

The complaint

Mr and Mrs K are unhappy with DAS Legal Expenses Insurance Company Limited's (DAS) handling of a claim made under their landlord home emergency cover.

Where I've referred to DAS below, this also includes any actions or communications from the agent handling the claim on DAS's behalf.

What happened

Mr and Mrs K own a property which is let out to tenants. They also have a home emergency policy underwritten by DAS.

There was a problem with the boiler at the tenanted property which was causing an intermittent issue with the hot water. So, DAS were contacted for assistance on 22 December 2022.

An engineer from DAS attended on 27 December 2022 which was the earliest available appointment. Parts were ordered, but they didn't return until 10 January 2023 to carry out repairs, which they say resolved the issue.

In February 2023 Mr and Mrs K contacted DAS and questioned why DAS hadn't fixed the issue at the time and said that their tenant was leaving. DAS responded to say what had happened during the claim, why there was delay in repairs and said they would raise a complaint.

Mr and Mrs K chased DAS for a response and ultimately had the boiler replaced in March 2023.

DAS issued a final response and offered £145 compensation for the delays in the claim. As Mr and Mrs K wanted DAS to contribute towards the boiler replacement and as they remained unhappy, they approached this service.

Our investigator looked into things and upheld the complaint in part. She said that she thought the £145 compensation for the delays in the claim was reasonable, so she didn't recommend this be increased. However, she said that DAS should pay Mr and Mrs K £250 towards the boiler replacement, as this is what the policy covered.

DAS said it would only pay the £250 contribution if Mr and Mrs K provided evidence from their engineer that the boiler was beyond economic repair, and that's why it needed replacing. They said this was in line with the policy terms for the contribution to be paid.

As an agreement couldn't be reached, the case was passed to me to decide.

As I reached a slightly different outcome to our investigator, I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“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’ve reached a slightly different outcome to our investigator. So, I’m issuing a provisional decision, to give both parties an opportunity to comment on my initial findings before I reach my final decision.

Firstly, DAS accepts there was a delay from when they were first contacted to the first visit, and to the subsequent repair. This is why they have offered £145 compensation. I need to take into account it was the tenant that was with intermittent hot water during this time, so it was the tenant who would have faced the direct inconvenience as a result.

DAS accept they took longer than they should have, and they have offered Mr and Mrs K £145 compensation. I think that amount is reasonable in the circumstances, so I’m not minded to increase this amount.

Mr and Mrs K’s policy provides a contribution towards boiler replacement when a boiler is deemed beyond economic repair:

“beyond economic repair

Where we have accepted a claim under insured event Heating failure that relates to a central heating boiler, we will assess if the claim is economical before proceeding. This assessment includes estimating the depreciation value of your boiler, according to its age. If we assess that the estimated contractor’s labour costs and replacement parts required to permanently repair your existing boiler are no longer manufactured and thus not available, we will pay the costs, or a contribution towards the costs, of a replacement boiler, rather than attempting any repairs. The most we will pay is £250 (including VAT).”

Mr and Mrs K said they want this contribution towards their boiler replacement. And our investigator thought that was fair and reasonable in the circumstances so she said DAS should pay this.

DAS said they would be willing to offer this in line with terms, subject to Mr and Mrs K providing evidence from their engineer that their boiler was beyond economic repair. Our investigator didn’t agree they should provide evidence and maintained that the payment should be made.

I’m not minded to agree with our investigator that DAS should pay this contribution without evidence, and I think DAS’s position is reasonable. I’ll explain why.

Mr and Mrs K allege that DAS failed to complete a repair of the boiler previously. And they say as a result of the continued intermittent hot water issue, their tenant moved out. However, having looked at all the information provided, and as accepted by Mr and Mrs K already, there isn’t any firm evidence to support that was the sole reason the tenant vacated.

Instead, Mr and Mrs K's letting agent let them know the tenant would be vacating, and they were told seven days after the initial repair was completed. There wasn't any reasons given by the letting agent at that point for the tenant vacating. So, there isn't anything showing the repair had failed which resulted in the tenant leaving.

Mr and Mrs K say they then spoke to the tenant three days later and they said there was still an intermittent issue, but they also say they are unsure if this is the reason the tenant left.

However, DAS weren't contacted by Mr and Mrs K at that point to raise an ongoing issue with intermittent hot water. So, DAS didn't have the opportunity to visit or inspect the issue, to see if it was a failed repair, or another separate issue. Therefore, it is unclear whether DAS did actually fail to fix the issue original problem, or if there was another unconnected issue.

Mr and Mrs K have said that when it was first fixed it appeared to be resolved. But they don't think that checking on that repair visit alone is sufficient. Instead, they say the engineer should return after the initial fix to check it is still working satisfactorily. I don't agree with what Mr and Mrs K say here. If the issue is resolved when the engineer attends, I wouldn't expect the engineer to keep returning to check it is still working. Instead, it would be for Mr and Mrs K to let DAS know if it later stopped working.

So, if the tenant made Mr and Mrs K aware on 20 January 2023 that there was still an ongoing issue, either due to a failed repair or otherwise, they could have raised this with DAS at the time, but they didn't.

Mr and Mrs K say they then tested the hot water themselves on 9 February 2023 when the tenant had vacated and they discovered there was still an issue, and they then contacted DAS on 17 February 2023. And after this, as they hadn't heard anything, they went ahead with replacing the boiler on 14 March 2023.

From my review of what happened, I think there has been some confusion between the two parties. I think Mr and Mrs K were under the impression they were saying that they still had ongoing issues with intermittent hot water at their property as DAS hadn't fixed it previously and were expecting DAS to reattend. Whereas I think DAS were under the impression Mr and Mrs K were complaining about what had happened previously, historically and retrospectively, as a complaint.

I say this because Mr and Mrs K's email to DAS outlined:

"On December 22nd 2022, I submitted a home emergency claim under (reference) for no hot water in our flat we rent out, I am the landlord.

An engineer (sic) came over on 27th December and advised it was a ignition switch, Submitted the report to you and an engineer didn't come back to fix it until 10th January.

We didn't speak to our teannts as assumed the job was completed as you sent a text to me, but they have advised it wasn't fixed and have handed in their notice to leave the flat mid January due to this.

Can you advise why you haven't advised us it didn't fix it at the time? i got a text to say completed, and i would like to claim for money towards us fitting a new boiler as per policy.

Please advise the process to complete this as we've have lost our tennats due to the timescale of not fixing it which is why i pay for landlord insurance with home emergency cover."

The following day, DAS responded to explain why there was a delay in the engineer attending, obtaining parts and the repair being completed. They also said the £250 contribution was only payable if the boiler was deemed beyond repair, but said it was fixed when the engineer attended, so there was no payment to be made. And they said they'd logged a complaint with the relevant department.

DAS also separately acknowledged the complaint and outlined their complaint procedure.

I think there has been confusion here between both parties' interpretation of things.

I don't think it was clear from Mr and Mrs K's email that the property didn't actually have hot water at that time. And Mr and Mrs K didn't call DAS to report an ongoing issue (or failed repair) at any point, either when they say the tenant told them after giving notice in January 2023, or at any point after either. And I think DAS's email response also indicates that they were under the impression it was a complaint about what had happened retrospectively, rather than Mr and Mrs K complaining that they still had ongoing issues and were expecting DAS to attend. Their internal notes show that was their understanding too, as they note the tenant allegedly left because of the previous delays, rather than ongoing issues.

The next contact was from Mr and Mrs K on 14 March 2023 when they advised they had replaced the boiler and wanted a contribution. And DAS responded to advise of the complaint timescales in line with the Financial Conduct Authority complaint handling rules for them to provide a response to Mr and Mrs K's complaint.

So, I think there has been a breakdown in the communication here. And I don't think either DAS or Mr and Mrs K are solely responsible, as it was a misinterpretation of things both ways.

But either way, I don't think it's been shown that DAS didn't carry out a successful repair on the initial visit either. The policy terms say that DAS would contribute £250 towards boiler replacement when the boiler is deemed beyond economic repair. But DAS hasn't had the opportunity to inspect the boiler before it was replaced, to see if the repair failed or indeed if it was beyond economic repair. So, at this stage, I'm not going to direct them to pay the £250 contribution.

However, DAS has said that if Mr and Mrs K can provide evidence that the boiler was beyond economic repair from their engineer then they'd make that payment. And I think that position is reasonable.

So, if Mr and Mrs K are able to obtain something from their engineer which demonstrates the boiler was beyond economic repair, they should submit this to DAS for consideration. Once DAS has done this, and if Mr and Mrs K are unhappy with the position DAS ultimately reaches, we may be able to consider that as a new separate complaint.

But based on what I've seen so far, I'm not minded to direct DAS to do anything further at this stage."

Therefore, I wasn't minded to uphold the complaint.

The responses to my provisional decision

DAS responded and said they were in agreement with the provisional decision.

Mr and Mrs K responded and said they don't understand why it took DAS so long to respond after they contacted them in February 2023. Mr and Mrs K also said they can obtain information from the plumber to provide to DAS, but they say they think they will then be asked for further information such as photos, which they don't have.

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.

And I've thought carefully about the initial conclusions I reached, and the responses to my provisional decision. Having done so, my final decision remains the same as my provisional decision, and for the same reasons.

Whilst I note Mr and Mrs K are unhappy with how long it took DAS to respond after they contacted them in February 2023, I talked about this in my provisional decision, and that I think there was some confusion between the two parties. Whilst Mr and Mrs K may have wanted a response sooner, DAS had outlined the Financial Conduct Authority complaint handling timescales for them to provide a response when Mr and Mrs K chased them. And I don't think DAS acted unfairly here.

I also acknowledge Mr and Mrs K have said they can obtain a report from their plumber, but they think DAS will then ask for further information, such as photos which they don't have.

As explained in my provisional decision, if Mr and Mrs K obtain something from their plumber which demonstrates the boiler was beyond economic repair, they should submit this to DAS. At this stage, I can't comment on what additional information (if any) DAS may need beyond a report for Mr and Mrs K to substantiate the boiler was BER. But as I outlined, once DAS has considered any information Mr and Mrs K provide, and if Mr and Mrs K are unhappy with the position DAS ultimately reaches, we may be able to consider that as a new separate complaint.

But at this stage, I'm not persuaded that it's been evidenced that DAS didn't carry out a successful repair on the first visit. And the policy terms say that a £250 contribution would only be payable in the event of the boiler being deemed beyond economic repair, but that hasn't been demonstrated. So, for the reasons outlined above and in my provisional decision, I'm not going to direct DAS to pay the £250 contribution at this stage.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Mrs K to accept or reject my decision before 6 September 2023.

Callum Milne
Ombudsman