

The complaint

A, a limited liability company complains about the handling of a claim it made on its SCOR UK Company Ltd ('SCOR') commercial legal expenses insurance policy.

A says SCOR treated it unfairly.

In this complaint A is represented by Mr L but I shall refer to all submissions as being A's own for ease of reference.

All references to SCOR include their claims handlers.

What happened

A made a claim on its SCOR commercial legal expenses insurance policy for cover to deal with a dispute against a third party.

SCOR considered the claim and initially determined that there was no insured event. A challenged the position and set out why the matter should be considered as a breach of contract claim. Upon reviewing this SCOR accepted A's position and referred it to their panel firm of Solicitors for review.

The panel firm carried out a detailed review. Their opinion set out that the claim didn't have reasonable prospects of success, as required by the policy. This was communicated by the panel firm to A. The opinion also identified issues regarding cover for arbitration and that it was the relevant tribunal for resolving disputes under the contract between A and the third party. In the body of the opinion the panel firm said arbitration was not covered by the policy.

SCOR then wrote to A saying no cover was available because the claim did not have reasonable prospects of success. The email went on to say that if A disagreed with the opinion of the panel firm on this it could obtain its own legal opinion from one of the three barristers chambers on their panel or appoint a chambers of its own choosing.

In response to this A's broker, on behalf of A, asked for a copy of the legal opinion of the panel firm which SCOR supplied. A's broker then supplied a legal opinion from an alternative Solicitor to SCOR which sets out that A's claim did have reasonable prospects of success. A says it paid over £4,000 for this.

SCOR considered the opinion and said it wasn't prepared to consider the claim because arbitration wasn't covered under the policy and therefore there wasn't anything they could offer cover for and in any event the advice provided by A wasn't from a barrister, which is what their policy said was required to challenge the panel firm's opinion.

A is unhappy with the way in which SCOR handled its complaint. It says that it spent over £4,000 obtaining advice from an alternative Solicitor and that SCOR failed to make clear this wasn't required given the claim wasn't covered. A is also unhappy with the way in which SCOR handled its claim more generally including delays, the fact that the panel firm never discussed the claim with it and that it was directed by SCOR to its free legal helpline whilst it

needed legal assistance.

Our investigator considered A's complaint and concluded it should be upheld. She said that SCOR should refund A for the reasonable costs it incurred in obtaining its own opinion and fund a barrister's opinion to determine the merits of the case in finality.

SCOR didn't agree so the matter was passed to me to determine.

I issued a provisional decision in which I said:

"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 uphold A's complaint but for different reasons and with different redress to that recommended by the investigator. Before I explain why, I wish to acknowledge the volume of submissions made by both parties and the various attempts the investigator made to reach resolution of A's complaint after reaching her view of matters. Whilst I've read everything that's been said, I won't be addressing it all. 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 A's complaint, namely whether SCOR treated it unfairly and what SCOR needs to do to put things right.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. A's policy is no exception. That means its claim needed to have over 51% prospects of succeeding in order for SCOR to cover them.

We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. SCOR did this. The Solicitor's advice was that first claim didn't have reasonable prospects of success and that it needed to be dealt by way of arbitration and that was not a course of action covered by the policy. On the question of cover for arbitration panel firm said "On this basis (A's) legal expenses insurers will need to consider this aspect further when it makes its decision on future funding."

I'm satisfied that the Solicitor was experienced in the area of law A was asking for help with and there's nothing in the advice I've seen which suggests it was obviously wrong or based on factual mistakes. So I don't think SCOR were wrong to rely on it when determining the claim had no merit. However SCOR were not clear at all with A that no funding was available for the claim on the basis that the contract that was the subject of dispute between A and the third party, was governed by an arbitration clause. Instead the claims handler for SCOR went on to tell A that the claim had no merit and wasn't covered but if A wanted to challenge it, it could obtain its own legal opinion from a barrister.

A did go on to obtain its own legal opinion as SCOR had been silent on no cover being available at all at that point. In response SCOR refused cover both because the opinion A obtained was not from a barrister and because the claim wasn't in any event covered because arbitration was excluded by the policy.

Much has been made by SCOR about the opinion being from the wrong sort of professional and the fact that their policy terms set out that a barrister's opinion is needed when a policyholder wishes to challenge a panel firm's opinion. Whether that's a feature of their policy terms is largely academic here. Generally, we would say that when a policy holder has provided a comparable legal opinion that contradicts a panel firm on the question of merits, we would expect a legal expenses insurer to reimburse them for that and fund a barrister's opinion to determine the matter in finality. But in this case, it makes no difference because the opinion from the panel firm is that the policy excludes cover for pursuing arbitration and that is how the dispute is intended to be resolved, as envisioned by the contract between the parties.

As it is clear that this is a contract dispute, I'm not satisfied that the dispute should now be interpreted differently to suit a different method of resolving the matter which might now be covered by the policy. And A's legal opinion does not address why arbitration is not the correct forum for pursuing this dispute. So, any assertions A has made are not founded in legal opinion but rather its own views. We wouldn't generally accept that position over a Solicitor's opinion, particularly where A has argued from the outset this is a contract dispute and should therefore be treated as such. Because of this I don't think there is cover for this claim under the policy. Unless A can show, with reference to a fully reasoned legal opinion from a suitably qualified legal professional, why the panel firm are wrong, SCOR doesn't need to cover the claim further.

As I've said SCOR were not clear with A when they should have been about cover not being available for the reasons I've mentioned. The email from the claim handler telling A to obtain a barrister's opinion when there was no cover for arbitration was misleading. And I think this led to A incurring unnecessary legal costs it didn't need to. So, I've set out what SCOR needs to do in this case below. I've also made an award for inconvenience in this case because it seems to me that A wasted time obtaining a legal opinion that was unnecessary and was better placed to focus its efforts and funds on its dispute with the third party directly. For clarity, I can't make an award for distress because A is not a natural person and therefore cannot suffer distress.

I've also considered all of the other matters complained of by A in this matter, including SCOR's initial refusal of its claim on the basis that it was not an insured event, delays and the actions of the panel firm. I am not satisfied that SCOR did anything wrong here. I can't comment on the actions of the panel firm- they are separately regulated independent legal professionals with their own regulator and code of conduct. As such they fall outside my remit. And I've not seen any delays in this claim that have caused me concern other than the misleading position SCOR took, for which I've made an award of compensation below. I'm not concerned by the position SCOR initially took when they said the claim wasn't an insured event because this wasn't an unreasonable conclusion to reach based on the information it had at the time. Once A clarified why it thought this was wrong, SCOR accepted the position swiftly, which was in my view the fair thing to do. As far as the panel firm's failure to discuss the claim with A before reaching its conclusions are concerned, I don't think this is a requirement so although it might have been helpful to avoid misunderstandings, A did have the opportunity to provide the panel firm with everything it wanted to be considered in advance and it also had the opportunity to clarify the position after the advice was received. So I'm not satisfied that A were denied the opportunity to put their case. Finally, I know A felt it was unhelpful to be directed by SCOR to its free legal helpline whilst it needed legal assistance. But I don't think this was wrong. There was no cover in place at the time to help A pursue its claim so this was the only assistance SCOR could offer.

Putting things right

SCOR should:

- *Reimburse A for the legal costs it incurred in obtaining an alternative legal opinion upon presentation of proof of the sums paid for this by A.*
- *Pay A interest at 8% per year simple on the legal costs it paid, from the time they were paid, until they are reimbursed.*
- *Pay A £350 for the inconvenience caused in obtaining an alternative legal opinion when this would not have led to the claim being accepted, when A could have been pursuing the claim it had sought assistance for instead."*

I asked both parties to provide me with any further comments or evidence for me to consider in response to my provisional findings. Both parties have now replied. SCOR has accepted my provisional decision. A has not and has made the following points:

- It accepts the claim it made on the policy was for a contract dispute and has never interpreted it as anything else.
- The cost of the insurance was determined by SCOR pursuant to an exchange of correspondence regarding the contract value.
- The policy clearly excludes arbitration costs, but SCOR's position is that the clause denies any legal expense cover to establish the extent to which the contractual claim is intended to be defended and thus the most appropriate method or tribunal for resolution of which arbitration is an option but not exclusively mandatory.
- Its legal opinion was confined to merits of the case, and it was only after A's merits opinion was put to SCOR that they changed their position and unilaterally decided that the arbitration exclusion denied any legal cover whatsoever regardless of the merit issues.
- It never claimed costs specifically for arbitration. A much more cost-effective letter of claim pursuant to the Pre-Action Protocol for Construction Disputes would have sufficed prior to definitively determine a course of action.
- It was not consulted, SCOR were simply seeking any means possible to avoid indemnity costs and incorrectly declared that arbitration was a mandatory means of resolution.
- It agrees with my findings about the reimbursement of its legal costs and interest but feels the sum of £350 in compensation isn't enough. It says it had to commit 47 hours of time to instruct a Solicitor and that it had numerous meetings and exchanges of correspondence with SCOR's broker.
- It wants to be paid £65 per hour for its time which amounts to £3,055 in compensation or an alternative sum I deem appropriate.

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 remain of the view that A's complaint should be upheld in the same way and with the same remedy as set out within my provisional findings.

I don't disagree with many of the points A has made about the way in which the claim was conducted by SCOR. But I also haven't seen anything but A's own account of the fact that the policy should have extended to covering it for some legal work in circumstances where the contract dispute that was governed by an arbitration clause that is excluded by the policy. I agree that SCOR should have made the position about this clear to A from the outset but in the absence of a legal opinion setting out why A's claim should have been covered because A is entitled to have the dispute resolved by other means despite an arbitration clause being in place, I can't say SCOR needed to provide it with cover. And I don't think SCOR did need to consult A about invoking the exclusion they did, although I accept it was not highlighted properly as a reason to turn down the claim as early as it

should have been. SCOR as an insurer are entitled to determine whether their policy excludes a claim. I wouldn't expect them to consult with their policyholders on these issues before declining a claim.

I understand A's point about the cost of the policy being determined by the contract that was the subject of the dispute and the fact that it found the claim it made in respect of it to later be excluded. If A feels the insurance was mis-sold, then it is entitled to complain about that to the seller. That issue is not however something I'm able to determine as part of this decision.

Finally, I understand what A says about the compensation I've awarded. But I can't compensate A for time it spent in instructing a Solicitor at the rate it has set out. There's an expectation that dealing with a legal expenses insurance claim will give rise to some degree of inconvenience for a policyholder and if A's claim was one SCOR considered to be covered, it would no doubt have conducted the same level of work to prove the merits of its claim anyway. The fact that it wasn't one that was covered due to a separate exclusion is unfortunate but doesn't lead to the conclusion that it is entitled to time back at a commercial rate. I'm unclear about whether A is pursuing its dispute with the third party directly. If so then it will have no doubt needed to conduct the exercise it did to ascertain, as any prudent business would, whether it had a claim capable of success. Either way, our awards are representative of inconvenience to a complainant rather than to compensate it for the loss of business hours. The award I've made is commensurate with that and accords with awards we'd made in similar circumstances.

Putting things right

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- Reimburse A for the legal costs it incurred in obtaining an alternative legal opinion upon presentation of proof of the sums paid for this by A.
- Pay A interest at 8% per year simple on the legal costs it paid, from the time they were paid, until they are reimbursed.
- Pay A £350 for the inconvenience caused in obtaining an alternative legal opinion when this would not have led to the claim being accepted, when A could have been pursuing the claim it had sought assistance for instead.

My final decision

I uphold A's complaint against SCOR UK Company Ltd and direct them to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 29 September 2025.

Lale Hussein-Venn
Ombudsman