

The complaint

Mr K complains about DAS Legal Expenses Insurance Company Limited's (DAS LEI) handling of a claim he made on a legal expenses insurance policy.

Where I refer to DAS LEI within my decision, this includes agents and representatives who handled the claim on its behalf.

What happened

Mr K holds a legal expenses insurance provided by DAS LEI. In September 2023 he made a claim on the policy.

Mr K's claim related to a lifetime magazine subscription. The magazine publisher had made changes to the terms and conditions which meant in order to continue receiving a paper copy of the magazine, he'd have to pay an additional amount each year.

Having considered his claim, DAS LEI made an offer of slightly less than £250 to settle the claim, rather than appointing solicitors to consider legal proceedings. It said this was based on an assessment of average life expectancy and the additional amount the publisher was charging.

Mr K didn't accept this amount. He said a more reasonable offer to settle the claim would be around £1,000, taking into account the monthly cost of the magazine. He complained, and when it assessed his complaint, DAS LEI increased its offer to £500. Mr K still didn't believe this to be a fair offer and accepted DAS LEI's alternative to appoint a legal representative to assess the merits of his case and consider proceedings. DAS LEI accepted there had been delays to the processing of his claim and offered £100 compensation to recognise this.

The legal representative concluded Mr K's case didn't have reasonable prospects of success. DAS LEI therefore ceased to provide further cover, but also declined to make the payment of £500 it had previously offered. It said that offer had been based on not referring the claim to a legal representative, and that had been explained to Mr K before he chose to take that option.

Mr K referred his complaint to our service. When he did so, he said he'd been led to believe that in referring the claim to the legal representative, that representative would seek information from the publisher that he'd been unable to obtain. If he'd been told this wasn't the case, he wouldn't have elected to refer the matter to the legal representative.

Our investigator thought DAS LEI had acted fairly and in line with the terms and conditions of the policy. She also thought the offer of compensation for the delays was reasonable. Mr K didn't agree and asked for an ombudsman's decision.

My provisional decision

In my provisional decision, I said:

My starting point is that it's fair for DAS LEI to make an offer to settle the claim rather than

refer the matter to legal representatives if it's considered economical to do so – ie the cost of the settlement offer is less than, or similar to, the cost of pursuing legal proceedings. Indeed, the terms and conditions of Mr K's policy say:

We may decide to pay you the reasonable value of your claim, instead of starting or continuing legal action.

That was DAS LEI's position here. It considered the offer made, initially for less than £250 and then increasing to £500, was that this represented an economical settlement of the reasonable value of the claim. Passing the matter to a legal representative would cost more than this. However, when it was clear Mr K didn't accept the offer, it acted fairly in appointing a legal representative to consider the merits of Mr K's claim.

The legal representative concluded that Mr K's claim, based on the information provided, didn't have reasonable prospects of success. In common with many legal expenses insurance, it's a condition of Mr K's policy that in order for ongoing cover to be provided, it needs to be more likely than not that legal proceedings will be successful, and that the other party has the means to pay any judgment. In Mr K's case, the legal representative concluded that, as the original contract terms and conditions hadn't been provided by Mr K, and he'd said he couldn't obtain them from the publisher, they couldn't assess whether Mr K's claim was likely to be successful. It appears DAS LEI is satisfied that the legal representative acted appropriately and that it didn't expect (or ask) the representative to seek to obtain the information from the publisher directly.

This, I think, gets to the core matter that I need to consider further. I agree DAS rightly concluded the claim should enjoy no further cover once the legal representative concluded that, in the absence of the contract terms and conditions, they couldn't properly assess Mr K's chances of success. His concern is that one of the primary reasons he elected to refer the matter to the legal representative is that from telephone conversations he had with DAS LEI, he was expecting the legal representative to obtain that information, as he'd been unable to.

I've been provided with a recording of a phone call between Mr K and DAS LEI where the offer of £500 was discussed. During the course of the call, it's apparent that Mr K doesn't accept this as he doesn't believe there's any evidence to show how that amount has been calculated.

However, during the call, I'm satisfied Mr K made it clear he'd been unable to obtain the original contract terms and conditions from the publisher. As he remained unwilling to accept DAS LEI's offer, he said he was *"happy now for you to go ahead and appoint a solicitor to try and take it further"* with the publisher, saying this was because *"I want to see the documents that I asked for."* He suggested that the only reason for the publisher to refuse to provide the information would be if they knew they were in breach of contract.

I think it's clear, therefore, from this telephone conversation that Mr K believed that the legal representative appointed would obtain, or would seek to obtain, the information from the publisher. It's also apparent that DAS LEI would reasonably have known Mr K had been unable to obtain the information himself, and was unlikely to be able to do so.

However, in spite of that, DAS LEI didn't advise Mr K during the phone call or in the letter which he was sent following the phone conversation, that the legal representative wouldn't be able to obtain the information but would instead assess the merits of the claim based on information held or provided by Mr K.

I think it's fair to say that if Mr K had been correctly advised of this, he wouldn't have wanted

to appoint the legal representative. It's also reasonable to conclude there was the opportunity to tell Mr K about this, either during the call or in the letter which was sent afterwards. One of the main reasons he chose the legal representative option was because he clearly expected that representative would be able to obtain, or would make reasonable efforts to obtain, the contractual terms and conditions. Mr K would have reasonably ended the phone conversation assuming that was what would happen. Similarly, the letter sent to Mr K after the phone call gives no indication of anything to the contrary.

I think if DAS LEI had correctly advised Mr K of the actions the legal representative would and wouldn't carry out, he'd most likely have accepted the offer made as it was clear that no further increase to that offer would be made, and that there were no prospects of the legal representative obtaining the requested information.

For these reasons, I don't think it's fair that DAS LEI withdrew the offer of £500. It wasn't accepted because Mr K believed, in error, that the legal representative would act differently, and DAS LEI had the opportunity to correct Mr K when the offer was still available to him. I think that his decision not to accept the offer can be linked to the lack of advice or correction given by DAS LEI.

So to put things right, I think DAS LEI should, in effect, reinstate the offer and pay the settlement of £500. I've considered whether DAS LEI should be required to pay the full amount Mr K estimated his claim to be worth, which was in excess of £1,000. I don't think it should. DAS LEI's original offer of slightly less than £250 was based on an offer price, which was multiplied by life expectancy. Mr K's calculation was based on the monthly price of the magazine, multiplied by 12 for an annual cost and then multiplied by life expectancy. Mr K doesn't object to using life expectancy as a measure for the calculation, but thought the use of the offer price was unfair. He observed that this didn't account for inflation or that the offer would be unlikely to be available beyond the first year.

I understand this, and if DAS LEI hadn't increased its original offer, I'd likely have said the figure was too low. It didn't take into account any possibility of inflation or offer prices no longer being available. However, I'm also not persuaded that Mr K's calculation could be reasonably relied on. That uses the monthly retail price of the magazine as its basis. One of the reasons for purchasing a subscription is that the annual cost of doing so typically represents a significant saving over the cost of buying the magazine each month. I also have to consider that where the value of the claim increased, the option of settling on economic terms rather than pursuing legal action is reduced. If the value of the claim exceeds the cost of pursuing the legal action, then that becomes the appropriate option for DAS LEI to exercise. At that point, the omission of information in the telephone conversation or letter would become irrelevant, as the offer to settle the claim would no longer exist.

I'm persuaded on balance that the annual subscription cost of the magazine would be lower than the amount calculated by Mr K, but would also likely be more than originally proposed by DAS LEI. I think the final offer of £500 did take into account that the cost could possibly increase over the course of the remaining subscription period. Without specific figures, it would be impossible to work out the exact amount this would cost and so I think £500 represented a fair offer.

DAS should pay this £500, and also pay 8% simple interest on the amount, from the date Mr K declined the offer, to the date of final settlement. This is in line with our position where a financial business could and should have made a payment but didn't do so because of an error on its part. Mr K would have, I'm satisfied, been in receipt of those funds and so DAS LEI should pay interest on this amount.

Finally, I'm satisfied that in failing to properly advise Mr K, DAS LEI caused him distress and

inconvenience. He had to liaise with the legal representatives, explaining that he didn't have the contract documents, and was then told the claim wouldn't be successful and as a result wasn't entitled to any settlement. That could have been avoided. The process of obtaining the legal advice took more than 6 weeks, and during this time Mr K would, I'm satisfied, have believed the legal representative was seeking to obtain the information. To recognise the distress and inconvenience caused, DAS LEI should pay an additional £200 compensation, which I think recognises the impact of its errors here. This is separate from the £100 it already offered to recognise the delays to the claim when information and correspondence provided by Mr K was acted on or responded to in a timely manner. I think the £100 offered to compensate for those delays was fair.

The responses to my provisional decision

Both Mr K and DAS LEI responded to my provisional decision.

Mr K agreed with my decision. His comments in response were focussed on how he thinks claims should be handled by an insurer, rather than my suggested remedy or making any additional points he wanted to have considered.

DAS LEI disagreed with my provisional decision. It believed that my suggestion that its representative should have given advice about the actions the solicitor would take was effectively asking the representative to give legal advice, which they weren't qualified to do. It disputed the contention that its representative would have known, or been qualified to know, what evidence the solicitor would require.

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'll deal briefly with Mr K's comments. I appreciate his desire to avoid a repeat of similar issues in the future. However, we aren't the regulator so aren't in a position to tell DAS LEI how it should handle claims or what specific advice it should give when it receives a claim.

Turning to DAS LEI's response and its belief that if its representative had told Mr K that the solicitor wouldn't be able to obtain the evidence then this would have been legal advice. I don't agree with this assertion. It's clear from the call that Mr K wanted to refer the matter to the solicitor in part because he believed they could obtain the contractual terms and conditions.

As I've outlined previously, any reasonable interpretation of what was said in the call was that he ended the call believing that to be the case. The position DAS LEI seems to agree with (having accepted the solicitors' position that without the contractual terms and conditions the claim doesn't have reasonable prospects of success) is that Mr K was responsible for obtaining that evidence. If it agrees Mr K was responsible for obtaining the evidence then it follows that it could have advised him of this. If it considered the solicitor could or should seek to obtain that information, then it could have paid the costs of the solicitor pursuing that. On balance, I'm satisfied that speaking about the solicitor's actions wouldn't have involved DAS LEI's representative giving legal advice. Instead, I think it would be advice about the insurance claim.

I've also considered an alternative scenario, where I accept that telling Mr K the solicitor wouldn't act to obtain the relevant evidence would have amounted to legal advice. Even if I do so, I still think DAS LEI's actions (or more specifically inaction) mean Mr K's decision to refer the matter to the solicitor wasn't properly informed.

The representative, when Mr K said he preferred to appoint a solicitor rather than accept the £500 offer, could have said that the evidence required, and who needed to obtain it, was something that they couldn't discuss, or that it was something to discuss with the solicitor at an early stage. If that had happened, Mr K would have been better informed and could have made a more informed decision about whether to take the risk of referring the claim to a solicitor.

During the relevant phone call there was no response from the representative when Mr K said he wanted the solicitor involved so the evidence could be obtained. The only reasonable interpretation Mr K could have been left with was that the solicitor would seek to obtain the evidence, in light of his specific comments about this.

Regardless of whether commenting about the specific actions the solicitor would take amounts to legal advice (which I don't think it does), the opportunity existed for the representative to comment on what Mr K had said. By saying nothing, it created an impression that the solicitor would take the action Mr K wanted when that wasn't the case.

In summary, I don't agree that commenting on the prospective actions of the solicitor would have amounted to legal advice. I consider it to be an element of claim handling, which DAS LEI has a duty to conduct efficiently. In addition, the lack of any comment, even if it was to say that the actions of the solicitor weren't something the representative could discuss, meant Mr K reasonably assumed the solicitor would obtain (or seek to obtain) the contractual terms and conditions.

I remain satisfied the lack of guidance or discussion of that point was a significant factor in Mr K's decision to refer the claim to the solicitor. As I said in the provisional decision, if he'd been properly advised, I think it's more likely than not he'd have accepted the £500 offer. That offer was fair for the reasons I've explained.

So having considered all of the evidence including the responses to my provisional decision, I'm satisfied Mr K's complaint should be upheld. Neither party has commented on my suggested redress and I remain satisfied that was a fair way of resolving the complaint.

My final decision

I uphold Mr K's complaint. In order to put things right, DAS Legal Expenses Insurance Company Limited must:

- Pay Mr K the £500 it offered in settlement of the claim. It should also pay simple interest at a rate of 8% on this amount from the date that amount was offered to the date of final settlement.
- Pay Mr K an additional £200 compensation. It must pay this amount within 28 days of us telling it Mr K accepts this decision. If it doesn't, it must pay simple interest at a rate of 8% on this amount from that date to the date of final settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 November 2024.

Ben Williams
Ombudsman