

The complaint

Mr A, trading as P, complains DAS Legal Expenses Insurance Company Limited turned down a claim he made on the legal defence section of his commercial legal protection policy.

What happened

In May 2023 Mr A contacted DAS via his broker seeking assistance in defending claims of sexual assault which had been made against him. Having reviewed information from the Crown Prosecution Service, DAS turned down the claim. It said cover was only provided where the date of occurrence of the insured event took place during the period of insurance.

In this case the allegations began prior to cover being in place for the type of business provided by P (massage) they appeared to relate to. It also thought the allegations might arise from incidents unrelated to P's business as Mr A knew the complainants outside of his professional capacity.

Our investigator thought many of the alleged offence had taken place away from P's business. So she thought DAS had fairly concluded the policy didn't cover them. And in any event the first of the allegations was prior to relevant cover being in place. She thought as the policy defined date of occurrence as "*when the insured person commenced or is alleged to have commenced to violate the criminal law in question*" both the first offence and any subsequent offences involving violation of the same criminal law would fall outside of policy coverage.

Mr A didn't agree. He said only one of the offences against him had taken place prior to relevant cover being added to his policy. The overwhelming bulk had taken place after that. He thought it was an overly stringent interpretation of the policy to say all the allegations weren't covered which wouldn't have been contemplated by the parties when contracting.

And he thought it was contradictory to conclude in relation to the date of occurrence that the allegations weren't covered because they were prior to relevant cover being in place but in relation to policy scope the issue was whether he'd subsequently established a social relationship with the complainants. 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 P's policy. That says it covers "*the insured person in respect of any insured incident arising in connection with the business shown in the policy schedule if the premium has been paid*". The insured person includes the policyholder as shown in the policy schedule. In this case that's Mr A. But I understand the business shown in the policy schedule only included massage from June 2015.

The policy sets out the insured events it covers which include 'Legal Defence'. That section says "*we will defend the insured person's legal rights...following an event which leads to the insured person being prosecuted in a court of criminal jurisdiction*". However, the policy only provides cover where "*the date of occurrence of the insured incident happens during the period of insurance and within the territorial limit*". And for criminal cases the policy says "*the date of occurrence is when the insured person commenced or is alleged to have commenced to violate the criminal law in question*".

In its final response DAS said "*the first alleged offence occurred in 2014 and relates to your massage services, which was not an insured activity until 2015 - as such the DOO [date of occurrence] is before cover for massage services was added and cover has been correctly declined on this basis*". However, having reviewed the witness statements relating to the case I don't think it is correct to say the alleged offence in 2014 related to massage services. There's no mention of Mr A providing that service at the time whereas descriptions of later incidents do include details on that.

However, I don't think that makes a difference to the outcome of the complaint. The policy only covers claims where the date of occurrence is within the period of insurance. And the claim needs to arise in connection with the business shown in the policy schedule. In this case Mr A's position is the allegations against him arose in relation to massage services he was providing. He's commented "*I offered them massage treatment which I am insured [for]*". And that cover was only included in his policy from June 2015. So if the date of occurrence (as defined in the policy) was prior to that date his claim won't be covered by his policy.

I think that's the case here. As I've said the policy defines date of occurrence as when the insured person "*commenced or is alleged to have commenced to violate the criminal law in question*". And in this case the first charge against Mr A (which clearly involves an alleged breach of criminal law) dates from 2014. I appreciate the remaining charges date from after relevant cover was included but the offences are similar and all involve alleged breaches of the same criminal law (the Sexual Offences Act 2003). Five of the alleged incidents (including the one from 2014) relate to the same individual.

I recognise the 2014 incident appears to have been unrelated to Mr A's work. But the policy references alleged violations of the criminal law by the "*insured person*". It doesn't say those need to arise in the course of their business. Mr A doesn't think it was the intention of the parties to exclude cover for this situation at the time he entered into the insurance contract. I'm not persuaded by that. It seems to me DAS's likely included this term because it didn't want to take on the risk of covering alleged breaches of criminal law where the start date for those allegations was prior to policy cover being in place.

I think it's also relevant here that the insured is Mr A and, while he's trading as P, that isn't a limited company and so doesn't have a separate legal identity of its own. The position might be different if it did and P was listed as the insured person. But it isn't. Given everything I've said I don't think it was unfair of DAS to conclude the date of occurrence was prior to cover for massage being included in the policy and turn down Mr A's claim on that basis.

DAS also questioned whether the allegations arose in the course of Mr A's business at all (if they didn't no cover would be available under his policy regardless of the date of occurrence). As I've already indicated the witness statements do suggest Mr A was providing massage services in relation to some of the later incidents. And I don't think the issue in itself is whether he also had a social relationship with the complainants.

The question is whether the services he was offering related to his business relationship with them rather than being provided in a social setting. In support of that Mr A has provided

invoices relating to one of the claimants which does indicate he provided a massage treatment although it only references one occasion. And while there is a reference to massage services being provided in some of the witness statements that doesn't apply in relation to all of the incidents alleged. However, I don't think this is something I need to determine. For the reasons I've already explained I'm satisfied DAS fairly turned down the claim on the basis the date of occurrence was prior to relevant cover being in place.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 7 June 2024.

James Park
Ombudsman