

The complaint

Ms R's complaint is about a claim she made on her Markel International Insurance Company Limited ('Markel') legal expenses insurance policy.

Ms R says Markel treated her unfairly.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving reasons for my decision.

Why I can't look at Ms R's complaint prior to 22 April 2022

As the investigator explained, Ms R did not refer her complaint about the matters addressed by Markel in their final response letter dated 22 April 2022 within six months to this Service. Rather she referred her complaint to us on 17 November 2024, so it was two years out of time.

There are certain times when we can look at complaints, which are time barred. One of those times might be if Markel consented to our doing so but Markel haven't consented to this in Ms R's case. The rules also allow us to look at complaints referred out of time if the failure to comply with the time limit was as a result of exceptional circumstances. In this case Ms R says exceptional circumstances apply because there wasn't a need to refer her complaint about this at that time. She says this was because she had been awarded judgment in her favour and it wasn't until she started experiencing problems with the legal claim later on that she felt there was cause for complaint against Markel. As such Ms R's case is that her complaint was not reasonably foreseeable at that time.

I've thought carefully about Ms R's submissions, but I don't think her circumstances amount to what we would consider exceptional circumstances. Firstly, the bar for what we'd consider 'exceptional' is particularly high. It extends to where complainants aren't able to meet the time limits. Examples of this might include serious ill health that might leave a complainant incapacitated or where a complainant doesn't for example receive a final response letter so isn't aware they need to refer their complaint to us within particular time limits. Either way, we'd be looking at something that prevented a customer from referring their complaint to us within the referral period. And whilst I understand that Ms R was unconcerned that her claim had been declined by Markel because she had been successful at Court, I think she would have reasonably been aware that she had cause to challenge Markel's funding decision as well as their position on the early delays she expressed concern about in respect of the management of her claim. The fact that she later became unhappy that Markel didn't cover her claim from the outset because her legal claim was not later successful makes no difference here. The issue is whether she was prevented from bringing a complaint within six months of Markel's final response letter dated 22 April 2022 and I don't think she was. Markel's letter was clear on what Ms R should do if she remained unhappy with the outcome of her complaint. Overall, I haven't seen anything that persuaded me the matter was one where Ms R would have been unclear about what she needed to do if she remained dissatisfied with the position Markel had taken.

For those reasons Ms R's complaints prior to 22 April 2022 aren't matters I can consider because they were referred over six months after Markel issued their final response letter and there are no circumstances that apply that mean we can look at things outside these limits.

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.

This relates solely to the complaints that Ms R has made following 22 April 2022. Having considered everything, I agree with the conclusions reached by the investigator for the reasons I have set out below. Before I address those, I wish to acknowledge the volume of submissions Ms R has made as well as her strength of feeling about her complaint. Whilst I have read and considered everything she's said, I won't be addressing it all within this decision. That's not intended to be disrespectful. Rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of Ms R's complaint, namely whether Markel treated her unfairly.

Ms R is unhappy that Markel didn't cover her legal fees, after her claim was declined because it had no reasonable prospects of success. The starting point is the policy terms. They say:

"Claims rejected due to a lack of reasonable prospects of success

If we rejected your claim solely due to a lack of reasonable prospects of success, we will pay costs that are reasonable and proportionate to the legal and/or financial remedy achieved, subject to the terms and conditions of this policy if:

- *You proceeded with the legal action which formed your claim to its conclusion with a Court, Tribunal or equivalent having issued a judgment (excluding any settlement, mediation, alternative dispute resolution or equivalent resolution process) and were successful*
- *You were defending, the judgment found you were not at fault*
- *You were pursuing, the judgment awarded you the remedy you were seeking at the time we rejected your claim*
- *You tell us about it as soon as possible"*

In this case Markel declined to cover the claim because the advice they received was that the claim had no reasonable prospects of success. Ms R then pursued her claim independently and with the assistance of lawyers. When she obtained a successful result Markel agreed to consider her costs subject to Ms R providing proof of the sums she'd paid. And when she did so, Markel paid those costs.

It's right that all of the costs Ms R is claiming for weren't covered by Markel, however. Those related to the costs associated with enforcement of her claim and the matters that transpired in this litigation beyond that. In order to assess whether this was a claim that was capable of cover, Markel said they'd need to see a positive legal opinion setting out that it was more likely than not that Ms R would succeed. That's not unreasonable. This was essentially a new claim that Markel was being advised to consider under the policy and the terms required it to have reasonable prospects of success. Discussion then arose about who would conduct that assessment. Markel offered their panel firm, but Ms R refused and proposed her own Solicitor. Markel were however concerned about their area of expertise and also made it clear that the hourly rate that firm was charging was more than they'd be prepared to pay. That wasn't in my view unreasonable. Markel were entitled to satisfy themselves that the firm providing the assessment of a claim they were considering funding was suitably qualified. And the policy only provided cover for costs Markel had agreed with

Ms R, so it was reasonable for them to flag what they weren't prepared to pay in respect of these at an early stage.

Matters then moved on in that the other party in the litigation applied to have judgment against her set aside so the question of enforcement became largely academic. Ms R then asked Markel for help with the hearing of that application. Markel offered for the matter to be sent to their panel firm to consider whether it fell under the terms of the policy. Ms R initially agreed then changed her mind and decided to use her own Solicitor. She was then unsuccessful at defending the set aside application and therefore the claim became live again and defended. At this point the matter reverted back to the position it was at after Markel declined it from the outset- namely it had no reasonable prospects of success. That's because Ms R was no longer successful in her legal claim and therefore was not entitled to have her costs reimbursed.

Further discussions were had with Markel about whether they would cover a claim in defamation against the same party. Markel declined this in accordance with their policy terms which didn't extend to such action. During this time (and on three separate occasions) Markel reminded Ms R that they had yet to receive an assessment of the ongoing claim from her. The implication of this is that if it was positive, they would consider funding the claim. Ms R didn't provide this. Since then she made continued requests for Markel pay her legal costs, including those her Solicitor was pursuing her for. I don't think it was reasonable to expect Markel to pay those costs. As things stood, Ms R's claim wasn't one that she had been able to demonstrate was covered; there was nothing from her Solicitor or the panel firm setting out she had reasonable prospects of success and Markel hadn't agreed to fund those costs from the outset in accordance with their policy terms. In the absence of both of those conditions being met, I'm not satisfied that Markel should have picked up Ms R's costs retrospectively.

The costs that Markel had agreed to pay related to those associated with her obtaining successful judgment (and therefore according with the policy terms I've quoted above) but not those incurred following this. Markel reimbursed her for those sums as soon as Ms R provided further details of them. Because of this I can't say Markel did something wrong here either. In addition and as a gesture of goodwill, Markel paid Ms R the balance of the indemnity available to her on her policy of almost £3,000. They did so even though they weren't obliged to. This goes beyond what we would expect an insurer to do so I think the amounts they have paid are more than reasonable in the circumstances.

Ms R has complained that Markel's failure to pay her legal costs led to her Solicitor taking action against her. I don't agree. It was Ms R's decision to instruct those Solicitors herself, and she was responsible for their fees. Markel did not agree to reimburse her for those costs and therefore aren't responsible for her failure to pay them. I appreciate that Ms R says she wasn't able to pay costs because she was paying for another important cost but doesn't mean that Markel needed to pay her claim.

Finally, Ms R is unhappy with the service Markel provided her with. Having considered everything, I'm not satisfied that Markel treated her unfairly. From what I've seen Markel provided Ms R with clear information about what was required from her to allow them to consider her claim at each juncture. For that reason, I don't think they did anything wrong.

My final decision

For the reasons set out above, I don't uphold Ms R's complaint against Markel International Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or

reject my decision before 9 October 2025.

Lale Hussein-Venn
Ombudsman