

Section 3K

Legal Expenses

(Operative only if so stated in the specification)

Definitions

Applicable to this section only. The meaning of other words in bold type are to be found in the General Conditions of the policy.

Appointed Representative

The lawyer, accountant or other suitably qualified person, who has been appointed to act for an **insured person** in accordance with the terms of this section of the policy.

Aspect Enquiry

An examination by the Inland Revenue which considers one or more specific aspects of **your** self assessment and/or corporation tax return.

Business

The business stated in the specification to this section.

Costs and Expenses

Legal costs

All reasonable and necessary costs chargeable by the **appointed representative** on a standard basis. Also the costs incurred by opponents in civil cases if an **insured person** has been ordered to pay them or pays them with the agreement of **DAS**.

Accountant's costs

A reasonable amount in respect of all costs reasonably incurred by the **appointed representative**.

Attendance expenses

The **insured person's** salary or wages for the time that the **insured person** is off work to attend any arbitration, court or tribunal hearing at the request of the **appointed representative** or while attending jury service, **NFU Mutual** will pay for each half or whole day that the court, tribunal or the **insured person's** employer will not pay for.

The amount **NFU Mutual** will pay is based on the following:

- the time the **insured person** is off work including the time it takes to travel to and from the hearing. This will be calculated to the nearest half day assuming that a whole day is eight hours;
- if the **insured person** works full time, the salary or wages for each whole day equals 1/250th of the **insured person's** yearly salary or wages;

- if the **insured person** works part-time, the salary or wages will be a proportion of the **insured person's** weekly salary or wages.

DAS

DAS Legal Expenses Insurance Company Limited which administers the independent claims handling service on behalf of **NFU Mutual** and to whom notification of any claim should be addressed at:

Legal Claims Centre,
DAS Legal Expenses Insurance Company Limited,
DAS House,
Quay Side,
Temple Back,
Bristol BS1 6NH
Tel: 0845 070 0173

Date of Occurrence

- (a) For civil cases (other than under insured incident - **5 Tax Protection**), when the cause of action first accrued.
- (b) For criminal cases, when the **insured person** commenced or is alleged to have commenced to violate the criminal law in question.
- (c) For **full enquiries** or **aspect enquiries**, when the Inland Revenue first notifies in writing the intention to make enquiries.
- (d) For Employers' Compliance and Value Added Tax disputes, when the relevant authority sends **you** an assessment or written decision.

Event

Anyone occurrence or number of occurrences arising directly or indirectly from one source or original source.

Full Enquiry

An extensive examination by the Inland Revenue which considers all aspects of **your** tax affairs, excluding those enquiries which are limited to one or more specific aspects of **your** self assessment and/or corporation tax return.

Injury

Bodily injury, death, disease, illness or nervous.

Insured Person

You and **your** directors, partners, managers and employees.

Money

Cash or any negotiable money instrument.

Premises

The buildings at the address(es) shown in **your** schedule which you use for **your business**.

Property

Material property.

Territorial Limits

For cover 2 Legal Defence (excluding 2(4), and 4(b) Injury

The European Union, the Isle of Man, the Channel Islands, Albania, Andorra, Bosnia Herzegovina, Bulgaria, Croatia, the Czech Republic, Gibraltar, Hungary, Iceland, Liechtenstein, Macedonia, Malta, Monaco, Montenegro, Norway, Poland, Romania, San Marino, Serbia, Slovakia, Slovenia, Switzerland and Turkey (west of the Bosphorus).

For all other cover

The United Kingdom of Great Britain and Northern Ireland, the Isle of Man, and the Channel Islands.

You/your

The company, partnership or individuals named in the policy.

Cover

NFU Mutual agree to provide the insurance in this policy in accordance with the operative covers shown in the policy schedule as long as:

- (a) the **date of occurrence** of the insured incident happens during the **period of insurance** and the insured incident occurs within the **territorial limits** in connection with the **business**; and
- (b) any legal proceedings will be dealt with by a court, or other body which DAS agree to, in the **territorial limits**; and
- (c) in civil claims it is always more likely than not that an **insured person** will recover damages (or obtain any other legal remedy which DAS have agreed to) or make a successful defence.

For all insured incidents, **DAS** will help in appealing or defending an appeal as long as the **insured person** tells **DAS** within the time limits allowed that they want **DAS** to appeal. Before **NFU Mutual** pay any **costs and expenses** for appeals, **DAS** must agree that it is always more likely than not that the appeal will be successful.

If an **appointed representative** is used, **NFU Mutual**

will pay the **costs and expenses** incurred for this.

NFU Mutual will pay Compensation Awards that **DAS** have agreed to.

The most **NFU Mutual** will pay for all claims arising out of any event is £100,000.

1 Employment Disputes and Compensation Awards

(a) Employment Disputes

DAS will defend **your** legal rights:

- (1) prior to the issue of legal proceedings in a court or tribunal following the dismissal of an employee: or
- (2) in the resolution of unfair dismissal disputes under the ACAS Arbitration Scheme: or
- (3) in legal proceedings in respect of any dispute with:
 - (a) an employee or ex-employee or a trade union acting on behalf of an employee or ex-employee which arises out of, or relates to, a contract of employment with **you**, or
 - (b) an employee, prospective employee or ex-employee arising from an alleged breach of their statutory rights under employment legislation.

What is not covered

- (1) Any employment dispute where the cause of action arises within the first 90 days of the indemnity provided by this section of the policy.
- (2) Any dispute with an employee who was subject to a written or oral warning (formal or informal) within 180 days immediately preceding the inception date of the indemnity provided by this section of the policy if the **date of occurrence** was within the first 180 days of the indemnity provided by this section of the policy.
- (3) Any redundancy or alleged redundancy or unfair selection for redundancy arising within the first 180 days of the indemnity provided by this section of the policy.
- (4) Any claim in respect of damages for personal **injury** or loss of or damage to **property**.
- (5) Any claim arising from or relating to any transfer of business which falls within the scope of the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended by the Collective Redundancies and Transfer of Undertaking Regulations (Protection of Employment) (Amendment) Regulations 1999, or the Acquired Rights Directive 2001 and any amending legislation.

(b) Compensation Awards

NFU Mutual will pay:

- (1) any basic and compensatory award: and/or
- (2) an order for compensation following a breach of **your** statutory duties under employment legislation in respect of a claim **DAS** have accepted under insured incident **1(a)**.

provided that

(1) In cases relating to performance and/or conduct, you have throughout the employment dispute either:

- (a) followed the ACAS Code of Disciplinary Practice and Procedures in Employment as prepared by the Advisory Conciliation and Arbitration Service; or*
- (b) followed equivalent codes of practice issued by the Labour Relations Agency in Northern Ireland; or*
- (c) sought and followed advice from DAS' legal advice service.*

(2) For an order of compensation following your breach of duty under employment legislation you have at all times sought and followed advice from DAS' legal advice service since the date when you should have known about the employment dispute.

(3) For any compensation award for redundancy or alleged redundancy or unfair selection for redundancy, you have sought and followed advice from DAS' Claims Department prior to serving notice of redundancy.

(4) The compensation is awarded by a tribunal or through the ACAS Arbitration Scheme. under a judgment made after full argument and otherwise than by consent or default, or is payable under settlement approved in writing in advance by DAS.

(5) The total of the compensation awards payable by DAS shall not exceed £ 1,000,000 in any one period of insurance.

What is not covered

- (1) Any compensation award relating to the following:
 - (a) trade union activities. trade union membership or non-membership;
 - (b) pregnancy or maternity rights;
 - (c) health and safety related dismissals brought under section 44 of the Employment Rights Act 1996;
 - (d) statutory rights in relation to trustees of occupational pension schemes;
 - (e) statutory rights in relation to Sunday shop and betting work.
- (2) Non-payment of **money** due under the relevant contract of employment or statutory provision relating thereto.
- (3) Any award ordered as a result of a breach of statutory rights in relation to the provision of relevant records to employees under the National Minimum Wage Act 1998.
- (4) Any compensation award or increase in compensation award ordered by the tribunal for failure to comply with a recommendation it has made, including non-compliance with a reinstatement or re-engagement order.

(c) Service Occupancy

DAS will negotiate for **your** legal rights against an employee or ex-employee to recover possession of **premises** owned by, or for which **you** are responsible.

What is not covered

Any claim relating to defending **your** legal rights other than defending a counter-claim.

2 Legal Defence

At **your** request

- (1) **DAS** will defend the **insured person's** legal rights:
 - (a) prior to the issue of legal proceedings when dealing with the
 - _ Police
 - _ Health and Safety Executive and/or Local Authority Health and Safety Enforcement Officer where it is alleged that the **insured person** has or may have committed a criminal offence; or
 - (b) following an event which leads to the **insured person** being prosecuted in a court of criminal jurisdiction; or
 - (c) if civil action is taken against the **insured person** for compensation under section 13 of the Data Protection Act 1998. **NFU Mutual** will also pay any compensation award made against the **insured person** under section 13 of the Data Protection Act 1998.
- (2) **DAS** will defend **your** legal rights following civil action taken against **you** for wrongful arrest in respect of an accusation of theft alleged to have been carried out during the **period of insurance**.
- (3) **DAS** will defend the legal rights of **your** directors, partners, managers and employees if:
 - (a) an event arising from their work as an employee leads to civil action being taken against them under legislation for unlawful discrimination on the grounds of sex, sexual orientation, race, disability, age, religious belief or political opinion; or
 - (b) civil action is taken against them as a trustee of a pension fund set up for the benefit of **your** employees.
- (4) **DAS** will represent the **insured person** in appealing against the imposition or terms of any Statutory Notice issued under legislation affecting **your business**.
- (5) **DAS** will represent **you** in appealing against the refusal of the Information Commissioner to register **your** application for registration.
- (6) **NFU Mutual** will pay the **attendance expenses** of an **insured person** for jury service.

Provided that

(1) In so far as proceedings under the Health and Safety at Work etc Act 1974 are concerned, the territorial limits shall be any place where the Act applies.

(2) At the time of the insured incident, you have registered with the Information Commissioner in respect of cover (1)(c).

What is not covered

- (1) Any claim which leads to the **insured person** being prosecuted for infringement of road traffic laws or regulations in connection with the ownership, driving or use of a motor vehicle.
- (2) Any claim under (3)(a) which leads to civil action being taken against **you**.

3 Contract Disputes

DAS will negotiate for **your** legal rights in a contractual dispute arising from that agreement or that alleged agreement which has been entered into by **you** or on **your** behalf for the purchase, hire, sale or provision of goods, services or the lease, license or tenancy of land or buildings.

Provided that

(1) The amount in dispute exceeds £250. If the amount in dispute exceeds £5,000, you will be responsible for the first £500 of legal costs in each and every claim.

(2) If the amount in dispute is payable in instalments, the instalments due and payable at the time of making the claim exceed £250.

(3) If the dispute relates to money owed to you, a claim under the policy is made within 90 days of the money becoming due and payable.

What is not covered

- (1) Any dispute arising from an agreement entered into prior to the inception date of the indemnity provided by this section of the policy if the **date of occurrence** is within the first 90 days of the indemnity provided by this section of the policy.
- (2) Any claim relating to the following:
 - (a) the settlement payable under an insurance policy;
 - (b) a loan, mortgage, pension or any other financial product and choses in action;
 - (c) a motor vehicle owned by, or hired or leased to **you** other than agreements relating to the sale of motor vehicles where **you** are engaged in the business of selling motor vehicles.
- (3) A dispute with an employee or ex-employee which arises out of, or relates to, a contract of employment with **you**.
- (4) A dispute arising from or relating to the renewal of a lease or tenancy agreement, or a rent review.
- (5) A dispute which arises out of the:
 - (a) sale or provision of computer hardware, software, systems or services; or
 - (b) purchase or hire of computer hardware, software, systems or services; tailored by a supplier to **your** own specification.
- (6) A dispute arising from a breach or alleged breach of professional duty by an **insured person**.
- (7) The recovery of **money** and interest due from another party other than disputes where the other party intimates that a defence exists.

4 Property Protection and Injury

(a) Property Protection

DAS will negotiate for **your** legal rights in any civil action relating to **property** which is owned by you, or is your responsibility, following:

- (1) any event which causes or could cause physical damage to such **property**; or
- (2) any nuisance or trespass.

What is not covered

Any claim relating to the following:

- (1) a contract entered into by **you**;
- (2) goods in transit or goods lent or hired out;
- (3) goods at premises other than those occupied by **you** unless the goods are at such premises for the purpose of installations or use in work to be carried out by **you**;
- (4) mining subsidence;
- (5) defending **your** legal rights other than in defending a counter-claim;
- (6) a motor vehicle owned or used by, or hired or leased to an **insured person** other than damage to motor vehicles where **you** are engaged in the **business** of selling motor vehicles.

(b) Injury

At **your** request, DAS will negotiate for an **insured person's** and their family members' legal rights following an **event** which causes **injury** to them.

What is not covered

Any claim relating to the following:

- (1) any **injury** which develops gradually or is not caused by a specific or sudden accident; or
- (2) defending an **insured person's** or their family members' legal rights other than in defending a counter-claim; or
- (3) a motor vehicle owned or used by, or hired or leased to an **insured person** or their family members.

5 Tax Protection

(a) Full or Aspect Enquiries

DAS will negotiate on **your** behalf and represent **you** in any appeal proceedings in respect of a **full enquiry** and/or **aspect enquiry**.

(b) Employers' Compliance

DAS will negotiate on **your** behalf and represent **you** in any appeal proceedings in respect of a dispute concerning **your** compliance with Pay As You Earn or Social Security Regulations following a review by the Inland Revenue or the Department of Social Security Contributions Agency.

(c) VAT Disputes

DAS will negotiate on **your** behalf and represent **you** in any appeal proceedings following an assessment issued by HM Customs and Excise in respect of Value Added Tax due.

Provided that

(1) For all insured incidents, you have taken reasonable care to ensure that all returns are complete and correct and that such returns are submitted within the statutory time limits allowed.

(2) NFU Mutual will not pay more than £5,000 for aspect enquiries.

What is not covered

- (1) In respect of **aspect enquiries** the first £200 of **costs and expenses** in each and every claim.
- (2) Any insured incident arising from a tax avoidance scheme.
- (3) Any insured incident caused by **your** failure to register for Value Added Tax.
- (4) Any insured incident arising from any investigation or enquiries undertaken by the Inland Revenue Special Investigation Section or Special Compliance Office.
- (5) Any insured incident arising from any investigation or enquiry by HM Customs and Excise into alleged dishonesty or alleged criminal offences.

Exclusions Applicable to section 3K

This section excludes:

- 1 Any claim reported to **DAS** more than 180 days after the date the **insured person** should have known about the insured incident.
- 2 **Costs and expenses** incurred before the written acceptance of a claim by **DAS**.
- 3 Fines, penalties, compensation or damages which the **insured person** is ordered to pay by a court or other authority other than compensation awards as covered under insured incident **1(b) Compensation Awards** and **2 Legal Defence**.
- 4 Any claim relating to patents, copyrights, trademarks, merchandise marks, registered designs, intellectual property, secrecy and confidentiality agreements.
- 5 Any claim relating to franchise rights, or agency rights where **you** have the legal capacity to alter the legal relations of another.
- 6 Any insured incident deliberately or intentionally caused by an **insured person**.
- 7 A dispute with **NFU Mutual** or **DAS**, not otherwise dealt with under Special Condition 7.
- 8 Any claim relating to a shareholding or partnership share in **you** unless such shareholding was acquired under a scheme open to all **your** employees or a substantial number of them of a certain minimum trade other than **your** directors or partners.
- 9 An application for judicial review.
- 10 Legal action an **insured person** takes which **DAS** or the **appointed representative** have not agreed to or where the **insured person** does anything that hinders **DAS** or the **appointed representative**.
- 11 When either at the commencement of or during the course of a claim, **you** are bankrupt or have filed a bankruptcy petition or winding-up petition, or have made an arrangement with **your** creditors, or have entered into a deed or arrangement or are in liquidation or part or all of **your** affairs or **property** are

in the care or control of a receiver or administrator.

12 Any claim relating to any non-contracting party's right to enforce all or any part of this policy. The Contracts (Rights of Third Parties) Act 1999 does not apply to this policy.

Special Conditions

1 An **insured person** must:

- (a) keep to the terms and conditions of this section of the policy;
 - (b) notify **NFU Mutual** immediately of any alteration which may materially affect **NFU Mutual's** assessment of the risk;
 - (c) take reasonable steps to keep any amount **NFU Mutual** have to pay as low as possible;
 - (d) try to prevent anything happening that may cause a claim;
 - (e) send everything **DAS** ask for, in writing;
 - (f) give **DAS** full details of any claim as soon as possible and give **DAS** any information **DAS** need.
- 2 (a) **DAS** can take over and conduct in the name of an **insured person**, any claim or legal proceedings at any time. **DAS** can negotiate any claim on behalf of an **insured person**.
- (b) The **insured person** shall be free to choose an **appointed representative** (by sending **DAS** a suitably qualified person's name and address) if:
 - i) **DAS** agree to start legal proceedings and it becomes necessary for a lawyer to represent the interests of the **insured person** in those proceedings; or
 - ii) there is a conflict of interest.

DAS may choose not to accept the **insured person's** choice, but only in exceptional circumstances. If there is a disagreement over the choice of **appointed representative** in these circumstances the **insured person** may choose another suitably qualified person.
 - (c) In all circumstances other than those set out in 2(b) above, **DAS** shall be free to choose an **appointed representative**.
 - (d) An **appointed representative** will be appointed by **DAS** and represent an **insured person** according to **DAS'** standard terms of appointment. The **appointed representative** must co-operate fully with **DAS** at all times.
 - (e) **DAS** will have direct contact with the **appointed representative**.
 - (f) An **insured person** must co-operate fully with **DAS** and with the **appointed representative** and must keep **DAS** up-to-date with the progress of the claim.
 - (g) An **insured person** must give the **appointed representative** any instructions that **DAS** require.
- 3 (a) An **insured person** must tell **DAS** if anyone offers to settle a claim and must not agree to any settlement without the written consent of **DAS**.
- (b) If an **insured person** does not accept a reasonable offer to settle a claim, **NFU Mutual** may be instructed by **DAS** to refuse to pay further **costs and expenses**.

(c) **DAS** may decide to pay the **insured person** the amount of damages that the **insured person** is claiming or is being claimed against them instead of starting or continuing legal proceedings.

4 (a) If **DAS** ask, an **insured person** must tell the **appointed representative** to have **costs and expenses** taxed, assessed or audited.

(b) An **insured person** must take every step to recover **costs and expenses** that **NFU Mutual** have to pay and must pay **NFU Mutual** any **costs and expenses** that are recovered.

5 If an **appointed representative** refuses to continue acting for an **insured person** or if an **insured person** dismisses an **appointed representative**, the cover **NFU Mutual** provide will end at once, unless **DAS** agree to appoint another **appointed representative**.

6 If an **insured person** settles a claim or withdraws their claim without the agreement of **DAS**, or does not give suitable instructions to an **appointed representative**, the cover **NFU Mutual** provide will end at once and **NFU Mutual** will be entitled to re-claim any **costs and expenses** paid by **NFU Mutual**.

7 If **DAS** and an **insured person** disagree about the choice of **appointed representative**, or about the handling of a claim, **DAS** and the **insured person** can choose another suitably qualified person to decide the matter. We must both agree to this in writing. If **DAS** cannot agree with the **insured person** about the choice of the second suitably qualified person, **DAS** will ask the president of a relevant national law society to choose a suitably qualified person. Whoever loses the disagreement will have to pay the costs of settling it.

8 **DAS** may at their discretion require **you** to obtain an opinion from counsel at **your** expense as to the merits of a claim or proceedings. If counsel's opinion indicates that there are reasonable grounds for the pursuit or defence of a claim or proceedings, the cost of obtaining the opinion will be paid by **NFU Mutual**.

9 This section of the policy will be governed by English law.

10 All Acts of Parliament within the policy wording shall include equivalent legislation in Scotland, Northern Ireland, the Isle of Man or the Channel Islands as the case may be.

Helpline Services

DAS provide these services 24 hours a day, 7 days a week during the **period of insurance**. To help **DAS** check and improve service standards. all calls are recorded.

Eurolaw Commercial Legal Advice

DAS will give **you** confidential legal advice over the phone on any commercial legal problem affecting **your business**, under the laws of the member countries of the European Union, the Isle of Man, the Channel Islands, Switzerland and Norway.

Commercial Tax Advice

DAS will give **you** confidential advice over the phone on any tax matters affecting **your business**, under the laws of the United Kingdom.

Business Assistance

In the event of an unforeseen emergency affecting **your business premises** which causes damage or potential danger, **DAS** will contact a suitable repairer or contractor and arrange assistance on **your** behalf. All costs of assistance provided are **your** responsibility.

To contact the above services, phone DAS on 0845 070 0173 and state that you are an NFU Mutual policyholder.

Counselling

DAS will provide all **your** employees (including any members of their immediate family who permanently live with them) with a confidential counselling service over the phone including, where appropriate, onward referral to relevant voluntary and/or professional services.

To contact the counselling helpline, phone DAS on 0117 934 2121. These calls are not recorded.

DAS will not accept responsibility if the Helpline Services fail for reasons they cannot control. Please do not phone DAS to report a general insurance claim.

The Employment Manual

The **DAS** Employment Manual offers comprehensive, up to date guidance on rapidly changing employment law. To view it, please visit the **DAS** website at www.das.co.uk. From the Home Page click on the Employment Manual icon. All the sections of this web-based document can be printed off for **your** own use.

ACAS Procedures

Details can be found at: www.acas.org.uk