

## **The complaint**

Mr S's complaint is about a claim he made on his Markel International Insurance Company Limited legal expenses insurance policy, for which cover was declined.

Mr S feels Markel have treated him unfairly both in relation to his initial claim and a further claim for cover he's made since then.

## **What happened**

Mr S made a claim on his Markel legal expenses insurance policy for cover to appeal a decision made by a party I shall refer to as W, to revoke particular certificates he held in relation to firearms.

Markel asked its panel firm of Solicitors to review the merits of Mr S's appeal. The panel Solicitor as well as a Barrister instructed by her advised the appeal had less than 51% prospects of success, which was a requirement of the policy.

Mr S pursued the appeal to conclusion without Markel's assistance. He was successful in part in that he didn't lose his certificates. Rather Mr S agreed to sign an undertaking agreeing not to do certain things going forward.

The policy sets out that if Mr S' claim is declined for having prospects of 50% or below and a policyholder goes on to win their claim, then Markel will pay their reasonable costs incurred in pursuing things. As such Markel offered to pay Mr S's costs. Mr S has yet to provide Markel with the evidence they've requested to allow them to assess any legal costs he might have incurred in pursuing the appeal himself.

In 2022 W revoked Mr S's certificates again for breach of the earlier undertaking he gave. Mr S asked Markel to help him appeal W's decision once more but Markel have refused on the basis that the claim he's making is new and they are not the legal expenses insurance providers for the policy year in which he has claimed.

Mr S is unhappy with the position Markel have taken throughout his claims. In particular, he wants Markel to provide him with cover to appeal the current decision by S.

Our investigator considered Mr S's complaints and concluded they shouldn't be upheld. He thought that Markel were entitled to rely on the legal opinions they received when they declined his initial appeal and that they didn't now need to cover his second appeal because that arises out of a separate cause of action- namely the undertaking he gave. Mr S doesn't agree so the matter 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 won't be upholding Mr S' complaint for broadly the same reasons set out by the investigator.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mr S's policy is no exception. That means his claim needed to have over 51% prospects of succeeding for Markel to cover it.

We don't think this is unfair. Legal action like the one Mr S was seeking to take can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Markel did this. The panel Solicitor's advice as well as that of the Barrister was that Mr S's appeal didn't have reasonable prospects of being successful. I appreciate that Mr S doesn't agree with that advice but that doesn't mean Markel did something wrong and should have funded his claim. And Markel did fund the Barrister's further costs in considering further submissions and evidence put by Mr S in response to the original opinion. Despite that the Barrister's opinion remained unchanged on the question of the merits of the appeal.

In this case I'm satisfied that the Solicitor and the Barrister were suitably qualified to advise on the nature of the appeal Mr S wanted to make and there's nothing I've seen in the submissions he's made that makes me think the advice is based on factual mistakes. I appreciate that Mr S doesn't agree with some of the things the Barrister has said but that doesn't mean that his advice was based on factual mistakes.

In circumstances where a policyholder doesn't agree with the legal advice given on the merits of their claim, they are entitled to obtain their own legal opinion. If that's supportive of the merits of their claim, we usually adopt the approach that a legal expenses insurer should consider this further. In this case Mr S went on to pursue his appeal himself and win, in part. So, in accordance with the policy terms Markel have agreed to cover his reasonable costs in doing so. I don't think Markel need to do anything beyond this. It's now up to Mr S to provide evidence to support the legal costs he's incurred in pursuing that appeal if he wants Markel to reimburse him for them.

Turning now to Mr S's claim for cover for a second appeal against W; I'm satisfied that appeal arises out of a new cause of action- namely the undertaking he gave to conclude the previous appeal. So, I'm not satisfied that this amounts to a continuation of the original claim he asked Markel to cover in 2020.

Mr S's policy is a claims made policy. That means that only claims reported during the policy period will be covered. As this claim falls outside the policy period, it's not a claim that Markel need to consider. If Mr S has legal expenses insurance with another provider for the relevant policy period, he should claim on that policy accordingly.

Overall, I know Mr S will find my decision disappointing but for the reasons I've set out above, I can't say that Markel acted outside their policy terms nor that the position they've taken in respect of both claims is unfair.

### **My final decision**

I don't uphold Mr S' complaint against Markel International Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 October 2023.

Lale Hussein-Venn  
**Ombudsman**