DRN-4291326

The complaint

A has complained that Watford Insurance Company Limited avoided a commercial vehicle insurance policy it took out to cover one of its vehicles and rejected a claim for damage to the vehicle because of this.

A is represented by a director of A, who I'll refer to as Mr P.

What happened

Mr P took out a policy on behalf of A via a comparison site for one of its vans. When doing so he said the policyholder should be one of its employees, who I'll refer to as Mr C. Mr P also said the owner of the van was Mr C and that he was also the registered keeper. The van was damaged in a collision while Mr C was driving it. A submitted a claim to Watford under its policy. Watford investigated the matter and discovered that A was the owner of the van and that it was registered in its name. Watford decided that Mr P, on behalf of A, had failed to make a fair presentation of the risk in accordance with its obligations under The Insurance Act 2015 ('the Act') when taking out the policy and that this was what the Act describes as a deliberate or reckless qualifying breach. They said they wouldn't have provided the policy if Mr P had answered the questions asked about the owner and registered keeper correctly. So they avoided the policy and refused A's claim on this basis. A complained to Watford, but they wouldn't alter their decision to avoid the policy.

A asked us to consider its complaint about Watford. One of our investigators did this. He issued his view on the complaint. In this he explained that he agreed that A had failed to make a fair presentation of the risk when taking out the policy. But that he thought their failure to do so was neither reckless nor deliberate. He further explained that – in his opinion - what A should have done was taken out the policy with it as the policyholder and said it was the legal owner and registered keeper of the van. He then explained further that because Watford had not provided underwriting evidence to show it would not have provided the policy with A as the policyholder, they had not demonstrated that A had made what the Act describes as a qualifying breach. He said this meant they weren't entitled to avoid the policy. He said to put things right Watford should reinstate the policy with A as the policyholder and consider A's claim under it.

A agree with the investigator's opinion. Watford do not and have asked for an ombudsman's decision. They've said that they would not have offered the policy (contract) at all to Mr C if A had been put as the owner and registered keeper of the van. And that this meant they were entitled to avoid the policy irrespective of whether there was a deliberate or reckless failure to make a fair presentation of the risk when the policy in Mr C's name was taken out. They have explained that they thought a policy in the name of A would have been a totally separate contract. So, whether they'd have offered it or not is irrelevant.

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 consider the relevant legislation in this case is The Insurance Act 2015 ('the Act').

The Act governs all insurance contracts other than those caught by the definition of a consumer insurance contract under s.1(a) of the Consumer Insurance (Disclosure and Representations) Act 2013 ('CIDRA'). In CIDRA a consumer is defined as an "individual" who is acting wholly or mainly for non-business purposes. And the contract Watford have avoided was taken out for the purposes of A or Mr C's business, as opposed to for personal use for non-business purposes.

The Act imposes a "duty of fair presentation" on insureds, which requires insureds to make a fair presentation of the risk to be insured before entering a contract of insurance. A fair presentation is one that satisfies requirements regarding both the content of the information presented to the insurer pre-contract and the form in which it is presented.

If the insured breaches the duty of fair presentation, the insurer will only be entitled to a remedy if it proves that it was induced by the breach to enter into the contract of insurance on the terms that it did, or at all. In order to establish that it was induced by the insured's breach, it will be key for the insurer to prove that, but for the breach, it would either not have entered the insurance contract or would only have done so on different terms, whether as to premium or otherwise (s.8, the Act). This would then make the breach what the Act describes as a 'qualifying breach'.

The remedies available to an insurer for a qualifying breach are set out in Schedule 1 of the Act. The insurer's remedy will depend on whether the breach was:

- Deliberate or reckless.
- Neither deliberate nor reckless.

In short if the insured's qualifying breach was neither deliberate nor reckless, the insurer's remedy will depend on what the insurer would have done had the duty of fair presentation been complied with. If the breach was deliberate or reckless, the insurer's remedy will include the ability to avoid the contract of insurance and retain any premiums paid.

It is clear from what A have said and the registration document for the vehicle insured under the policy that the owner and registered keeper of it was A. It's also clear that when Mr P took out the policy on behalf of A through a broker he said the owner and registered keeper was Mr C.

I've also noted that the class of use Mr P chose for the vehicle didn't include business use, which it is clear was also an error on Mr P's part, bearing in mind the vehicle was owned by A and mainly used for its business.

It's also clear that the policy should have been taken out in the name of A, as it was the owner and registered keeper of the vehicle to be insured under it.

So, as far as I am concerned Mr P provided the wrong information regarding four things when he took out the policy on behalf of A. Mr P has explained that he must have simply made these mistakes due to a lack of care, having made the application through a comparison site and having found the process quite difficult. He's also said he spoke to the broker involved over the telephone after providing the information via the comparison site. And he's sure the broker would have been aware that the vehicle he wanted to insure belonged to A.

I do of course appreciate what Mr P has said about why he provided incorrect information when he took out the policy. And I find his explanation that it was just due to carelessness on his part plausible. This is because, as I see it, he didn't really have anything significant to gain by taking out a policy in the name of Mr C with him as the owner and registered keeper.

However, it does mean Mr P, on behalf of A, failed to make a fair presentation of the risk when he took out the policy. I appreciate the broker may have been aware the vehicle to be insured was owned by A, but as I understand it, the broker was not acting as an agent of Watford; it was acting as an agent for A. This means A is responsible for any errors made by the broker.

However, I do not consider Watford have provided sufficient evidence show that this failure to make a fair presentation of the risk was what the Act describes as a qualifying breach. This is because, despite being asked several times by us to provide evidence that they would either not have offered a policy in the name of A, with A as the registered keeper and owner of the insured vehicle, with Mr C as a named driver and cover for business use on different terms to the policy it offered or that they would have offered such a policy on different terms, they have not done so.

Watford have instead provided evidence to show they wouldn't have offered a policy to Mr C as the policyholder if they'd been aware the vehicle was owned by and registered to A. However, this ignores the fact that the fair presentation of the risk Mr P needed to make on behalf of A was with A as the policyholder, owner and registered keeper of the vehicle to be insured and Mr C as a named driver, and with the use of the vehicle as being for business. And, as I have already explained, I have no evidence from Watford to show they would not have offered such a policy at all or that they would have offered it on different terms.

As Watford have not, in my opinion, shown A made a qualifying breach under the Act, it follows that I do not consider it would be a fair and reasonable outcome of this complaint to let their avoidance of the policy taken out by Mr P on behalf of A stand and for them to be allowed to refuse A's claim for this reason.

Putting things right

In view of what I've said, I consider the fair and reasonable outcome to this complaint is for Watford to reinstate the policy they avoided retrospectively and in doing so change the name of the policyholder to A, with Mr C as a named driver and the class of use to cover business use. They should then consider A's claim following the accident under the terms of this policy.

My final decision

For the reasons set out above, my final decision is that I uphold A's complaint and order Watford Insurance Company Limited to do what I've set out above in the 'Putting things right' section.

Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 6 September 2023.

Robert Short
Ombudsman