

The complaint

Mr S complains about how his insurer, DAS Legal Expenses Insurance Company Limited (DAS) dealt with a claim under his breakdown insurance policy.

References to DAS in this decision include their agents.

What happened

In August 2023 Mr S's vehicle suffered a flat tyre while on a motorway. Mr S wasn't able to fix the tyre given the nature of the deflation and his vehicle only having a basic tyre repair kit. He called DAS and connected to a link where he completed details of the breakdown. A recovery agent arrived and put Mr S's vehicle on a trailer but said DAS hadn't authorised recovery of the vehicle to Mr S's home, so they'd have to wait for a call from DAS. DAS called to tell Mr S his policy only provided local recovery (10 miles) so he'd have to pay extra for the additional 90 miles to his home (at a cost of about £220). Mr S challenged this, saying there was no mention of this condition on the DAS website. Needing to get home, Mr S reluctantly accepted the additional cost (£226.92).

Unhappy at what had happened, Mr S complained to DAS. DAS didn't uphold the complaint. In their final response they said while Mr S's policy included nationwide recovery, there were some 'fault specific' restrictions (exclusions) within the policy wording. DAS referred to an exclusion if recovery was more than 10 miles where service couldn't be provided at the roadside because a vehicle wasn't carrying a roadworthy spare wheel, repair kit, jack or locking wheel nut removal device. The exclusion didn't apply to vehicles having run flat tyres, not equipped to carry spare wheels or the repair kit couldn't repair the tyre. DAS said Mr S reported his vehicle didn't have a spare wheel (confirmed by the recovery agent) so he wasn't covered for assistance beyond the 10 mile local recovery limit.

Mr S then complained to this Service. He said he wasn't aware of the limit (exclusion) on his policy to 10 miles. He also didn't think the exclusion applied because his particular vehicle (as manufactured) wasn't equipped with a spare wheel and the repair kit wouldn't have been able to fix the flat tyre. He'd been affected financially by having to pay the additional cost to recover his vehicle to his home. He was also unhappy at how long it took DAS to respond to his complaint and wanted them to reimburse the additional amount he'd paid.

Our investigator upheld the complaint, concluding DAS hadn't demonstrated the exclusion applied. Mr S said his vehicle didn't come with a spare wheel as standard, so the vehicle never had one. As the wording of the exclusion meant it didn't apply where a vehicle wasn't equipped to carry a spare wheel, then DAS hadn't acted fairly to apply the exclusion. To put things right, the investigator thought DAS should reimburse Mr S the £226.92 plus interest. DAS disagreed with the investigator's view and asked that an ombudsman review the complaint. They said they'd obtained a legal view on the interpretation of the wording in the exclusion referring to a vehicle being "*equipped to carry spare wheels*". DAS said this meant a vehicle having a specific feature (such as a wheel compartment or well) to allow a spare wheel to be carried.

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.

My role here is to decide whether DAS have acted fairly towards Mr S.

The key issue in Mr S's complaint is whether DAS acted fairly to apply the exclusion where a vehicle wasn't carrying a spare wheel (or repair kit or other equipment). In such cases costs incurred in recovery over 10 miles would not be covered (and so would be chargeable). Mr S says it was unfair to apply the exclusion, partly on the grounds he wasn't aware of the exclusion and also because his vehicle was never equipped with a spare wheel, But it was with an aerosol repair kit, but it couldn't be used to repair the tyre in the circumstances in which it was damaged.

DAS say it was fair to apply the exclusion as Mr S's vehicle didn't have a spare wheel. They also say the wording of the exclusion should be interpreted to mean the exclusion applies where a vehicle is equipped to carry a spare wheel (for example a wheel compartment or well). The implication being that this would apply even if the vehicle didn't come with a spare wheel – the wording of the exclusion meant the key was the *ability* to carry a spare wheel, rather than whether it *actually* was carrying a spare wheel (my emphasis).

Given the issue revolves around the specific wording of the policy exclusion and its meaning and interpretation, I've set out the full wording, which is to be found under the *General Exclusions* section of the policy document:

22. "Cost incurred in addition to a standard call-out and recovery further than 10 miles where service cannot be undertaken at the roadside because the vehicle is not carrying a roadworthy spare wheel, aerosol repair kit, appropriate jack or, the locking mechanisms for the wheels are not immediately available to remove the wheels. This exclusion does not apply to motorcycles, scooters or vehicles which have run flats, are not equipped to carry spare wheels or the aerosol repair kit cannot repair the breakdown."

Before considering the meaning and interpretation of the exclusion wording, I've first considered the circumstances of the breakdown, from what Mr S and DAS have told us, including relevant evidence and information.

Looking at DAS's case file, I can see Mr S contacted DAS to log the need for assistance on the evening of the date of the incident. He also updated his request to tell DAS his vehicle didn't have a spare tyre and the recovery agent subsequently confirmed this on their arrival. I can also see the case notes updating the recovery request to note no spare tyre and therefore only covered for 10 mile recovery, with the job recorded as 'part insured/part pay'. The notes then record the recovery distance as 71 miles, so Mr S would be responsible for the mileage above 10 miles. The case notes then record the additional payment being made. The case notes then record – after Mr S lodged his complaint – the vehicle having no spare wheel or 'any other repair kit'.

However, Mr S has told us his vehicle didn't come with a spare wheel, from the time of its manufacture. But it was equipped with a basic tyre repair kit. I've seen nothing to contradict this – both Mr S and DAS agree the vehicle didn't have a spare wheel. My understanding is that where a vehicle doesn't as standard come with a spare wheel, some form of tyre repair/inflation kit will be provided instead (unless the vehicle is equipped with run flat tyres, which isn't the case here). Mr S says his vehicle had a basic tyre repair kit, but that it wasn't sufficient to deal with the flat tyre. I haven't seen detail of why this might be the case, for

example the tyre being too badly damaged or deflated. But neither have I seen anything to contradict this statement.

So, the first part of the exclusion wording wouldn't apply, as the vehicle was carrying an aerosol repair kit.

That being the case, then the last part of the exclusion wording would also be relevant (my emphasis added):

*“This exclusion does not apply to motorcycles, scooters or vehicles which have run flats, are not equipped to carry spare wheels **or the aerosol repair kit cannot repair the breakdown.**”*

Use of 'or' in the wording indicates the wording that follows applies, regardless of whether the vehicle is 'not equipped to carry spare wheels'.

So, I've concluded in the specific circumstances of this case the above wording means the exclusion does not apply. So, DAS acted unfairly in applying it.

While I've reached this conclusion, I've considered DAS's view, based on legal advice, that the wording of the exclusion, specifically the wording in the exclusion referring to a vehicle being *“equipped to carry spare wheels”*. DAS say this means a vehicle having a specific feature (such as a wheel compartment or well) to allow a spare wheel to be carried.

However, I don't think this is a reasonable interpretation. I say that because vehicles may be constructed as standard with a compartment or well that could house a spare wheel. But that doesn't mean a spare wheel is included as standard (either full size or a 'skinny' size). It may be added as an optional extra, but where that option isn't selected then the compartment will be empty, or a tyre repair/inflation kit is included.

The implication of DAS's view is that where a vehicle has a spare wheel compartment or well, but doesn't come with a spare wheel, then a policyholder would have to purchase a spare wheel in order for the exclusion not to apply. Even if this was possible, I don't think it's fair or reasonable – nor is it spelt out in the policy terms or conditions.

Taking all these points together, I've concluded DAS acted unfairly and unreasonably to apply the exclusion in the specific circumstances of this case. It follows they also acted unfairly and unreasonably in charging Mr S £226.92 for the recovery mileage greater than the 10 mile limit in the exclusion.

In terms of what DAS should do to put things right, I think they should reimburse Mr S the £226.92 charge. As Mr S had to pay the charge before DAS would recover his vehicle to his home, DAS should add interest on this amount, at a rate of 8% simple, from the date Mr S paid the charge to the date they reimburse him.

My final decision

For the reasons set out above, I uphold Mr S's complaint. I require DAS Legal Expenses Insurance Company Limited to:

- Reimburse the £226.92 charged to Mr S for the recovery mileage greater than the 10 mile limit in the exclusion.
- Pay interest on the amount, at a rate of 8% simple, from the date Mr S paid the charge to the date they reimburse him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 May 2024.

Paul King
Ombudsman