

## **The complaint**

Mrs S, trading as S, complains that HCC International Insurance Company Plc wouldn't cover a claim she made on S's professional risks insurance policy.

## **What happened**

S took out professional risks insurance with HCC with effect from 11 July 2022. The following day Mrs S contacted her broker and said she'd notified her previous insurer of a complaint that had been made against her. She asked whether HCC should be told about this. The broker provided information about the complaint to HCC which opened a file and requested additional information.

At the start of November, HCC asked for an update on the potential claim. Mrs S said the complaint was being looked into and it might be there was no case to answer. HCC confirmed it still required information about this which Mrs S provided. The investigation into the complaint against Mrs S subsequently found a prima facie case of misconduct. HCC said it wouldn't be providing cover because the policy excluded claims arising directly or indirectly from any claim or circumstance that an insured was aware of prior to the start of the policy. It thought that was the case here.

Our investigator was satisfied Mrs S was aware of the circumstances giving rise to this claim prior to taking out the policy with HCC. So he thought it had fairly concluded it wasn't covered. And he didn't think HCC had led her to believe the claim would be covered. It had carried out investigations into what happened but email correspondence referred to it looking into "*potential*" policy coverage.

Mrs S didn't agree. She said full details of the complaint against her had been provided to HCC the day after policy inception. It had then opened a file and requested further information. But the claim wasn't declined for a further six months and only once it was clear she required representation. Mrs S said if there was no cover for her potential claim she should have been told that at the outset. If that had been done she'd have stayed with her previous insurer. She only decided to change because other in her field used the same broker and she understood they were experienced in the needs of her business.

## **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 HCC has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of S's policy. This does include cover for damages and claimant costs along with defence costs and expenses. But the exclusions applying to the relevant section include any claim *"arising directly or indirectly from any claim or Circumstance of which the Insured was, or ought reasonably to have been, aware prior to inception of this Policy, whether notified under any other insurance or not"*. Circumstance is defined as *"any circumstance, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a claim against the Insured or a claim by the Insured under this Section"*.

I think Mrs S was aware of a circumstance likely to give rise to a claim prior to taking out the policy. Before doing so Mrs S had correspondence with an individual she'd provided services to. That individual confirmed she'd made a complaint about her and the relevant authority had notified Mrs S of that complaint. And Mrs S clearly recognised there was a potential claim issue here as she told her previous insurer about this. The claim she subsequently sought assistance with from HCC arises from that issue. So I think it was reasonable of HCC to conclude it was caught by the *"claims or circumstances known at inception"* exclusion.

Mrs S hasn't disputed that but says she provided full details of the complaint to HCC at the point she took out the policy and it only told her six months later it wouldn't be covering her claim. However, it doesn't appear she provided any information to HCC prior to taking out the policy. So I don't think there can be any argument this was a risk it had agreed when accepting cover.

And while Mrs S says she provided details of the complaint to HCC the day after the policy started I don't think that is correct. She does appear to have contacted her broker at that time but that information wasn't passed on to HCC until ten days later. It then requested further information but that doesn't appear to have been provided until November. I think HCC was also clear in correspondence that it was requesting information so it could assess *"potential"* policy coverage. It didn't say any claim would be accepted.

Even if HCC should have told Mrs S sooner it wouldn't be providing cover for her possible claim (and I'm not sure it should) I don't think that would have changed matters. She's suggested she'd have stayed with her current insurer if told that but the first time HCC received any information about the complaint against her was after she'd taken out cover with it. So any information she was given at that point couldn't have impacted a decision to change insurers that had already been implemented. And if Mrs S is unhappy with the broker who arranged this policy that's something she'd need to pursue as a separate complaint against that business.

I understand Mrs S is unhappy she had to cover the legal costs of representation at the relevant hearing. HCC queried in its final response to her complaint whether she'd approached her previous insurer for assistance (given she did notify it of this potential claim). I'm not clear if Mrs S has done that. If she hasn't that may be something she wants to consider. However, for the reasons I've explained, I think HCC has correctly and fairly turned down the claim she made under S's policy with it.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 16 May 2024.

James Park  
**Ombudsman**