

The complaint

P made a claim on its Ecclesiastical Insurance Office Plc trading as Ansvar Insurance ('Ansvar') business protection insurance policy, which Ansvar declined to cover.

P says Ansvar was wrong to decline its claim and treated it unfairly.

In this complaint P is helped by a representative but I shall refer to all submissions as being P's own for ease of reference.

What happened

P made a claim on its business protection insurance policy for cover to help with a claim for damage which occurred to a customer's property whilst P was engaged in repairing it.

Ansvar considered the claim and said that it wasn't one that was covered by the policy. However, it also thought that the professional indemnity section should have been worded to offer cover in circumstances where negligence was being alleged against P. As such Ansvar agreed to consider the claim in those circumstances. In doing so it decided that cover wouldn't apply because P's customer wasn't alleging negligence and hadn't done so. In addition, P had settled the claim with its customer directly by paying it compensation for the damage that occurred whilst the item was in its possession. Ansvar said that this was in breach of the general conditions of the policy and had prejudiced its position to mitigate its loss. As such Ansvar said it wouldn't be able to assist P further.

P says that Ansvar should cover its claim, that the item belonging to the customer was damaged accidentally whilst it was being worked on and there was never any prospect of anyone disputing liability because the facts speak for themselves.

Our investigator considered P's complaint and concluded it should not be upheld. P doesn't agree so the matter has been referred to me to determine.

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 won't be upholding P's complaint. I'll explain why.

Having considered the policy terms in detail, I'm satisfied that the only possible section of cover that might apply to a claim like this under the policy would be the professional indemnity section of cover which provides cover for any claim made for damages, costs and expenses which the insured becomes legally liable for arising from any professional indemnity wrongful act. The following exclusion applies to that section of cover:

"2. Liability directly or indirectly arising from:

a) any bodily injury, to any person or damage to, or loss of use of, any tangible property, unless arising directly from any negligent advice, design, formula or specification given in the provision of professional services".

In this case the damage to the customer's property didn't arise from any negligent advice, design, formula or specification given so the claim isn't one that falls within cover. That said, Ansvar did say they were prepared to interpret the term to cover the type of work P was doing, namely repair/restoration. So, I have gone on to consider the claim as if cover was applicable under this term. Having done so, I am satisfied that the policy conditions that would allow Ansvar to accept the claim have been breached here.

P has not provided any information about what its customer said to it when it told it about the damage to the item. And I haven't seen any specific allegations of negligence that were made. Rather P informed Ansvar that it settled the customer's claim by paying it compensation of close to £6,000. I can't see that P referred to Ansvar before it made the decision to pay this sum, which is in breach of the following policy condition:

"it is a condition precedent to our liability that:

b) If the claim relates to, or includes, any allegations or proceedings made against you, or any person who is entitled to indemnity under this policy, you and they shall:

- not admit, deny, negotiate or agree a settlement without our written consent*
- send to us, unanswered, every writ, summons or other communication immediately it is received without making any acknowledgement*
- send to us written details of any related inquest, legal inquiry, prosecution or procedure immediately it is known to you.*

We will not deal with, continue to deal with or pay, any claim if you fall to comply with any part of this condition where such failure adversely affected our liability for, or the amount of, any claim. Any payment on account of a claim already made by us shall be repaid to us."

I appreciate that it's possible no allegations at all were made against P by its customer and that P simply offered to settle the claim without a request to do so out of goodwill. But that doesn't mean that Ansvar are obliged to cover P's claim in those circumstances. Ansvar were entitled to decline the claim on the basis that P agreed a settlement without further reference to it. This denied Ansvar the opportunity to mitigate any losses it might have covered had the customer eventually alleged negligence against P. For that reason, I don't think Ansvar did anything wrong by turning down P's claim.

My final decision

I don't uphold P's complaint against Ecclesiastical Insurance Office Plc trading as Ansvar Insurance.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 27 September 2024.

Lale Hussein-Venn
Ombudsman