

The complaint

D, a limited company, complains Starr International (Europe) Limited turned down a further claim it made on its contractor's liability insurance policy.

What happened

In August 2020 D entered into a contract to carry out refurbishment and construction work at a client's property. After the work was completed, a dispute arose over the final balance due. The client took the matter to adjudication. D sought assistance from its policy in defending that claim. Starr turned the claim down for a number of reasons. D said it had no option but to appoint its own solicitors to act in the adjudication proceedings. In January 2022 the adjudicator found D didn't owe any sums to the client and in fact he owed D around £34,000.

We've previously considered a complaint about Starr's decision to turn down D's claim. Another Ombudsman concluded in August 2023 the claim had been incorrectly declined. And she said Starr should reimburse D for the legal costs incurred in defending the claim (plus interest). However, she said any concerns D had about whether Starr should cover proceedings that had now been pursued in the High Court would need to be considered as part of a separate complaint.

D sought cover under its policy for the costs it had incurred in taking that action and also claimed for the legal costs of action for defamation it took against its client. Starr turned down those claims in September 2023. It said the policy provided cover for the defence of legal liability claims against D which wasn't the case here; D was pursuing these claims.

Our investigator agreed Starr had fairly turned down these claims because they weren't covered by its policy. D didn't agree. It said Starr's breach of its duties was evident from the previous Ombudsman's decision. And it said the ongoing disputes arose from the unsuccessful claim that had been made against it and the initial negligence by Starr had subsequently led to other legal stages. It also thought there had been unreasonable delay by Starr in dealing with claims it made. 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.

I appreciate D believes Starr's breach of its duties is evidence from the previous Ombudsman's decision. But that decision related to the issues which were considered and addressed within it. The decisions Starr subsequently made on costs relating to the High Court and defamation claims are new issues and not something which were covered as part of the previous complaint (which is why I'm able to determine them here). However, I'm not able to consider any issues which were addressed in the previous decision.

Turning to the new issues, the relevant rules and industry guidelines say Starr 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 D's policy. The cover for 'Public Liability' includes a section headed 'Costs and Expenses' which says "*In addition the Underwriter will pay costs and expenses incurred by the Insured or with its written consent...in connection with the defence of any claim...which may be the subject of indemnity under this Section*".

I've reviewed the claims that D was seeking assistance with. High Court proceedings were pursued against its client to enforce the decision of the arbitrator (who said the client owed D around £34,000). And the defamation action was pursued by D against the client in relation to online comments made about work it had carried out.

I think it's clear in both instances D was therefore seeking to pursue these claims. The client is the defendant in the High Court proceedings while D was listed as the claimant. Similarly in relation to the defamation action a letter from D's solicitors in September 2022 said if a satisfactory response wasn't received "*our instructions are to commence proceedings to include an injunction and a Claim for damages for loss incurred by our clients*". However, the policy doesn't cover the pursuit of a claim; the terms say it will pay Costs and Expenses incurred in connection with the defence of any claim.

I appreciate the High Court action did follow on from the arbitration proceedings where D successfully defended the claim against it. But the defence proceedings ended with the decision the arbitrator reached in January 2022. I don't think the costs and expenses of separate action against the client to pursue an amount the arbitrator said they owed (in a different arena) could reasonably be said to be incurred in connection with the defence of a claim. And I think the defamation action pursued against the client is at even more of a distance from the proceedings that were covered by D's policy.

For cover to be available for D claims they do need to fall within one of the insured incidents set out in its policy. And the onus is on a policyholder to show that. For the reasons I've explained I don't think it was unreasonable of Starr to conclude D hadn't done that in relation to these claims and to decline to provide cover for them.

And I haven't seen evidence of unreasonable delay by Starr in doing so. Following the previous final decision Starr asked for further information in support of D's further claim for costs on 7 September 2023. Having considered the evidence it explained why it didn't think the claim was one its policy covered later that month. And I think it responded to the further concerns D then raised within a reasonable timeframe.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 1 July 2024.

James Park
Ombudsman