

The complaint

Mr and Mrs B complain DAS Legal Expenses Insurance Company Limited (DAS) unfairly declined a claim under their legal expenses insurance (LEI) policy.

For ease of reading, I've referred to only Mr B throughout my decision.

What happened

The circumstances of this complaint are known to both parties, so I've summarised what's happened.

- In January 2023, Mr B sought cover under the 'property protection' section of his LEI policy because he said an enforcement agency had trespassed on his property and threatened to seize goods from him, which he said it didn't have the authority to do.
- DAS declined the claim saying the policy wasn't designed to respond to the possibility of a trespass and said it instead needed to be current and ongoing.
- Mr B disagreed and brought a complaint to this Service. An Investigator considered it and said he didn't think DAS had applied the policy terms fairly.
- DAS responded and said as the enforcement agency's attendance at Mr B's home was related to a dispute about another property there wasn't cover under the policy. And it referred to the following exclusion which says: "we will not pay for any claim relating to the following [...] b. any building or land other than your home."
- The Investigator considered this and was persuaded the exclusion applied in the circumstances – so he thought DAS' decision to decline the claim was fair.
- Mr B disagreed and so, the complaint has been passed to me for an Ombudsman's decision.

I issued a provisional decision on 3 August 2023, which said:

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.

Having done so, I don't consider it fair for DAS to rely on the exclusion it has to decline Mr B's claim - I'll explain why.

DAS has said that because Mr B's legal dispute relates to another property – in so far as the enforcement agency was only on his property because an order had been made against him to pay an outstanding sum of money connected to another property – there isn't cover under the policy.

But I'm not persuaded by this reasoning. Whilst it can be argued that - in the broad sense – the legal dispute is connected to another property, Mr B's legal dispute itself is about an alleged trespass to his home and whether the enforcement agency can lawfully enter his property and land. And it's on this point that DAS needs to seek legal advice – which it hasn't yet done.

So, I don't think it's fair for DAS to say the legal dispute relates to another property and rely on this exclusion to decline the claim.

My provisional decision

My provisional decision is that I intend to uphold this complaint and direct DAS Legal Expenses Insurance Company Limited to:

- *Reconsider Mr and Mrs B's claim without relying on the exclusion.*
- *In doing so, it must seek legal advice to determine if a trespass has occurred and whether Mr and Mrs B's legal claim enjoys reasonable prospects of success.*

Both parties responded to my provisional decision. DAS accepted it and said it would arrange for the legal dispute to be legally assessed in terms of cover and prospects of success.

Mr B replied saying he thought my direction to DAS should be for it to accept the claim - subject to an independent legal opinion confirming the legal dispute enjoys reasonable prospects of success. His rationale being that he's concerned DAS will find another ground upon which to exclude his claim.

Mr B added that the policy covers "any legal nuisance or trespass" and so DAS needs to consider both – not just whether a trespass has occurred. He also considers DAS to have already been provided with the opportunity to do so, and it hasn't been able to demonstrate that a legal nuisance or trespass hadn't occurred.

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've considered both parties' responses, but my final decision remains the same as that set out in my provisional findings. I'll explain why.

I appreciate Mr B has concerns about DAS relying on another exclusion to decline his claim, but simply put, it's entitled to do so. So, I won't be directing DAS to accept the claim.

DAS has now agreed to obtain legal advice as to whether there is cover and reasonable prospects of success in respect of Mr B's legal dispute and I'm satisfied this is fair. In doing so, I'd expect DAS to consider whether a nuisance or trespass has occurred as this is the section of the policy Mr B considers his legal dispute to fall under.

Mr B has said he wants an independent legal opinion as to whether cover and prospects of success exists, but I'm not persuaded this is necessary. As things stood, DAS hadn't sought legal advice from its panel solicitors as to whether Mr B's claim was covered – which is what it now needs to do. And as I've not been provided with any evidence to persuade me that an independent legal opinion is required at this stage, I'm satisfied DAS can rely on the legal advice of its panel solicitor when deciding if Mr B's claim is covered.

If Mr B is subsequently unhappy with the outcome of that review, he'd need to complain to DAS about that in the first instance before referring the matter to this Service.

My final decision

My final decision is that I uphold this complaint and direct DAS Legal Expenses Insurance Company Limited to:

- Reconsider Mr and Mrs B's claim without relying on the exclusion.
- In doing so, it must seek legal advice to determine if a trespass or nuisance has occurred and whether Mr and Mrs B's legal claim enjoys reasonable prospects of success.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 14 September 2023.

Nicola Beakhust
Ombudsman