

The complaint

A limited company, which I will call F, has complained about the rejection of a claim under its commercial legal expenses insurance policy with Markel International Insurance Company Limited trading as Markel Legal Expenses Insurance.

Mr R, as director of F, has brought this complaint on its behalf. Mr R is also represented in this complaint but, for ease, I will refer to F or Mr R throughout this decision.

What happened

In December 2024, F contacted Markel to make a claim for legal expenses cover, as it had received a High Court application for breach of contract from a former employee.

Markel rejected the claim, as it said it related to a dispute with the same employee that had arisen before the start of the policy in August 2022. Markel said the policy excludes cover for any claim arising from any “*cause, event or circumstance*” that occurred before the start of the policy. Markel says the employee was dismissed in January 2022 and issued tribunal proceedings in February 2022 and the breach of contract claim relates to the same employment dispute.

F was not happy with this. As Markel did not change its position, F brought the complaint to us.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that Markel was entitled to refuse the claim for the reasons it did.

Mr R does not accept the Investigator’s assessment. He has made a number of points in response to the Investigator and in his initial complaint. I have considered everything he has said but have summarised the main points below:

- the former employee has made two claims against it: one in the employment tribunal for unfair dismissal, and one in the High Court for breach of contract in relation to payment of bonuses. They are entirely separate and distinct actions.
- The termination of the employee’s employment was not therefore the circumstance that gave rise to the High Court claim. The cause the High Court claim was not the dismissal but the alleged breach of deferred payment (of bonuses) agreement.
- Statutory employment rights are legally distinct from breach of contract claims. The claim it has made to Markel is for cover only for the High Court matter.
- The first date that F was aware of the possibility of the High Court claim was April 2023, which is after the start of the policy.
- The exclusion clause relied on by Markel should not be interpreted so widely as to include claims that were not reasonably foreseeable at the time the policy started. Even if they relate to matters that occurred prior to the start of the policy.
- The exclusion clause should be interpreted narrowly and does not clearly apply to the High Court claim in the circumstances.
- There is no clear evidence that F had actual or constructive knowledge of the

circumstances of the potential claim as brought and pleaded in the High Court action before the policy began.

As the Investigator has not been able to resolve the complaint, it has been passed to me.

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.

F's policy provides cover for a number of legal disputes, including employment disputes in the employment tribunal and the High Court. However, as with all insurance policies, this cover is subject to various terms and conditions. The exclusion term relied on by Markel in this case says:

"We will not cover you for...

3. Any claim relating to or arising from any cause, event or circumstance occurring before or existing at the start of this policy and which has or which you knew or should reasonably have known may give rise to a dispute, legal proceedings or HMRC investigation or a claim".

These terms, or similar, are not uncommon in legal expenses insurance policies such as this one and I do not consider them unclear or unfair. Insurers are, however, required to apply any policy terms fairly. I have therefore considered whether Markel has acted fairly in applying these terms to refuse F's claim. Having done so, I think it has acted fairly and is entitled to reject F's claim. I will explain why.

To fall within this exclusion the "*cause, event or circumstance*" that has given rise to the legal proceedings or claim must have occurred or existed before the start of the policy.

The High Court legal proceedings relate to alleged non-payment of deferred bonuses. I can see that the former employee and F agreed that some annual bonuses would be deferred and would be payable on termination of his employment or by other mutual agreement. The tribunal claim form refers to a claim for bonuses from 2004 onwards. The bonuses were therefore alleged to have been due before or at termination of the employee's employment. Given this, it seems to me that the cause, event or circumstance that gave rise to the High Court legal proceedings (*i.e.* the non-payment of bonuses) did occur or exist before the start of the policy.

In addition, I think the dispute about payment of bonuses is inextricably linked to the dismissal and the tribunal proceedings. I say this because, while the former employee may have a separate legal cause of action for breach of contract, it appears he has only taken this action because he was dismissed. I think this claim can also therefore be considered to have arisen from the dismissal in January 2022.

I think the claim in relation to the High Court proceedings does therefore fall within the exclusion. As mentioned, however, I also have to consider whether it is fair and reasonable to strictly apply the exclusion term in the particular circumstances of the case.

Mr R has said it is not fair to apply the term in the circumstances as it was not reasonably foreseeable that the High Court claim would be made at the time F took out the policy.

Having considered everything carefully, I think F was on notice in February 2022 that a legal claim for non-payment of bonuses was likely. I will explain why.

As mentioned, the former employee set out in his employment tribunal application that he was claiming for unpaid bonuses. Mr R says this was a “*broad and generalised reference to unpaid bonuses*” and was not a formal grievance or legal claim. He says he therefore had no constructive knowledge of the claim and in any event denies the allegations which also have to be taken into account in assessing whether F had constructive knowledge of the claim before the start of the policy.

Mr R’s solicitors have confirmed the tribunal lacks jurisdiction to determine the claim regarding the bonuses, which is why separate High Court proceedings were necessary. The former employee’s application to the tribunal set out that he considered the bonuses were payable and was seeking payment of them. The fact the former employee could not pursue that part of his claim against F in the employment tribunal does not change the fact he put F on notice that he considered he had a valid claim for non-payment of bonuses. I think the inclusion of the claim for payment of bonuses in the tribunal claim form was sufficient to mean that F knew, or should reasonably have known, that the legal proceedings and therefore the insurance claim would likely arise.

F may deny the former employee’s claim but I do not think that means this should be interpreted any differently.

Having considered everything carefully, I am satisfied that it was reasonably foreseeable in February 2022 (before the start of the policy in August 2022) that the former employee would likely pursue a claim for the bonuses.

For all the reasons given, I am satisfied that Markel has acted fairly and reasonably and in line with the policy terms in rejecting this claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask F to accept or reject my decision before 12 January 2026.

Harriet McCarthy
Ombudsman