DRN-3426927

The complaint

A company, which I'll refer to as H, complains that China Taiping Insurance (UK) Co Ltd cancelled its retail catering policy and declined its claim for flood damage.

The director of H, whom I'll refer to as Mr S, brings the complaint on H's behalf.

What happened

H took out a retail catering policy with China Taiping in May 2014. In May 2019 the policy lapsed due to H's business being closed. The policy was reinstated when the business reopened in July 2020. Following floods in July 2021, H made a claim against the policy after its premises suffered flood damage.

During the investigation of the flood claim, China Taiping found that the directors of H failed to disclose that a business which Mr S had previously been involved with went into liquidation in October 2020 with over £100,000 outstanding debts. They also found a CCJ against H from 2017 with a debt of just over £300 which remained unsatisfied and hadn't been disclosed either.

China Taiping acknowledged that while the liquidation was disclosed via an email in April 2019, Mr S didn't disclose the substantial debt involved. If these material facts were disclosed, they would not have continued to provide cover because the risk wasn't within their underwriting appetite. China Taiping therefore said they cancelled H's policy from the date of the liquidation, October 2020, and as a result there was no policy in place to deal with the flood claim.

China Taiping also said that they believed H would have been aware of the substantial debt involved in the liquidation and therefore deemed this non-disclosure to be either deliberate or reckless and therefore did not return any premium as a result of the policy cancellation.

Mr S said he didn't know about the outstanding CCJ and that there was no debt involved in the liquidation in 2020. He explained that the liquidation took place because the landlord of the premises wanted to take the site back and therefore it was advised by his accountant to liquidate the business to bring it to an end and he believed this was standard accounting practise.

Our investigator considered the complaint and didn't think China Taiping had acted unfairly. She said in Summary:

- H was under a duty to make a fair presentation of risk at each renewal following the liquidation.
- She acknowledged that there was an email from April 2019 where H confirmed that a business was liquidated with no debts.
- On review of the liquidation statement she felt that H should have been aware of the outstanding debt. She also said H ought to have known about the CCJ from 2017

too.

- She was satisfied that had H informed China Taiping of the outstanding debt involved in the liquidation and the CCJ, they wouldn't have provided cover.

- She concluded that China Taiping acted fairly by avoiding the policy from the date the liquidation ended and declining H's claim, due to its failure to disclose the information about the outstanding debt and the CCJ.

Mr S didn't agree with the investigator and asked for an ombudsman's decision. In summary he said, he did inform China Taiping about the liquidation and there was no debt. He also said the CCJ was recorded in error, it has now been set aside by the courts.

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.

I know this will not be the outcome H was hoping for but, having considered the matter carefully, I don't uphold this complaint and I'll explain why.

The crux of this complaint centres on China Taiping's decision to cancel the policy and reject H's claim.

From what I understand, the liquidation in question started in 2018 and ended in October 2020. The CCJ which China Taiping says H also failed to disclose was dated 2017.

When considering whether China Taiping acted fairly, the starting point is the Insurance Act 2015. Under this Act, commercial policyholders have a duty to make a fair presentation of the risk to the insurer when taking out and renewing a policy.

The Insurance Act says disclosure needs to be made as follows:

- *disclosure of every material circumstance which the insured knows or ought to know, or*
- *failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances.*

For China Taiping to take any action at all they need to show H didn't do this and that it made what's known as a qualifying breach.

Under the Act a qualifying breach is a breach for which the insurer has a remedy against the customer because they would either not have sold them the policy, or would have done so on different terms.

The statement of fact that was completed on behalf of H in July 2020, included the following statement:

> *"Material facts should be disclosed in a reasonably clear and accessible manner and you may want to keep records of members of your senior management and individuals responsible for arranging your insurance so that you can easily access this information and disclose their knowledge as appropriate."*

The statement of fact also asked the following questions:

"Has the proprietor, partner or director of this business, whether in a personal capacity, or as the proprietor, partner if director of any other business, ever:-

been declared bankrupt or insolvent, or the subject of bankruptcy or insolvency proceeding

been served with a County Court Judgement (CCJ) or Scottish Decree

been involved in a business which went into administration, administrative receivership, liquidation or entered into either a company or individual voluntary arrangement with creditors"

The above questions had all been answered *no*.

H's policy terms and conditions also say:

"(7) DUTY OF FAIR PRESENTATION

You must make a fair presentation of the risk to the company at inception, renewal and variation of the policy.
a) In the absence of such fair presentation, the company may avoid the policy and refuse to pay any claims where any failure to make a fair presentation is:
i. deliberate or reckless; or
ii. of such other nature that, if you had made a fair presentation, the company would not have underwritten the risk the company will return the premium paid by you unless the failure to make a fair presentation is a deliberate or reckless"

Although the questions in the statement of fact had been answered *no*, Mr S had informed China Taiping of the liquidation via email in April 2019 but, he said there were no debts involved. He said he hadn't told China Taiping about the CCJ because he wasn't aware of it and he said that it has now been set aside.

China Taiping said both the non-disclosed CCJ and the liquidation debt would have required referral to its underwriting management, who has confirmed it would not have offered cover under either scenario. However, it has tried to be as fair as possible to H and therefore taking into consideration that it discovered the CCJ after the liquidation, it made the decision to focus on what it believes to be the most severe of the two, i.e. the liquidation due to the substantially higher amount of debt involved. China Taiping therefore cancelled H's policy from the date of the liquidation. As China Taiping isn't relying on the CCJ for the cancellation of the policy, I haven't made a finding on it. I've therefore focused my decision on the non-disclosure of the liquidation debts and whether a fair presentation of risk had been made in 2020 and at renewal in 2021.

I'm aware that an email was sent to China Taiping in April 2019 about the liquidation however it stated there were no debts involved. A fair presentation of the risk should also have been made at renewal in May 2019 however it looks like the policy lapsed this year due the business being closed, and it was taken out again in July 2020 when the business reopened. At this point a new statement of fact was completed on behalf of H.

Therefore, a fair presentation of the risk should have been made by H when the policy was taken out in July 2020 because the duty of fair presentation applies at inception as well as renewal.

China Taiping have provided information which demonstrates that the directors of H, including Mr S, signed a liquidation statement dated 2018 which showed clearly that there

was a substantial amount of outstanding debts.

Taking Mr S' circumstances into consideration – a director of a business which went into liquidation, who had signed the liquidation statement which showed the outstanding debts, I believe he ought to have known about the debts. He therefore should have disclosed this to China Taiping in July 2020 and at the renewal in 2021.

While I appreciate the reasons for why Mr S states the company was liquidated and that a substantial amount of debt was linked to H, it doesn't change the fact there was outstanding debts at the time of the liquidation which Mr S ought to have been aware of and should have disclosed. This information was material to China Taiping's decision in accepting risk.

I am satisfied that it was H's responsibility to ensure that it provided a fair presentation of the risk to China Taiping when the policy was taken out in July 2020 and at the renewal in 2021. As it didn't do that in this instance, I am satisfied that it didn't make a fair presentation of the risk.

China Taiping have provided their underwriting guide and the underwriter has confirmed that had they been told about the debt involved in the liquidation, they wouldn't have offered terms. Based on this evidence, I am satisfied that, had the appropriate disclosures been made, China Taiping wouldn't have offered terms to H in July 2020 or at the renewal in 2021. Therefore, I think H made a qualifying breach in both July 2020 and July 2021.

The remedies available to China Taiping depend on whether a qualifying breach is either deliberate or reckless, or, neither deliberate nor reckless. China Taiping have treated H's breach as deliberate or reckless. Based on all the circumstances, I think China Taiping acted fairly in deciding this. H ought to have known about the substantial outstanding debt in the liquidation and should have disclosed it to China Taiping in July 2020 and 2021.

The Insurance Act says that in the above circumstances, China Taiping can avoid the policy from the date of renewal at which the disclosure should have been made. This would have been when the policy was incepted in July 2020 and at the renewal in 2021. China Taiping said they cancelled the policy from October 2020 and avoided the policy which incepted in 2021. As China Taiping were entitled to avoid the policies from July 2020 I'm not going to interfere with their decision. As a result, there was no policy in place to meet the flood claim in July 2021.

Taking everything into account, I don't think China Taiping acted unfairly in cancelling H's policy from the date of the liquidation - October 2020, retaining all the premium paid and declining the claim in question, for not making a fair presentation of the risk.

My final decision

My Final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 11 January 2023.

Ankita Patel
Ombudsman