DRN-5975329

The complaint

L, a limited company, complains about what Assicurazioni Generali S.p.A did after it made a claim on its business protection insurance policy. L is represented by its director, Mr S.

What happened

In April 2024 L informed Generali via its broker that it's regulator (the Financial Conduct Authority) had issued a supervisory notice requiring all regulated activities to cease. The broker said L wanted assistance from its policy with legal support. Generali highlighted a number of policy exclusions which might apply including that it didn't cover claims arising from a regulatory direction. A second supervisory notice was issued in July 2024.

After considering further information from L's broker Generali confirmed in August it wouldn't be providing cover for the claim. It relied on the exclusion for claims arising from a regulatory direction. It accepted that didn't apply where the claim "*also arises directly from a finding of Civil Liability against the Assured giving rise to a Third Party Loss"*. But it didn't think that applied in this case because the notice issued by the FCA didn't represent a finding of civil liability. And the wording of the clause meant that a separate finding of civil liability to the regulatory direction was in any case required.

In response L drew attention to two upheld complaints against it from our service which it said had been flagged by the FCA in the supervisory notices it issued. It said that showed there were findings of civil liability against it and those were likely to have led to the FCA notices being issued. General didn't accept those outcomes did represent findings or that they were causative of the notices being issued by the FCA. It continued to rely on the policy exclusion to decline the claim L had made.

Our investigator thought Generali had acted correctly and fairly in relying on the exclusion to decline the claim. Mr S didn't agree. In summary he said:

- The policy had been taken out in good faith on the basis it provided cover for regulatory action, defence costs, and potential client redress. L's broker believed it should accept responsibility and honour the claim. It wasn't fair or reasonable that neither the broker or Generali should deal with the claim leaving L unprotected despite having paid for cover.

- If Generali didn't believe cover was available it shouldn't have agreed to the appointment of a legal firm to represent L and respond to the FCA notice. Doing so showed it accepted the matter fell within the scope of cover at that time and it was unfair it had later changed its position. And L had paid the policy excess on the basis that liability for the defence had been accepted.

- The term that Generali was relying on was within the small print of the policy and hadn't been brought to its attention by either it or L's broker. It wasn't reasonable of Generali to rely on this to turn down the claim in those circumstances. And he said our service should have a duty of case to small firms which didn't have in house legal teams and ensure a fair and reasonable approach to claims was taken.

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.

The relevant rules and industry guidelines say Generali has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

In his submissions Mr S says Generali told L's broker it wouldn't honour any claims arising from client compensation awards linked to the FCA notice as they fell outside the scope of cover. However, I haven't seen any evidence of such a claim being made in the period I'm considering as part of this complaint (which covers the period until Generali issued its final response on 14 November 2024).

And Generali told us its position was that, subject to other terms and conditions of the policy, it would potentially cover other third party losses. What it had declined to cover were the legal costs of challenging the notices the FCA issued. That's the issue covered in its final response and that's what I've considered in this decision. If Generali has subsequently declined to cover separate costs relating to client compensation awards that would need to form part of a separate complaint.

The relevant section of L's policy provides cover for 'Civil Liability' It says:

"*in consideration of the payment of the premium and subject to all the terms, conditions and limitations of this Policy, Underwriters agree to indemnify the Assured for Third Party Loss resulting directly from any Claim made against the Assured by a third party for Civil Liability provided the Claim arises out of the Business Activities and is first made against the Assured and notified to Underwriters during the Policy Period."*

The policy defines 'Civil Liability as:

"(a) breach by the Assured of a duty to a third party which is actionable at law as a tort;

(b) breach by the Assured of any statute of the Republic of Ireland, England, Wales, Scotland, Northern Ireland or Channel Islands (including any statutory provisions and/or rules or regulations made by any regulatory body or authority of the Republic of Ireland, England, Wales, Scotland, Northern Ireland or Channel Islands) which is enforceable under the laws of the Republic of Ireland, England, Wales, Scotland, Northern Ireland or Channel Islands.

(c) breach of trust or fiduciary duty by the Assured; giving rise to a civil liability on the part of the Assured for which the remedy is a claim for damages or a Restitutionary Order".

It defines 'Claim' as:

"(a) receipt by the Assured of a written or oral demand for damages or restitution;
(b) service on the Assured of documents commencing legal, regulatory or arbitration proceedings against the Assured; or
(c) the discovery by the Assured of any circumstance which could reasonably be anticipated to give rise to any of (a) – (b) above."

And the definition of 'Third Party Loss' includes "*the total amount which the Assured are legally liable to pay in respect of a Claim made against the Assured by a third party for Civil*

Liability. Third Party Loss shall include Court judgments, arbitration awards, settlements, claimant's costs and Defence Costs".

I understand Generali has accepted the notice which was issued against L by the FCA would meet the policy definition of a 'Claim'. In addition, it accepted the misconduct alleged in that notice was likely to constitute an allegation of negligence or breach of statutory duty. So it would also fall within the definition of 'Civil Liability'. And as the definition of Third Party Loss includes defence costs it appears that, in principle, cover would be available for L's claim.

However, the policy contains a general exclusion applicable to this section which says it doesn't cover "*any Claim arising out of any direction by any regulatory or supervisory body unless such Claim also arises directly from a finding of Civil Liability against the Assured giving rise to a Third Party Loss".*

That's exclusion which Generali has relied on to turn down the claim so I've gone on to consider whether it's done so fairly and reasonably. I think it's clear the 'Claim' in this case did arise out of a direction by a regulatory body. The FCA is L's regulator and the notice it issued directed it to cease carrying out regulated activity. So the question is whether the second party of the exclusion clause means it shouldn't apply here. For that to be the case the Claim must also arise directly from a finding of 'Civil Liability' against L.

Given the wording of that clause I think it's reasonable to say the finding of 'Civil Liability' is separate from the direction of the regulatory body. The clause wouldn't logically make sense if they related to the same thing and that's reinforced by the fact it says this must "*also*" arise from a finding of Civil Liability. So I've considered whether there is any separate finding of 'Civil Liability' beyond the notices issued by the FCA which have given rise to the claim.

L has highlighted two outcomes from our service which it believes represent a finding of 'Civil Liability against it. I've reviewed those. In the first we concluded L should refund the complainant the management fee for their account because its terms didn't say this was non-refundable (plus interest and a payment for distress and inconvenience). In the other (on which a final decision was issued) we concluded L should have warned the complainant their investments weren't appropriate. And they'd have acted differently if told that.

I don't think either of those outcomes could be said to constitute a finding of 'Civil Liability' as defined in the policy. In particular while our outcomes take into account (amongst other things) relevant law and regulations having done so we decide cases based on what is fair and reasonable in all of the circumstances of the case. In line with that approach neither of the outcomes in this case find a specific breach by L of any statute (including statutory provisions or regulations), a breach by L of a duty actionable at law or a breach of trust or fiduciary duty.

But even if those outcomes could be said to constitute a finding of 'Civil Liability' they would also have needed to give rise to the 'Claim'. For that to be the case I think there would need to be a causal link between those outcomes and the FCA's decision to issue its supervisory notices. L says those complaints are referenced in the notices. But I've reviewed the second supervisory notice (which I understand contained the key information from the first) and I can't see it does contain any specific reference to the outcomes we reached.

In any case I think it's clear from the notice the FCA's concerns about L's actions were extensive and identified issues that went far beyond those referenced in our outcomes (or which didn't feature in them at all). I don't think it's possible to say it was the outcomes we reached on those cases which caused the FCA to issue the supervisory notices. And I think it was reasonable of Generali to conclude the policy exclusion applied.

L says that exclusion was within the small print of the policy and wasn't brought to its attention. Generali was responsible for drawing L's attention to the significant or unusual terms of the policy in the information it was responsible for producing. And, taking into account the relevant rules, I think a significant or unusual exclusion is one that would tend to affect the decision of customers generally to buy. I don't think the exclusion in this case meets that test. While it does limit the cover provided by the policy it does so in very specific and limited circumstances. I don't think it limits the cover provided for 'Third Party Loss' to the extent Generali needed to highlight that in the information it was responsible for.

L also says Generali shouldn't have agreed to the appointment of a law firm to represent it if it didn't believe cover was available. Generali did agree legal advice could be sought after it was notified of the supervisory notice. However, in that email it also said "*please note that no thoughts / views / assurances have been given pertaining to coverage at this time, and nothing in this email should be construed otherwise*". In a subsequent email around two weeks later it said *"it seems that absent a Civil Liability finding against the Insured the Claim, (including any associated Defence Costs) is excluded*". It went on to say "*we must reserve all its rights at law and under the Policy in respect of the operation of the policy terms and conditions for the notification".*

So while I appreciate L may have paid the policy excess on the basis it thought liability had been accepted I think Generali did make clear to L (via its broker) at an early stage that wasn't the case and it had concerns about policy coverage. If L has ongoing concerns about the policy excess then it will need to raise these separately with Generali as that doesn't appear to be a complaint point raised with it to date. L also feels the exclusion should have been considered by its broker when the policy was sold. However, that's something which would need to be looked at as part of the separate complaint I understand L is pursuing against its broker.

L says we should ensure a fair and reasonable approach is taken to claims. As I've already outlined that is the basis on which we approach our decision making. But having considered all of the evidence in this case, and for the reasons I've explained, I think Generali did act fairly and reasonably in relying on the policy exclusion to turn down the claim L made. But as I've also said (and Generali has explained) that decision only relates to the claim for legal fees L made. It might be Generali would reach a different outcome on other third-party losses linked to the supervisory notice but that isn't the claim L made in April 2024 and which I've considered in this decision.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask L to accept or reject my decision before 27 February 2026.

James Park
Ombudsman