

The complaint

M, a limited company, complains about a claim it made on its DAS Legal Expenses Insurance Company Limited ('DAS') commercial legal expenses insurance policy.

M's complaint is brought by Mr M on its behalf.

Mr M says M was treated unfairly.

What happened

M made a claim on its DAS commercial legal expenses insurance policy as freeholder of a property concerning damage caused to its property.

DAS appointed a panel firm to consider its claim under the property section of the policy. Mr M was unhappy with the time it was taking the panel firm to consider the claim. He said M was being threatened with legal action. DAS chased the panel firm and asked them to provide a response sooner than their usual timeframe. They also offered M £75 in recognition of the delay in confirming cover was in place. Mr M declined this offer.

Following this, the panel firm reviewed M's claim and concluded they weren't experienced in the area of law applicable to one aspect of M's claim as part of it concerned a claim relating to M's tenants and that was not something they could look at under the property section of cover. Because M required urgent advice, DAS arranged a legal advisor from its helpline to call Mr M and discuss matters with him.

DAS then considered whether M's claim in respect of its tenants was covered under the contract section of the policy before it could appoint another firm of Solicitors to look at that. They concluded the policy wouldn't respond because this section of cover only applied to contracts for goods or services. As the tenancy agreement was neither of those, DAS said it couldn't assist M further.

The original panel firm continued to consider the remaining aspects of M's claim- specifically a claim for damage to M's property against a third party who had conducted repairs. The panel firm concluded that they didn't have enough evidence to establish the cause of the damage to M's property and who was responsible for it so they couldn't say the claim had reasonable prospects of success. Mr M then asked DAS to fund an expert report for M to help prove its claim had reasonable prospects of success. DAS declined but said that if M was able to obtain a report that changed the merits of its claim to place it within cover, it would reimburse it for the cost of this.

M then supplied an expert report so Mr M asked DAS to reconsider the claim. DAS referred the matter back to the panel firm to consider. The panel firm reviewed the report and concluded that the matters complained and documented within the report couldn't be considered without first determining who is responsible for what under the lease applicable to M's property. Given this fell outside the scope of their expertise, they said they couldn't consider things further. DAS then reviewed the matter and said the claim was excluded under the contract section of the policy because it related to a lease. As such they turned

down cover.

Mr M is unhappy about how DAS handled M's claim and the fact that it was one that would never have been covered. He's also unhappy with the time taken to establish this.

Our investigator considered M's complaint and concluded it shouldn't be upheld. Mr M doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding M's complaint. I'll explain why under the headings below.

Handling of the claim

I've noted the chronology of events in summary above. When considering the handling of the claim generally, I've thought about whether DAS should have known these claims were ones that would never have been covered, sooner than they did.

Having done so, I think DAS could've asked Mr M for further details of the claims sooner, but based on the information he'd provided, I'm not sure that would have necessarily revealed they wouldn't have been covered by the policy. I say so because M had a few issues he was exploring with the panel firm. And those issues weren't straightforward. Once the panel firm understood what they related to, as well as the evidence required to establish things, they provided advice about what they could and couldn't advise on and DAS were then able to review the claims under their policy terms further.

In this case I think DAS were reliant on the panel firm to advise on how the claims would be considered in law. That's because there was a possibility they could be considered under the property section of the policy, under nuisance and negligence- but after Mr M supplied an expert report, it became clear from the panel firm's advice that the matters documented needed to be assessed under the obligations set out under M's lease. I don't think DAS could have reached this conclusion themselves. They were reliant on legal advice to reach it as much as M was. So, whilst I understand why Mr M feels DAS could've been clearer about policy coverage, I don't think it could necessarily determine whether exclusions applied until the panel firm clarified the details of the claims. And given M is a commercial customer, there is an expectation that they would've had some awareness of what was covered under the policy terms in the first instance. I don't think DAS could've anticipated the exclusions that eventually applied based on the information they were given. And if they had applied them arbitrarily without them being properly considered first, this would've been unfair to M.

For clarity, I can't comment on the quality of the legal advice provided by the panel firm as that falls outside my remit but if Mr M feels the panel firm are at fault, then he can raise the matter with them directly with them or pursue M's complaint through the Legal Ombudsman.

Mr M has questioned why DAS didn't appoint a panel firm with experience in contract law. In this case the contract being referred to is the tenancy agreement. I don't think DAS needed to. Issues concerning the tenancy weren't covered by the policy, so I don't think appointing Solicitors that could have considered the tenancy would have been of any benefit to M.

Withdrawal of funding

The panel firm advised that the claim relating to the rehousing of M's tenants wasn't a matter they could deal with as it was a tenancy issue. At this point DAS considered that claim and concluded this was excluded. That's because that section of the policy relates to contracts for goods and services. Because the tenancy didn't amount to either, DAS declined to cover it. I agree with their interpretation in this regard.

The nuisance and negligence claims were turned down because they didn't have reasonable prospects of success, as required by the policy. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim- including the strength of the evidence supplied. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. DAS did this.

I'm satisfied that the Solicitor was experienced in the area of law M was asking for help with and I've seen nothing that suggests their advice was based on factual mistakes. So, I think DAS were entitled to turn down cover when they did and I think it was fair for them to offer to reimburse the cost of any expert evidence M might obtain that supported the merits of its claim, if M chose to obtain this. I'll discuss the report further below but for the sake of completeness I don't think DAS were wrong to withdraw funding again after the panel firm advised the matter needed to be reviewed in relation to M's tenancy agreement because this claim wasn't covered by the policy terms.

Expert evidence

The expert report M supplied was from its tenant's surveyor rather than one that M had obtained itself. Mr M says that if it had known about how things were going to unfold, he would have obtained his own expert evidence.

I've thought about this, but I don't think this would have made much difference. That's because the panel firm's advice, following sight of the expert report supplied was that the matters complained of and documented within the report couldn't be considered without first determining who was responsible for what under the lease applicable to M's property. I can't see how this advice would have changed if M had obtained its own report. Had it done so, I don't think the cost of it would have been covered by DAS because it wouldn't have established the merits of the claim- but rather led DAS to the conclusion that it wasn't one that was covered under the policy because it related to a lease. So I think M would have been out of pocket if it did this.

Delays

There were some delays at the beginning of M's claim which DAS acknowledged and offered M £75 for. I appreciate Mr M wasn't happy with this, but I think the sum offered for the duration of the delay (a little over two weeks including Christmas holidays) was reasonable. I know Mr M feels this time added to the worsening condition of M's property, but I don't think DAS is responsible for that.

Mr M was unhappy with the time the panel firm said they would take to assess the claim initially. I can see that the timeframe quoted is in line with what we would expect but when Mr M complained of the urgency, I can see that DAS took steps to try to obtain the advice sooner.

Mr M says the expert report he supplied wasn't promptly considered. I don't agree. DAS sent the report to the panel firm to consider. They did this and spoke to Mr M about it directly. They then followed that up in writing. There was nothing in the timeline surrounding this that makes me think DAS didn't do what they should have in a timely manner. And as I said before, the worsening condition of M's property during this time, isn't something DAS were responsible for.

I know Mr M is unhappy about the time it has taken DAS to reach the conclusions it did about the extent of cover, but as I said above, I think they were reliant on the advice of the panel firm to reach this conclusion, so I don't think I can say their overall decision to withdraw funding was delayed- rather it followed the advice given to them. As such I can't say that DAS should pay anything further.

If Mr M wants to accept the sum of £75 initially offered to M, he should contact DAS directly.

My final decision

For the reasons set out above, I don't uphold M's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 13 November 2023.

Lale Hussein-Venn
Ombudsman