "keys" that fit into the holes for lifting the cover. And the emails show an image of a "drain cover seal breaker" tool.

The emails from the drainage company include the following:

"Our engineers carry a set of drain keys that cover all chambers, these ones from what I can see are either a L shaped key or threaded that screw in"

So I accept that the drainage company had looked at the image of Mrs K's drain cover and identified that it needed either an L-shaped or a threaded key. The drainage company's engineers carry such keys. But the email doesn't say that the drainage company's engineers carry a seal breaker.

I note that Mrs K refers to the inspection cover as a "*concrete chamber cover*". So I find it likely that the cover was heavy. The context was a blocked drain inside Mrs K's home. And the DAS engineer evidently didn't have immediate access to an L-shaped or a threaded key to fit the holes. And, even if he had, he would still have had to pull up the heavy cover.

So I'm not persuaded that DAS or its engineer fell below a reasonable standard of care by lifting the cover using a lever. I find that it was necessary to gain access to carry out the repair and it was necessary to damage the surrounding flooring in order to do so.

Clearly it would've been better to warn Mrs K and ask for her permission. But I have to keep in mind that the policy exclusion for damage caused where it is necessary to gain access to carry out repairs.

So I don't find it fair and reasonable to direct DAS to repair the damage (or to pay for the repair of the damage).

I've reviewed the timeline of what DAS did and said. I note that its final responses acknowledged some shortcomings. And I find that DAS didn't respond quickly enough to the

drain blockage. Also, DAS didn't communicate with Mrs K as well as it should've done.

I've thought about the impact on Mrs K at an already difficult time for her. I note that she was finding it difficult to use the stairs to get to the alternative facilities in her home. At times, she felt that DAS was ignoring her although it knew of her issues. And I've seen that the DAS file noted that Mrs K had become tearful.

Putting things right

DAS wrote two final responses to try to put things right. It belatedly reimbursed the £290.00 and it paid a further £275.00. But – having weighed everything up – I'm not satisfied that this went far enough. I agree with the investigator that it's fair and reasonable to direct DAS to pay Mrs K a further £600.00 for distress and inconvenience.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I direct DAS Legal Expenses Insurance Company Limited to pay Mrs K – in addition to its previous payments - a further £600.00 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 25 March 2022.

Christopher Gilbert

Ombudsman