

The complaint

Mr D complains that DAS Legal Expenses Insurance Company Limited unfairly declined his claim for rent protection under his legal expenses insurance policy.

What happened

Both parties are familiar with the circumstances of this complaint, so I've summarised what has happened.

- Mr D is a landlord. He has a legal expenses insurance policy which provides cover in the event a tenant fails to pay their rent. The policy is underwritten by DAS Legal Expenses Insurance.
- In March and April 2021, Mr D spoke with DAS' legal advice team.
- During his first call with the legal advice team, Mr D explained his tenant was in arrears of approximately four weeks and wanted to know whether he should make a claim for rent protection. He expressed his concerns in doing so and how it could impact his premiums. The adviser said he would look into Mr D's concern and get back to him.
- Another DAS legal advisor called Mr D back. A discussion was had about the relevant notices which could be served to Mr D's tenant for failing to pay rent. Towards the end of the call, Mr D asks about rent protection. He's told he has to go through the legal expenses insurance team and the adviser offers to put an enquiry through to the team for him. Mr D says he'll contact the insurer himself.
- In a subsequent call, Mr D speaks to another legal helpline advisor. In it, Mr D asks when he needs to let DAS know that he wants to make a claim. The advisor responds and talks about how long Mr D might have to give his tenant before making a claim. The adviser offers to send Mr D a link to the online claim form.
- Mr D subsequently submits a claim in August 2021 but is told it's too late by DAS. It says the claim was reported more than 90 days after Mr D became aware of the issue with his tenant's rent arrears.
- Mr D brought a complaint to this service. An investigator considered it and said DAS hadn't treated him fairly. She was satisfied Mr D had made the claim in time as in March and April he'd clearly reported to DAS there was an issue. Whilst she accepted it was reported to legal advice team, and not the legal expenses team, she said the contact details in the policy booklet led Mr D to the legal advice line instead – which isn't Mr D's fault.
- To put things right she said DAS needed to reconsider the claim without relying on the 90-day exclusion. And that if it were to pay the claim, it should add 8% simple interest from 26 September 2021, which is a month after Mr D raised a claim.

- DAS disagreed. It said its advisers had offered to submit a claim on Mr D's behalf and had provided him with a link to the online form to do so. It said it can't be responsible for Mr D's decision not to act.
- Because DAS disagreed the complaint has been passed to me for 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.

Having done so, I'm upholding this complaint and I'll explain why.

- The policy document is the starting point. Under *"what you are not covered for"* it says: *"Any claim reported to us more than 90 days after the date you should have known about the insured event."*
- DAS' legal advice line provides a service on behalf of the insurer – it's part of the package provided by the policy, and so, I'm satisfied DAS is ultimately responsible for what is said by the legal advice line.
- Mr D spoke to the legal advice line having been directed to it by calling the contact numbers in the policy document. It's standard practice that the legal advice line would assist with a claim in the first instance.
- What's key here is whether Mr D was given misleading information during those calls which lead him to believe he didn't need to make a claim at that time or that there wasn't a deadline for submitting one in respect of the rent arrears.
- I've listened to the relevant calls. Whilst I accept advisers mentioned the legal expenses insurance team and offered to put forward a claim enquiry on Mr D's behalf, I'm not satisfied that overall, the information Mr D received from the helpline was sufficiently clear in respect of when he would need to submit a claim for the rent arrears.
- Of note, is that in a call with an adviser, Mr D explicitly asks – *"Do I leave it [meaning a claim for the rent protection] for a couple of months and come back to you? How soon do I need to let you know?"*. The adviser responds that it *"sounds like an insurance matter"* but then adds that Mr D might have to possibly wait eight weeks to make a claim. But my interpretation of this comment is that it's in respect of notifying the tenant about action being taken, rather than notifying the insurer about wanting to make a claim – which is what Mr B was in fact asking. So, I don't think it's fair to say Mr D was given clear advice in respect of this.
- Furthermore, in the same call, the adviser says, *"it's up to you whether you claim, wait or consider making a claim to the county court."* Having heard that he could "wait" I'm satisfied it would be reasonable for Mr D to assume that there wasn't a deadline in place for submitting a claim in respect of rent protection.
- I'm not persuaded DAS has provided clear advice to Mr D. So, I don't think it has treated Mr D fairly in declining his claim based on it having been submitted outside of the 90-day window. It follows therefore, that it should

reconsider the claim without reference to this exclusion.

- Mr D has complained that DAS didn't keep to deadlines when dealing with his complaint about how it handled his claim. Whilst I can see it missed its own deadlines, a final response was ultimately provided within the eight weeks it's given before a complaint can be submitted to this service.

Putting things right

I've explained that DAS should reconsider the claim without reference to the 90-day exclusion.

If the claim is successful and paid, DAS needs to add 8% simple interest to the payment. I've set out below how I've determined when interest should be added from.

When Mr D called DAS in March 2021, his tenant's rent was already four weeks in arrears (I can see from the estate agent's records that the tenant failed to pay the full rent amount on 26 February 2021). Mr D would have needed to give the tenant a further four weeks before acting – which would have been 23 April 2021. And from this point Mr D would have had 90 days to submit a claim.

From listening to the calls, I think Mr D was more likely to have logged the claim towards the end of the claim period (had he known there was one) as he said he wanted to give the tenant the opportunity to pay the arrears to avoid claiming on his insurance unnecessarily. So, I think the earliest Mr D would have submitted a claim was 22 July 2021.

It's reasonable that DAS would require one month to deal with the claim. I'm satisfied the earliest date a payment would have been made is 22 August 2021. And so, 8% simple interest should be added from this date until the payment is made.

My final decision

My final decision is that I uphold this complaint.

DAS Legal Expenses Insurance Company must reconsider the claim without applying the 90-day exclusion.

If the claim is successful, it should pay it plus 8% simple interest, which should be calculated from 22 August 2021 until the date the payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 18 July 2022.

Nicola Beakhust
Ombudsman