

The complaint

Mr W is unhappy with how DAS Legal Expenses Insurance Company Limited has dealt with claims he made on a legal expenses insurance policy.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here.

For ease, I will concentrate on providing my reasons for my decision. I will refer to any information I believe is relevant to my decision below. I will not be listing each individual action that has happened and where I think it is appropriate, I will summarise information that has been provided.

My provisional findings

I issued my provisional findings on 9 December 2022. I said I intended to uphold the complaint for the following reasons:

"Mr W's complaint concerns three separate claims. I will therefore refer to each claim under a separate subheading.

Claim one – tenant (rent) default and property damage.

This claim was originally set up by telephone in March 2022. There were delays in undertaking the initial insurance checks to confirm Mr W had cover, acting on the advice received from solicitors and reviewing the claim further in reference to the policy coverage.

In response to a complaint Mr W made, DAS offered £150 to reflect what had happened to that point.

In November 2021, Mr W emailed to make a complaint about the panel solicitors and request a copy of all of the information DAS held about him. DAS issued a final response in January 2022, explaining DAS couldn't comment on the conduct of the solicitors concerned. However, it offered £25 compensation to reflect the fact it had delayed in providing its complaint response to Mr W.

I can see Mr W then contacted DAS to discuss the progress of this claim and was sent a rent schedule to complete. However, this was information Mr W had already provided at the start of the claim in March 2021.

The claim was then reviewed again, and Mr W was informed the rent he wanted to claim for wasn't actually covered by the policy. Having looked at the policy terms, I'm satisfied this was the correct position.

A further £50 compensation was offered by DAS at this point as it said there had been an eight-working day delay in providing this information to him.

Having reviewed matters again, DAS has now acknowledged it didn't deal with this claim well. It recognises its responses to Mr W didn't appreciate the overall delays, lack of communication and repeated requests for information it already held.

It confirms the eventual decision to decline the tenant (rent) default claim was correct, by notes that this decision should have been made a lot earlier in the claim and that this would have unnecessarily caused confusion and upset to Mr W. It recognises because of the above, it also delayed in moving the property damage claim forwards.

Overall DAS has said it would like to make a further offer of £300 compensation to Mr W. Having reviewed what has happened in this claim, I think that is reasonable. It would bring the total compensation amount awarded to £525.

Claim two - Damage claim

DAS has admitted it delayed in registering this claim – it incorrectly added details of this claim, to claim file one, and didn't realise its mistake until nearly three months later. It has offered £100 compensation for this which I think is reasonable. Mr W has said he provided information about this claim to DAS earlier than it has said, so he believes the compensation amount should be higher.

There are no set amounts as to how much compensation should be awarded in any given circumstance. When considering matters such as this I will consider what has happened and the impact that has been caused. Here DAS has admitted it could have set the claim up earlier and has offered compensation. Whether or not that date was wrong, doesn't automatically mean more compensation is due. Here it has admitted its error and made an offer to put it right – I think that is reasonable. Mr W has suggested the delay has impacted the underlying legal claim; however, I can't see that is the case. I agree the progress of the claim was delayed but I think the compensation offered acknowledges this.

DAS did set the claim up and asked for specific information from Mr W in order to progress the matter. I'm satisfied it progressed the claim when it was in receipt of all of the necessary information.

Claim three – damage claim.

DAS admitted it delayed in registering this claim, and an offer of compensation was included in that which I referenced under claim two. For the same reasons as I have set out above, I think this amount is reasonable. I wouldn't look to double it or suggest more should be awarded simply because there are two claims. Everything has been dealt with together.

It appears it took a little while for all necessary information to be obtained on this claim and details about the deposit cover was resolved. This isn't unusual, and although I realise this may naturally cause some frustration, I don't think DAS acted unreasonably here. It passed the claim over to the solicitor when it was satisfied it had all of the relevant information.

DAS has said as far as it is aware, all relevant information was sent to the panel solicitors to review. If the panel solicitors felt the need to request information or ask for clarity on information provided, these are actions outside of DAS' control. I can't see anything to suggest this was incorrect.

Other matters

Duplication of information

I understand Mr W was caused some frustration as he was asked to send information through which believed he had sent before. There were some instances which I have referred to above where this information was incorrectly asked for. However, it must be borne in mind that each claim is separate and therefore there will naturally be a level of duplication that happens.

I can also see that on occasion Mr W sent information through on emails where the previous content related to different claim number. I think DAS did its best here to arrange for the information to be moved to the correct file each time. However, I have acknowledged above where this caused a delay.

Conduct of solicitors and their assessment of the claims

I'm aware Mr W complained about how the panel solicitors were dealing with his claims and the information it has provided to him. DAS referred those points to the panel solicitor and explained to Mr W it was not able to review the conduct of solicitors.

The solicitor firm has dealt with Mr W's complaint directly and offered him compensation.

Solicitors are professionals in their own right, are regulated separately and have their own complaints process to be followed.

DAS did what I would have expected it to do here by ensuring Mr W's complaint was passed on to the panel solicitor for it to address. Simply because the solicitor firm has potentially admitted to some failings it doesn't automatically mean their legal assessment of a claim is flawed or that DAS should assign the claims to another solicitor firm. DAS is entitled to rely on the advice of the solicitors, and it has correctly set out that should Mr W disagree with this, then he is entitled to seek an opinion from a different solicitor. Should that solicitor be of the opinion the legal claims have prospects of success Mr W would need to present that assessment to DAS for it to then review further.

Summary

Overall, I think DAS could have handled Mr W's claims better. However, I'm satisfied it has now recognised this.

I'm satisfied the offers of compensation DAS made in its various final responses and the additional £300 it has now offered, fairly reflects the trouble and upset Mr W was caused by its poor service".

Responses to my provisional decision

DAS responded and confirmed it had nothing further to add.

Mr W said he didn't feel the following points had been covered.

- Responses were not made in line with his request for reasonable adjustments, or was his file provided to the solicitor as requested, therefore causing him additional burden in having to duplicate information.
- Rent arrears were not acted upon, or information provided to the solicitor to progress legal action. Despite asking several times he was not informed about the rent arrears until several months later.
- DAS admitted to its faults by admitting they had not received documents for one of

the tenants, but they did not offer a higher level of compensation after its decision, which he feels is unfair.

- Although delays are mentioned and, on an individual, basis, there is no mention of the amalgamation of events for the three tenants he had, or that it was a high level of incompetence and mismanagement across several platforms.
- Why did DAS fail to pay the rent arrears or respond to his requests for the payment which should have been the following month and not a year later and without any indication or response why?
- DAS failed to provide or work alongside of the solicitors and inform them, that each claim was in actual fact above £1000 and on that basis instruct the solicitors to act. DAS could have intervened and instructed the solicitors to act, as the claim was above the threshold.
- DAS also discriminated with some of the responses, not being in a format requested.

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'll respond to each of Mr W's points below.

- Responses were not made in line with his request for reasonable adjustments, or was his file provided to the solicitor as requested, therefore causing him addition burden in having to duplicate information.

It won't always be possible for a business to communicate in a way a consumer requests, and in any event, I can't see here that DAS has specifically responded to a complaint about a failure to make reasonable adjustments so I will not make a finding on that here.

I responded to the point regarding the information the solicitor received when I said the following in my provisional decision:

"Duplication of information

I understand Mr W was caused some frustration as he was asked to send information through which believed he had sent before. There were some instances which I have referred to above where this information was incorrectly asked for. However, it must be borne in mind that each claim is separate and therefore there will naturally be a level of duplication that happens.

I can also see that on occasion Mr W sent information through on emails where the previous content related to different claim number. I think DAS did its best here to arrange for the information to be moved to the correct file each time. However, I have acknowledged above where this caused a delay".

- Rent arrears were not acted upon, or information provided to the solicitor to progress legal action. Despite asking several times he was not informed about the rent arrears until several months later.

This matter is addressed under the heading 'claim one' in my provisional decision.

- DAS admitted to its faults by admitting they had not received documents for one of the tenants, but they did not offer a higher level of compensation after its decision, which he feels is unfair.

I have addressed this matter under 'claim one' in my provisional decision. DAS has now offered an increased amount of compensation which I think is reasonable.

- Although delays are mentioned and, on an individual, basis, there is no mention of the amalgamation of events for the three tenants I had, that it was a high level of incompetence and mismanagement across several platforms.

I have addressed this point in my summary where I said the following:

"Overall, I think DAS could have handled Mr W's claims better. However, I'm satisfied it has now recognised this.

I'm satisfied the offers of compensation DAS made in its various final responses and the additional £300 it has now offered, fairly reflects the trouble and upset Mr W was caused by its poor service".

- Why did DAS fail to pay the rent arrears or respond to his requests for the payment which should have been the following month and not a year later and without any indication or response why?

This is addressed under 'claim one'. DAS has admitted it should have realised much earlier in the claims process that the claim would not be met. I confirmed in my provisional decision that its eventual decision not to pay the claim was fair and in line with the policy terms.

- DAS failed to provide or work alongside of the solicitors and inform them, that each claim was in actual fact above £1000 and on that basis instruct the solicitors to act. DAS could have intervened and instructed the solicitors to act, as the claim was above the threshold

DAS are not legal experts; they are entitled to rely on the action and opinions of the panel solicitors. It would not be for DAS to interfere in the legal claim or challenge the opinion of the solicitors. The solicitors have provided their opinion on what can and can't be claimed for. I explained in my provisional decision what Mr W would need to do if he disagrees with the opinion of the solicitors:

"... DAS is entitled to rely on the advice of the solicitors, and it has correctly set out that should Mr W disagree with this, then he is entitled to seek an opinion from a different solicitor. Should that solicitor be of the opinion the legal claims have prospects of success Mr W would need to present that assessment to DAS for it to then review further."

- DAS also discriminated with some of the responses, not being in a format requested.

As I've mentioned above, I can't see that DAS has specifically considered a complaint about failing to make reasonable adjustments, so I won't make a finding on that here. In addition, I would add that this service would not make a finding on discrimination as that is a legal test. Should Mr W seek a determination on that fact, he would need to go to court.

Under this complaint I've considered generally the level of service DAS has provided to Mr W and I've found that on occasion it has been poor and more could have been done to make the process less confusing for Mr W.

Having considered everything, I'm not minded to change the outcome I reached in my provisional decision.

So for the same reasons I set out in my provisional decision, I uphold Mr W's complaint. DAS should now make an additional payment of £300 compensation to him to reflect the trouble and upset its actions caused.

Putting things right

DAS should make an additional payment of £300 compensation to Mr W.

My final decision

I uphold Mr W's complaint against DAS Legal Expenses Insurance Company Limited. It should put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 January 2023.

Alison Gore
Ombudsman