

## The complaint

J complain DAS Legal Expenses Insurance Company Limited have declined their claim for costs under their legal expenses insurance policy.

## What happened

J had an agricultural tenancy that came to an end in November 2021. In December 2021 they served notice on their landlord under the Agricultural Holdings (Scotland) Act 1991 seeking compensation for improvements they'd made during the tenancy. Although the landlord originally agreed the improvements, and J had had the improvements professionally valued, the landlord went back on the agreement.

J had legal expenses insurance (LEI) with DAS Legal Expenses Insurance Company Limited (DAS). In February 2022 they made a claim for cover under the Arbitration and Agricultural Scottish Land Court hearings section of their policy.

J's initial intention was to take the claim to court. And J's solicitors asked for confirmation the policy covered all legal fees to prepare for and attend the hearings.

DAS accepted the claim. They said J could continue to instruct their existing solicitors on the understanding costs they'd already incurred wouldn't be covered, the solicitors must accept their standard terms of appointment and there must be reasonable prospects of success. The claim and legal case went ahead on that basis. Proceedings were issued in April 2022.

Later that month J's solicitors updated DAS. They explained the landlord was engaging and agreeable to "*appointing two valuers and an oversman to arrive at a contractually binding valuation figure that [the landlord] will then pay*", which would resolve matters. They asked DAS for authority to take that option rather than continuing with the proceedings. DAS authorised J's solicitors to go ahead on the understanding recovery of costs would be part of any settlement.

In mid-May 2022 J's solicitors advised the landlord was refusing to pay interest and court fees J required. They thought the case might need to go back to court. And they asked DAS for confirmation they could take that step and costs would be covered. DAS agreed and asked the solicitors to get back to them once the hearing had concluded.

In late June DAS asked for an update. In early August the solicitors reported the dispute had been settled out of court. They asked DAS to confirm whether J could claim their costs on the policy. DAS said the policy excluded costs and expenses incurred where the dispute was settled and agreed before an arbitration or hearing took place.

The solicitors then explained, in summary, that a claim had been lodged at court. But the parties had agreed they'd each appoint a valuer to try and reach agreement about J's claims as well as an oversman to resolve any disputes. Since the valuers hadn't been able to reach agreement, the oversman had made the final decision about the compensation the landlord should pay to J. So, although the dispute had been resolved outside court, there had been a form of arbitration.

DAS said they'd review policy cover. They required the solicitors to provide a detailed breakdown of their costs for that to happen. The breakdown was sent to DAS in December 2022. And in February 2023 DAS continued to decline the claim on grounds the dispute had settled by agreement and the policy didn't provide cover in those circumstances.

J complained. DAS stood by their decision. Since J didn't agree, they brought their complaint to the Financial Ombudsman Service. Our investigator upheld the complaint. She said, broadly, the dispute was settled at arbitration; there was cover under the policy for arbitration; and DAS should pay the claim. She noted J had also complained about delays by DAS in dealing with the claim. DAS had accepted responsibility for that and offered compensation of £200, which our investigator thought was fair and reasonable.

J accepted our investigator's view. DAS didn't agree they should pay the claim, so the 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've come to broadly the same outcome as our investigator. Since my reasons and the redress I think is fair are partly different, I'm issuing a provisional decision to give the parties the chance to comment before I issue a final decision.*

*In line with Financial Conduct Authority rules, we expect insurers to consider claims promptly and fairly, and not to decline claims unreasonably. I'll consider J's complaint against that background. The starting point is the terms and conditions of the policy.*

*J had LEI cover for legal expenses up to a certain limit for certain insured events, subject to the terms, conditions and exclusions set out in the policy.*

*DAS accepted J's claim was covered under the Arbitration and Agricultural Scottish Land Court Hearings section of the LEI policy. They pointed out at the time of the claim that the cover was for representation at arbitration or at hearings of the Scottish Land Court, relating to disputes arising out of a tenancy or lease regulated by the 1991 Agricultural Holdings (Scotland) Act or the 2003 Agricultural Holdings (Scotland) Act (the Acts).*

*DAS also noted arbitration included determination by an independent expert or mediation if the tenancy agreement said that was the only way of resolving the dispute. And they've relied on that to decline J's claim. I haven't seen any such clause in the agreements J had with the landlord. But I don't think that matters since that's not the process that was followed to resolve J's dispute with the landlord.*

*Although the solicitors initially said the dispute had been “settled”, they explained soon afterwards the process that had been followed was a form of arbitration.*

*Arbitration isn't defined in the policy. What happened seems to have followed the process set out in the Acts relating to arbitration as an alternative to court. Even if I'm wrong about that, I think the process was in line with common dictionary definitions of arbitration including: "the process of solving an argument between people by helping them to agree to an acceptable solution" (Cambridge) and "the judging of a dispute between people or groups by someone who is not involved" (Collins).*

*The parties reached an agreement to go to arbitration, but they didn't reach an agreement about the terms of settlement. As the solicitors explained to DAS, the process followed involved each party appointing an arbiter. In the event the arbiters couldn't reach agreement, the matter would be determined by the oversman – the final arbiter. From the information J have provided, I can see the oversman reached the final decision. And the arbiters signed an agreement to confirm the dispute had been resolved based on the oversman's determination.*

*Bearing all of the above in mind, I think the dispute was resolved through arbitration. And the policy responds. DAS should therefore meet J's claim for the costs they incurred from when DAS agreed to the appointment of J's solicitors, in line with the remaining policy terms and conditions.*

*I've considered the time things took. I note J were concerned about delays in DAS responding to the costs information their solicitors had provided. They did so outside the deadline they'd set themselves. I think the £200 DAS offered is fair to compensate J for the inconvenience that caused. So, I won't ask DAS to pay any more than that.*

### **My provisional decision**

*I intend to uphold this complaint and direct DAS Legal Expenses Insurance Company Limited to:*

- 1. Meet J's claim for costs from the date DAS agreed the appointment of their solicitors subject to the remaining terms and conditions of the policy.*
- 2. Pay simple interest at the rate of 8 per cent a year on any costs J have already paid, and which are payable by DAS under the policy, from the date J paid them until the date DAS reimburse them, subject to J providing proof of payment.*
- 3. Pay J £200 compensation."*

### **Developments**

J accepted my provisional decision and DAS failed to respond. So, I'll go on to give 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.

Since there's no new information to consider, I see no reason to change my mind about this complaint. So, I uphold the complaint for the reasons I set out in my provisional decision.

### **Putting things right**

I see no reason to change my mind about how DAS should put things right as set out in my provisional decision.

## **My final decision**

I uphold J's complaint and direct DAS Legal Expenses Insurance Company Limited to:

1. Meet J's claim for costs from the date DAS agreed the appointment of their solicitors subject to the remaining terms and conditions of the policy.
2. Pay simple interest at the rate of 8 per cent a year on any costs J have already paid, and which are payable by DAS under the policy, from the date J paid them until the date DAS reimburse them, subject to J providing proof of payment.
3. Pay J £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask J to accept or reject my decision before 19 October 2023.

Julia Wilkinson  
**Ombudsman**