

The complaint

A limited company, that I will refer to as C, complains about the decision of Markel International Insurance Company Limited to decline its legal expenses insurance claim.

What happened

The following is intended only as a brief summary of events. C operates as a childcare business and held a commercial insurance policy, underwritten as far is relevant by Markel. The policy provided cover for a number of areas of risk, including legal expenses.

In late 2022, C submitted a tender to its local council in relation to early learning and childcare. This tender was not successful, and C had until 22 December 2022 to bring court proceedings to appeal the council's decision. On 13 December 2022, C contacted Markel to make a contract dispute claim under its policy to cover the costs of making this appeal.

On 9 January 2023, Markel declined the claim. It said that the appeal process was by judicial review, and that the policy did not cover a claim where the issue related to a dispute before a contract had been entered. C complained about this decision and the delay in it being made. C said that the appeal did not involve a judicial review, and that it was already in contract with the council – that the tender related to a renewal of this contract.

Markel explained that the decision had taken longer than it would have hoped for, and apologised. It also said that C should provide a copy of the contract its dispute related to.

C was not satisfied with this and brought a complaint about the situation to the Financial Ombudsman Service. However, our Investigator did not recommend it be upheld. He didn't think that an application for funding could be a good or service. He also thought that Markel's apology was sufficient for the inconvenience caused by any delays in the claim handling.

C responded, saying that the dispute related to a contract for the provision of childcare services, and that this was a 'good or service'. It also said that it was under contract with the council, and so a contract did exist. C also said that it suffered a great deal of inconvenience having to chase up Markel, and felt that monetary compensation was appropriate in the circumstances.

Our Investigator then said that even if the dispute related to the provision of a service, the dispute was not about the existing contract C had with the council. The dispute was instead around the application for a contract.

C remained unsatisfied. It said the dispute related to the potential loss of the continuation of a long standing contract. And that nowhere in the wording does it say whether a contractual dispute must relate to an existing or future contract, or a continuation or renewal of that contract.

As our Investigator has been unable to resolve this complaint. It has been passed to me for a 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.

Having done so, I am not upholding this complaint. I'll explain why.

The relevant part of C's policy says:

"We agree to pay Costs in a dispute with a Contracting Party over a contract for the sale, hire or supply of goods and services"

There are a number of further requirements that would have to be met for a claim under this cover to be successful. But the starting point is that a claimant must demonstrate that there is a dispute over a contract for (in this case) services between the claimant and the contracting party.

C did have a contract with the council. However, the dispute it wished to claim about did not arise directly from this contract. The existing contract related to the provision of childcare up to a certain point in time. There was not, for example, a dispute about the funding or service provided in relation to this contract.

The dispute related to a potential contract that had not been entered. This potential contract related to the provision of childcare after a certain point in time. At the time of the dispute, no contract existed in relation to providing childcare after this point in time. As this contract had not been entered (at least between C and the council) at the time of the claim, I consider C was unable to demonstrate that there was a dispute over a contract.

I appreciate that C considers the tender it submitted, to which its claim relates, to be for the renewal of the existing contract. But I consider that this would be a new contract for the provision of childcare services. And as the dispute relates to this, potential, new contract – which was not at the time in existence – I do not consider it to fall within the clause above. It follows that I consider Markel to have acted fairly and reasonably when declining C's claim.

C has also complained about the delays and communication issues it experienced. I do note that C expressed the urgency of the situation to Markel. And that C felt it necessary to chase Markel on a number of occasions.

Markel has acknowledged that it took longer to provide C with a claim response that it would have hoped for. However, whilst I appreciate C needed a quick answer – and that this actually took just over four weeks – it often isn't possible for an insurer to review a matter and confirm cover immediately. Ultimately, C needed an answer to its claim within nine days of contacting Markel. And I don't think this is something I would expect Markel to have been able to provide. So, whilst I agree the claim decision did take a while, I don't think this would have greatly changed the situation.

And making insurance claims is unfortunately often time consuming and inconvenient. Whilst I note that Markel could have been more proactive in contacting C – which led to C having to chase – I have not seen level of material inconvenience that I consider warrants monetary compensation in this case.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or

reject my decision before 20 December 2023.

Sam Thomas
Ombudsman