

## **The complaint**

Q, a limited company complains U K Insurance Limited voided its Tradesman's Insurance policy and didn't pay a claim it made on it. Q is represented by its director, Mr E.

## **What happened**

In January 2022 Mr E made a claim on Q's policy following a theft of tools. As part of its consideration of the claim UKI found there was an outstanding County Court Judgement (CCJ) issued in March 2019 against a business which Mr E was a director of.

It said when taking out this policy in November 2020 he'd answered 'No' to the question *"Has anyone with a financial interest in the business, including you, your family, or any partner/principal/director, received a County Court Judgement (CCJ) regarding debt (either as an individual or in connection with a business)?"* UKI thought Mr E should have should have told it about the CCJ in answer to that question. If he had done it wouldn't have offered cover at all. So it said it would be voiding Q's policy from the start (and wouldn't be paying the claim).

Our investigator thought Mr E should have told UKI about the CCJ and was satisfied it wouldn't have offered cover if he'd done so. So he thought it was entitled to void the policy. And after the complaint had been made to us UKI said it was prepared to accept the non-disclosure wasn't deliberate or reckless. It said it would refund the premiums Q paid for the policy which our investigator also thought was fair.

Mr E didn't agree. He said he didn't know about the CCJ when taking out the policy and it didn't show on his credit report. And he'd now been successful in having it set aside. He didn't mean to misrepresent the position in order to obtain insurance. He highlighted the impact on Q of the decline of its insurance claim and the policy voidance.

## **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 appreciate this issue has had a significant impact on Q and its ability to trade. But the question for me is whether UKI did anything wrong in turning down its claim and voiding its policy. As this was a commercial policy the relevant law is the Insurance Act 2015. That says when taking out the policy Q had a duty to make a fair presentation of risk. So it had to disclose:

- everything it knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstances.

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 available information and consider if there's anything they ought to disclose.

In this case it's not in dispute that UKI asked when the policy was taken out (and at renewal) whether *"anyone with a financial interest in the business, including you, your family, or any partner/principal/director, received a County Court Judgement (CCJ) regarding debt (either as an individual or in connection with a business)?"* Mr E answered no to that question.

However, a business he'd been the sole director of did have a CCJ against it so that answer wasn't correct. Mr E says he didn't know about that. But I think it's likely information about that would have been sent to the registered address of that business. And while I appreciate information about the CCJ didn't appear on Mr E's personal credit file the question also asked about a CCJ in connection with a business. I think making reasonable checks (in line with the requirements of the Insurance Act) would have included checking the position in relation to that business as well.

I appreciate Mr E has subsequently been successful in having the CCJ set aside but it's the position as it applied when Q took the policy out (and at renewal) that's relevant here. I think the CCJ is something Q should have told UKI about. And because it didn't, I don't think it's made a fair presentation of risk. UKI says it wouldn't have offered cover if it had been aware of this. It's provided underwriting evidence in support of that so I'm satisfied that's the case.

Where an insurer can show it would have done something different, had there been a fair presentation of risk, this is known as a "qualifying breach". If an insurer can show a qualifying breach was deliberate or reckless it can avoid the contract and doesn't need to return any of the premiums paid. If the breach wasn't deliberate or reckless but the insurer wouldn't have entered into the contract it can avoid the contract but must return the premiums paid. In this case UKI has now accepted the breach wasn't deliberate or reckless. So while it's entitled to void the policy it needs to return the premiums paid.

### **My final decision**

U K Insurance Limited has now agreed to refund the premiums Q paid for this policy which I think is a fair way of resolving this complaint. So my decision is it needs to do that.

Under the rules of the Financial Ombudsman Service, I'm required to ask Q to accept or reject my decision before 30 August 2023.

James Park  
**Ombudsman**