

The complaint

Mr P complains, on behalf of his business 'A', that The New India Assurance Company Limited unfairly declined a claim under his business protection insurance policy.

What happened

The background to this complaint is well known to both parties, so I'll only summarise the key events here.

In 2020, there was a theft and malicious damage at the insured business premises which led to consequential losses including business interruption. So Mr P made a claim under A's business protection insurance policy.

New India declined the claim. It said A had no insurable interest in the business that is run from the premises – who I'll refer to as 'C' – and that it is Mr P personally who runs C with permission from the owners under a management agreement. Because of this, New India said there had been a misrepresentation and voided the policy.

Mr P didn't think his claim had been declined correctly or fairly in accordance with case law, so he raised a complaint which he brought to our service. But our investigator didn't uphold it. As Mr P didn't agree, the complaint was passed to me and in November 2022 I issued the following provisional decision.

My provisional decision

It's a fundamental principle of insurance law that, for a contract of insurance to be valid, the insured party must have an "insurable interest" in the subject matter of the insurance policy. In this case that means, for the insurance policy to be valid, A must have some financial interest in C and / or the insured premises from which C is run, i.e. it must have something to lose if C or the insured premises suffers harm.

To clarify, it's not my role to decide whether A has an insurable interest which satisfies the contract of insurance. Instead, my role is to decide whether New India's decision to decline the claim and void the policy was fair in the circumstances based on the information it had at that time.

From the information provided, it appears Mr P personally entered into a management agreement with the owners of C in around 2012, which allows him to run the business from the premises, provided that certain conditions are met. From what I've seen, A is a separate entity from C and it was set up in around 2017 – several years after Mr P entered into this agreement to run C. And there is no evidence of a transfer of business to A.

Furthermore, A doesn't own the premises nor is it a tenant of the premises. I understand the renovations, which were the subject of malicious damage, were paid for by Mr P personally.

It's not clear who paid for the stock which was stolen. New India believe Mr P paid for this personally. And, whilst Mr P has provided invoices that are addressed to A, I haven't seen anything to show that they were actually paid by A.

Mr P has provided a brief letter from his accountant which sets out the fixed assets recognised in A's accounts. But there is nothing to show the make up of A and New India say there are other businesses in A's portfolio.

For these reasons, I'm not satisfied Mr P has demonstrated to New India that A has an insurable interest. So I can't fairly conclude that New India's decision was wrong or unfair in the circumstances.

Mr P has provided case law in support of his argument that New India's stance is a "technical defence" and that Courts are reluctant to find the absence of an insurance contract after a premium has been paid.

I've considered the case law presented and whilst I'm not bound under the DISP rules by the law and regulations, I have taken it into account when deciding what is fair and reasonable in the circumstances of this case.

Looking at the case law presented, I can see the Court found that the business in that case did have an insurable interest in the property – which was the subject of a fire – as there was a lawful relationship between the business and the individual, and that the business paid rent to the individual. These circumstances differ from A's position whereby no information has been given to show what interest A had in C or the premises.

I recognise that Mr P has suffered a significant loss to his business and livelihood, and for that he has my sympathy. But he shouldn't feel like he's losing out on a technicality; from what I've seen, the insured party – A – simply isn't entitled to claim under the policy as it has no financial interest in the business being claimed for. And I haven't seen anything to persuade me that it would be reasonable to depart from the established legal principle of insurable interest.

New India says had the business ownership been represented correctly it wouldn't have offered a policy. On that basis, it has voided A's policy from inception and offered to refund the premiums.

Looking at the applicable law – Insurance Act 2015 – Mr P should've made a fair presentation of the risk when he took out this policy by disclosing everything he knew, or ought to know, that would influence the judgement of New India in deciding whether to insure the risk.

Having reviewed the proposal forms, I can't see that he told New India about the business set up with C and that he had entered into a management agreement personally – which Mr P would've been aware of. New India says had it known this information, it wouldn't have offered a policy.

So I'm satisfied there has been a misrepresentation here which would amount to a qualifying breach. In these circumstances, the Insurance Act 2015 allows New India to void the policy, refuse any claims and return the premiums. So I'm satisfied the action New India has taken is fair and in line with the remedies available to it and the policy should be treated as if it didn't exist.

If Mr P has any further evidence which shows A has an insurable interest – like a full breakdown of A's accounts or proof of payment from A's bank account for stock, rent or

wages as an example – then he should present this to New India for it to reconsider its position. I can only decide this complaint based on the information New India had when it made its decision.

Responses to my provisional decision

Neither Mr P nor New India has responded to my provisional decision and the deadline for doing so has now passed.

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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

My final decision is that I direct The New India Assurance Company Limited to refund the premiums paid by or on behalf of A in respect of the policy in question from inception until the date the policy was voided.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 28 December 2022.

Sheryl Sibley
Ombudsman