

## **background**

The background and circumstances of this complaint and my initial thinking are set out in my 30 April 2015 provisional decision. I attach a copy of that decision, which forms a part of this final decision.

Mr and Mrs K and AMS have seen the provisional decision. Mr and Mrs K have responded but AMS hasn't.

## **my findings**

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

AMS hasn't provided any new information or comments for me to consider. Mr and Mrs K asked for clarification about if the award I set out was limited to the first tier tribunal or included the legal costs of appeals. My intention is to put Mr and Mrs K in the position they'd have been in if they'd had the cover they'd asked for. So the award below should include any legal costs that they could have claimed for under the policy they asked for. I've amended my final decision wording slightly to make this clear.

## **my final decision**

For the reasons I've set out above and in the attached provisional decision I uphold Mr and Mrs K's complaint and direct Active Mortgage Services Limited to:

1. Arrange for a suitably qualified party to assess the legal expenses claim Mr K would have made if they'd had legal expenses cover under their policy in 2013. Ideally the assessment should be carried out by the insurer that would have provided the cover.
2. If the insurer would have accepted their claim, AMS must pay Mr and Mrs K's legal expenses in respect of Mr K's claim against his former employer less a deduction for any costs they incurred before they tried to claim that the insurer wouldn't have paid. It can also deduct the extra premium Mr and Mrs K would have paid for legal expenses cover.
3. Pay Mr and Mrs K £150 in compensation for trouble and upset.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs K to accept or reject my decision before 10 July 2015.

Mike Foster  
**ombudsman**

## **copy of provisional decision**

### **complaint**

Mr and Mrs K's complaint is that Active Mortgage Services Limited (AMS) didn't include Family Legal Protection (legal expenses cover) in their home insurance policy when they'd asked for it.

### **background**

In December 2010 Mr and Mrs K told AMS that they wanted to take out home insurance based on a quote it had provided. The quote was for a policy under a scheme with a large insurance intermediary. It included £50,000 of legal expenses cover. AMS weren't able to activate the quote on their computer system. So its adviser phoned the intermediary to set up the policy. It was set up without legal expenses cover.

Mr and Mrs K renewed the policy several times without legal expenses cover. Then in 2013 Mr K tried to make a legal expenses claim for a dispute with his employer. He then found out they didn't have legal expenses cover.

Our adjudicator thought that AMS hadn't made sure Mr and Mrs K had the cover they wanted. And she suggested it should have their claim assessed and pay them compensation equivalent to what the legal expenses insurer would have paid.

AMS hasn't responded to the adjudicator, so the complaint's come to me for a decision.

### **my provisional findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I intend to uphold Mr and Mrs K's complaint and I've explained why below.

It's clear from what Mr and Mrs K have said and the quote they were given in 2010 that AMS knew that they wanted legal expenses cover. AMS has said the insurance intermediary might have forgotten to include it. But neither AMS nor the intermediary has a recording of the call AMS's managing director made to put the cover in place.

So I need to decide what's most likely to have happened and think about AMS's responsibilities as Mr and Mrs K's insurance agent.

AMS's managing director has said that she remembers asking the intermediary to set the policy up because she couldn't do it herself due to a systems issue. She's said she would have passed on the details of the cover Mr and Mrs K wanted to the intermediary. But the policy was set up without legal expenses cover despite the fact the quote the intermediary had provided included it. I think it's unlikely that the intermediary would have missed out legal expenses cover if it had been mentioned by AMS. I think it's much more likely that AMS' Managing Director left out this element of cover when speaking to the intermediary on the phone.

Even if this isn't what happened, as Mr and Mrs K's agent, AMS should have checked the details of the policy the intermediary set up matched Mr and Mrs K's requirements. It didn't, so I would still think it's AMS's fault the policy didn't include legal expenses cover.

I accept that Mr and Mrs K could have spotted their policy didn't include legal expenses cover when they got their policy documents originally. And they could also have spotted it at subsequent renewals. But this doesn't alter the fact AMS failed to make sure the policy met Mr and Mrs K's requirements.

In any event, I can understand how Mr and Mrs K didn't notice that the legal expenses cover was missing. After all it wasn't the main reason they were taking out the policy, and the schedule they got didn't specifically say legal expenses cover wasn't included. It just wasn't mentioned. So when they got the schedule with the policy document - which had a legal expenses section - they could easily have missed the fact legal expenses wasn't shown on the schedule.

So I think the fair and reasonable outcome to Mr and Mrs K's complaint is for AMS to put them in the position they would have been if they'd had legal expenses cover when they wanted to claim in 2013. But it's important that Mr and Mrs K understand that this means they'll only get compensation if it turns out all or part of their claim would have been accepted.

I can see AMS has mentioned that Mr and Mrs K wouldn't have been covered anyway because they appointed a solicitor before contacting the intermediary about making a legal expenses claim. But this isn't necessarily right. I say this because the insurer might have been content with this. Or Mr and Mrs K might have been able to change to the insurer's approved solicitor. So AMS should take this into account when they have the claim assessed.

If the insurer would have insisted Mr and Mrs K transfer to one of its panel solicitors, or have limited the charging rate if they used their own solicitor, Mr and Mrs K might not get back everything their solicitor charged before they tried to claim. This is because Mr and Mrs K's solicitor might have charged more than the rate their panel solicitor would have charged. But from the time they tried to claim onwards, Mr and Mrs K should receive all the legal costs (not the insurer's panel rates) for work that would have been covered by the policy. This is because they may have paid more than this because they couldn't claim under their policy. It wouldn't be fair for them to be worse off because they weren't covered when they should have been.

If the policy had included legal expenses cover, Mr and Mrs K would've had to pay a slightly higher premium. AMS can deduct that extra premium from any payment made for their legal expenses.

I agree with the adjudicator that Mr and Mrs K must have been very upset when they found out they didn't have legal expenses cover. And it must also have caused them a fair bit of trouble. So I also think AMS should pay £150 in compensation to reflect this.

### **my provisional decision**

For the reasons I've set out above I intend to uphold Mr and Mrs K's complaint.

I intend to direct AMS to:

4. Arrange for a suitably qualified party to assess the legal expenses claim Mr K would have made if they'd had legal expenses cover under their policy in 2013. Ideally the assessment should be carried out by the insurer that would have provided the cover.
5. If the insurer would have accepted their claim, AMS must pay Mr and Mrs K's legal expenses in respect of Mr K's employment tribunal less a deduction for any costs they incurred before they tried to claim that the insurer wouldn't have paid. It can also deduct the extra premium Mr and Mrs K would have paid for legal expenses cover.
6. Pay Mr and Mrs K £150 in compensation for trouble and upset.

Mike Foster  
**ombudsman**