

The complaint

A company, which I'll refer to as S, complains about the way DAS Legal Expenses Insurance Company Limited dealt with a claim on its commercial legal expenses insurance policy.

Mrs S, who is a director of S, brings the complaint on its behalf.

What happened

S instructed a firm of solicitors (which I will call P) to pursue a legal claim against a third party. Following issues with the way P dealt with matters, S made a claim on its policy for cover to pursue a professional negligence case against P. DAS initially accepted this claim and appointed solicitors to deal with it for S, but later removed cover as the solicitors said the claim did not have a reasonable chance of success.

S made another claim to pursue a negligence case arising from an incident in 2018 but this was declined because it concerned something that happened before the policy with DAS started.

S complained and DAS issued a final response on 3 October 2023. S referred that complaint to this Service and we have dealt with that complaint separately.

S made a new claim in February 2024 relating to P failing to recover costs from the third party after a court order in May 2020. DAS declined this claim, saying it originated from a dispute that took place before the policy started.

DAS sent its final response to this complaint in May 2024 and while it maintained the decision to decline the claim, offered £100 compensation for delays in dealing with it.

S is unhappy that DAS wouldn't provide cover and says it is now unable to recover about £35,000 as a result.

Our investigator explained that this complaint only concerns events after October 2023, which were covered in the final response DAS issued in May 2024. She said:

- the decision not to provide cover was fair, as the case related to events in 2018 and the policy didn't start until 2020
- while there were some delays, there had not been any significant impact as a result and the compensation of £100 offered by DAS was fair.

S disagrees and has requested an ombudsman's decision. On behalf of S, Mrs S says:

- S first brought a claim against P for professional negligence in 2020 originating from a court case 2018, but the negligence occurred after the case had concluded.
- DAS initially provided cover but later, after many changes of position, said cover would not be provided.

- Despite providing additional evidence and following the barrister's advice to pursue the negligence claim, DAS argued there were different issues and insisted on opening new cases, even though the new issues are directly related to the same underlying matter originally covered.
- DAS later denied cover for anything relating to P, claiming the issues predated the policy, which contradicts its earlier acceptance and handling of the claim. This inconsistency has caused significant delays and financial impact and the case is now essentially time barred.
- The interconnected nature of these decisions means that they cannot fairly be reviewed in isolation.

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.

There's a long history to this matter, since the first claim S made in 2020. I appreciate the various claims may be related but that doesn't mean I can consider them all together. I have to consider complaints in line with the rules that govern our jurisdiction and I have already issued a decision about the complaint that followed the final response DAS issued in October 2023. This complaint only concerns the later claim made after that date, which DAS addressed in its final response letter of 24 May 2024.

The relevant industry rules and guidance say insurers must not unreasonably reject a claim.

The policy provides cover for the type of claim S wished to make but only subject to the policy terms and conditions. And the policy terms say DAS will provide cover "*provided that... the date of occurrence of the insured incident is during the period of insurance*".

"*Date of occurrence*" is defined 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 you or an insured person first became aware of it.)"

"*Period of insurance*" is defined as "*The period for which we have agreed to cover the insured person and for which we have accepted the premium.*"

So the claim is only covered if it concerns an event that took place while the policy is in force and there's no cover if it concerns something that happened before the policy started. That's not an unusual term – insurance is about future risk and insurers won't generally provide cover for something that has already happened.

In addition, cover is only provided where a claim is likely to have a reasonable chance of success. Again, that's not an unusual term; most legal expenses policies don't cover a claim that's unlikely to succeed.

DAS referred the claim to solicitors to advise. The advice was that a claim against P was not likely to be successful, as P was not the cause of the third party's failure to pay. That was a reasoned legal opinion from a partner at the firm of solicitors and it was reasonable for DAS to rely on that.

The solicitor indicated that S could still take action itself to enforce the judgment against the

third party. DAS considered this, but as that arose directly from the original dispute with the third party – which dated back to before the policy started – it would not be covered.

Mrs S herself says the issues are all connected. I know Mrs S says this claim is about P failing to recover costs from the third party after a court order in May 2020 but, although the court order was made in 2020, it followed directly from earlier events.

The originating cause of the action to be taken (enforcing the judgment against the director) was the original claim against the third party and the director. That dispute happened before the policy started, so is not covered.

For these reasons, the decision not to provide cover was in line with the policy terms and was fair.

In her view, the investigator set out a chronology of the correspondence relating to this claim and said that although there was some delay by DAS, the compensation of £100 it had offered was fair. Looking at the timeline, I agree that was a fair offer. While there were some instances of delay replying to correspondence, the period was relatively short. I can't consider any distress caused to Mrs S personally, only the inconvenience caused to S, and the impact on S was limited.

I understand S didn't accept the offer of compensation so it hasn't been paid. On that basis, I think it would be fair for DAS to pay it now.

My final decision

DAS Legal Expenses Insurance Company Limited has already made an offer to pay £100 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that DAS Legal Expenses Insurance Company Limited should pay £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 4 November 2024.

Peter Whiteley
Ombudsman