

The complaint

Miss T's complaint is about a claim she made in respect of her business under a DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

DAS declined to cover the claim. Miss T says this is unfair and wants DAS to accept the claim.

What happened

Miss T had a legal expenses insurance policy in place for her business from June 2013 – June 2014.

Miss made a claim on that policy for cover to bring a claim against a third party, which she pursued with the benefit of the insurance.

Miss T now feels the Solicitor and Barrister that acted for her at time were negligent in how they dealt with that claim. As such she made a further claim on the same policy for cover to pursue a claim against them. The claim itself relates to a loan that Miss T says was omitted in a settlement proposal by those Solicitor and Barrister amounting to around £250,000.

DAS declined the claim. They said the originating cause was the negligence itself which arose some considerable time after the policy expired, and this isn't something that cover would extend to. On the other hand, Miss T says the originating cause of the claim is the original dispute with the third party. As such, cover should engage under the 2013-2014 policy. She wants DAS to accept the claim and provide legal expenses insurance cover for her to pursue the former Solicitor and Barrister for professional negligence.

Our investigator considered Miss T's complaint and concluded that it shouldn't be upheld. She said that although she could see the cases were connected, the cover being sought is for a claim against a different opponent for a different cause of action that occurred 6 or 7 years after the policy expired and this wasn't something that was covered by the policy. Miss T doesn't agree so the matter has been passed to me to determine.

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 don't uphold Miss T's complaint, and this is why.

The starting point is the policy terms. They say:

"We agree to provide the insurance in this section as long as:

(a) The date of occurrence of the insured incident happens during the period of insurance and within the territorial limit;"

"Date of occurrence" is defined as "For civil cases... the date of occurrence is when the

cause of action first accrued."

"Insured incident" refers to the various types of legal claims the policy extends to.

In this case Miss T says the cause of action can be traced back to the original claim because the losses she's claiming for are the same losses claimed for against the third party for which DAS provided cover. She says the Solicitor and Barrister she wants to claim against are now responsible for those because they failed to include them in a settlement proposal that ultimately brought the claim to an end. DAS says the cause of action first accrued in 2021 when the alleged professional negligence occurred against the Solicitor and Barrister Miss T wants to claim against.

I've thought about what both parties have said, and I understand the argument that Miss T is making. But I don't agree with it. Whilst it might be right that Miss T is still seeking to recover the same loss, she was seeking against the third party, the claim itself has changed. It's no longer the same cause of action, both because she's claiming against different parties- her former Solicitor and Barrister- and because the claims are in respect of a different type of claim in law- professional negligence. As such, I take the view that the cause of action for this specific claim didn't accrue when Miss T made her initial claim to DAS under the 2013/2014 policy, but rather when the alleged negligence occurred, and this was several years after the policy expired. Without that cause of action, there would be no claim in law against the former Solicitor and Barrister at all.

I appreciate that from Miss T's perspective her claim is a continuation of the legal process originating from the first claim made to DAS for cover. I also understand what she says about the lawyers not understanding the law relating to loan account requirements, which only became apparent when they produced an offer to settle the matter in 2021. But for the reasons I've set out above, I consider the causes of action to be distinct, both in time and in law and against different parties. Even if I determined the negligence itself occurred earlier than the production of the offer itself, it would still fall outside the scope of policy cover because those lawyers were appointed after the expiry of the policy period. As such the claim doesn't fall within the period of insurance Miss T is seeking cover for.

My final decision

I don't uphold Miss T's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 6 November 2023.

Lale Hussein-Venn
Ombudsman