

The complaint

Mrs K's complaint is about some enquiries she made with DAS Legal Expenses Insurance Company Limited ('DAS') about a landlord's insurance policy she bought from her broker. DAS was the underwriter of that policy.

Mrs K says that DAS treated her unfairly.

What happened

Mrs K took out a landlord's insurance policy through a broker. She also had another policy in place from a different seller with similar benefits, so she wanted to check which policy provided a better level of cover before cancelling the other.

Mrs K says she checked the policy with the broker that sold it to her and saw that there was a 90-day exclusion in place for making a claim against tenants, but she wanted to make sure this didn't apply to her because she had continuous cover in place with a different provider.

Mrs K says she called her broker to clarify this, and they told her she would be covered for claims within the first 90 days.

Mrs K's complaint relates to how further queries she made with DAS about the policy were handled by them. She's unhappy with how they dealt with her request for clarity around whether the references she'd obtained for her tenants accorded with the policy conditions, as she wanted to make sure she was covered in the event her tenant defaulted on the rent. Miss K says she raised this initially with DAS by telephone who gave her the email address for their underwriting team. She says she emailed that team twice but received no response.

Miss K had also raised the issue with her broker who said that as long as the reference was from a licensed referencing company, the reference she obtained would be considered satisfactory. But Miss K wasn't sure if the reference she obtained was from a licensed referencing company or what that meant. She asked her broker to go back to DAS about this for clarity. Miss K said she was told by her broker to contact DAS directly about this. As Miss K had already sent DAS two emails and not received a reply, she raised a complaint with them. DAS' response was that their underwriting team wasn't customer facing so couldn't correspond with her. They directed her back to her broker for clarity on whether her references met the policy criteria. Her broker wasn't able to provide any further clarity on the matter.

Overall, Miss K says she still doesn't know if the references she obtained meet the policy criteria and feels that her questions about this still haven't been answered. She was also concerned about the policy requirement for references being required from a landlord or managing agent in circumstances where her tenant might have owned their own home before or lived with family. She wanted to know what would happen if that was the case. Miss K says she hasn't cancelled her other landlord's policy as a result because she doesn't know if it provides cover for her where this one might not if a claim was necessary.

Our investigator considered Miss K's complaint and concluded it shouldn't be upheld. She

said the policy terms answered her concerns in a clear way and so DAS didn't need to do anything further. Miss K didn't agree so the matter was passed to me to determine.

I issued a provisional decision in December 2023 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 uphold Miss K's complaint. This is why.

Miss K took out a policy that was underwritten by DAS. If she made a claim on the policy, DAS would be deciding whether she'd met the policy conditions before agreeing to pay out a claim. In this case, Miss K wanted clarity on whether her references met the policy criteria. In particular she wanted to know whether DAS would consider them as having been obtained from a 'licensed referencing agency' as required by the policy terms, as this wasn't defined and she didn't know what this meant.

Given the term 'licensed referencing agency' isn't explained within the policy terms, I don't think the question Miss K asked was unreasonable. DAS as insurer of the policy was the most appropriate business to pose that question to.

DAS directed Miss K back to her broker and said that if they were in any doubt about the meaning of the policy wording, they could refer back to them. But the broker did do that and Miss K still didn't receive clarity from them through DAS' involvement to confirm whether the references she'd obtained met the policy criteria. All she was told was that as long as the policy was from a licensed referencing company, the reference would be satisfactory. But she was still no clearer about what a licensed referencing company was and whether her references met that criteria.

I don't think it was unreasonable for Miss K to ask DAS for clarity on this specific point directly. DAS was after all her insurer and like she's said, if she'd make a claim on the policy, DAS would've considered the situation before deciding whether cover was available. So, I see no reason why they couldn't do so now. I don't think taking the position that their underwriting department wasn't customer facing and therefore couldn't answer her question, was helpful. They could've arranged for someone else, like Miss K's broker to communicate their position to her if they didn't feel able to respond to her directly in a timely manner but they didn't do so. Indeed, the information DAS appeared to give to Miss K's broker took her no further forward at all. So, I can't see any reason why they couldn't have reviewed her references and confirmed whether they were satisfied they were from a licensed referencing agency. And they could have arranged for this within a reasonable time frame from Miss K contacting them directly. It was only after her third contact with DAS when she raised a complaint with them that they responded at all. This wasn't satisfactory at all in my view.

From what I can see, Miss K's broker did ask DAS for their input but there was nothing in the responses provided to Miss K that made clear whether the references she'd obtained were sufficient to say she'd be able to make a successful claim under the policy. So, I take the view that they should do so now- either directly or through Miss K's broker. Miss K has said that because she still doesn't know whether the cover she has will engage, she's continued to maintain two policies. Whilst the fact that Miss K had two policies in place isn't something DAS is responsible for, I think that they could have helped her sooner which would in turn have enabled her to make a decision about what to do about her insurances. I'm satisfied that their decision not to do so would've caused her both stress and inconvenience in the circumstances. As such I think DAS should compensate her for this. I think £150 is adequate compensation in the circumstances.

Miss K has also said she's concerned about the policy requirement for references being required from a landlord or managing agent in circumstances where her tenant might have owned their own home before or lived with family. She wanted to know what would happen if that was the case. The policy terms say:

"^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)."

But they don't explain what would happen if a tenant can't provide a landlord reference because they weren't previously renting out a property, perhaps because they owned their own home or were living with family. I would expect DAS to take a view on this issue and be able to advise Miss K what alternative would be acceptable to them. If this remains an area of concern for Miss K, DAS should address her query directly and provide her with the clarity she's requested.

Putting things right

DAS should now confirm to Miss K whether the references she's obtained meet the policy conditions either directly or through her broker and pay her £150 in compensation for not doing so sooner and in a timely manner.

If Miss K still wants DAS to address what would happen in circumstances where a tenant doesn't have a reference from a previous managing agent or landlord, DAS should advise her of what alternative would be acceptable to them. They can do this either directly, or through her broker."

I asked both parties to provide me with any more comments or evidence in response to my provisional decision. Both parties have now responded. Miss K said she had no further points or information to add. DAS have accepted my provisional findings and agreed that they were best placed to comment on the suitability of the references queried by Miss K and that there were failings on their part after the broker provided Miss K with an incorrect email address. They've also said that if the tenant was living with family or was a homeowner before taking up the tenancy, this would satisfy their requirement for a previous landlord reference if their position could be evidenced.

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.

In light of what both parties have said, I remain of the view that Miss K's complaint should be upheld in the same way and for the same reasons set out within my provisional decision.

And whilst DAS have now addressed what would happen if a tenant can't provide a landlord reference because they weren't previously renting out a property, perhaps because they owned their own home or were living with family, they haven't yet said whether the references Miss K has obtained would be considered to be from a licensed referencing agency. So, DAS will still need to do that. As such DAS should put things right as I've set out below.

Putting things right

DAS should now confirm to Miss K whether the references she's obtained meet the policy conditions either directly or through her broker and pay her £150 in compensation for not

doing so sooner and in a timely manner.

They can do this either directly, or through her broker.

My final decision

For the reasons set out above and within my provisional decision dated December 2023, I uphold Miss K's complaint and direct DAS Legal Expenses Insurance Company Limited to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 30 January 2024.

Lale Hussein-Venn
Ombudsman