

The complaint

Mr S and Ms S complain DAS Legal Expenses Insurance Company Limited (DAS) have wrongly refused to pay their claim for loss of rent under their Legal Expenses Insurance (LEI) Policy.

What happened

Mr S and Ms S had cover for rent arrears as part of their LEI policy with DAS. The policy started on 24 February 2021. When their tenants fell into arrears, they made a claim. DAS declined to pay the claim on grounds there was no cover since the rent arrears began in early May, within 90 days of the policy taking effect, and Mr S and Ms S hadn't notified them of the claim until mid-August, outside the 90 day period set out in the policy.

Mr S and Ms S said the arrears began to accrue in June, which was more than 90 days after the policy started. And since they'd made their claim in August, they were within the 90-day period for making the claim. They were also unhappy with how their claim had been handled.

DAS didn't uphold Mr S and Ms S's complaint, so they brought it to the Financial Ombudsman. Our investigator thought the evidence showed the claim arose in May 2021 and DAS had been right to say there was no cover. And she thought the £100 DAS had offered Mr S and Ms S was fair to compensate them for the delays DAS had acknowledged. Since Mr S and Ms S didn't agree, their complaint's been passed to me to decide.

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.

I'm sorry to hear of the difficulties Mr S and Ms S have had with their tenants. I can see they're owed a considerable amount in rent. But, having considered their complaint carefully, I don't think DAS have unfairly declined their claim, as I'll explain.

We expect a LEI insurer to consider claims promptly and fairly and not to reject a claim unfairly. Against that background, the starting point for considering Mr S and Ms S's complaint, is the policy itself.

Subject to the terms and conditions of the policy, DAS provide cover where, amongst other things, the date of occurrence of the insured incident is during the period of insurance and any claim is reported to DAS during the period of insurance and as soon as Mr S and Ms S become aware of an incident which could give rise to a claim.

DAS said Mr S and Ms S's claim was an insured incident under section "**5 Tenant Default**" of the policy. But they declined the claim on grounds the date of occurrence of the insured incident was within the first 90 days of cover.

Date of occurrence is defined in the policy, for rent arrears, as *"the first date that any of the rent due under the terms of the tenancy agreement (or any other amount agreed between*

*you or your tenant) is not paid, unless this event and any other event leading to a claim have arisen from the same originating cause in which case the **date of occurrence** will be the first of these events”.*

This is a term commonly found in LEI policies, which we don't generally consider to be unfair. Where there is more than one incident that leads to a claim on the policy, the first of those is the relevant date for determining the date of occurrence. Mr S and Ms S say the rent arrears should be treated as having started in June 2021. But I'm satisfied the evidence shows arrears began to accrue from early May 2021 and built up from then on. Since the first date any of the rent due wasn't paid was May 2021, that's the date of occurrence under the policy terms.

The policy excludes cover where *“Any disagreement with **your tenant** when the **date of occurrence** is within the first 90 days of the first period of insurance and the tenancy agreement started before the start of this policy unless equivalent legal expenses and tenant default insurance was continuously in force.”*

The policy began on 24 February 2021, and arrears began in early May. That means the date of occurrence which led to Mr S and Ms S's dispute with the tenants was within the first 90 days of the policy. So, it's excluded under the policy unless Mr S and Ms S had equivalent legal expenses and tenant default insurance in force before the policy started. I'm not aware they did. Even if they had, I don't think it affects the outcome of their complaint, for reasons I'll explain below.

I've noted cover was provided on condition Mr S and Ms S reported the claim as soon as they became aware of an incident which could give rise to a claim. It was also a condition of the policy that claims must be reported within a specified period. It said:

*“Please note that all claims, other than claims under insurance incident **5 Tenant default**, must be reported to us no more than 90 days after the date **you** should have known about the insured incident.*

*For claims under incident **5 Tenant default**, please contact us if any part of the rent owed under the tenancy agreement is still unpaid 45 days after the date it was first due...”*

And the policy excluded *“Any claim reported to [DAS] more than 90 days after the date [Mr S and Ms S] should have known about the insured incident”.*

I think it's reasonable to say that Mr S and Ms S ought to have known about the tenants' failure to pay rent in May 2021. The statement of account they provided to DAS shows rent arrears started to accrue from then on without the tenants ever getting back up to date with payments. Under the policy they were required to tell DAS as soon as they were aware of any arrears as that was an incident that could give rise to a claim. Under the tenant default section, they should have contacted DAS within 45 days if any part of the rent was still unpaid, as it was here. And, since they didn't notify the claim until more than 90 days after the May rent wasn't paid in full, their claim was excluded.

Mr S and Ms S say they weren't able to take legal action against the tenants until there were two months' arrears. But that doesn't affect their obligations to report the claim in line with the policy terms and conditions. So, I don't think that affects the fact they reported their claim too late.

Taking everything into account, I don't think Mr S and Ms S's claim is covered under the policy or that DAS have unfairly declined their claim.

DAS acknowledged there were some delays in responding to Mr S and Ms S's correspondence when they queried DAS's decision to decline their claim in September 2021. DAS were reviewing their decision and making enquiries. But I can understand the delay was frustrating for Mr S and Ms S who were understandably concerned about the rent they were losing. In the circumstances, I think the £100 DAS have offered is fair compensation for the delays they've acknowledged. And DAS should now pay that sum to Mr S and Ms S.

Putting things right

DAS should now pay Mr S and Ms S the £100 compensation they've offered for distress and inconvenience. Bearing everything in mind, whilst I understand Mr S and Ms S will be disappointed, for the reasons I've explained, I don't think DAS need to take any other action.

My final decision

DAS Legal Expenses Insurance Company Limited should pay Mr S and Ms S £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Ms S to accept or reject my decision before 8 September 2022.

Julia Wilkinson
Ombudsman