

The complaint

M, a limited company, complains Euler Hermes SA/NV didn't pay two claims it made on its Advanced Payment Protection insurance policy.

What happened

In January 2022 M took out Advanced Payment Protection Insurance with Euler which provided cover (subject to policy terms and conditions) for money paid to an insured supplier in anticipation of the delivery of goods by that supplier.

M made a claim on the policy in March 2022. It said it had made an advance payment of around £8,100 for goods from a supplier (C) which hadn't been delivered. It made another claim in May in relation to goods that hadn't been delivered by a different supplier (S) for around £2,750.

Euler said the policy didn't cover claims where the debt was disputed by the supplier. And that was the case for both of the claims M made. It said if the disputes were resolved in favour of M it would reconsider matters. In response to the complaint M then made Euler said the claims had been correctly declined because of the ongoing disputes. It also said there were unpaid premiums on the policy amounting to around £4,600.

However, in order to resolve the complaint it said if M paid those premiums it would pay both claims. Alternatively it could refund the premiums M had paid and terminate the policy (without paying the claims). M said it had cancelled its direct debit and hence the policy with effect from the end of May 2022. It believed premiums had been paid until that date. It didn't think any further payments were due so didn't accept the offer Euler made.

Subsequently, in response to legal action Euler's solicitors initiated against C, that business said it had been the victim of fraud and never had a contract with M. Euler therefore withdrew its previous offer to make payment on this claim because it said M had paid a fraudulent third party rather than the insured supplier it had approved.

Our investigator agreed M hadn't paid the premiums that were due for a policy which had a 12 month contract. So it was in breach of the terms. And in any event the claims it had made both involved disputes with suppliers and the policy didn't provide cover where that was the case. In addition for the claim against C it did appear M had paid someone other than the insured supplier. So he didn't think Euler acted unfairly in withdrawing the offer it had made to pay this claim. And the value of the claim against S was less than the unpaid premiums on the policy meaning there was nothing for Euler to pay here either.

M didn't agree. In summary it said

- It believed it had met the claims conditions of the policy as they related to having a valid approved limit and didn't agree it had breached any of the other terms and conditions.
- It didn't understand why the suppliers in this case would dispute the payments and thought they were in clear breach of the contracts they had entered into. It thought they

might have said there was a dispute in order to prevent payment under the policy being made and didn't feel there was any legitimate dispute in this case.

- It questioned whether C was in fact a separate business to the one it had contracted with and said it had carried out reasonable checks on this company prior to doing business with them. And it thought Euler should in any case have carried out its own due diligence on this company prior to granting approval for them as an insured supplier and should have identified any fraudulent issues (if these existed).
- It didn't think there was any dispute with S and queried why that claim hadn't been paid.
- It said it only cancelled the policy at the end of May 2022 because the claims it had made weren't being paid and it thought this was a valid reason for doing so. It thought condition 8 of the policy allowed it to do so. And, as its claims had been made prior to cancellation, they should still be considered by Euler

So I need to reach a final 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.

The relevant rules and industry guidelines say Euler has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

The starting point is the terms and conditions of M's policy. These say Euler "*will pay you up to the Insured Percentage of the Insured Debt that relates to a valid claim if your Insured Supplier...fails to fulfil the terms of the Contract with respect to the delivery of goods and/or provision of services; and/or fails to repay you the value of the Insured Debt due to their Insolvency or Protracted Default*"

But it goes on to say "*You are not covered for any Insured Debt or losses in any way caused by...a Dispute*". And the policy defines a dispute as "*any unresolved, genuine and documented disagreement between you and the Insured Supplier relating to any obligations owed by either you or the Insured Supplier under the Contract that results in refusal by the Insured Supplier to deliver goods and/or provide services to you.*"

So the issue here isn't whether the claim conditions relating to, for example, having an approved limit had been met. It's whether Euler acted reasonably in concluding there was a dispute (as defined by the policy) meaning these claims weren't covered.

M thinks the suppliers only suggested there was a dispute to avoid payment being made under the terms of the policy. But I can see when Euler contacted someone who said they were representing C it was told the shipment wouldn't be made until after the balance had been paid. And the payment terms said the balance should be paid after checking had taken place in an overseas warehouse (not after delivery to the UK).

It commented "*without balance payment we cannot do anything or complete the shipment because we need the money to pay logistics and our suppliers. We are a trading company and not end manufacturers*". That correspondence was shared with M at the time and Euler's collections team concluded legal action would be necessary to resolve the issue.

When Euler contacted S it also claimed that under the terms of its contract with M a further

£2,750 payment was required prior to the delivery of goods. So both companies were arguing M hadn't met its contractual obligations.

I appreciate M doesn't agree with those arguments but the test here is whether Euler acted reasonably in concluding there was a dispute. Given the arguments put forward by C and S I think it did. In fact M appeared to accept there was a dispute with C because in an email on 22 April 2022 it said *"the debtor is disputing the outstanding debt and we are aware of it and due to this dispute only we have been obliged to raise our claim but only as a last resort"*. I think it was reasonable of Euler to conclude cover wouldn't be available for these claims unless those disputes were resolved in favour of M.

In any event this isn't the key issue here because, although it continued to believe there was a dispute, Euler ultimately decided not to rely on this term to turn down the claims. It confirmed in response to the complaint M made it would make payment in order to resolve matters. But that was subject to the outstanding premiums for the policy being paid.

The reason the claims weren't then paid was because M didn't pay those amounts and says it wasn't required to. In fact M says it was entitled to cancel the policy (without paying further premium) because its claim hadn't been paid. And it's referenced a condition of the policy which it says allows that. But that term doesn't appear in the policy; it's in a separate document which relates to Euler's debt collection services.

I appreciate M felt Euler wasn't fulfilling its responsibilities under the policy and that's what led it to stop paying the premiums. However, I've already found that Euler acted correctly in telling M there was an ongoing dispute in relation to the claims it made and the policy wouldn't provide cover unless these were resolved in its favour.

And the policy terms say at condition 5.3 *"You must pay the Advance Deposit Premiums specified in the Schedule together with any additional premium payable in accordance with Condition 5.4, within 14 days of the due dates specified. Your compliance with Condition 5.3 is a condition precedent to our liability to you under the Policy for any benefits under the Policy"*

So it's a requirement of the policy that premiums have been paid prior to benefit being provided. At the point Euler offered to pay these claims there was a significant amount of premiums that were due but remained unpaid. I think it was in line with the policy terms and fair of Euler to say it wouldn't be making payment until the issue with the unpaid premiums had been resolved.

I think it acted reasonably in then withdrawing that offer in relation to supplier C when new information about that business came to light as part of the legal proceedings that had been initiated. The policy says it covers an Insured Debt paid to an Insured Supplier. And the definition of an Insured Debt includes that it *"relates to goods and/or services which are due to be supplied to you within the maximum terms for delivery of goods and/or provision of services specified in the Approved Limit for that Insured Supplier..."*

In this case Euler approved a limit of £50,000 in relation to C in February 2022. So it's a debt with C that would be covered by the policy. However, that business doesn't supply the sort of goods M ordered and says it solely provides IT consulting services. It said a website which does list those goods and uses its postal address is fraudulent and has no connection to it. In addition C's entry on Companies House doesn't include the individual listed on the website as is managing director. And C has provided a reference showing it's reported this issue to ActionFraud and contact it's had with HMRC about this matter. There are also other online reports of the website being fraudulent.

I think Euler acted reasonably in concluding the contract M had must therefore have been with someone other than the business it had approved. I appreciate that business may have fraudulently misrepresented themselves to M as being C. But that doesn't change the fact the policy covers a debt to C and the available evidence doesn't show there is one.

M argues Euler should have identified this issue when approving C. But it was only the direct contact that took place with C prior to legal action which established this. I don't think those are checks it would have been reasonable to expect Euler to perform when approving a credit limit under the policy. And in any event I don't think M could reasonably have regarded those checks as a substitute for its own responsibilities to establish it was contracting with a legitimate business.

I appreciate the same issue doesn't apply to the debt with S. But, as I've already explained, I think it was reasonable of Euler to say the issue of unpaid premiums would need to be resolved before any claim was paid. And the debt in this case is around £2,750 and the unpaid premiums on the policy are around £4,600. So even if Euler were to offset those premiums against the debt no claim would be payable in relation to this.

In summary, I think Euler acted reasonably in concluding there did appear to be a dispute with both C and S meaning these claims weren't covered by M's policy. When it subsequently decided (as a gesture of goodwill) to pay those claims I think it was fair of it to say the issue of unpaid premiums would need to be resolved prior to it doing so.

And I think it was fair of it to withdraw that offer in relation to the claim against C once it became apparent M hadn't contracted with C. And no payment would be due in relation to the claim relating to S because the unpaid premiums outweigh the amount that would be due. As I'm satisfied on those points, I've not needed to consider any other reasons Euler has given for declining the claims.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 11 August 2023.

James Park
Ombudsman