

The complaint

A limited company, which I will refer to as F, complains about the decision by Accredited Insurance (Europe) Ltd to decline its professional indemnity insurance claim.

What happened

The following is intended only as a summary of the events. Additionally, although other parties have been involved in the process, I have just referred to F and Accredited for the sake of simplicity.

F is an investment advisor firm. It held an industry specific professional indemnity insurance policy underwritten by Accredited. The policy period was from 3 May 2022 to 2 May 2023, inclusive. On the afternoon of 2 May 2023, F was contacted by phone by one of its clients who made a complaint alleging F had provided inappropriate advice on an investment. F did not inform Accredited of this until 4 May 2023.

Accredited did not immediately raise any concerns with the date this notification was made. And even arranged for F to receive legal advice, which Accredited paid for. In November 2023, Accredited then informed F that it had decided to decline the claim. F was unhappy with this, ultimately bringing its complaint to the Financial Ombudsman Service.

Our Investigator recommended the complaint should be upheld. He thought Accredited had not acted fairly and reasonably, by relying on a breach of a condition in the policy, in the circumstances of the complaint.

Accredited did not agree. It said the Financial Ombudsman needed to take into account, among other things, the law and good industry practice. And it considered the terms of the contract of insurance had not been met by F. Accredited said that F was a FCA authorised firm, which also had the benefit of expert support, and so ought to have known about and adhered to the policy requirements. Accredited also said that the terms in the policy were similar to those in other comparable policies. And that, whilst there was only a few hours between the phone call from the client and the expiration of the policy, all F was required to do was to send a brief email.

As our Investigator was 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 upholding this complaint. I've explained why below.

Firstly, I'll just reiterate that the above is merely a summary of the events and arguments. Both parties have provided detailed submissions, covering a number of points. I have not discussed each of these within this decision though. Instead, I have focused on what I

consider to be the key issues. This is not intended as a discourtesy, but rather reflects the informal nature of the Financial Ombudsman.

Accredited has said that it should have been notified that a claim had been made before the expiry of the policy period. However, I note that the term Claim has a particular meaning within the policy that requires the relevant third party to have made this in writing. It does not appear that a written submission from the client was made until after the expiry of the policy. So, this term would not technically apply.

The situation would more appropriately fall under the policy definition of a Circumstance. This is information discovered within the policy period which leads the policyholder to think that an identifiable person will likely make a claim.

This doesn't change a huge amount, but does limit the parts of the policy that are relevant.

Accredited has referred to Condition 4.2 of the policy and this is still relevant. This requires the policyholder to notify the insurer prior to the expiration of the policy period – in this case by the end of 2 May 2023. And it is not in dispute that this did not happen. Notification of the Circumstance appears to have happened on 4 May 2023. It follows that F was in breach of this condition.

Accredited has said that section 11 of the Insurance Act 2015 would not apply to this condition. However, I am not sure I agree with the reasoning here. The purpose of condition 4.2 is, in part, to allow an insurer to put in place measures to limit further exposure (for example by providing legal assistance). Where there is a breach of this condition, and an insurer is not notified of a Circumstance, they are potentially unable to mitigate any increasing loss. So, I think this section of the Act is likely to be relevant.

Regardless of this though, whether or not this section is applicable, I consider it would only be fair and reasonable for an insurer to rely on a breach of a condition within the policy if this had prejudiced its position. In this regard, I would expect this prejudice to relate to – for example – the insurer's ability to mitigate any increasing loss by providing legal assistance. I would add that if the condition is indeed a condition precedent to Accredited's liability – as it has indicated – the onus is on F to demonstrate that no prejudice has been suffered, rather than for Accredited to demonstrate that there is prejudice.

Either way though, I fail to see how not being notified of the Circumstance has led to any such prejudice in the circumstances of this particular complaint. In this case, the situation did not evolve between 2 and 4 May 2023, other than that a claim was made. I do not consider Accredited would have been able to act to prevent this. And Accredited was then able to provide F with the same level of assistance – until November 2023 – as would have been provided had notification been made on 2 May 2023.

So, although F was in breach of a policy condition, in order for me to conclude that it was fair and reasonable that its claim be declined, I consider Accredited's position will need to have been prejudiced. And I don't think it was.

It might well be good industry practice to have clauses within policies that require notification to be made within the policy period. However, it is necessary that these clauses are interpreted fairly and reasonably in the circumstances of any particular claim. I appreciate Accredited's comments about what appropriate deadline there might be where notification outside of this period would still be acceptable. But this will depend on the circumstances of the claim in question. And what impact there has been from the late notification.

I do appreciate that F could, and perhaps should, have met the requirement of the policy.

But it does not automatically follow that a breach of a condition means it is fair and reasonable for an insurer to decline a claim. And, taking into account all the circumstances of this particular complaint, I do not consider Accredited acted fairly and reasonably by declining the claim for a breach of Condition 4.2 in the policy.

Putting things right

Accredited Insurance (Europe) Ltd should put things right by reconsidering F's claim based on the remaining terms of the policy, on the basis that F had notified it of the Circumstance within the policy period.

My final decision

My final decision is that I uphold this complaint. Accredited Insurance (Europe) Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 16 October 2025.

Sam Thomas
Ombudsman