

The complaint

Ms D complains mistakes by DAS Legal Expenses Insurance Company Limited in handling an employment claim under her legal expenses insurance policy led to it being out of time and her losing out on compensation.

What happened

At the end of April 2021 Ms D took out legal expenses insurance (LEI) with DAS as part of her home insurance policy. In late September 2021 Ms D made a claim for LEI cover to pursue a claim against her employer.

DAS declined the claim at the beginning of October 2021. They said the first incident leading to Ms D's claim had arisen in April 2020. Since she'd added LEI to her policy at the end of April 2021, the claim fell outside the period of her LEI cover.

Ms D said her claim related to discrimination that had happened in 2021 and she'd submitted supporting documents as background information. DAS said she should continue with her employer's ongoing internal appeal process and come back to them, once she had an outcome, with a timeline of the new dispute and supporting documents.

In late March 2022 Ms D made a new claim on the policy. She chased DAS for a response in early April. DAS thought it was a continuation of the earlier claim. And they asked Ms D again to provide a timeline of events so they could consider when the discrimination first began.

Ms D got in touch with DAS in early May 2022. She was unhappy her claim hadn't progressed. DAS raised a complaint and responded at the end of June.

DAS said they'd been right to decline the original claim. They apologised for the delay in declining the new claim. They said, broadly, the documents Ms D had submitted in relation to both claims suggested the events her case against the employer was based on had begun before the policy began at the end of April 2021. She should let them know if she'd had LEI cover before then and they'd check if DAS were the insurers. If she hadn't, it would be fair to ask their panel solicitors to see if she had a standalone claim based solely on events that had happened since the policy began. Ms D agreed to that in mid-July 2022.

DAS appointed panel solicitors straight away. The solicitors advised in mid-August 2022 that Ms D was out of time for making a claim to the employment tribunal and it didn't have reasonable prospects of success as a result. Since Ms D had admitted she was aware of the time limits, and she'd been waiting to hear from DAS as to the status of her insurance coverage to pursue the claim, the tribunal was unlikely to allow the claim outside the time limit.

Ms D complained delays by DAS in handling her claim and appointing solicitors who could consider it had led to the claim being out of time.

DAS agreed there had been a delay in progressing her 2022 claim. And they paid her £100

compensation for any distress caused when they didn't ring her back as requested to discuss her new complaint. But they said they weren't responsible for missing the time limit. They made the following points:

- It was Ms D's responsibility to protect her legal position.
- Ms D had been aware of the relevant time limits having previously made a claim through the employment tribunal.
- DAS hadn't told her at any point they'd cover the claim.
- She'd failed to respond to their correspondence in early April 2022.
- They'd said they were unlikely to cover the claim in early May 2022.
- When discussing the complaint a few days later, they'd said a likely outcome was that they'd explain in full the reasons why they'd declined the claim.
- They hadn't suggested a legal review of her complaint until their response at the end of June 2022.

Since Ms D was unhappy with DAS's response she brought her complaint to the Financial Ombudsman Service. Our investigator didn't uphold the complaint. She said Ms D had delayed in contacting DAS to progress her claim and in providing them with information they'd requested to consider cover. She was aware of the time limits for making an employment tribunal claim. And she ought to have taken steps to protect her position. DAS weren't responsible for her complaint being out of time.

Since Ms D didn't agree, her complaint's 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.

I'm sorry to hear of the impact Ms D's employment issues have had on her health. I can understand it was disappointing to be told her legal claim was out of time. But, as I'll explain, I've come to the same outcome as our investigator for broadly the same reasons.

We expect insurers to deal with claims promptly and fairly and not to decline claims unreasonably, in line with relevant Financial Conduct Authority rules. I'll consider Ms D's complaint against that background. The starting point is the LEI cover she had with DAS.

Under the terms of the LEI policy, and subject to its terms, conditions and exclusions, Ms D had LEI of up to £50,000 for certain insured incidents. They included disputes relating to Ms D's contract of employment.

For cover to be available, the "*date of occurrence*" of the insured incident had to be within the period of insurance. Date of occurrence was defined in the policy 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 when **you** first became aware of it.)"*

The period of insurance was between 30 April 2021 and 30 April 2022. So, the event leading to the claim had to happen during that period.

It was a condition of policy cover that a claim should have reasonable prospects of success, that is there had to be at least a 51% chance of recovering losses or damages.

Ms D's concerned that solicitors who couldn't consider her complaint were involved in September 2021. But I don't think that affected the progress of her claim. DAS reviewed the documents Ms D submitted in late September 2021 and said her claim wasn't covered by early October. They explained why the claim wasn't covered and suggested alternative ways in which Ms D might be able to pursue her legal claim. I think they acted promptly and fairly.

It was reasonable for DAS to think Ms D's claim related to the treatment she'd received from her employer since before the policy began. She'd provided details of issues that had arisen with colleagues in or before December 2019 and her concern about a warning she'd received in around March 2020, as well as later documents. It wasn't clear then that her claim was only for events that post-dated the start of the policy.

Ms D rang in early October 2021 to explain the dispute was for new discrimination that had happened that year. She said she'd provided supporting documents to show evidence of a previous dispute. But I don't think it was unreasonable for DAS to continue to decline the claim at that stage. The employer's internal process was still going on. It could have resolved the dispute. The policy only provided cover for the costs of legal proceedings, not the internal process.

I think it was reasonable for DAS to treat the second claim Ms D made in late March 2022 as a continuation of the first. She was coming back to them following completion of the internal process. And since Ms D had recorded the incident date as 1 April 2021 on her claim, it was reasonable for DAS to think it continued to pre-date the policy.

DAS fairly accepted they'd delayed in responding to the new claim initially. But they'd told Ms D by early April 2022 that they were declining the claim and would require a timeline of events to confirm when the alleged discrimination first started to consider the claim further. I think that was fair. The policy said she must give DAS any information they needed to consider the claim. Although DAS were able to piece together a timeline themselves when they looked at the complaint later, the information they had wasn't complete and the claim Ms D wished to make wasn't clear. In the circumstances, it was reasonable for DAS not to accept the claim at that stage.

DAS followed up in writing shortly afterwards. They said then that if her claim was covered under the policy they'd appoint one of their panel solicitors to deal with it. But they asked her not to take any legal action in the meantime without their authority as it could lead to the claim being declined; any cover under the policy wouldn't start until they'd formally appointed solicitors; and they wouldn't cover any legal costs incurred before then.

Ms D ought reasonably to have understood she had to provide more information to enable DAS to consider her claim. But she didn't come back to DAS until early May when she complained about lack of progress and DAS raised a complaint. DAS say they didn't give Ms D any assurances that her complaint would be upheld when they spoke to her a few days later. I'm not aware of any evidence they did. They responded formally to her complaint within the timescales the Financial Conduct Authority rules require - before the end of June 2022. They said they'd correctly declined the claim. But they felt it would be fair to get a legal view on whether she could bring a claim for incidents that had happened after the policy took effect. I think that was reasonable.

Ms D was aware by early May that DAS had declined the claim. Whilst she may have hoped they'd change their mind, she couldn't rely on that. I can understand she would have been reluctant to appoint her own solicitors given the warnings DAS had given about what might happen if she did and the costs involved. But bearing in mind Ms D was aware a time limit might apply to her legal claim, I think it's reasonable to expect her to have taken action to protect her position rather than waiting for DAS's response to her complaint.

DAS appointed the panel solicitors in late July, immediately after Ms D had agreed they should. Since the claim was out of time, the solicitors advised the claim didn't have reasonable prospects of success. The time limit had passed by the time DAS had responded to the complaint at the end of June. But, since I think DAS handled the claim fairly and reasonably, as I've explained, it wouldn't be fair to hold them responsible for that.

Even if I thought it was, it wouldn't be fair to ask them to pay Ms D the compensation the employment tribunal may have awarded her. It's uncertain whether DAS would have covered the claim even if the legal claim had been within the time limit. The solicitors said there was the possibility of pursuing a legal claim, but they didn't formally advise on whether it had reasonable prospects of success on the merits. So, I can't be sure DAS would have covered the claim under the policy.

Even if DAS had covered the claim, I can't be certain the employment tribunal would have made an award of compensation in the end. The claim was in its very early stages. The solicitors' assessment may have changed once the employer had put in its defence, for example. It's too speculative to say Ms D would have recovered any compensation. So, it wouldn't be fair to ask DAS to pay towards that.

Bearing everything in mind, whilst I understand Ms D will be disappointed, I'm not persuaded it's fair and reasonable to uphold her complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 21 August 2023.

Julia Wilkinson
Ombudsman