

The complaint

Mr M's complaint is about a rent guarantee claim he made on his DAS Legal Expenses Insurance Company Limited ('DAS') rent protection insurance policy.

Mr M says that DAS treated him unfairly.

What happened

When Mr M's tenant defaulted on his rent repayments, Mr M made a rent guarantee claim on his DAS rent protection insurance policy.

DAS considered the claim and declined to cover it. They said Mr M hadn't complied with one of the conditions of the policy when he took on the tenant, which was to obtain a satisfactory reference from a referencing service. DAS say that although Mr S did obtain a reference, when interpreted, meant that the tenant couldn't afford the rent when Mr M tenanted his property to him. As such DAS refused to consider the rent guarantee claim but they did offer Mr M £50 for the upset caused because the meaning of "satisfactory" could have been made clearer in the policy.

Unhappy, Mr M complained to the Financial Ombudsman Service. Our investigator considered Mr M's complaint and concluded it shouldn't be upheld. She said that Mr M hadn't complied with the policy condition to obtain a satisfactory reference, so DAS didn't need to consider his claim. She also said the £50 compensation offered was reasonable. Mr M doesn't agree, so the matter was passed to me to determine.

I issued a provisional decision earlier this month along the following lines:

"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 Mr M's complaint, and this is why.

The starting point is the policy terms. They say:

"1. We will pay Your Rent Arrears while Your tenant or ex-tenant still occupies the Let Property up to a maximum of 12 months for any one claim....."

"Provided that:

In both 1 and 2 You have:

I obtained a satisfactory reference for each tenant and each guarantor from a referencing service before the tenancy started;"*

*"*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 Judgements Office, County Court Judgments and bankruptcy)."*

In this case Mr M supplied a reference from his tenant's accountant setting out that his self-employed income for the previous year amounted to £641 gross per month on average. It also set out that this was in respect of part time working and that he was currently working full time with an estimated monthly earning of £1,166 gross. The reference also sets out his wife was working full time hours when he was working part time.

DAS reached the conclusion that the reference was not satisfactory. They based this on the figures for Mr M's previous year's earnings when compared to the rental payment of £450 which they say meant the rent was unaffordable. DAS accept that the policy wording doesn't specify a formula or benchmark to inform what is meant as "satisfactory" within the policy terms but they still declined the claim. Instead, they offered Mr M £50 because they thought the terms could have been clearer on this point. I don't think this was reasonable in the circumstances. Firstly, the term DAS have relied on to decline the claim isn't clear. And it certainly doesn't set out that a tenant's affordability should be worked out in the way that DAS have. Indeed, nothing in the terms refer to affordability at all. I appreciate that this was likely to be the intention behind them, but I don't think that means that DAS were entitled to interpret them in the way that they did. And in the absence of a specific definition for "satisfactory", I think DAS were wrong to turn down Mr M's claim.

That said, I have thought about the dictionary definition of "satisfactory" when considering the term I've quoted. Reading the term that way, the reference needed to "fulfil expectations, be acceptable, though not outstanding or perfect". I think the reference did meet that criteria. Whilst it could be concluded that Mr M's previous year's income was less than acceptable to meet rental payments, DAS didn't take into account that the accountant said his wife was working full time. And, whilst she wasn't the tenant, this would inevitably have meant the household income was considerably more than Mr M's previous year's earnings. Taken together with the fact that Mr M was now working full time, I struggle to see why the reference would be less than acceptable.

But even if that wasn't the case, I'm not persuaded that DAS should have looked back at this reference to determine an unacceptable risk was present when the tenant had consistently paid rent to Mr M for 15 years before he defaulted. Mr M says that in that time his tenant's financial position changed considerably, such that he hadn't defaulted until he made his claim. I think this is relevant because the tenant clearly did not have the same risk profile he presented when he first let Mr M's property. And for the reasons I've mentioned, the tenant wasn't what I would consider to be as being an unacceptable risk at that time in any event.

As I understand it, Mr M has now recovered the rent arrears due to him, so he's not seeking reimbursement of this. As such I've considered an appropriate award of redress for DAS' actions. If things had gone as they should have, DAS would have accepted Mr M's claim from the outset. The fact that they didn't, would no doubt have caused him some worry given the policy was in place to help him with the kind of situation he found himself in. And after the claim was turned down, Mr M was put to considerable inconvenience pursuing things, when he shouldn't have had to. Taken together, the stress and inconvenience caused to Mr M is enough to warrant a higher award than the £50 offered by DAS. Accordingly, I'm increasing the compensation payable to Mr M to £150 to encompass the £50 offered. I think this is more appropriate in the circumstances."

I asked both parties to provide me with any further comments and evidence in response to my provisional findings. Mr M hasn't responded but DAS have. They've said they have no additional points to add.

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.

Given I have no further submissions from either party, I remain of the view that Mr M's complaint should be upheld as set out in my provisional decision.

Putting things right

DAS should pay Mr M £150 to compensate Mr M for the stress and inconvenience their actions caused. This award encompasses the £50 offered by DAS previously to Mr M in compensation.

My final decision

For the reasons set out above, I uphold Mr M'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 Mr M to accept or reject my decision before 15 December 2023.

Lale Hussein-Venn
Ombudsman