

The complaint

Mr L is unhappy DAS Legal Expenses Insurance Company Limited turned down a claim he made on his legal expenses insurance policy

What happened

Mr L has legal expenses insurance with DAS provided as part of his home insurance. The landlord of his leasehold property claimed against him for unpaid service charges, ground rent and insurance (plus costs and interest) it said were owed under the terms of his lease. Mr L sought assistance in defending that claim.

DAS turned down the claim. It said while his policy did cover contract disputes the lease agreement Mr L had with his landlord wasn't a contract for goods or services. And that needed to be the case in order for an insured event to have taken place under the policy.

In his most recent view (and having considered information about the claim provided by Mr L) our investigator said he thought Mr L's claim was for a breach of his lease by his landlord (rather than simply being about the non payment of service charges). And the lease had transferred title / ownership to Mr L. If DAS had wanted the contract disputes section to exclude cover for claims like this it should have made that clear in the policy or defined what it meant by a contract. So he thought DAS should arrange for a legal assessment of the claim in line with the remaining terms and conditions of the policy.

DAS didn't agree. It said the cover provided by the policy was for contract disputes where the contract was for the buying/hiring of goods or services. However, the claim in this case related to whether there had been a breach of Mr L's leasehold agreement. It said its position was that a lease was a licence or agreement to occupy land and / or buildings and not one for goods or services. It thought its decision to turn down Mr L's claim had been correct.

I issued a provisional decision on the complaint earlier this month. In summary I said:

The relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

For cover to be available for Mr L's claim it needs to fall within one of the insured incidents set out in his policy. And the onus is on a policyholder to show their claim falls within one of those sections. In this case I don't think it's in dispute the only insured incident Mr L's claim might fall within is 'Contract Disputes'.

And in relation to that, his policy says it covers costs and expenses arising from an agreement or an alleged agreement entered into "for the buying or hiring in of any goods or services or the selling of any goods".

In this case Mr L's dispute arises from the lease agreement he has with the landlord of his property. I accept that issue could in itself constitute a contractual dispute but there's no suggestion that agreement was for the selling of any goods. So in order for it to be covered

under the policy it would need to be for the buying or hiring of goods or services. I don't think Mr L has shown it was.

In my view the main purpose of the lease is the conveyance of property in the form of Mr L's flat. But I think goods are generally understood to represent tangible, moveable items. I don't think they would reasonably include a physical building. And while I appreciate the landlord might be providing some services (in terms of property maintenance) I don't think Mr L has shown his lease is an agreement "for" those services. The key purpose of the lease is to allow him to reside in the property for a set period of time and to set out his rights and responsibilities and those of his landlord. I think any provision of services by the landlord is ancillary to the main purpose of the contract (which was to convey land). And so I'm not persuaded Mr L has shown his lease does represent an agreement for services.

But even if Mr L was able to satisfy DAS on that, for cover to be available under this section of the policy I think there would reasonably need to be a link between any agreement for services and the dispute he was seeking legal expenses cover for. I don't think there is. I've reviewed the court papers relating to this claim and I can see his landlord is taking action against him for unpaid ground rent, service charges and insurance premiums.

Mr L's submissions set out 'Disputed Grounds' which are that the amount claimed is not wholly due as payment terms had been varied and a processing charge and legal fees should not be included. So his claim is about liability for these charges. He hasn't specifically argued, as part of his challenge to the claim, there's been any failure by the landlord to provide services that were due under his lease. And he doesn't appear to be seeking legal expenses cover in relation to such a dispute. So even if he was able to show his lease was an agreement for services I don't think cover would in any case be available for the claim he's seeking assistance with.

I appreciate the contract disputes section of the policy separately covers "Your legal rights in a contractual dispute or for misrepresentation arising from an agreement or alleged agreement which you have entered into for the buying or selling of your principal home". However, even if Mr L could show that his dispute fell within those provisions (and I'm not sure there's a close enough connection between this dispute and the buying of his principal home) cover is only provided where he "entered into the agreement or alleged agreement during the insurance period".

In this case I can see from Land Registry information that Mr L's property was last sold in February 2007 and information DAS has provided says the start date of cover was June 2007. So I don't think cover would be available under this part of his policy either. As a result, and for the reasons I've explained, I don't think DAS acted unreasonably in declining the claim he made.

Responses to my provisional decision

DAS didn't respond to my provisional decision. Mr L did provide further comments. In summary he said:

- He was defending a claim for an alleged breach of contract relating to non-payment for services and he provided invoices covering these services. He thought those invoices showed he was buying services from a service provider and were separate from the purchase of the property (which completed in July 2007). And he provided a copy of his lease which contained a requirement to pay for these services.

- He said his claim was founded on the unpaid invoices for these services and he didn't accept there wasn't a link between that agreement and his dispute. Any of the terms in his contract could provide valid grounds to defend himself against a breach. And he had a legitimate right to do so in relation to the billing terms. He also said his defence included a counterclaim in relation to a failure to carry out maintenance work.
- He said this policy was taken out in June 2007. As he'd paid for it since then, including for the years relating to the claim he wanted to make, he thought it should provide cover for this.

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 accepted in my provisional decision Mr L's landlord was likely to be providing some services in the form of property maintenance. And I appreciate those obligations are set out in his lease. But it remains my view that Mr L hasn't shown his lease is an agreement *for* those services (which it needs to be in order for this claim to be covered by his policy). I continue to feel the key purpose of his lease is to allow him to reside in the property for a set period of time and I think the provision of services is ancillary to that. So I'm not persuaded this is an agreement *for* services which would fall within the terms of his policy.

Nor am I persuaded the dispute he's trying to obtain cover for in any case relates to a failure by the landlord to provide services that were due under his lease. Mr L has argued that a breach of the billing terms of that agreement gives him a defence against the requirement to pay. But whether that's correct or not it doesn't show that his claim is about a failure to provide those services to him.

And while he's suggested his counter claim relates to that I've read it and it's not obvious to me it does. There are no specific instances of a failure to provide, for example, maintenance services set out in that. The particulars of the breach don't reference this issue at all and none of the remedies listed within the counter claim relate to the provision of services to Mr L's property. My view remains that, even if Mr L was able to show his lease was an agreement for services, cover wouldn't be available for his claim.

The contract disputes section does separately provide cover for a contractual dispute *"arising from an agreement or alleged agreement which you have entered into for the buying or selling of your principal home"*. Based on the information Mr L has now provided I think it's likely he did enter into the lease agreement after he took out the policy. So the exclusion I previously referenced wouldn't apply to his claim. But the dispute would still need to arise that that agreement.

And even if the term *"arising from"* means the agreement doesn't need to be the proximate cause of what happened (directly giving rise to the events leading to the claim) I think it's reasonable to say there would nevertheless need to be a relatively strong degree of causal connection between the two.

For the broadly the same reasons I've already set out I don't think that's the case here. I don't think there a close enough connection between Mr L's lease agreement (which as I've said primarily allows him to reside in his property for a set period of time) and the dispute he's seeking cover for to say it *"arises from"* an agreement for the purchase of his principal home.

Finally, Mr L has suggested that as he's been paying for the policy since he first took it out in June 2007 it should provide cover for his claim. However, it's not the time he's been paying for the policy that's the issue here but whether he's shown he has a claim that falls within one of the insured incidents it contains. I don't think he's done that.

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 L to accept or reject my decision before 29 March 2024.

James Park
Ombudsman