

The complaint

Miss L complains that DAS Legal Expenses Insurance Company Limited caused delays in reaching a decision on a claim under her legal expenses insurance policy, which prejudiced her position in the legal proceedings against her. She's also unhappy with the decision it reached to decline cover.

What happened

The detailed background to this complaint is well known to both parties, so I only intend to provide a brief summary of the key events here.

- On 19 July 2022, Miss L made a claim to DAS regarding a dispute with the management company of her property. She'd withheld service charge payments due to the unsatisfactory service being provided, and as a result she was accruing late payment fees and receiving threats of legal action being taken against her.
- The following day, DAS acknowledged Miss L's claim and set out what she could expect from the claim process. This letter said DAS would assess the claim to check it's covered by the policy and, if it is, instruct solicitors to assess whether there was a reasonable chance of the claim succeeding.
- DAS requested further information from Miss L on 25 July 2022. Specifically, it asked her to confirm whether she had a contract in place with the management company. Miss L responded the same day to say that she believed there was a contract in place but personally she'd never seen it and the previous resident was refusing to give her a copy.
- On 2 August 2022, DAS accepted the claim and instructed its panel firm of solicitors. It told both Miss L and the panel firm that the claim was a "contract dispute" which was covered by the policy.
- In late September, the panel firm queried with DAS whether this claim was in fact covered by the policy as there didn't seem to be a contract in place between Miss L and the management company. And in any event, it didn't think it had the required expertise for what appeared to be a property dispute. So it told DAS it couldn't take on the case.
- This prompted DAS to review the claim and on 31 October 2022, it advised Miss L that there was no cover under her policy for this type of dispute. This was because Miss L didn't hold a contract with the management company in her personal capacity, and it didn't fall under any other section of cover.
- Miss L raised a complaint about DAS' decision to decline the claim and the time it had taken to make it. She said the delay in getting legal support has resulted in more late payment charges being accrued on her service charge arrears, and it's jeopardised her legal position because she hasn't followed the pre-action protocol following the threat of legal action against her.

- DAS responded to the complaint in January 2023. It said the decision to decline cover was correct and that there weren't any delays in handling the claim. But it acknowledged that cover had been confirmed in error, which it apologised for. To recognise the upset and inconvenience of cover being withdrawn, it offered £100 compensation.
- Miss L didn't think this fairly compensated her for what went wrong, so she brought her complaint to our service. But our Investigator was satisfied that the offer of £100 was fair and reasonable in the circumstances of the complaint, and she didn't think DAS needed to do more.
- As Miss L didn't agree, the complaint was passed to me to decide and I issued the following provisional decision.

Provisional decision

Firstly, to be clear, I'm aware Miss L is unhappy with the panel firm of solicitors, but I can't comment on that. They're a separate entity to DAS and don't act on its behalf, so I can't fairly hold DAS liable for their actions. Solicitors have their own regulatory body and ombudsman service. So, if Miss L is unhappy with the day-to-day handling of her legal case, the conduct, actions, or advice of a legal professional, she'll need to raise this with them directly and escalate it to the relevant dispute resolution service, the Legal Ombudsman.

Claims decision

The terms and conditions of Miss L's policy say it will cover contract disputes defined as *"your legal rights in a contractual dispute arising from an agreement or an alleged agreement which you have entered into for...the buying or hiring in of any goods or services, or the selling of any goods"*.

Miss L doesn't have a contract with the management company personally, rather this was a contract entered into by what appears to be the freeholders as a Resident's Management Association. I can't see any other section of cover which this claim would fall into. As such, I'm satisfied that DAS' decision to decline the claim was in line with the policy terms and conditions.

Claims handling

Prior to instructing solicitors, it was DAS' role to determine whether Miss L's claim fell within the policy terms and conditions. It said so in its letter to Miss L dated 20 July 2022. But despite specifically asking Miss L whether she had a contract in place with the management company, and receiving information that implied she might not, DAS went ahead and instructed solicitors regardless.

I'm persuaded that DAS had enough information to be on notice that the claim may not be covered on 25 July 2022. I say this because Miss L said she *"believed"* there was a contract in place but that she hadn't *"seen"* it (my emphasis). If Miss L had personally entered into a contract, she would've had to have seen it in order to sign it. Instead, she said the old management resident was refusing to give her a copy which implied that someone else was a party to the contract.

Whilst this comment alone may not have given DAS enough grounds to conclude that the claim wasn't covered, I'm satisfied it was enough to prompt it to ask further questions. Had it done so, DAS most likely would've discovered for itself that Miss L wasn't a party to the

contract and that the claim wasn't covered by the policy terms. This would've resulted in the claim being declined almost three months earlier than it was.

In missing the opportunity to assess the claim correctly, DAS subjected Miss L to a delay during a time when she was under threat of legal action and under an obligation to comply with the pre-action protocol. And even after being advised by the panel solicitors on 29 September 2022 that the claim was unlikely to be covered, DAS still didn't inform Miss L of its decision to decline the claim until a month later. So I'm persuaded there were delays here, and that they were avoidable.

Putting things right

When awarding compensation, I must consider the impact Miss L has suffered as a result of what's gone wrong. I have no doubt that this whole process has caused her distress and inconvenience at an already stressful time. Furthermore, Miss L tells us that late payment fees were accruing on her arrears during these delays and her legal claim was jeopardised.

Taking everything into account, based on the evidence I've seen, I'm inclined to increase compensation to a total of £300 (inclusive of DAS' initial offer of £100). I'm satisfied this fairly reflects the impact caused to Miss L based on the length of the delays and the distress it would've caused.

I'm not minded to award Miss L the late payment fees themselves. This is because it was Miss L's decision to withhold her service charge payments from the management company, and she was aware that they were applying these late fees prior to making her claim. So whilst I appreciate she feels she's in a worse position now than before her claim, I haven't seen anything to persuade me that Miss L would've brought her account up to date had DAS declined her claim correctly at the outset.

Reponses to my provisional decision

Miss L has told us she has nothing more to add. And DAS has accepted my provisional decision, confirming that no compensation has been paid as yet.

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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons I've explained, I uphold the complaint and direct DAS Legal Expenses Insurance Company Limited to pay Miss L compensation of £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 14 September 2023.

Sheryl Sibley
Ombudsman