

The complaint

S, a limited company, complains about what happened after it made a number of claims on its business legal protection insurance policy.

S is represented by one of its directors, Mr S.

What happened

Between February and June last year S made a number of claims on its policy. These related to a dispute with a former director. S wanted the policy to assist with recovery of a loan the director had taken out. It wanted funding to serve a statutory demand on the former director and bankrupt him and his company. And it wanted to take proceedings for breach of fiduciary duty.

Separate claims were also made in a personal capacity on the policy by Mr S. These related to a personal injury claim (against the former director) and a claim against a local authority in relation to Council Tax reduction.

DAS said while the policy did provide cover for contract disputes S didn't have a contract for goods or services with the former director and in any case this section of the policy excluded cover for disputes about a loan. In addition it said these matters had arisen prior to S taking out its policy and it didn't provide cover where that was the case. The proceedings S wanted to take against the director were linked to the loan issue and so weren't covered for the same reasons.

The personal injury Mr S was claiming for happened before the policy started (and in any case the policy excluded psychological injury or injury that happens gradually). And as Mr S didn't have a contract with his local authority the Council Tax claim wasn't covered either. However, it accepted it could have provided better customer service when dealing with the claims and paid S £200 in recognition of the inconvenience it had been caused by that.

Our investigator thought DAS had acted correctly and fairly in concluding the claims S had made weren't covered by its policy. And she thought the amount it had offered for its customer service failings was fair.

Mr S didn't agree. He said the policy had been mis-sold because it hadn't provided the expected help. And S had been left without legal support. He provided an email which he said showed DAS didn't have a panel firm with relevant expertise and couldn't meet S's needs. 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'm not considering in this decision the claims that Mr S has made in his personal capacity (relating to the personal injury and Council Tax). I've explained to Mr S that those will need to be considered as part of a separate complaint if he chooses to pursue them.

Turning to the complaints made by S, I appreciate it has sought to make a number of different claims. But I think it's fair to say the underlying dispute is the same. It relates to the action of its former director and in particular the debt S believes he owes in relation to an unpaid loan (the bankruptcy proceedings S wants to initiate are also linked to that issue).

For cover to be available under S's policy for a dispute relating to that the issue would need, as a starting point, to be one S's policy covers. I don't think it is. I've reviewed the different insured events the policy provides cover for and I note S made its claims under 'Contract Disputes' and 'Debt Recovery'.

'Contract Disputes' provides cover for "*A contractual dispute arising from an agreement or an alleged agreement which has been entered into by you or on your behalf for the purchase, hire, sale or provision of goods or of services*". But I don't think S has evidenced that it had a contract meeting that definition with its former director. And in any case the policy says it doesn't cover "*a claim relating to the following...a loan, mortgage, pension, guarantee or any other financial product*". I think it's clear this claim did relate to a loan (S says the former director didn't pay back a loan).

I've also looked at the 'Debt Recovery' section of the policy. That covers a "*dispute relating to the recovery of money and interest due from the sale or provision of goods or services, including enforcement of judgments*". But again I don't think S has evidenced that the money it wanted to recover was due from the sale or provision of goods or services. And in any case this section of the policy also excludes cover for claims relating to a loan. As a result I think DAS was right to conclude that cover wasn't available for S's claims under either of these sections of its policy. I can't see cover would be available under any of the other insured events the policy covers either. And I agree there's no section of cover that would assist with a claim for breach of the director's fiduciary duties in isolation.

But even if there was an insured event here, I don't think the policy would engage. That's because it only provides cover where "*the date of occurrence of the insured incident is during the period of insurance*". And the relevant definition of date of occurrence in the policy is "*For civil cases...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.)*"

I understand the start date of S's policy was March 2021. And I think it's clear from the information it supplied that the issues with its former director took place prior to that date. For example, S said that individual appointed himself as director of the business in March 2015 without the approval of Mr S and the claim relates in part to actions the former director took in that role.

Given S appears to have been aware of those issues at the time I think DAS has fairly concluded that the date of occurrence of the events giving rise to the claim was prior to S's policy being taken out.

I've also reviewed the email S provided from one of DAS's panel solicitors. But I'm not clear that relates to these specific claims as it references a probate matter. In any case I've explained in this decision why I think DAS reasonably concluded the claims S made simply weren't ones its policy covered. The email S has provided doesn't change my thinking on that. And while I appreciate because the claims were turned down S hasn't been provided with the legal support it believes it needed, I don't think that's come about as a result of

anything DAS got wrong. I agree that there were some customer service issues with how DAS handled the claims, but I think the £200 DAS has already paid for this does enough to recognise the inconvenience S was caused by that.

S also says this policy was mis-sold to it. But as our investigator explained that isn't an issue which forms part of this complaint which only relates to the decisions DAS reached on the claims it made. If S wants to pursue a complaint about the mis-sale it will need to raise it with the business responsible for that (which, based on the information I've seen, doesn't appear to have been DAS).

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 31 January 2024.

James Park
Ombudsman