

The complaint

T, a limited company, complains about what DAS Legal Expenses Insurance Company Limited did after it made a claim on its legal expenses insurance policy. T is represented by one of its directors, Mr W.

What happened

In July 2021 Mr W contacted DAS to make a claim on T's legal expenses policy. This related to action T wanted to take against a contractor who had carried out a development for it. DAS accepted the claim and referred it to one of its panel solicitors for an assessment of whether it had reasonable prospects of success (as required by the policy terms). The first panel firm was unable to carry out the assessment because of a conflict of interest so another firm was asked to look at the claim.

Further discussions took place between the parties including whether to obtain expert reports. However, in September 2021 DAS said it had reviewed the claim and would no longer be providing cover. It said that was because the date of the event leading to a claim had to occur during the period of insurance. It didn't think that was the case here. It accepted it should have identified that earlier and offered to pay T £500 in recognition of the impact of that error on it.

Mr W provided evidence which showed the policy start date was actually August 2019 (rather than August 2020 as DAS had said). DAS accepted that was the case but still thought the event giving rise to the claim happened before that date.

Our investigator agreed DAS had fairly turned down the claim. And she thought the £500 DAS offered was a fair way of recognising the inconvenience T had been caused by what DAS got wrong.

Mr W didn't agree. He accepted the contractor had carried out some work before the policy started and this wasn't covered. But he said other work had been carried out by the same contractor after the policy began which there were also problems with. He thought a claim relating to this should be covered. So I need to reach a final decision.

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.

The relevant rules and industry guidelines say DAS has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of T's policy. This says cover will be provided where *"the date of occurrence of the insured incident is during the period of insurance"*.

It defines date of occurrence as *"the date of the event that leads to a claim. If there is more than one event arising at different times from the same originating cause, the date of*

occurrence is the date of the first of these events (this is the date the event happened, which may be before the date your or an insured person first became aware of it)."

I've thought about how that applies in this case. I think it's agreed T entered into a contract for works to be carried out in 2016. DAS says the date of occurrence would be when the works (which were later found to be defective) were carried out. And as these works were quite extensive it's taken that date as being when they were completed. That was also in 2016.

T didn't take out this policy until August 2019 so I think DAS is right to say the date of the event leading to the claim was before the start of the policy. However, our normal approach is to say time should run from a customer's date of knowledge. We'd think about whether they knew (or should reasonably have known) there was a problem which could lead to a legal dispute when they took out the policy.

In this case I appreciate at the point the works were completed T may not have been aware of significant issues with them. But I think it's clear it was aware of problems from 2018 onwards as it had to engage the original contractors on a number of separate occasions to carry out remedial works prior to the policy start date.

So I think DAS has fairly turned down the claim as it relates to those matters. And I understand Mr W has accepted a claim relating to works which took place prior to the policy start date isn't covered. His argument is that further work was required after the policy was in place and it should cover a claim in relation to these.

I don't think it's in dispute further work did take place after the policy had started. But the evidence I've seen doesn't suggest this was a new development for which T had entered into a separate contract. Mr W emailed the contractor in July 2021 and all of the issues raised appear to relate to the development originally carried out in 2016 and remedial works relating to that. So I think the later works were a continuation of efforts to remedy the problems caused by the defective works carried out prior to the policy start date rather than being separate and distinct from them. If the original works had been correctly carried out then the remedial works wouldn't have been required.

And the policy says where claims arise from the same originating cause "*the date of occurrence is the date of the first of these events*". I think in this case the works do have the same originating cause and that didn't take place during the period of insurance. As a result I don't think DAS did anything wrong in concluding the claim Mr W wants to pursue isn't covered by T's policy.

But I agree DAS should have identified sooner that was the case. Because it didn't, I think T would likely have believed from July to September its claim was likely to be covered. However, I think the £500 DAS has already agreed to pay is a reasonable way of recognising the inconvenience T was caused by what DAS got wrong.

My final decision

I don't think DAS Legal Expenses Insurance Company Limited did anything wrong in turning down the claim T made. And while it should have identified earlier the claim wasn't covered, I think the offer of £500 it has made in relation to this is fair. So DAS Legal Expenses Insurance Company Limited will need to pay T £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 13 June 2022.

James Park
Ombudsman