DRN-6220614

The complaint

Mr M, as a trustee of T, a charity, complains that Markel International Insurance Company Limited (Markel) unfairly declined a claim made on a legal expenses insurance policy.

What happened

T held insurance covering various risks with Markel, including liability for legal expenses incurred in actions relating to its activities.

In August 2024, T effectively ceased operations although the limited company remained registered. It did so because the trustees were of the view that it could no longer fund its operations. T contacted their insurance broker who arranged for run-off insurance cover to be put in place starting in December 2024. That policy was with a different insurer, and Markel weren't informed that T had ceased operations.

A few weeks later, T was notified of a claim by a former employee, alleging discrimination and that they had been unfairly dismissed. T contacted Markel to make a claim.

After carrying out enquiries into the claim and T's circumstances, Markel declined to cover the claim. It said a condition of the policy relating to liquidation had been triggered when T ceased operations, and that condition said that in the event of a liquidation or similar event, all cover on the policy would cease.

Mr M, on behalf of T, complained to Markel. When they rejected the complaint, he referred the complaint to our service. Our investigator thought Markel's decision had been fair. Mr M disagreed and asked for an ombudsman's decision.

My provisional decision

On reviewing the information available, I thought the complaint should be upheld, and so issued a provisional decision. In this, I said:

Certain relevant aspects of this complaint aren't in dispute, some of which I've outlined above. However, I think it's worth repeating the following points, which I'm satisfied are agreed by both parties.

- The trustees of T decided to cease operations in August 2024.
- The reasons for this included a lack of ongoing income meaning that future activities had no guarantee of being funded.
- T was solvent at the time it ceased operations, with no known liabilities to third parties.
- T took out run-off cover as it started to dispose of assets, to come into force in December 2024.
- The claim was made by the former employee after T ceased operations.

The policy condition referred to by Markel states:

"Liquidation

If you are placed in liquidation, receivership, administration or bankruptcy or enter into a voluntary arrangement of any kind or if any application is made to the Court or a meeting held for these purposes, this policy will automatically terminate. If this happens, cover for costs and compensation will be automatically withdrawn and costs incurred or compensation awarded after the date of withdrawal will not be covered."

Markel's position is that by ceasing operations and beginning the process of disposing of assets and closing, T's circumstances meant this condition applied. The question that I need to answer is whether that was a reasonable position.

I don't think it was. It seems to me that the purpose of this condition is to terminate cover when an insured entity enters into an insolvency process. The condition refers to being "placed in liquidation, receivership, administration or bankruptcy." That clearly doesn't apply here – it was a decision made by T to cease operations and carry out an orderly, solvent closure.

T hadn't entered into a voluntary arrangement with creditors, or appointed administrators, nor had it gone through any formal insolvency process. I'm satisfied the condition outlined above is related to those processes, not one where a decision is made to wind down the charity.

As T wasn't going through an insolvency process, I don't believe it was reasonable to invoke this condition. I'm aware that documents submitted to Companies House detailed the reasons behind ceasing operations, including the lack of income to fund operations.

However, the document also details that T was solvent and that the decision to close was voluntary, and not driven by any bankruptcy, administration or insolvency processes. While the liquidation condition refers to "voluntary arrangement of any kind," I don't believe that the decision to close on a solvent basis meets that condition.

T continued to exist as a legal entity at the time of the claim being made, but was in the process of closing and had ceased its charitable activities. However, it was in the process of disposing of assets and formalising the closure. It hadn't been liquidated, and nor was it in a voluntary arrangement with any other body or organisation relating to insolvency, which I'm satisfied is what the "voluntary arrangement" part of the condition refers to.

I also think it's relevant to observe that if T had continued to operate, at the risk of insolvency, then at the time of making the claim (a few weeks later), then the liquidation condition would have been unlikely to apply – so T are effectively having the liquidation condition applied because the trustees decided to conduct an orderly, solvent closure, rather than risk an insolvency event. That doesn't seem fair.

I further note the separate "Alteration" condition of the policy which says:

"Alteration
You must notify us prior to or immediately if, during the period of insurance, there is any alteration in your ownership of the business, or if there is any alteration

a) In or to the business,
b) Due to the business being wound up or carried on by a liquidation or receiver or permanently discontinued,
c) Due to its disposal or removal
d) In respect of which your interest ceases except by operation of law,
e) in respect of the risk of subsidence, ground heave or landslip where any demolition, construction, ground works or excavation work is being carried out on any site adjoining the premises

f) to the facts or matters set out in the schedule or otherwise comprising the risk presentation made by you to us at inception, renewal or alteration of the policy, which materially increases risk of loss or damage as insured by this policy."

It's fair to say that this condition is more relevant to T's circumstances here. There was a change in the way it operated, as it was no longer providing the services it was established to. That would be a change of the nature described in clauses (a), (b) and/or (c) of this condition.

However, it would seem to be inferred that Markel accepts the condition doesn't apply here, as no reference has been made to it. I assume this is because the risk of an employment related claim (which is what has arisen) isn't materially affected by that change. Former employees could still bring a claim regardless of whether the charitable operations are ongoing or have ceased. I think that's a reasonable position.

By concluding that the liquidation condition applied, I assume this means Markel considered the policy to have been terminated. The condition says this is what will happen. As I don't agree that the condition should apply here, I'm satisfied that as a first step the policy should be reinstated. Markel should then reconsider the claim, in line with the remaining terms and conditions. It isn't for me to say whether the claim would be covered on an ongoing basis, as I'm not a claim handler. There will be other terms and conditions which will apply and the claim will need to fall within those in order to be covered.

My understanding is that the claim, and correspondence with the former employee, was initially covered by Markel. Solicitors appointed (and paid by Markel) before the cover was declined defended the claim, and my understanding is that no further correspondence or proceedings had been issued by the time the claim was declined.

If, following that withdrawal of cover, T has incurred costs which would otherwise have already been covered by Markel in defending the claim from the former employee, Markel should reimburse T's reasonable costs. It should also pay simple interest at a rate of 8% on any such amounts, in line with our approach to such matters where an insurer has unreasonably declined cover and led to a policyholder paying for costs out of their own funds which should have been met by the insurer. It reflects that the policyholder should have had the funds in their own possession and could have earned interest on them.

I understand that the decision to withdraw cover caused distress to Mr M, as he was concerned that, with the claim declined, T was potentially in a position where it would have to fund further legal expenses if they arose. However, as the policy is in T's name, and Mr M refers the complaint on its behalf, I can't ask Markel to award compensation for this. I could ask Markel to recognise the inconvenience caused to T by the decision to decline cover, but in the absence of any suggestion or evidence that T has, for example, needed to source suitable legal advice to continue defending the claim from the former employee, I'm unable

to do so. In any case, that would be relatively minor inconvenience as continued liaison with legal representatives would have been required, the only additional disruption would be in sourcing a suitable legal professional to take on the case. On that basis, I'm not minded to ask Markel to pay any compensation at this stage.

The responses to my provisional decision

Mr M responded to my provisional decision on behalf of T. He accepted the findings I'd made and my proposals for how the complaint should be resolved. He indicated there were costs which had been incurred which would be prepared and submitted to Markel.

Markel disagreed that the complaint should be upheld. In summary, it argued that:

- My interpretation of the "Liquidation" condition was unduly narrow. It considers that a voluntary decision to wind down before entering formal insolvency should fall within the definition of a "voluntary arrangement of any kind."
- Limiting "liquidation" and "voluntary arrangement" to circumstances involving creditors would undermine the clause's intent, and the policy doesn't limit its application to insolvent liquidations.
- The "alteration" condition, while not referred to in earlier correspondence, does apply to T's circumstances. T should have notified Markel of the winding down of operations, at which point cover would have been terminated. The risk of employment related claims was increased while the defensibility of such claims was reduced.
- T should have notified Markel of the change in operations, and if it had done so cover would have been terminated at that point. T therefore benefitted from the initial stages of the claim being covered when it ordinarily wouldn't have been entitled to.

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.

Mr M hasn't made any additional points, or asked that I reconsider how this matter should be put right. However, Markel's disagreed with my conclusions. I'm not minded to change my conclusions, and my reasons remain broadly similar to what I'd outlined in the provisional decision, so I won't repeat those in full. I will, however, seek to address the points raised by Markel in response to that provisional decision.

I can't agree that the circumstances prior to the claim fall within a reasonable definition of a "voluntary arrangement of any kind," as suggested by Markel. There's no further definition of that part of the condition, so I have to take an ordinary and normal meaning of it.

I'm aware a suggestion could be made that with the inclusion of "of any kind," then the situation here, where the trustees of T took the voluntary decision to wind down operations could fall within this. However, the context of this part of the condition is important. It forms part of the "Liquidation" condition and directly follows mention of being "placed in liquidation, receivership, administration or bankruptcy." I'm satisfied a reasonable interpretation of a "voluntary arrangement," in the context of the wording, should be interpreted as meaning an agreement entered into with creditors.

I think that the alternative definition Markel seeks to rely is too vague to be a reasonable interpretation of the wording. The fact that voluntary arrangements are referenced in the liquidation condition of the policy indicates to me that it should be specifically connected to liquidation and insolvency processes. At the time of the claim, T wasn't, in my opinion, in liquidation, administration, bankruptcy proceedings or any related or similar voluntary arrangement.

I should also say as well that my intention wasn't to limit the application of the liquidation clause to insolvent liquidations. There's no reason that a liquidation on a solvent basis wouldn't engage the relevant condition, provided the liquidation had actually taken place. That wasn't the case here. All I've said is that I don't think the specific circumstances of T's status at the time of the claim didn't meet the criteria for the liquidation condition to be fairly relied on to decline cover.

Markel has said that, even though in no correspondence with either T or our service did it

refer to the condition, it does think the alteration condition applied here. As I've said before, T had gone through a fundamental change, in that its operations had been wound down and it was in the process of disposing of assets. So that element of the alteration condition would seem to apply.

However, Markel also needs to demonstrate there was a material increase in the risk as a result of this. It says there was, on the basis that an employment claim was "inevitably" more likely, and that defending any such claim would prove more difficult.

While Markel says it's inevitable that there is a greater likelihood of an employment claim as a result of a business winding down, it doesn't expand on the reasons for that position. It needs to demonstrate that there was a measurable and material risk of this claim because of the nature of T's decision to wind down operations if it seeks to rely on the alteration condition. Given that the claim included allegations of discrimination, which could be advanced regardless of T's operation or not, I can't see how the risk of this claim was increased because T didn't notify Markel of the change in its operations.

Similarly, the suggestion that a claim is less defensible because of the change in T's operations before the claim was made isn't supported by the evidence. Markel initially accepted the claim and did, in fact, defend the claim. As part of that there's nothing to indicate that the relevant records were incomplete or inaccessible, making the claim harder to defend.

This means that on balance, I can't agree with Markel's assertion that the material risk of the claim was higher as a result of T starting the process of closing down prior to the claim.

Finally, I note Markel's comments around the inception of run-off cover and what it would have done if T had notified it of its decision to cease operations. However, I can't agree that, in line with the policy terms and conditions, there was any obligation on T to notify Markel prior to the claim being made and so the suggestion that the policy cover would have terminated before the claim was made isn't supported by my conclusions. I accept cover would have ceased when the run-off cover came into force, but at the time the claim was made, the policy with Markel was both in place, and should reasonably have been.

Markel has essentially said the policy was terminated when the decision to wind down operations was taken (as it says it should have been so informed then, and would have cancelled the policy). What I'm saying by requiring Markel to reinstate cover is to act as if that termination didn't take place, and instead the policy remained in force until the run-off cover started.

My final decision

I uphold T's complaint. In order to put things right, Markel International Insurance Limited must:

- Reinstate T's policy.
- Reconsider the claim in line with the remaining terms and conditions.
- In the event that the claim is covered, and T has incurred further costs which would be covered by the policy, reimburse T's reasonable costs plus 8% simple interest on those amounts.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 14 April 2026.

Ben Williams
Ombudsman