

The complaint

Mr W complains that DAS Legal Expenses Insurance Company Limited rejected a legal expenses insurance claim.

What happened

Mr W is a director of P, a limited company, which has a business protection insurance policy that includes legal expenses cover. Mr W is included as an insured person on the policy.

In January 2023 he made a claim on the policy for cover in relation to a dispute with the management company of the flat where he lives (and from which he runs his business).

Mr W bought the leasehold property in 2009. The previous leasehold owner had obtained planning permission for improvements to the loft space and Mr W says the freeholders had given their consent for the alterations. He carried out structural alterations to the loft space and submitted a deed of variation to the freeholder.

In response the freeholder said it would require Mr W to pay a premium and other charges, including legal costs, which Mr W didn't agree to. The freeholder also said Mr W was trespassing in the loft space. Mr W wanted cover under the policy for his legal costs in addressing these matters.

DAS rejected the claim, saying the nature of the dispute didn't fall within any of the insured events set out in the policy terms.

Mr W complained about the decision and DAS issued a final response to the complaint maintaining its decision. He referred that complaint to this Service outside the time limit for doing so. I've issued a decision on that complaint explaining that it's not one we can investigate.

Mr W contacted DAS again in August 2023. He said DAS had been wrong to reject his claim but in any event, the other party had made a counterclaim against him and this should be covered as DAS has previously confirmed he would be covered to defend a counterclaim.

DAS reconsidered the claim but again said there was no cover. Mr W complained and DAS issued a final response to this complaint in November 2023 saying:

- The claim still wouldn't be covered; there's no cover under the property protection section where the dispute concerns a contract (in this case, his lease) and no cover under the contracts section where it relates to the sale, purchase, terms of a lease, licence, or tenancy of land or buildings.
- But there had been some delays and poor service and compensation of £150 was paid in respect of this.

When Mr W brought this complaint to this Service our investigator said DAS' decision was fair; there's no cover under either the contracts or the property protection sections of cover, nor was there cover for defending a counterclaim as no counterclaim had been issued.

Mr W disagrees and has requested an ombudsman's 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress; and not unreasonably reject a claim.

DAS originally considered the claim under both the contracts and the property protection sections of cover and said there was no cover under either of these. After Mr W approached it again in August 2023, DAS reconsidered the claim and again said there was no cover.

The contracts section concerns contracts for goods and services, and excludes disputes relating to a lease, licence or tenancy. So it doesn't seem to apply – and Mr W isn't arguing that it does. He says the claim should be covered under the property protection section of the policy. So I've considered that section carefully. It says there is cover for the following:

A civil dispute relating to physical property which is owned by you, or is your responsibility following:

1 any event which causes physical damage to such physical property, or

2 a legal nuisance (meaning any unlawful interference with your use or enjoyment of your land, or some right over, or in connection with it); or

3 a trespass.

Please note that you must have, or there must be reasonable prospects of establishing you have, the legal ownership or right to the physical property that is the subject of the dispute.

The cover is only for pursuing one of these claims. And there's an exclusion for

Defending your legal rights but we will cover defending a counter-claim that is an insured incident under this policy

There's also an exclusion for any claim relating to a contract.

In the first instance it's for the insured to show there's an insured event. To be covered under this section, Mr W needs to show he is pursuing a claim against the other party for physical damage, nuisance or trespass. If, for example, the freeholder was occupying part of his flat and he was taking action against it for trespass, that would be covered (subject to any other terms or exclusions that might apply).

But there doesn't seem to be any suggestion the freeholder has damaged his property, caused a legal nuisance or trespassed on his property and Mr W isn't claiming any of these things. His claim against them – as set out by his solicitor in correspondence which he's provided – would be on the basis of estoppel; he was given an assurance about the loft space; he reasonably relied on that assurance; and he's suffered a detriment as a result.

On this basis Mr W isn't pursuing a type of claim that would be covered under this section of the policy. He hasn't shown there is an insured event as set out in the policy.

Mr W says he should be covered now as he's defending a counterclaim, but the other party hasn't issued a counterclaim against him. What's happened is a negotiation about the terms

of a deed of variation to his lease. If no agreement is reached, Mr W says he will pursue a claim based on estoppel. For their part, the freeholder has indicated it's likely to bring a claim for trespass.

If he was pursuing proceedings against the other party, and they issued a counterclaim against him (or it was clear they were about to do so), he may potentially be covered for that. But this hasn't happened. As it stands, there's currently no counterclaim against him – only the threat of one in the future.

DAS says the exclusion for disputes relating to a contract applies, as the dispute relates to a contract, namely the lease agreement. Mr W says the claim is based on estoppel. So it's not directly related to his lease. Since it concerns a proposed variation to his lease there is a connection. But estoppel in itself isn't an insured event. And in any event, I don't think the claim is covered for the reasons set out above.

In its final response DAS acknowledged there had been some delays and poor customer service and in particular, it could have told Mr W sooner the claim wasn't covered. DAS paid compensation of £150 for this. Taking into account the period involved and the impact on Mr W I think the compensation DAS paid is fair.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 March 2024.

Peter Whiteley
Ombudsman