DRN-5568588

The complaint

B, a limited company, complains that U K Insurance Limited ("UKI") has unfairly declined a claim under their commercial legal expenses insurance policy.

Where I refer to UKI, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

- In 2024, B made a claim to UKI for the legal costs of pursuing action against their previous accountant for professional negligence.
- UKI declined the claim on the basis the insured event took place in July 2020 at the latest and the policy didn't commence until October 2022.
- B raised a complaint on the basis that:
  - the policy terms relied on to decline the claim are onerous, unfair, and buried within a lengthy policy document which no one reads.
  - they weren't aware of the negligence until January 2023 after the appointment of a new accountant and a VAT expert.
- UKI maintained its decision to decline the claim, so B brought their complaint to our Service.
- Our Investigator was satisfied UKI had acted in accordance with the policy terms and hadn't treated B unfairly.

As B didn't agree with our Investigator, the complaint has been passed to me to decide.

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.

Having done so, I've reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties' submissions in respect of this complaint. Whilst I've read them all, I won't comment in detail on every single point that has been made. Instead, I'll focus on the key points that are relevant to the outcome I've reached. That's in line with our remit, which is to resolve complaints promptly and with minimal formality.

The terms and conditions of B's policy say it will cover a claim *"provided that…the date of occurrence of the insured incident is…during the period of insurance"*. It defines the date of occurrence as *"the date of the event that leads to a claim"*.

In this case, the insured incident is the professional negligence, so the date of occurrence is when that negligence took place. UKI says this would've been at least July 2020 if not before, as this is the deadline by which the accountant needed to reclaim B's VAT and failed to do so.

On a strict interpretation of the policy terms, I agree with UKI that the date of occurrence hasn't taken place within the period of insurance. But my role isn't solely to determine whether the policy terms have been applied correctly. I've also thought about whether they were applied fairly and reasonably in the individual circumstances of the claim. In doing so, I've thought about when B ought reasonably to have been aware of the professional negligence.

Looking at the information available, B was in contact with their accountant in 2019 regarding reclaiming VAT. And in early 2020, emails were sent from B which include comments such as *"an opportunity that we must not miss regarding the claim for VAT"* and *"put in a claim asap"*.

B say they didn't find out until January 2023 that the accountant didn't make the claim. But it's not clear why they didn't know. They'd made a specific request to their accountant to reclaim VAT and it's reasonable to think they would've followed this up with the accountant later on to establish if this was done, especially considering the amount of money being claimed. And even if they hadn't, it's reasonable to expect B to have noticed when the money claimed for wasn't received in their accounts.

So regardless of whether B knew or not, I'm persuaded they ought reasonably to have known by July 2020 that their accountant had failed to take action and that the deadline to do so had passed. As such, I'm satisfied UKI's decision to decline B's claim is fair and reasonable in the circumstances.

B say the policy term is onerous and unfair. And that it's buried in lengthy terms and conditions which no one reads. But I don't agree.

The policy requirement that a claim must take place within the policy period is a common one and it's in line with the general principles of insurance. The purpose of insurance is to provide protection against the risk of financial loss from uncertain and unexpected events. If an event has already occurred before the insurance is in place, the loss is no longer uncertain or unexpected.

Furthermore, the terms and conditions being applied here are on page one of the commercial legal expenses insurance section of the policy. B say they didn't know they had legal expenses insurance and that they didn't read the policy. But it's their obligation to read their policy documents which form the basis of the contract between them and UKI. Ultimately, I can't fairly hold UKI responsible for B's failure to read their policy.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 24 September 2025.

Sheryl Sibley
Ombudsman