

## **The complaint**

Mr K and Ms K are unhappy with what DAS Legal Expenses Insurance Company Limited did after they made a claim on their Landlord's Legal Protection insurance policy.

## **What happened**

In January 2022 Mr K contacted DAS as his tenant was in rent arrears and he wanted assistance with the repossession of his property. DAS asked for further information including what references had been obtained prior to the start of the tenancy. Having considered that information it turned down the claim on the tenant default section of the policy. It said that was because the references Mr K obtained didn't meet the policy requirements. And the rent arrears should have been reported to it within 90 days of them occurring which hadn't happened in this case.

It referred the repossession claim to panel solicitors for assessment and followed up on progress in May 2022. The panel solicitors told it they'd tried to contact Mr K but hadn't received any meaningful response and they'd make a further attempt. DAS subsequently advised Mr K he should speak to the panel firm to discuss his claim and provide any information they needed.

Our investigator thought the claim should have been reported to DAS earlier and in line with the reporting requirements in the policy. And in any event the policy required a reference from an employer or other financial source which Mr K hadn't provided. So she thought DAS had correctly turned down his rent guarantee claim. Any concerns he had about the actions of the panel firm in relation to his repossession claim would need to be raised with them.

Mr K didn't agree. He thought the requirement to report rent arrears within 90 days was an essential term of the policy which should have been clearly highlighted to him. And in this case the arrears had arisen during the Covid-19 pandemic so he was lenient over non-payment of rent in line with Government guidance. He didn't think an insured incident had occurred until it was clear the tenant would cease paying rent entirely. At that point he contacted DAS to make his claim.

And he'd obtained references which were in line with the standards of the time when his tenant first moved into his property in 2008. He remained unhappy with the service provided by the panel firm who dealt with his repossession claim.,

So I need to reach a final decision.

## **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.

I appreciate Mr K has found this matter extremely stressful and I know some of these issues coincided with a period of significant ill health for him. I was sorry to hear about this and hope he's now recovered from that.

But the question I need to consider is whether DAS did anything wrong when dealing with the claim he made. And the relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mr K's policy. This says "*we will negotiate for the following...your legal rights in trying to get possession of your property that you have let under ...an assured shorthold tenancy*". And where a claim has been accepted under that section it also provides cover for rent arrears "*while your tenant or ex-tenant still occupies your property for a maximum of 12 months*".

However, that's provided "*you have...obtained a satisfactory reference for each tenant and each guarantor from a licensed referencing service before the tenancy started*". And the policy says that 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)*". The policy doesn't cover "*any claim reported to us more than 90 days after the date you should have known about the insured incident*".

I've thought first about whether Mr K met the referencing requirements of his policy. I can see the information he provided to DAS is from when the tenant first moved into the property in 2008. It includes a reference from a previous landlord and a check carried out by a tenant referencing service. But I don't think it's in dispute Mr K didn't provide an employer's reference.

Mr K believes he met the standards in place at the time but I don't think that's the issue here. The policy requires that references are obtained "*before the tenancy started*". In this case Mr K's tenant took out an Assured Shorthold Tenancy (AST) for a 12 month period in 2008. I'm not clear what happened at the end of that tenancy but Mr K told us the tenant signed a new 12 month AST in September 2020. So at the point (at the latest) the previous tenancy had ended and a new one had begun. Based on the policy wording the referencing requirement would therefore need to have been satisfied at that point.

I appreciate Mr K didn't feel the need to obtain new referencing information because the tenant had been in the property for many years and there had been no previous issues. I understand why he thought that. But that doesn't change the fact he hadn't met the terms and conditions of his policy. And Mr K believes the reason the tenant got into arrears was because she lost her job. So I think the absence of (in particular) an employer's reference from before the start of the new tenancy is relevant to the loss that subsequently occurred. As a result I don't think it was unfair of DAS to turn down the claim because the referencing conditions hadn't been met.

DAS also said the rent arrears hadn't been reported to it within 90 days of them occurring. Mr K says that condition wasn't brought to his attention. But the Insurance Product Information Document (IPID) says the policy doesn't cover claims "*reported more than 90 days after the date you should have known about the insured incident*". So I think DAS did make him aware of this.

Mr K says he didn't tell DAS about the rent arrears earlier because he was taking a lenient approach to his tenant in line with official guidance. And I understand due to Government Covid-19 rules, between November 2020 and 31 May 2021 it wasn't possible to deliver a

notice of eviction. But I understand those temporary rules were lifted from the start of June 2021.

And by September 2021 the tenant was in reasonably significant arrears amounting to around £2,000. However, Mr K didn't tell DAS about this until 2022 which was a year after the arrears first arose and more than 90 days after those arrears reached the level they had in September 2021. And the definition of rent arrears which applies to the 'Insured Incident' of 'Tenant default' includes "*unpaid rent that...is owed to you under a tenancy agreement*".

I think that would cover the arrears in this case and I think Mr K would reasonably have known an insured incident had taken place by September 2021 which is more than 90 days before he contacted DAS. In any case, as I'm satisfied the referencing conditions of the policy haven't been met, I think that in itself provides grounds for DAS to fairly turn down the claim under the tenant default section of the policy.

I appreciate Mr K is also unhappy with how his repossession claim was handled by the panel firm DAS appointed to consider it. But the actions of a panel firm when carrying out their legal role aren't something we can consider. That's because we can only consider the covered activities set out in our rules (the Dispute Resolution Rules or DISP). Those activities include regulated activities. And "*carrying out a contract of insurance*" is a regulated activity. That's why we can consider what DAS did here.

However, the actions of the solicitors acting in their legal capacity aren't a regulated activity and don't fall within any of the other covered activities contained in our rules. So that isn't something we can look at; the solicitors are independent professionals with their own regulator and complaints procedures.

I can consider whether DAS took reasonable steps from a claims handling perspective and I think it did. It followed matters up with the panel firm at the start of May 2022 and was told it was awaiting a response from Mr K to attempts it had made to get in touch with him. If, as appears to be the case, Mr K is unhappy with what the panel firm subsequently did on his case that's something he can pursue through that firm's complaints process and potentially escalate to the Legal Ombudsman if he remains unhappy.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K and Ms K to accept or reject my decision before 17 November 2023.

James Park  
**Ombudsman**