

The complaint

Mr G complains DAS Legal Expenses Insurance Company Limited (DAS) wrongly refused to pay the legal costs he incurred in appealing a statutory improvement notice (SIN) served on him by his local council.

Where I refer to Mr G, I include his representative.

What happened

Mr G had landlord's legal expenses insurance (LEI) with DAS that had been arranged for him through an intermediary that I'll call "Firm S" between November 2021 and November 2022.

In March 2022 the council served a SIN on Mr G requiring him to carry out works of repair to a rental property he owned. Mr G appealed the notice and made a claim on his policy with DAS afterwards for the legal costs he'd incurred. DAS declined the claim on grounds the policy didn't provide cover for a statutory notice dispute.

Mr G complained. He said, in summary:

- He'd contacted Firm S in mid-April who'd confirmed he'd be covered.
- When he'd asked if similar claims had been made by other policyholders - so he had confidence the LEI would meet his costs if he instructed solicitors - Firm S had said they weren't uncommon and had generally all been paid out.
- Firm S said they wouldn't be able to open a claim with a reference until the tribunal reference number was available; that could only be obtained once an appeal had been made; but Mr G said he'd asked Firm S to record he'd made a claim.
- Firm S had said he should go ahead and instruct the solicitors and claim the costs back afterwards.
- Based on what Firm S had told him, Mr G expected cover to be provided.

DAS didn't uphold Mr G's complaint. They said they and Firm S are separate entities and DAS couldn't comment on any advice Firm S had given; appeal of a SIN isn't an event covered under the policy; and, in any event, there's an exclusion for *"Any costs and expenses, hotel expenses or storage costs that are incurred before [DAS] agree to pay them."*

Mr G was unhappy with DAS's response, so he brought his complaint to the Financial Ombudsman Service. Our investigator said the policy didn't provide cover. DAS and Firm S are separate firms. Firm S don't make decisions on claims. Since DAS hadn't been aware of the claim, they couldn't be held responsible if Firm S had wrongly told him it would be covered. Mr G didn't accept our investigator's view. And since the complaint hasn't been resolved, it'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 may not mention here everything the parties have said. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I think is key in coming to my decision. I note Mr G's strength of feeling. But, as I'll explain, I've come to the same outcome as our investigator for broadly similar reasons.

We expect insurers to consider claims fairly and promptly and not to decline claims unreasonably. I've considered Mr G's complaint against that background, starting with the policy wording.

Broadly, subject to the terms and conditions of the policy, Mr G had cover for up to £50,000 of legal expenses in relation to the insured events set out in the policy. I agree with DAS that an insured event didn't happen here. Although Mr G had cover for legal defence, that was limited to defending a criminal prosecution and an appeal against a decision not to adapt a property following certain statutory requests. None of those situations arose in Mr G's case. And, even if they had, any costs and expenses incurred before DAS had agreed to pay them weren't covered.

The policy terms were clear, fair and not misleading on these points as I'd expect them to be to comply with Financial Conduct Authority requirements. The issue is whether, in the circumstances of Mr G's complaint, it's fair and reasonable for DAS to have declined the claim.

In summary, Mr G makes the following key points:

- He bought the policy through Firm S.
- The policy schedule includes DAS's logo and contains a footer referring to the registration/authorisation of DAS which suggests they agree the information it sets out.
- The policy schedule directs the policyholder to contact Firm S, not DAS.
- He rang Firm S on a number provided.
- It was reasonable for him to rely on the information Firm S gave that he could go ahead with the appeal and claim the costs under the policy retrospectively.
- DAS should be held responsible for making sure the right information appears in the policy documents and that Firm S give out the right information since they sell policies for DAS and act on their behalf. DAS should compensate the policyholder for Firm S's mistakes and take things up with Firm S themselves.

DAS say:

- There is no cover under the policy.
- Firm S issue policy documentation as they sell policies on DAS's behalf, but they also arrange other insurance with other insurers with or without DAS legal cover.
- Firm S are a separate company and aren't authorised to handle claims on behalf of DAS - they aren't involved in advising, providing guidance or making decisions about claims under the DAS LEI insurance.
- The policy schedule says it should always be read with the policy wording.
- The policy wording set out the number to ring to make a claim. It explained a decision on cover wouldn't be made then, a claim form would need to be completed and forwarded to the claims handling team, and an explanation about what to do next would be provided.
- The policy schedule set out clearly the number to call to make a claim. That number directs to DAS.

- Mr G didn't ring the claims number, but another general contact number for making policy changes.

I'm conscious Mr G had around three weeks between receiving the SIN and appealing it. So, time was relatively tight. But I think it's reasonable to expect him to have been aware of the contents of his policy and to have reviewed it before making a claim. If he'd done that, I think he ought reasonably to have understood DAS were the insurers; a claim form would need to be completed before the claim could be assessed and cover confirmed; DAS made decisions about whether a claim would be covered, not Firm S; and DAS wouldn't pay costs if they'd been incurred before DAS had agreed them. The policy set out the claims process in terms that were clear, fair and not misleading.

There's no dispute Mr G rang the general contact number rather than the claims line. Even though there was a separate claims number, I think it was reasonable for Mr G to think, based on the policy documents, that all calls went through to Firm S and he'd be able to discuss his situation by ringing any of them.

Our experience of calling Firm S suggests it's possible, depending on the options selected, to be directed to DAS or to discuss a new claim with Firm S. Mr G recalls selecting the claims option when he called, although it's not clear how far Mr G got in that process. But I don't think it matters. Firm S have confirmed, broadly, that if a customer contacts them about a claim, they'd refer them to DAS to discuss it. That doesn't seem to have been Mr G's experience. But it's in line with the policy wording and DAS's evidence as to Firm S's role in relation to claims handling.

On balance, given the clear policy wording and the different roles Firm S and DAS fulfil, I don't think it's fair to blame DAS if an individual at Firm S acted outside their usual processes. I understand Mr G may be complaining to Firm S direct, as he's entitled to. Bearing everything in mind, whilst I understand Mr G will be disappointed, I don't uphold his complaint against DAS for what happened here.

My final decision

For the reasons I've explained, I don't uphold Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 May 2023.

Julia Wilkinson
Ombudsman