

The complaint

Miss B is unhappy that DAS Legal Expenses Insurance Company Limited declined her claim for blocked drains under her home emergency policy. Miss B was also unhappy with the way DAS handled the claim.

What happened

Miss B lets out her property to tenants. Miss B was made aware that the drains were blocked, and sewage was backing up into the garden. This problem ended up happening on numerous occasions. There were debates about who was responsible for the drain, about how many people were needed to complete the work, the involvement of the local water authority and finally it was decided the responsibility lay with Miss B rather than the water authority. There were delays in DAS getting workmen to the site to deal with the problem and with the tenant requiring the basic utilities and services in the house Miss B decided to get her own contractors in on each occasion to clear the blockage.

Miss B claimed for the costs involved in clearing the blockages and DAS declined to pay. It said the drain in question serviced both properties on the site. It said the blockage was within the property boundary of the neighbour's garden. DAS concluded the its policy doesn't provide cover for shared fixtures and fittings, facilities, services outside the legal boundary of the property.

Miss B didn't accept this and brought her complaint to this service. Our investigator upheld the complaint. She said the policy covered emergency call outs for plumbing and drainage and the damage was within the property boundary. Our investigator said the exclusion for communal areas shouldn't apply. She said DAS should pay for the costs of the three call out fees to Miss B with interest and pay £225 compensation for the stress and loss of expectation.

DAS didn't accept this and asked for the complaint to be passed to an ombudsman for a decision.

In my recent provisional decision, I said:

"I need to decide whether or not DAS acted reasonably when it declined the claim.

The final response letter from DAS said:

"Your Home Emergency policy does not provide cover for any shared fixtures or fittings, facilities or services outside the legal boundary of the property. However, if you are able to provide documents showing that the blockage is within the legal boundary of the property covered by your Home Emergency policy, we would be happy to reconsider this."

The Insurance Product Information Document (IPID) said:

"What is not insured

Claims relating to shared areas or communal parts of a property including shared fixtures and fittings, facilities or services outside the legal boundary of your home”.

The details I've seen from the water authority state that the damage was outside the legal boundary of Miss B's let property. As the water authority aren't linked to DAS, I think this is persuasive evidence. DAS pointed out that all the details provided by the businesses called out and used by Miss B also confirmed the drain was a “shared facility”.

Miss B said the boundary was one and the same and it was all under one freehold property, so the drains are shared.

I can understand why Miss B expected her policy to act here. And I think she's got a good point about the delays she faced when claims were made - this is a home emergency policy. Miss B should be able to expect quick action.

But I think it's clear the policy exclusion applies. The drain is shared, and the problem area was in the neighbour's garden and the policy excludes this. So, I think DAS acted reasonably when it declined the claims.

However, the handling of the claims could have been better. Miss B pointed out that she thought she had a policy that covered 24 hours 365 days of the year. But Miss B noted when requesting an emergency visit DAS said it couldn't get anyone out over the weekend and she would have to wait until Monday. The records from DAS suggest slightly different, its notes said it could get someone out, but it would only be a single person rather than a two man team. It could only get a two man team to Miss B's property on the following Monday and in this case a two man team was required.

I think DAS realised it had caused some distress and inconvenience and it offered Miss B £75 as compensation. I don't think that's enough in the circumstances. It is clear there was an impact on Miss B, and this caused problems for her in trying to get services up and running again and working properly for her tenants. Miss B also had to involve her father to help deal with DAS. So, in view of the impact on Miss B I think £150 compensation for the distress and inconvenience is reasonable in this case.”

Responses to my provisional decision

DAS responded it has no objections to the proposed outcome.

Miss B didn't respond.

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.

In view of the responses I see no reason to change my provisional decision. So, my provisional decision will become my final decision.

Putting things right

- Pay Miss B £150 compensation for the distress and inconvenience caused.

My final decision

I uphold this complaint in part.

I require DAS Legal Expenses Insurance Company Limited to:

- Pay Miss B £150 compensation for the distress and inconvenience caused.

DAS Legal Expenses Insurance Company Limited must pay the compensation within 28 days of the date on which we tell it Miss B accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 26 December 2022.

John Quinlan
Ombudsman