

The complaint

Mr M is unhappy with the refusal of DAS Legal Expenses Insurance Company Limited (DAS LEI) to pay all the legal fees he incurred prior to the formal appointment of his solicitors (S).

What happened

Mr M is in dispute with his employer. He has legal expenses insurance with DAS LEI. Mr M contacted DAS LEI on 2 or 3 February 2023. DAS LEI referred the claim to a firm of solicitors I'll call F on 3 February 2023 to assess whether Mr M's claim had reasonable prospects of success. F confirmed – after some delay and after getting a barrister's opinion – that there were reasonable prospects of success.

Whilst this was going on Mr M decided he wanted to instruct S to represent him. He let DAS LEI know about his choice sometime on or after 20 March 2023 and it sent its standard terms of appointment to S on 5 April 2023. With S being formally appointed on 19 June 2023.

Before S was formally appointed Mr M incurred legal costs including the costs of two barristers (one senior and one junior).

Mr M asked DAS LEI to reimburse the legal costs that he'd incurred. It did not agree that it had done anything wrong but as a gesture of goodwill it agreed to cover the work of the senior barrister only.

Mr M disagreed with the decision as he felt it was unfair and detrimental to his legal case. To put things right, Mr M would like DAS LEI to cover the legal costs he incurred in full and be reasonably compensated for the distress and inconvenience caused.

The investigator didn't recommend the complaint be upheld. He didn't believe DAS LEI caused any unreasonable delays. He didn't think it would be fair to ask DAS LEI to cover the unreimbursed fees. He thought the claim didn't need to include the full information file to avoid time barring to come into effect and that the junior barrister's work wasn't necessary.

Mr M disagreed. He said that DAS LEI didn't provide him with timely information regarding progress and it took days to revert to him despite telephone and email chasers. He says if DAS LEI had helped him appropriately he would not have had to instruct the barristers to put together his claim urgently.

My provisional decision

Although I agreed with the investigator that the complaint shouldn't be upheld I thought it was appropriate to do a provisional decision so that Mr M would have the chance to respond to the way I considered his complaint.

In my provisional decision I said:

Based on what I have seen so far I am satisfied DAS LEI referred the case promptly to F to confirm the case had reasonable prospects of success.

Mr M appears to have informed DAS LEI that he wanted to exercise his freedom of choice to appoint S on 20 March 2023. DAS LEI sent its standard terms of appointment to S on 5 April 2023. With S being formally appointed on 19 June 2023. I cannot see that DAS LEI is responsible for any delay from 5 April 2023. There does appear to have been some delay between 20 March 2023 and 5 April 2023 (so 16 days). I am not sure what happened here and it maybe that one or more of the dates aren't quite right. I haven't followed up on these dates because I am not satisfied that they are material to the complaint. This is because even if those 16 days hadn't been lost, given the appointment didn't happen until 19 June, then assuming the same time scales were followed S would have been appointed on or around 3 June (so after the claim had been filed and the barristers' fees incurred). And anyway, for the reasons I set out below I am not persuaded that it would be right to overturn the professional opinion of the costs lawyer.

Much of the other evidence for DAS LEI's lack of help that Mr M has put forward didn't come from DAS LEI but instead came from his dealings with F. DAS LEI is not responsible for F. If Mr M was unhappy with F he needed to bring this to the attention of DAS LEI at the time of the delays so it could have had the opportunity to do something about it. I can't see that he did this before the fees in dispute were incurred.

The policy specifically excludes costs prior to approval. But DAS LEI – as a gesture of goodwill – did pay some of the fees incurred prior to 19 June 2023. I think this was fair and reasonable.

Mr M wants both the senior and junior barrister's fees paid. But the costs lawyer wasn't persuaded by all of Mr M's arguments – including regarding the urgency of lodging the claim at the Employment Tribunal - that the fees of the junior barrister were necessary as there appeared to be duplication between the barristers. Costs lawyers are experts in legal costs and in the absence of evidence from a suitably qualified alternative expert setting out a contrary view I am minded to accept his professional judgment.

So, whilst DAS LEI may have been responsible for some delay I think it has already paid a fair and reasonable amount to Mr M for the costs incurred before S was appointed. I do not therefore intend to uphold this complaint.

Responses to my provisional decision

DAS LEI made no further comments.

Unfortunately, Mr M has been unwell so there has been a delay in making this final decision. In his response to my provisional decision Mr M explained that he was also unhappy that DAS LEI did not compensate him for the inconvenience and material distress caused; as well as for the interest incurred from the date of him settling the barrister's invoices.

Mr M says that he was not handed over to F for the express purpose of checking if his claim had a reasonable prospect of success and he says that actually there was no clear distinction made to him that he was being handed over to a separate entity.

He also says that his debilitating mental condition means that he would struggle more than most in pursuing litigation and lodging the ET1.

He continues to disagree that it is unfair that the junior barrister's fees have not been met. He thinks that DAS LEI's costs lawyer is not independent or unbiased.

He has also set out the timeline of events and considers that DAS LEI is responsible for 62 days delay.

After receiving Mr M's response to my provisional decision, I let him know that as costs lawyers have professional duties that they are obliged to follow I would accept their professional opinion on costs in the absence of contrary compelling evidence from another suitably qualified person. And as there was nothing on the face of it which indicates the costs lawyer had erred, I wouldn't be requiring the business to obtain a second opinion. I explained it remained open to Mr M to get a second opinion at his own cost.

Mr M at first said he would get a second opinion and then decided not to do so. Mr M also supplied some emails which he says demonstrate that he was not aware that DAS LEI and F were separate entities.

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 am very sorry to hear that Mr M has continued to be unwell since my provisional decision. I wish him the best on his journey to recovery.

I have looked carefully at what he has said, and he hasn't changed my mind. I still think that DAS LEI's offer to him is fair and reasonable.

I am satisfied that it should have been clear to Mr M that DAS LEI and F were separate legal entities albeit part of the same group. For example, F repeatedly referred to DAS LEI as the insurer rather than we/us. I appreciate that he has provided me with an email where he has said: *I think it's best to proceed with a law firm that is not part of the insurance company*. But the response from F makes clear that F and DAS LEI are not the same body as F refers to DAS LEI as 'your insurers' and invites Mr M to contact the insurers directly. I therefore have not changed my mind that Mr M should have contacted DAS LEI earlier if he was unhappy with F.

Given the above I can't hold DAS LEI responsible for any delays which happened prior to 20 March. Whilst I appreciate there were delays after 20 March these do not appear predominantly to have been caused by DAS LEI. Mr M has referred to his solicitors having 'other priorities'. It is not for DAS LEI to chase Mr M's new solicitors to get terms signed. The terms are not particularly complex or lengthy and so I can't hold DAS LEI responsible for the weeks it took for them to be reviewed.

I appreciate that Mr M would like DAS LEI to pay him interest and to compensate him for the distress and inconvenience caused to him. When I look at what a business has offered I consider whether it is fair and reasonable in all the circumstances of the complaint. In this case I think the offer was fair and reasonable. DAS LEI made a goodwill offer to pay £7,100 towards his costs. One of its cost lawyers explained that the amount Mr M had been invoiced in respect of the barristers' fees was very high and that duplication wasn't necessary. I appreciate that Mr M doesn't think that there was duplication but as I previously explained costs lawyers have professional duties to act independently so I think it is reasonable to rely on this expert opinion particularly as the payment itself is a goodwill payment.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 May 2024.

Nicola Wood
Ombudsman