DRN-3205812

The complaint

S, a limited company, complains that Aviva Insurance Limited avoided its commercial motor insurance policy (treated it as if it never existed) and declined its claim following an accident. S is represented in this matter by Mr T, its director. He wants Aviva to pay the claim.

What happened

Aviva carried out validation checks after Mr T made a claim on his policy. Aviva was firstly concerned that the car involved had been a previous Category B write-off and so shouldn't have been on the road. Aviva then found that it had previously repudiated a claim made by Mr T and told him that it wouldn't offer him any further policies. Aviva said Mr T's failure to disclose the repudiation was a qualifying breach under The Insurance Act 2015. And it said this entitled it to decline the claim, avoid the policy and retain the premiums.

Mr T said he'd never received the repudiation letter. He said he didn't know that the car had been a Category B and Aviva had never asked him if it was. And he said the policy was in S's name and he wasn't driving at the time of the accident. So he thought Aviva should pay the claim.

Our investigator didn't recommend that the complaint should be upheld. She thought Mr T hadn't made a full disclosure to Aviva when he took out the policy. She thought he hadn't disclosed the previous repudiation and Category B. And so she thought Aviva was entitled under The Insurance Act 2015 to reject the claim, avoid the policy and retain the premiums.

Mr T replied that he wanted a review of his complaint, so it's come to me for 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.

Commercial policies are covered by The Insurance Act 2015, which came into effect on 12 August 2016. Unlike consumer policies, commercial policyholders have to volunteer information – they have a duty to make a "fair presentation" of the risk to the insurer when taking out a policy. This means they have to disclose either:

- everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms; or
- enough information to put an insurer on notice that it needs to make further enquiries about potentially material circumstances.

There are some exceptions. For example – unless the insurer asks about it – the policyholder doesn't have to disclose something if it reduces the risk or if the insurer already knows (or should reasonably know) about it.

The Insurance Act says the policyholder "ought to know" what should reasonably have been revealed by a reasonable search of information available to them. So the policyholder should take reasonable steps to check any information available to them and consider if there's anything they ought to disclose.

So I've considered whether Mr T gave a fair presentation to Aviva of everything he knew – or ought to have known – about the risks he wanted to insure. And I'm satisfied that Mr T didn't give Aviva a fair presentation. I say this because:

1. Aviva had previously repudiated a claim Mr T had made on a private motor insurance policy and it had told him that it wouldn't provide him with cover in the future. Mr T said he never received this letter. But I think Mr T must have been aware of this as he didn't make any further contact with Aviva about the claim.
2. Mr T said he wasn't driving at the time of the incident and the policy was in S's name. But as Mr T was associated with S, as its director, then I think he should have disclosed the previous repudiation to Aviva.
3. The car involved in the incident was a previous Category B write-off. Mr T said he wasn't aware of this. But I think he must have known as he told us he'd contacted the DVLA to obtain the V5 registration document which wouldn't have been provided due to the categorisation.

Aviva would have done something different if Mr T had made a fair presentation – it wouldn't have offered cover. So I'm satisfied that this was a qualifying breach under The Insurance Act 2015.

And as I'm satisfied that Mr T knew his previous claim had been repudiated I think this was a deliberate or reckless qualifying breach. And Aviva is entitled to avoid the policy and refuse all claims and it doesn't have to return the premiums. And so I don't require Aviva to pay S's claim.

My final decision

For the reasons given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 26 January 2022.

Phillip Berechree
Ombudsman