

The complaint

N, a company, complains about a claim it made on its AXA Insurance UK Plc ('AXA') legal expenses insurance policy.

N says AXA treated it unfairly.

In this complaint N is represented by Mr R, but for ease of reference, I shall refer to all submissions as being N's own.

What happened

In October 2022 a third-party N had entered into a commercial agreement with, served notices on N. One notice set out that N was in breach of contract; the other was a notice of expulsion against one of N's directors.

Ten days later N instructed a firm of Solicitors to help it deal with the consequences of the notices that had been served on it.

In mid-November 2022, N notified AXA of the claim and asked for funding for it. In early December N then submitted a detailed claim form to AXA. AXA reviewed that information and nine days later asked N for further information about it.

There then followed further correspondence between AXA and N's Solicitors on the question of cover, which I won't repeat here but is well known to both parties.

Whilst this was ongoing N's Solicitors provided detailed responses to the third party's Solicitors in respect of the claims being made and invited them to either retract their claim or make reasonable proposals for alternative dispute resolution. By the end of December N's dispute with the third party settled.

N wanted AXA to cover the costs it had incurred in dealing with this dispute. N says that AXA didn't provide it with the urgent legal expenses funding it needed when it sought cover. It's also unhappy AXA didn't agree to fund its own Solicitors' costs from the outset, which it says amounts to £37,000. AXA declined. They said that N incurred the costs it's claiming for without their consent, so they're not obliged to fund them.

Our investigator considered N's complaint and concluded that it shouldn't be upheld. N 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 won't be upholding N's complaint. This is why.

Like all before the event insurance policies, N's insurance is subject to terms and conditions. In this case several terms needed to be met in order for AXA to provide N with cover. That

included accepting the claim fell within cover and if so, obtaining an opinion from legal professionals on the merits of it. If the claim was found to have reasonable prospects of success, AXA would usually then arrange for a panel firm of Solicitors to act for N in accordance with the remaining terms of the policy.

This is the usual way in which legal expenses insurance policies are administered. There are further conditions on the policy that need to be met in order for funding to continue. This includes the relevant panel firm entering into an agreement with AXA, if one isn't already in place, which provides for reporting obligations to AXA, to act in accordance with the policy terms and to obtain authority to incur costs at various points in the claim. There are circumstances in which policyholders, in a policy like this would be entitled to instruct their own Solicitors to act for them. And that's usually where proceedings become necessary. This is reflected by the term:

"Where recourse is necessary to a lawyer and proceedings need to be issued, the insured persons are free to choose an appointed representative to act in the name of and on behalf of the insured persons in legal proceedings where the administrator has consented, subject to you paying the first £1,000 of any one claim. The name and address of the appointed representative you propose to instruct must be notified to the administrator in writing. The proposed appointed representative will enable the insured persons to comply with the terms and conditions of the policy and will be appointed to act for the insured persons in line with the administrator's standard conditions of appointment. Any professional expenses or legal expenses charged by the insured persons proposed appointed representative in excess of those that would normally be incurred in using a specialist panel solicitor will be the responsibility of the insured persons."

In this case, the usual terms set out within the policy weren't met. N had instructed their own Solicitors to act for them from the outset. AXA didn't have any involvement in that. Indeed, they didn't receive details of the claim to allow them to consider it for around nine weeks after the notices were served on N and around four weeks after N's Solicitors had likely incurred a bulk of costs that N was looking for cover for. So, I don't agree with N's assertion that it made its claim in a timely manner, such that AXA should have considered it faster and agreed to grant it with cover. Even if AXA had granted N with funding soon after the full details of the claim were disclosed (which isn't something I'd expect to happen given the steps needed to confirm if cover is available) there wouldn't have been much in the way of legal costs to cover because N's claim settled around two weeks after the full details of the claim were disclosed.

It's a term of the policy that any costs a policyholder is seeking cover for need to be approved by AXA beforehand. That didn't happen in this case, and I don't think AXA unreasonably delayed providing approval or delayed dealing with N's claim. AXA were entitled to ask for further information to satisfy themselves that the claim was one that was covered. And given proceedings didn't need to be issued, there was no requirement for AXA to agree to the instruction of N's Solicitors. Because of this, I don't think AXA behaved unreasonably. As such I won't be directing them to do anything in this complaint.

In reaching this conclusion I take N's point that it felt it needed to instruct Solicitors and pursue settlement options in a timely manner. I can understand that. N was of course free to do this, and it might have been in its best interests to do so, but I don't think this means AXA did anything wrong. The point at which the claim was made was some time after N needed help, and as I've explained, insurers are entitled to carry out various checks to ensure that cover is available. The time AXA took to investigate the claim and respond to N wasn't unreasonable. And even though it might have cost AXA more to take on the claim, if it hadn't been settled, I don't think this means they should pay N's costs as claimed just because they might amount to less.

N has said that the time AXA took to consider its claim would have exposed it and its Directors to various risks by not providing it with cover. I don't agree that that was AXA's responsibility here. If N had made the claim in full as soon as the notices were served on it and made AXA aware of the urgency in dealing with them, and AXA didn't take action to consider the claim promptly, I might have taken a different view. But that's not the case here. N's claim is essentially for legal costs for a matter that was two weeks away from conclusion. Whilst N might not have known that at the time, it doesn't make AXA responsible for its legal costs before the claim was accepted and the appointment of any Solicitors agreed.

My final decision

Overall and for the reasons set out above, I don't uphold N's complaint against AXA Insurance UK Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 12 February 2024.

Lale Hussein-Venn
Ombudsman