

The complaint

Mr R is a director of a limited company I'll refer to as N. He's complained on N's behalf that Euler Hermes SA/NV turned down a claim on N's credit insurance policy.

Mr R has been represented by Mr H in bringing this complaint. For ease of reading I'll refer to all actions and comments as being those of Mr H.

What happened

N took out a Trade Builder policy with Euler Hermes in October 2018 which included a credit insurance policy. On 6 March 2019 Mr H contacted Euler Hermes to say N might need to claim on its policy. Mr H said that a company that I'll refer to as P hadn't paid any outstanding invoices between October 2018 and March 2019, totalling over £55,000. Mr H said N had been in contact with the directors of P who had promised to pay all outstanding amounts. On 29 March P went into administration without paying the amount owed.

Mr H contacted Euler Hermes in May to claim on the policy. Euler Hermes turned down the claim. It said the contract between N and P required P to pay invoices within 30 days. It said N knew the first payment had been missed by the end of November 2018. Euler Hermes said the terms and conditions of the policy required N to report any adverse events which might give rise to a claim. It said the maximum extension period for reporting was 60 days and the reporting limit was £5,000, so N should have reported the missed payment by the end of January 2019. Euler Hermes said if N had reported the missed payments when they should have done it would have passed the information to its collections agency or applied alternative credit limits. It said Mr H had sent an email to the customer service mailbox in March saying N might want to claim, but hadn't provided any of the details it needed.

Mr H didn't think it was fair for Euler Hermes to turn down N's claim. He said the directors of P had assured N the payments would be made. And reporting the debt to Euler Hermes would have adversely impacted the relationship between N and P.

As Euler Hermes still thought it had correctly turned down N's claim, Mr H brought the complaint to us. He said the money owed had only become a debt once N knew P wouldn't be paying it. Euler Hermes said the maximum extension period had been reached on 30 January 2019 and it was a condition precedent to liability that debts were reported in line with the limits set out in the policy. A condition precedent means that the policyholder is required to do something - in this case report the debt within the time limits set out in the policy - before the insurer has any liability to pay the claim.

Our investigator didn't recommend that the complaint be upheld. He thought Mr H had let Euler Hermes know about a potential claim in March which should have alerted it to get in touch and find out more. However, he didn't think this mattered to the outcome of the claim, because he thought Mr H should have reported the claim by 30 January 2019. He thought that in reporting the claim later than it should have done N had most likely caused Euler Hermes a loss.

Mr H didn't agree with the investigator and asked for an ombudsman's decision. He said N only knew there was likely to be a loss in March 2019 when P had gone into administration. He said before then P's directors had assured N the invoices would be paid. He said even if he'd reported the claim after the first missed payment it's likely Euler Hermes would have had to cover that first payment, so it should at least pay that part of the claim.

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've decided not to uphold it.

The terms and conditions of N's policy have a heading "*What you must tell us*". Under that it says:

"In relation to any Insured Buyer, every time:

a an Adverse Event occurs; or

b circumstances arise that would give a reasonable and prudent uninsured reason to believe that the Insured Buyer is or may be unable to meet their payment or any other obligations owed to you under the Contract; or

c a debt (including a debt subject to a Dispute) remains unpaid at the end of the Maximum Extension Period and after the total of all overdue debts in respect of the Insured Buyer has exceeded the Free Reporting Limit specified in the Schedule, whichever is the first to occur, you must within 14 days give us in the format required full details in writing, by mail, facsimile or electronically."

I can see that the policy schedule says the free reporting limit is £5,000 and the maximum extension period is 60 days. The policy defines the maximum extension period as the "*maximum period specified in the Schedule by which you can extend the original due date for payment of any debt*".

P was required to pay the first invoice by the end of November 2018 but didn't make the payment. I appreciate that the directors of P continued to assure N that the payment would be made. But the maximum extension period of 60 days had passed and I can also see from the invoices that the free reporting limit had been exceeded.

For those reasons I'm persuaded that is fair for Euler Hermes to say the maximum extension period was reached on 30 January and the debt should have been reported by 13 February 2019 at the latest. I don't accept that N only needed to make Euler Hermes aware of the claim once it knew P was in financial difficulty. And I say that because it had missed payments, the maximum extension period had passed and the free reporting limit exceeded.

I agree with our investigator that N did make contact with Euler Hermes in March 2019. And I think that should have been enough for Euler Hermes to get in touch to clarify the further information it needed. However, I don't think that matters to the outcome of my decision. That's because even though N made contact in March 2019, that was still later than the policy required.

I understand Euler Hermes said the term for reporting debts is a condition precedent to its liability. But in order to consider what's fair and reasonable in all the circumstances I've also thought about whether N reporting the claim late would have prejudiced Euler Hermes. By that I mean whether the late reporting would have made any difference to the amount Euler Hermes would have paid if it had been reported in time. Having done so, I'm satisfied that the late reporting did prejudice Euler Hermes. I say that because Euler Hermes said if it had

known about the debt sooner it would have passed it to its collections company and been able to adjust any credit limits. That means Euler Hermes would still have had the opportunity to minimise N's losses and ultimately its own liability before P went into administration. So, I don't think it would be fair or reasonable of me to require Euler Hermes to cover any of the outstanding debt.

I understand this isn't the outcome N was hoping for. However, I'm satisfied that Euler Hermes' decision to turn down the claim was fair and reasonable and in line with the terms and conditions of the policy.

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 N to accept or reject my decision before 29 June 2020.

Sarann Taylor
Ombudsman