

The complaint

Mr M is unhappy with what DAS Legal Expenses Insurance Company Limited did after he made a claim on his legal expenses insurance policy.

What happened

On 19 October 2023 Mr M contacted DAS and said a Section 21 eviction notice had been served by his landlord at the end of August. DAS acknowledged the claim and said it would be in touch within five working days. Mr M called for an update on 26 October when he was told his claim would be covered. He was then asked for further information which he provided that day. DAS subsequently advised on 7 November that it wouldn't assist with his claim because the policy didn't cover disputes over a lease.

In response to the complaint Mr M made DAS said the claim had been correctly declined. But it accepted he should have been told that on 26 October. Instead, it had wrongly told him it would be covered and asked for further information that wasn't required. In recognition of the impact of that on him it offered to pay £200.

Our investigator accepted Mr M had also incurred solicitor's costs but thought that would have been the case even if his claim had been declined when it should have been. And he thought the £200 DAS had offered to recognise the distress and inconvenience he was caused was fair.

Mr M didn't agree. He drew attention to how stressful it had been to face the prospect of homelessness at the same time he was impacted by a serious illness. And he said if DAS had told him earlier his claim wasn't covered he'd have been able to appoint a solicitor at lower cost than the one he was forced to find at short notice. As a result he'd have saved some of the money he had to spend on legal costs. So I need to reach a 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.

The relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

Mr M's policy does cover contract disputes but it excludes *"a dispute over the sale, purchase, terms of a lease, licence, or tenancy of land or buildings (other than disputes arising from you buying or selling your principal home)"*. I think it's accepted the claim Mr M made would be caught by that exclusion.

But it's also common ground that instead of explaining that to Mr M when he called on 26 October DAS wrongly told him his claim would be covered. And it then asked him for further information about his claim which wasn't required. A call Mr M was told had been arranged with a legal advisor didn't then take place on 31 October (though I understand he was able

to speak to an advisor later that day). Following that, and despite a number of chasers from Mr M, DAS didn't tell him his claim had been declined until 7 November.

DAS has clearly been at fault here. And I've gone on to think about the impact of that on Mr M. He accepts he would always have needed to seek his own legal assistance as his claim wasn't covered by his policy. But he's suggested that, as a result of the delay, he incurred higher legal fees than would otherwise have been the case. That's because he had to find a solicitor to assist at short notice and other lawyers who charged less didn't have capacity at that point.

I've carefully considered that point. In doing so I've taken into account that while DAS was clearly at fault in what it said during its call with Mr M on 26 October the information request it subsequently sent (which I accept in itself was unnecessary) did say *"If your claim is covered under the policy, I will look to appoint one of our Preferred Solicitors to deal with the matter...I would also advise that cover under the policy will not commence until we have formally appointed a solicitor"*. So I don't think Mr M could have assumed his claim would be covered based on the phone call he'd previously had. In fact that's something he appears to have been aware of because in response he said *"I was shocked to receive your email as I was told during a telephone conversation about an hour ago that I am definitely covered by the policy"*.

In any event I'm not persuaded that, even if Mr M had received an earlier claim decline outcome, he'd have approached solicitors significantly earlier than he did. I say that because when he emailed DAS on 26 October he said *"My request is for legal assistance in defending any Possession Order issued by the court if the landlord proceeds down this route... our main objective is to reach agreement with the landlord without the need to go to court"*. And it was only on 4 November that Mr M confirmed to DAS his landlord had decided to apply for a possession order. That suggests to me that it would only have been after that date Mr M would have sought his own legal assistance - and that was only three days before DAS told him it wouldn't be covering his claim.

In addition, even if Mr M had contacted solicitors earlier, I've not seen clear evidence to show he'd have been able to find one who would have agreed to act for him at a lower rate than he subsequently paid. Taking all of that into account I can't conclude there's a causal link between what DAS got wrong and the solicitors costs Mr M then incurred.

However, I do accept that not receiving responses from DAS to the chasers he was sending and then being told his claim wouldn't be covered, contrary to the information he'd previously given, will have been distressing for Mr M. I think that upset will have been exacerbated by the fact this was in itself a difficult and stressful time for him as he faced the prospect of having to leave his property at the same time as dealing with a serious illness. But I've also taken into account that Mr M did receive a correct claim outcome 13 working days after first making his claim to DAS. While that's clearly a longer timeframe than it should have been it doesn't extend over, for example, a number of months. Taking all of that into account, and on balance, I think the £200 DAS has already offered is a fair way of recognising the impact on Mr M of what it got wrong.

My final decision

For the reasons I've explained I think the offer of £200 that DAS Legal Expenses Insurance Company Limited has already made to settle this complaint is fair and reasonable in all of the circumstances. So my decision is that DAS should pay Mr M £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 July 2024.

James Park
Ombudsman