

## **The complaint**

Mr D's complaint is about two claims he made on his DAS Legal Expenses Insurance Company Limited ('DAS') landlord's legal protection insurance policy.

Mr D is unhappy with the outcome of those claims as well as the delays he said DAS caused throughout them.

## **What happened**

Mr D made two claims on his landlord's legal protection insurance policy when two of his tenants stopped paying their rent.

DAS asked for several pieces of information to consider the claim, which Mr D provided. Eventually DAS appointed their panel firm to consider claims for possession of the property. The panel firm advised the claims had reasonable prospects of success and offered to take action on Mr D's behalf.

DAS then confirmed the outcome of Mr D's claim for his rent guarantee claim. They said they weren't prepared to pay this aspect because Mr D hadn't complied with the referencing requirements of the policy. In particular they were concerned that the references Mr D had provided weren't satisfactory. DAS offered to contact the referencing agency Mr D said he'd employed to discuss the position, but Mr D declined this. Mr D later declined to pursue the claim for possession through the panel Solicitors. He said he'd reached agreement with the tenants directly for them to vacate the property and thought there was no prospect of enforcing an order for arrears of rent from them by proceeding with the claim.

Instead, Mr D wants to claim on the rent guarantee insurance for his losses. Mr D is also unhappy with the time it took DAS to deal with his claim and to tell him they weren't prepared to cover the rent guarantee aspect. He feels that if DAS had told him this sooner, his losses would've been less than they are now.

DAS accepted that they'd caused delays in the way they'd dealt with the claim. They offered Mr D £250 in respect of this. Mr D doesn't think this goes far enough and remains of the view that his claim for rent guarantee should be paid.

Our investigator considered Mr D's complaint. He initially said DAS were entitled to decline his claim in reliance of their policy terms. Mr D challenged this and made a number of submissions in response. After considering those, the investigator changed his view and said that DAS were estopped from declining the rent guarantee claim and that it was fair and reasonable for them to pay this. He also said Mr D had obtained a reference from a reputable letting agent, so he'd done what he needed to do. DAS don't agree and have made a number of submissions in response. As such the matter was passed to me to determine.

I issued a provisional decision earlier this month in which I said the following:

*"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 won't be upholding Mr D's complaint. I've explained why below. In reaching this decision I want to assure Mr D that I've taken into account the considerable submissions he's made in this complaint. Whilst I haven't addressed each and every one here, I have considered them. That's not intended to be disrespectful to Mr D, it's simply a reflection of the informal nature of the Financial Ombudsman Service.*

*The starting point is the policy terms. Mr D was looking to make a claim under the tenant default cover section of the policy for rent guarantee. That section of cover states that DAS will pay Mr D's rent arrears whilst his tenant still occupies his property. But in order for that to happen the policy makes it a requirement that they've first accepted Mr D's claim under the repossession section of cover. In order to do that DAS would've needed to be satisfied that the claims had reasonable prospects of success. This isn't unusual in policies of this nature. And an insurer's decision to fund repossession proceedings but to decline cover for rent guarantee for a policyholder's failure to comply with the policy terms is also a possibility.*

*In this case, the earliest DAS could've decided to turn down Mr D's claims for rent guarantee would've been after they were satisfied the claims for repossession had reasonable prospects of success. So, I don't agree with Mr D that DAS could've made this decision before this aspect of cover was first considered because Mr D wouldn't have been eligible for a claim under the rent guarantee section of the policy unless his claim for repossession was first accepted by DAS.*

*Turning now to the term DAS relied on to turn down Mr D's rent guarantee claims; DAS say that the references Mr D obtained weren't satisfactory. The policy requires Mr D to have:*

*"(i) obtained a satisfactory reference\* for each tenant and each guarantor from a licensed referencing service before the tenancy started..."*

*"\*The reference must include: written references from a previous managing agent or landlord; an employer (or any other financial source), and a credit-history check (including the Enforcement of Judgments Office, County Court Judgments and bankruptcy)."*

*When Mr D initially made his claim to DAS, he was asked whether he dealt directly with his tenants or through an agent. Mr D replied that he dealt with them directly. The tenancy agreements that Mr D supplied for his tenants also set out:*

*"9. Landlord's Agent: N/A- Self Managed Lettings"*

*But when DAS asked for references, they received communication from a letting agent attaching references carried out for both properties. They were also supplied with a credit history check.*

*When DAS asked for written references from previous landlords and employers, Mr D supplied documents that DAS thought were questionable in content. This was because the provenance of those items couldn't be validated. They weren't on any form of letterhead, and they weren't received from any verifiable email addresses.*

*There were other matters of concern to DAS too. One of the tenant's payslips showed a monthly net pay of around £3,000 when he was purporting to earn around £37,5000 gross annually in a takeaway restaurant. And the two landlord references for both the tenants purporting to be from different landlords at different addresses were written in identical form and contained the same grammatical errors as follows:*

*“This reference letter is to confirm that have been tenants in the above property.”*

*Of further concern to DAS was the photocopy of the passport that was supplied for one of the tenants. The passport claimed the tenant's place of birth was the ‘Republic of Thailand’. DAS have pointed out that Thailand is not a Republic, it is a Kingdom, which calls into question its authenticity.*

*Other matters of concern to DAS were Mr D’s refusal for them to speak with the letting agent to discuss their concerns about the references supplied and his subsequent refusal to take up DAS’ offer to consider funding a breach of contract claim against the letting agents in respect of unsatisfactory references. Overall and for these reasons DAS felt the references were unsatisfactory and in breach of the policy condition. Given the nature of their concerns, I don’t think the position DAS took was unreasonable. And I’m satisfied that the policy condition I’ve quoted above was breached by Mr D in this instance.*

*As such I’ve gone on to think about whether Mr D breaching the policy condition in this case prejudiced DAS’ position. If it hadn’t then DAS wouldn’t be entitled to rely on the condition to turn the claim down. The purpose of a policyholder complying with a condition like the one DAS have relied on here is to reduce the risk of loss occurring. In this case the type of references Mr D obtained gave DAS concerns about the financial and general status of the tenants, which bore out when they stopped paying rent. And given the reasons Mr D has given for not seeking to pursue his tenants for recovery of arrears under the policy- but rather to claim on it- I think it’s reasonable to say that Mr D’s breach of the policy condition increased the risk of loss in the circumstances. If Mr D had complied with the policy condition then it the risk of the tenants defaulting on their rent would have been better mitigated and the possibility of enforcing an order for arrears of rent against them might have been more likely. So, I think DAS were entitled to rely on Mr D’s breach of the policy condition when turning down his claim.*

*In light of what I’ve said about when DAS could’ve reasonably rejected Mr D’s claim, I don’t think there were considerable delays on their part or that Mr D is out of pocket due to their actions. DAS have however offered him £250 in compensation for the delays he’s claimed for. It’s up to Mr D whether he wants to accept this. If so, he should contact DAS directly.”*

I asked both parties for any more comments or evidence in response to my provisional decision. DAS haven’t responded. Mr D has however responded. He’s made a number of submissions which I haven’t summarised in this decision, but I have considered in detail.

### **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.

Having done so, I remain of the view that Mr D’s complaint shouldn’t be upheld for the same reasons set out in my provisional decision. That’s because I’m not persuaded by the submissions Mr D has made have changed my view of the outcome of his complaint.

I’ve explained why below. In doing so, I’ve addressed the substance of his submissions in response to my provisional decisions rather than each and every point he’s made.

Mr D’s main point of contention is that DAS should have told him from the outset that they didn’t think he’d complied with the reporting requirements of the policy when he made his claim. Rather, he feels that they led him to believe that his claim for rent arrears would be covered when considering and dealing with his claim for repossession. Mr D also says DAS delayed dealing with that claim which led to him incurring further lost months of rent. As a

consequence of these actions Mr D feels DAS are estopped from rejecting his arrears of rent claim.

It wasn't incumbent on DAS to consider Mr D's claim for rent arrears from the outset or set out their position on it. As I've said, the policy makes it a requirement that Mr D's claim is first accepted under the repossession section of cover, which included validating that specific claim and arranging for the merits of it to be assessed, before the claim for arrears of rent could be considered. Until that happened and the claim was accepted, DAS weren't obliged to consider Mr D's arrears of rent claim at all. So, they didn't need to tell him from the outset whether that claim would be covered. If the merits of his claim for repossession didn't meet the policy threshold or there was some other reason why that specific claim shouldn't be covered, then DAS would've been entitled to turn both the claim for repossession and arrears of rent without considering the latter any further.

In this case DAS recognised that it took them longer than it should have to consider Mr D's repossession claim so they offered him £250 for this. Mr D is unhappy with this. He says DAS' actions caused him to have a greater liability than he otherwise would have in terms of rent arrears. I'm not persuaded by this or that £250 isn't adequate compensation for the initial delays DAS have accepted. From what Mr D has said, it sounds like his tenants weren't in a position to pay their rent at all when they defaulted. It was on this basis that Mr D decided against pursuing them for a repossession, which would have included a claim for arrears of rent within it. So even on his own case, it was unlikely he would have gotten anything back from his tenants through repossession, whether that claim was pursued sooner or later than it was. And given he didn't think this course of action would prove fruitful, he could have mitigated his losses by seeking to reach an agreement with his tenants to leave his property sooner than he did. That is after all the method he employed to arrange for them to vacate his property rather than to pursue things through repossession proceedings.

From what Mr D has said, it sounds like he was more interested in pursuing the arrears of rent claim with DAS rather than an order for possession, which as I've said, would have included a claim for arrears of rent. But that's not the primary purpose of the cover. The policy is designed to help policyholders recover their rent from tenants through repossession and when that option is pursued, they are usually able to mitigate some of their losses by claiming on the rent arrears section of the policy subject to the remaining policy terms. DAS as the insurer will then look to recover any sums they pay their policyholders for rent arrears from anything recovered from the tenants in the repossession proceedings. So, DAS didn't have to do anything differently in this case beyond compensating Mr D for the initial delays they caused in the repossession claim. And as I set out in my provisional decision, I think the sum they offered him was adequate compensation for these delays.

Turning to Mr D's point about DAS being estopped from rejecting his arrears of rent claim; I don't believe the principle of estoppel applies here. I haven't seen anything that supports Mr D's assertion that DAS assured him he would be paid his arrears of rent claim. As I've explained, the policy doesn't operate in a way where such assurances could be given from the outset in any event. And I've already explained why DAS didn't need to consider that claim to start with. I've also explained why DAS' actions didn't cause Mr D any significant prejudice generally with the way they dealt with his claim, but more particularly, I'm not persuaded that DAS made any representations that Mr D relied on in support of his arrears of rent claim, such that he acted to his detriment. Because of this I can't say that DAS need to pay this claim.

Mr D has made various submissions in support of why he feels he's either met the policy's referencing requirements or why it's unreasonable for DAS to determine that he hasn't. I don't think it's good enough in this case for Mr D to rely on his having obtained a reference

from a referencing agency when there were clearly questions over the remaining referencing requirements, including “*written references from a previous managing agent or landlord; an employer (or any other financial source)*”.

I appreciate that Mr D has now provided further explanations for the issues that DAS have identified. It's up to DAS whether they will accept those at this point. Mr D is of course entitled to ask them to reconsider his claim in light of his explanations. But based on the reasons DAS have cited for the references being unsatisfactory and the nature of their concerns, I'm satisfied the term was breached and that DAS was caused prejudice as a result. Mr D's own assertions support that his tenants had no means with which to pay their rent when they defaulted. Whilst adequate referencing might not have protected both him and DAS from this scenario entirely, they may well have reduced the risk of it. Satisfactory references might also have provided Mr D with the ability to enforce an order for arrears of rent against his tenants.

### **My final decision**

For the reasons set out above and within my provisional decision, I don't uphold Mr D's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 February 2024.

Lale Hussein-Venn  
**Ombudsman**