

The complaint

Ms E complains about the way in which DAS Legal Expenses Insurance Company Limited (DAS) dealt with her legal expenses insurance claim and the deduction of a policy excess.

What happened

Ms E had legal expenses insurance (LEI) as part of her home insurance.

In around 2016 Ms E suffered damage to her property following works carried out by her neighbours' roofing contractors. They failed to put things right and the problem continued. In early 2019 Ms E made a claim on her LEI policy to cover, broadly, the costs of taking legal action against her neighbours to pay for the damage the contractors had caused and sort out the ongoing problems.

DAS confirmed Ms E's claim was covered under the LEI policy and appointed their panel solicitors to advise on the prospects of making a successful legal claim. The solicitors said Ms E's claim would be based on nuisance and trespass. But there weren't reasonable prospects of a successful claim given the evidence at the time.

Ms E got her own surveyor's report. Based on that, the solicitors advised there were reasonable prospects of success. But they changed their minds in 2022 since the neighbours or contractors wouldn't be able to pay. Ms E was unhappy her property hadn't been repaired several years after the damage had started and more damage was happening. She felt the solicitors had failed to move the legal claim on. And she was unhappy DAS deducted a policy excess when they reimbursed her surveyor's fee.

DAS said the excess was payable under the terms of the policy and they'd explained that to Ms E at the outset. But they acknowledged they'd provided some poor service. And to put things right they offered to reimburse the £250 they'd deducted from the surveyor's fee, effectively waiving the policy excess.

Since Ms E was unhappy with DAS's response she brought her complaint to the Financial Ombudsman Service. She wanted her property repaired and was worried accepting the offer of £250 would affect her complaint about that. Our investigator said the LEI policy didn't cover the costs of repairing the damage. DAS had acknowledged their service failings. And the offer they'd made to put things right was fair. Since Ms E didn't agree, her complaint was passed to me to decide. I recently issued a provisional decision, an extract of which follows:

"What I've provisionally 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 problems Ms E has had with her property over the past few years. I can understand it's been a stressful situation given her personal circumstances. I've come to an outcome that's similar to our investigator's, as I'll explain. But since the redress I'm proposing is different in some regards, I'm issuing a provisional decision to give the parties the chance to comment before I issue a final decision.

We expect insurers to handle claims fairly and promptly, and not to decline claims unreasonably. I'll consider Ms E's complaint about DAS against that background. The starting point is the terms and conditions of her LEI policy.

Ms E had LEI cover as part of her home insurance policy. DAS only provided the LEI cover. Buildings and contents insurance were provided by a separate insurance company to DAS. I'm not considering what that other company did. I'm only looking at the actions of DAS. The LEI DAS provided didn't cover the costs of putting right any damage to Ms E's property. It only covered legal costs to pursue certain claims, subject to the terms and conditions of the policy.

DAS confirmed Ms E had cover under event "*5. Property protection*" which was for:

*"A civil dispute relating to property **you** own...following:*

- (a) an event which causes physical damage to such property but the amount in dispute must be more than £100*
- (b) a legal nuisance (meaning any unlawful interference with **your** use or enjoyment of your land, or some right over, or in connection with it)*
- (c) a trespass..."*

It didn't cover "*The first £250 of any claim for legal nuisance or trespass. This is payable as soon as **we** accept the claim.*"

It was a term of the LEI that Ms E's claim must have reasonable prospects of success for the duration of the claim – that meant the prospects of recovering losses or damages or obtaining any other legal remedy DAS agreed to, including enforcing a judgment, always had to be at least 51%.

I think the terms of the policy I've mentioned were set out in a way that was clear, fair and not mis-leading in line with Financial Conduct Authority requirements. They explained the types of property claims the policy would fund, that Ms E would have to pay an excess of £250 if the legal claims were for nuisance or trespass, and that DAS would only fund the claim for as long as it had reasonable prospects of success.

DAS wrote to Ms E in February 2019 to let her know they'd cover her claim subject to their panel solicitors confirming it had reasonable prospects of success. They said they'd require payment of the excess at that stage - rather than when they accepted the claim. And they set out the process her claim would follow. I think DAS explained things clearly and managed Ms E's expectations appropriately.

The panel solicitors DAS appointed had experience in the type of dispute Ms E had with her neighbours and their contractors. It was reasonable for DAS to appoint them. And the advice they initially gave about the nature of the legal claims Ms E could bring doesn't appear to contain any obvious mistakes. So, I think it was reasonable for DAS to rely on it in taking decisions about policy cover.

At first the panel solicitors didn't think the legal claim had reasonable prospects of success based on the evidence available at the time. Ms E was given the option of getting her own surveyor's advice, which she did. I'd expect DAS to have been involved in the appointment of an expert. That doesn't seem to have happened. But I don't think it caused Ms E a problem. The panel solicitors felt the evidence her surveyor provided supported her claim; she was able to take the claim forward at that stage; and DAS agreed to refund the fee, less the excess.

Since the solicitors had advised Ms E's legal claim would be based on nuisance and trespass, she became responsible for the excess once they'd said it had reasonable prospects. As she didn't pay it at the time, it wasn't unreasonable for DAS to deduct it when they refunded the surveyor's fee to Ms E later.

From what I understand, the panel solicitors advised the claim no longer had reasonable prospects of success in 2022 on the basis it wouldn't be possible to recover any money. I understand Ms E was disappointed when DAS withdrew cover. But the policy didn't promise any legal claim would be successful. I wouldn't expect DAS to have carried on funding the claim in those circumstances. A private individual is unlikely to pursue a legal claim where the prospects of winning or recovering any money are poor. It's not reasonable to expect a LEI insurer to do so either.

DAS have acknowledged they provided some poor service.

Following the solicitors' initial assessment Ms E was unhappy and contacted DAS in around April or May 2019. They failed to get back to her once they'd seen the solicitors' advice. And it wasn't until September DAS took action and her claim was re-opened. But Ms E had got the surveyor's evidence in the meantime. And based on that advice the solicitors felt her claim had reasonable prospects. I'm not aware DAS's delay affected her claim, although I can understand it was frustrating and stressful given the difficult circumstances Ms E was in.

DAS failed to respond initially when Ms E asked them to pay the surveyor's invoice in mid-November 2019. They said they were asking the panel solicitors about it at the end of that month. But they didn't confirm they'd pay it until the beginning of November 2022. And there was a delay of several weeks between the legal claim ending and payment being made. I'm not aware the initial delay impacted Ms E's legal claim. But she'd been out of pocket for some time. I can understand that will have been frustrating when she's told us she can't afford to repair her property.

The surveyor's invoice was for £550. Their invoice suggests it had to be paid by mid-July 2019. Ms E didn't ask DAS to pay it until mid-November 2019. It's reasonable to think they should have reimbursed it by the end of that month to allow for any checks they had to make and their payment processes. Ms E was responsible for the £250 excess at around the same time. So, it's reasonable to think DAS would have made the net payment of £300 they made in the end. Broadly, Ms E's been out of pocket in the sum of £300 since the end of November 2019. So, based on what I currently understand about the timescales, I think it's fair DAS pay her interest on that amount from 1 December 2019 until they paid it on 1 November 2022.

DAS have offered to refund Ms E the £250 excess. Since she was obliged to pay it, as I've explained, I've thought about whether that sum is fair to compensate Ms E for the poor service. I understand the situation Ms E's been in has been stressful. She's unable to fund the cost of the repairs needed to her property. And I understand she has caring responsibilities. Whilst DAS's mistakes will have added to her stress, the delays they were responsible for were relatively minor and affected Ms E for short periods. In the circumstances, and on balance, I think it's fair for DAS to pay Ms E, as compensation for distress and inconvenience, the £250 they've already offered.

I understand Ms E feels little progress was made with her legal claim or repairing the property even though the solicitors had the case for a few years. I'm not aware of the work the solicitors carried out. But if Ms E has concerns about that she'd need to complain to them direct as they were acting for her, even though DAS appointed them. If she was unhappy with their response, she'd be able to take her complaint to the Legal Ombudsman.

I'm not aware of the claim she made on her buildings/contents policy either or whether she complained to the insurer of that part of her policy. If she was unhappy with that insurer's handling of her claim she could also complain to them. If she was unhappy with their response, she could then refer her complaint to us.

My provisional decision

DAS Legal Expenses Insurance Company Limited should pay Ms E

1. Simple interest on £300 from 1 December 2019 to 1 November 2022 at the rate of 8% a year; and
2. Compensation of £250 for distress and inconvenience.

If DAS consider they are required by HM Revenue and Customs to deduct tax from the interest, they should tell Ms E how much they are taking off. And they should give Ms E a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue and Customs if appropriate."

Developments

DAS accepted my provisional decision.

Ms E was disappointed with the compensation I proposed. She's explained the inconvenience caused by the damp and damage to her property and the impact of that on her and her child. She's described the impact on her health of the overall circumstances and the delays DAS caused. She's told us the damage to her property remains and continues; and she will have to finance the repairs herself and continue the difficult communications with her neighbours.

Ms E believes that but for DAS's delays, the third party she alleges were responsible for causing the damage could have been taken to court successfully before they were dissolved. And she's said she has been out of pocket in relation to the surveyor's report for three years and could have used the money for repairs or other expenses.

I've considered what Ms E's told us and will go on to make my final decision.

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 don't underestimate the effect Ms E's circumstances have had on her health and living situation. And I appreciate that will have meant that delays by DAS will have had a greater impact than they might otherwise have done. But I need to be fair to both parties and bear in mind that the mistakes DAS made were relatively minor and impacted Ms E for limited periods.

It's unfortunate the company that carried out the roofing works was dissolved. But there's no evidence any delays by DAS affected the progress of the legal claim, as I explained in my provisional decision. The solicitors said there were reasonable prospects in September 2019 following the surveyor's report. And they said in around September 2022 that the claim no longer had reasonable prospects. So, the case had been going on in the meantime. DAS's failure to reimburse the surveyor's fee didn't affect it. I appreciate Ms E has concerns about how the solicitors handled the claim. But DAS aren't responsible for that. And I've explained how Ms E could complain about the solicitors if she wanted to.

I understand Ms E was out of pocket for some time regarding the surveyors fee. But I've asked DAS to pay interest to compensate her for that. In all the circumstances, I still think the compensation of £250 I've proposed is fair and reasonable. Bearing everything in mind, I uphold this complaint for the reasons and on the basis I've explained.

Putting things right

DAS should pay Ms E the interest and compensation I've set out below.

My final decision

I uphold Ms E's complaint and direct DAS Legal Expenses Insurance Company Limited to pay her:

1. Simple interest on £300 from 1 December 2019 to 1 November 2022 at the rate of 8% a year; and
2. Compensation of £250 for distress and inconvenience.

If DAS Legal Expenses Insurance Company Limited consider they are required by HM Revenue and Customs to deduct tax from the interest, they should tell Ms E how much they are taking off. And they should give Ms E a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue and Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms E to accept or reject my decision before 30 August 2023.

Julia Wilkinson
Ombudsman