DRN-6046267

Financial Ombudsman Service

The complaint

N, a limited company, complains about what SCOR UK Company Ltd did after it made a claim on its commercial legal expenses insurance policy.

What happened

N is the freeholder of six flats. It has a residential property owner's insurance policy which includes legal expenses cover provided by SCOR. The insurer of the main policy is a different business. At the end of February 2025 N sought assistance from its legal expenses policy with a neighbour dispute. SCOR declined the claim on 7 March. It didn't think the dispute was covered by the policy and thought in any case it began prior to it being taken out. N challenged that decision. SCOR accepted on 21 March there was evidence of nuisance and trespass which the policy could cover. And that did fall within the policy period. It said it would pass the matter to a firm of panel solicitors to progress.

N asked if it could use its own solicitors who were local to it and familiar with the claim. SCOR said as the claim wasn't at the stage where proceedings needed to be issued N didn't have the right to do that. And it was satisfied its panel firm would be able to progress the claim (and a face to face meeting could take place if required). It arranged for the panel firm to contact N to discuss this further.

At the start of April N raised concerns about the indemnity limit that would apply to its claim; the schedule said this was £100,000 but the policy terms said £50,000. It reiterated that it wanted a local solicitor to deal with the matter. SCOR said it didn't have a panel firm based in N's area but could instruct another firm which was closer to it. It said the indemnity issue would need to be addressed by N's broker.

N said the business responsible for the main policy had accepted it was at fault here. It wanted confirmation the £100,000 limit would be honoured and queried who would be responsible for that. SCOR accepted it had previously provided inaccurate information about what limit would apply. It offered to pay £175 for the inconvenience that caused. It said N could approach the business responsible for the main policy about the incorrect figure being included in the schedule. And the claim could in any case be progressed on the basis of the £50,000 indemnity limit.

At the start of June SCOR agreed to cover up to the £100,000 limit (I understand costs over the policy limit will be recovered from the business responsible for the main policy). N said it thought the failures by SCOR represented a conflict of interest which meant it should be able to choose its own solicitor under the relevant regulations. SCOR didn't agree but said it was happy to appoint the alternative panel firm it had previously referenced.
Our investigator said SCOR wasn't responsible for the error in the policy schedule. But it had provided confusing information about what indemnity limit would apply to N. And it had wrongly concluded the claim predated the policy inception date. However, the £175 SCOR had already offered did enough to recognise the inconvenience N was caused by that. He thought SCOR had correctly said N didn't have the right to choose its own solicitor. And he didn't agree the identified failings by SCOR meant it should be able to do so. He thought its offer of an alternative panel firm was appropriate.

N didn't agree. It made detailed comments (all of which I've read) and in summary said:

- The legal position on freedom of choice was set out in Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990. It wasn't possible for the policy wording to override that. The regulations said that should apply where any inquiry or proceedings were taking place. That was the case here as the boundary dispute was being investigated. And it referenced European case law which it believed showed freedom of choice wasn't limited to cases where judicial proceedings had begun.

- It said freedom of choice should also apply where there was a conflict of interest or exceptional circumstances. In this case the split funding of the policy indemnity limit represented a conflict which could impact case strategy when costs approached the policy threshold. And as the panel firm was part of the claims handler's wider group that created an economic dependency which represented a conflict.

- It said the poor handling of the claim by SCOR had itself created a conflict as SCOR wouldn't now be able to provide "*zealous representation*". And it wasn't appropriate to limit a conflict of interest to that included within the solicitor's professional conduct rules when this wasn't referenced in the regulation itself. It said a broader meaning based on dictionary definition should apply. Doing that meant there was a conflict here.

- It also thought exceptional circumstances applied because that the defendant in the boundary dispute also owned one of the properties of which N was the freeholder. N's director owed duties to all of the flat owners which created a complex dual relationship and was something that required specialist advice. That meant the dispute wasn't one appropriate for panel solicitors to consider. And extensive site visits would be required as well as face to face meetings. It wouldn't be possible for that to be handled remotely and it would be more cost effective for the claim to be progressed by local solicitors already familiar with it.

- As a right to manage company it was a not for profit entity rather than a commercial enterprise. And it was the individual flat residents who were impacted by this dispute. It didn't accept we couldn't take the impact on them into account when considering what compensation was appropriate. It thought N should be treated in the same way as a sole trader business or partnership. Although N had a separate legal entity it was functionally equivalent to those bodies. It explained how the residents had been affected by what SCOR got wrong and didn't agree the compensation offered by SCOR was enough.

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 SCOR has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. In considering this complaint I've reviewed all of the submissions N made before and after our investigator issued his view. But I've focussed in this decision on what, in my view, are the key issues.

N's request to choose its own solicitor

N says it should have been allowed to choose its own lawyer to progress the claim. In relation to that the policy terms say it can do so where "*we agree to start proceedings or*

proceedings are issued against an Insured, or there is a conflict of interest". However, and as N has said, the legal position on this is governed by Regulation 6(1) of the Insurance Companies (Legal Expenses Insurance) Regulations 1990.

That says "*where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)".*Regulation 6(2) says "*The insured shall also be free to choose a lawyer (or other person having such qualifications as may be necessary) to serve his interests whenever a conflict of interests arises"*. And Regulation 6(3) says "*The above rights shall be expressly recognised in the policy".*

That means there is a requirement for a legal expenses policy to reflect what the regulations say. As a result I think the question here is whether, taking into account the regulations and relevant case law, did N's circumstances mean SCOR acted unfairly it declining to allow N to use its own lawyer to represent it?

In its submissions N has cited case law (Stark v DAS Österreichische Allgemeine Rechtsschutzversicherung AG [2011] C-293/10) which it believes supports its position. I'm aware of that case but I've not been able to identify the direct quote N has made from it. The focus of that case was in any event on whether restrictions an insurer placed on a policyholder's right to choose their own solicitor were permissible (rather than when those rights applied from).

However, there are other cases which do comment on that. And our general approach, which takes into account relevant case law (in considering what's fair and reasonable in all the circumstances) is that a policyholder has the freedom to choose their own solicitors from when legal proceedings need to be started. I don't think it's dispute N's claim hadn't reached that stage. N says the panel firm would need to have made inquiries into the claim to establish whether it had reasonable prospects of success. I accept it would but I'm not satisfied that would constitute an '*inquiry*' as referenced in the regulations. I think that would reasonably be interpreted as a procedure required by a court or similar body. It wouldn't include the preparatory work before negotiations had failed and proceedings were imminent.

In any event the inquiries N has referenced are ones the panel firm would make to establish whether the claim had reasonable prospects of success (as required by the policy). Under the regulations the freedom to choose only applies where recourse to a lawyer is had "*to defend, represent or serve the interests of the insured".* The primary reason for carrying out a prospects assessment is so an insurer can be satisfied a claim is more likely than not to be successful and meet the terms for funding to be provided under the policy. So it's mainly carried out for the benefit of the insurer rather than to serve N's interests. In addition, I don't think it would be fair to say N had the right to choose its own lawyer unless cover was available under its policy in the first place. That wouldn't be the case unless and until the claim had been shown to have reasonable prospects of success.

I appreciate N also believes it should have the right to choose its own lawyer because there was a conflict of interest. I'm not satisfied that is the case. I think it's reasonable to interpret the reference to a conflict of interest in the regulations to a situation where the panel solicitor would be in breach of their code of conduct or would be professionally embarrassed if they continued to act. That isn't the case here.

N argues the funding arrangements for the claim constitute a conflict of interest as set out in the regulations. I'm not persuaded they do. SCOR has agreed to honour the indemnity limit

for this claim of £100,000. So any decisions on funding will be for it to make. It may subsequently seek to recover sums in excess of the policy limit from the business responsible for the main policy but I don't see that creates a conflict of interest. It isn't that unusual for more than one insurer to fund a legal expenses claim (for example where a policyholder has more than one policy on which they could claim). And its commonplace for insurers to agree arrangements between them to cover that situation.

The panel firm is part of the same overall group as the handlers of N's claim but I don't agree that in itself creates a conflict of interest. Regardless of the overall ownership structure the panel firm are a separate organisation which is separately regulated. And the lawyers involved in the case are independent and required to act in line with their professional duties.

There were some issues with SCOR's initial handling of the claim (which I'll go on to consider). But I don't see that creates a conflict of interest either. If the claim was found to have prospects of success it would be the panel firm which would have day to day conduct of it. And, as I've already said, the lawyers working for that firm would be expected to act in line with their professional duties in progressing it.

I've considered whether SCOR should nevertheless have gone beyond the wording of the policy and the regulations and exceptionally agreed N could use its own lawyer. I would expect an insurer to do so where, for example, the case was particularly complex and the panel firm didn't have the necessary expertise to deal with the matter. In this case N says there are internal relationships which make the claim complex. But while that might cause difficulties between the parties I don't think it shows the underlying claim (which relates to nuisance and trespass) was particularly complex. And I'm not aware N has provided any legal advice of its own in support of its position on this. In the absence of that I don't think SCOR needed to take any further action.

N says the claim requires a site visit and face to face meetings. But if the panel firm felt, in its professional opinion, that was required it could make the necessary arrangements. And SCOR did seek to address this issue by agreeing to appoint a panel firm that was geographically closer to N's location than the one it originally proposed. I don't think it needed to do more.

SCOR's handling of the claim

There were some failings by SCOR in its initial handling of the claim. It does appear to have been in error in saying the claim predated the start of the policy. And it incorrectly advised N a £100,000 indemnity limit would apply when the policy wording said £50,000. I think SCOR could also have been more proactive in resolving the indemnity issue given it recognised the discrepancy between the schedule and policy terms at the point the claim was made.

N believes we should consider how individual flat owners have been affected by what SCOR got wrong. I recognise it's a not for profit right entity set up under the right to manage. But that doesn't change the fact N is the is the policyholder and customer of SCOR (and the entity for whose benefit the policy was taken out). So it's the 'eligible complainant' in this case. As such it's only the impact on it I can consider and not the individual flat owners. And a limited company isn't a natural person so can't suffer distress in the same way an individual can. It can be caused inconvenience and I accept it will have been put to some avoidable time and trouble in trying to resolve matters with SCOR. But I'm not satisfied that caused a significant delay to the progress of the underlying claim SCOR confirmed at the start of June 2025 a £100,000 indemnity limit would apply to the claim. It appears it hasn't progressed since then because N wanted to use its own solicitors. For the reasons I've explained I think SCOR acted correctly and fairly in declining to agree to that. So any ongoing delay doesn't result from what it got wrong. I'm satisfied the £175 already offered

does enough to recognise the inconvenience caused to N by SCOR's initial failings when handling of the claim.

N says SCOR's direct involvement with this matter following the complaint to us shows it was concerned substantial financial or regulatory risk existed. But SCOR are the insurer of the policy so I don't find it surprising it was involved or advised the matter would be best responded to as one complaint. I don't think there's more it needs to do to put things right.

My final decision

SCOR UK Company Ltd has already made an offer to pay £175 to settle the complaint and I think this offer is fair in all the circumstances. So my decision is that SCOR should pay N £175

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 1 April 2026.

James Park
Ombudsman