DRN-4691904

The complaint

Miss R complains about how her insurer, Chaucer Insurance Company Delegated Activity Company (Chaucer), dealt with a claim for damage to Miss R's stock while being held in a facility operated by a storage firm (M).

Chaucer use agents to administer the policy and to assess claims. References to Chaucer include these agents.

This decision covers Miss R's complaint about Chaucer as the insurer of the policy covering the storage facility. It doesn't cover M as the storage firm operating the facility. Specifically, the decision covers Chaucer's settlement of Miss R's claim for damage to her stock – it doesn't cover the sale of the policy, the subject of a separate complaint to this Service.

What happened

In January 2022 Miss R rented space in M's storage facility for some of the stock used in her business. Under the terms for rental of the storage space, an insurance policy covering the storage facility was provided by Chaucer. As the owner of the facility, M were the party assured under the policy, although in certain circumstances Chaucer could extend coverage under the policy to goods stored at the facility, should they be damaged or lost whilst in the care, custody, and control of M. In completing the agreement covering rental of the storage unit, Miss R indicated she was accepting insurance cover provided by Chaucer and put down an estimated £3,000 value of the stock to be stored at the facility.

In November 2022 some of the stock items were damaged due to drone flies and other insects. Miss R contacted Chaucer to lodge a claim for the damage to the stock. A pest control firm attended the facility to consider the options for treatment of the insects, but concluded while dead insects were present, no live drone flies were found so it wouldn't be beneficial to carry out treatment at that time.

In her claim form, Miss R said the value of the damaged stock items was £4,169 – but Chaucer said when she took out the policy she'd put a value of £3,000 for the value of stock items. Chaucer asked for further information about the value of the items, including receipts for the items. Miss R provided information indicating the value of the items to be some £10,169.

Chaucer assessed the claim and in January 2023 told Miss R that from what she had told them, the replacement value of the stock at the facility (£10,169) exceeded the value she'd declared when taking out the policy (£3,000) so she was significantly underinsured. Under the terms of the policy, claims would be settled proportionately where the declared value was less than the replacement value. Chaucer applied an 'average clause' to the claim and calculated a settlement value of £1,179.91 (after deducting the policy excess of £50)[1]. As there wasn't an inspection of the damaged stock and lack of evidence of the actual price,

[1] The settlement value was calculated by applying the proportion calculated - from the declared value (£3,000) divided by the total replacement value (£10,169) - to the amount claimed for damaged stock (£4,169) and then deducting the policy excess of £50.

and Miss R wanted a swift settlement, Chaucer made a deduction, reducing the settlement offer to £786.12.

Miss R was unhappy at the settlement offered, as well as how the policy had been sold (as part of the rental agreement). She said she hadn't been provided with policy documentation and only later found out the policy was actually issued to M as the storage facility operator (not her). M had failed to provide her with details of the policy. So, she complained to Chaucer.

In their final response, regarding the settlement of the claim, Chaucer said Miss R had signed a declaration confirming she accepted the policy cover provided under the terms and conditions of the Summary of Cover and that she'd read and understood the content of the cover. Failure to declare an adequate value of the stock at the facility (to M) would result in any claim for damage or loss being proportionately reduced. Chaucer had emailed Miss R confirming cover under the policy and this gave Miss R the opportunity to amend the value of the stock covered – but this wasn't taken up. While they maintained Miss R had been underinsured, Chaucer did remove the deduction they'd applied to the settlement offer, so the offer reverted back to £1,179.91.

Unhappy at Chaucer's final response, Miss R then complained to this Service. She said she'd been denied her consumer rights and wasn't given details about the policy. She needed an insurance policy that covered her stock and told M's manager this before signing the agreement. The manager said the policy would cover her stock at the facility. Her business had suffered because she wasn't able to sell the stock at key dates, such as Christmas and holidays. She wanted compensation (£2,000) and full settlement based on the value of the stock (£4,169). She said her health had also been affected by what had happened and the stress it had caused her, so she wanted compensation for these effects.

Our investigator upheld the complaint in part. She concluded Chaucer hadn't sold the policy to Miss R, so the complaint about the policy being mis-sold wasn't something to consider. On the assessment of the claim and settlement offered, the investigator said when it is alleged that information provided when taking out insurance wasn't correct, the relevant legislation was the Insurance Act 2015 (the Act). This was because Miss R was making a commercial claim for loss of her business stock. The Act required Miss R to make a 'fair presentation' of the risk to be covered under the policy. Failure to do so meant Chaucer had to decide whether there was a 'qualifying breach' of the Act, which it would be if, but for the breach, Chaucer wouldn't have offered the policy at all or on different terms. If a breach was deemed to be qualifying, a further consideration would be whether the breach was deliberate or reckless (or neither).

When taking out the policy, Miss R told M she estimated the value of the stock at £3,000. The investigator thought – as it wasn't in dispute the actual value of the stock was more than £3,000 – this meant Miss R failed to make a fair presentation of the risk. Having concluded this, the investigator thought it likely Chaucer would still have provided the policy, on the same terms and at the same price, as the difference in values wasn't significant. That being the case, under the Act this wouldn't have constituted a qualifying breach, so Chaucer couldn't take any action (to reduce the claim proportionately) as the Act would take precedence over any policy terms Chaucer had about proportionate settlement of claims.

To put things right, the investigator thought Chaucer should settle the claim up to the policy limit (£3,000). While Miss R wanted settlement of the full amount of the damaged stock (£4,169) she it wouldn't be fair for Chaucer to pay more than the policy limit. As Miss R said the incident had been damaging for her business (the damaged items couldn't be sold over Christmas) she'd suffered inconvenience, so Chaucer should pay £200 compensation.

Chaucer disagreed with the investigator's conclusions and asked an ombudsman to review the complaint. They agreed the Act was relevant but disagreed with the investigator's view on its application. While they didn't at any point consider avoiding Miss R's policy, the remedies available for breach of the duty of fair presentation under the Act and the remedy available under application of the Average clause in the policy terms and conditions operated in different circumstances. They thought, ordinarily, under-declaration of an insured value was unlikely to amount to a breach of the fair presentation duty, so an insurer's remedy would be application of the Average clause. They didn't consider whether breach of fair presentation duty was 'qualifying' or was deliberate or reckless, as these weren't relevant considerations to application of the Average clause. Chaucer referred to the wording of the Average clause in the policy Summary of Cover provided to Miss R, which made the position clear.

On the settlement offer, Chaucer said the amount claimed by Miss R was £4,169 – whereas the minimum actual value had been estimated at £10,169. This latter figure was the one they'd used in applying the Average clause, the calculation they'd set out in their final response letter. They didn't think the investigator had set out any reasons why they shouldn't proportionately settle Miss R's claim based on the Average clause, so weren't persuaded they should increase their settlement offer to the policy limit. As they didn't think they'd calculated the settlement offer incorrectly nor delayed the claim settlement, they also didn't think a compensation award was appropriate in the circumstances.

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.

My role here is to decide whether Chaucer have acted fairly towards Miss R. In doing so, I'd want to reassure Miss R I've considered all the points she's raised as part of her complaint, including those made in response to the investigator's view, even if I haven't referred to them all in detail in this decision.

I've also considered what Miss R has told us about her circumstances, including her vulnerability and health and how she feels they have been affected by what's happened in this case. I've borne this in mind when deciding whether Chaucer have acted fairly towards Miss R when assessing and settling her claim for damage to her stock.

The key issue in Miss R's complaint is whether Chaucer have acted fairly in making a proportionate cash settlement offer for her claim, reflecting what they say is Miss R declaring a value of her stock that indicates a significant degree of underinsurance when compared to the total replacement value of the stock (including both damaged and undamaged stock).

When Miss R took out the policy, she had a duty – under the Act – to make a fair presentation of the risk. This means it was her responsibility to disclose everything she knows, or ought to know, that would influence the judgement of the insurer in decided on whether to insure the risk and on what terms.

Miss R says she wasn't provided with policy documentation and information when she took out her storage rental agreement with M (which included the option of cover for the stock through Chaucer's policy with M). Chaucer say Miss R was asked what the value of her stock was, and she said £3,000. Having looked at the relevant documents, including the Licence Agreement with M and the Policy Summary of Cover, I'm satisfied she agreed to £3,000 being the value of stock to be stored. Chaucer also say Miss R was again provided with a summary of cover after taking out her rental agreement, which included the opportunity to revise the estimated value of stock stored at the facility.

As the value of stock she subsequently disclosed when making her claim was significantly higher, she didn't make a fair presentation of the risk.

Having reached this conclusion, I've then considered whether Chaucer acted fairly and reasonably towards Miss R under the Act. As the stock insured was for Miss R's business, then I'm satisfied the provisions of the Act apply in the circumstances of this case.

Looking at the provisions of the Act, Miss R would be under a duty to make a 'fair presentation' of the risk when opting to accept the cover provided by Chaucer. Given my conclusion above that Miss R ought reasonably have been aware of the need to provide an accurate estimate of the value of her stock – but didn't – then I've concluded she didn't make a fair presentation of the risk when she provided a value of £3,000.

Having concluded Miss R didn't make a fair presentation, I've considered whether, under the Act, this would constitute a 'qualifying breach'. In considering this point, Chaucer have said they didn't consider Miss R's actions under the Act, so they didn't form a view as to whether any breach was qualifying – and if so, whether it was deliberate or reckless, or neither.

They've also not provided any indication they would have done anything differently had Miss R declared a different (higher) value of her stock, that is, had she not failed to make a fair presentation. For example, whether it would have declined cover at all or to charge a higher premium or other change to the policy terms and conditions.

What this means is that Chaucer cannot apply any of the remedies available to it under the Act. It cannot avoid the policy (treat it as through it never existed) and decline the claim or reduce the claim settlement. So under the Insurance Act, it needs to meet Miss R's claim

While Chaucer applied the Average clause set out in the Summary of Cover document, the provisions of the Act (as primary legislation) take precedence over the terms of the policy. That being the case, as I've concluded Chaucer can't apply any of the remedies under the Act, then they acted unfairly towards Miss R in applying the Average clause to reduce Miss R's claim proportionately.

Having reached these conclusions, I've considered what Chaucer need to do to put things right. As they haven't acted fairly in applying the Average clause to reduce Miss R's claim proportionately, then they should settle the claim in line with the £3,000 figure Miss R provided as the value of her stock. While this is less than the £4,169 figure for damaged stock she claimed, it wouldn't be fair or reasonable to require Chaucer to settle the claim at a figure higher than the policy limit (£3,000). They should also apply the policy excess (£50) to the £3,000 so leaving a net settlement of £2,950.

As I've concluded Chaucer acted unfairly towards Miss R in applying a proportionate reduction to her claim, I've considered the distress and inconvenience Miss R says she's suffered from what happened. I've reflected the published guidance from this Service when making awards for distress and inconvenience, as well as the impact on Miss R from what she's said about her vulnerability and health issues. Taking account of the circumstances of the case, I think £200 for distress and inconvenience would be fair and reasonable.

My final decision

For the reasons set out above, it's my final decision to uphold Miss R's complaint. I require Chaucer Insurance Company Delegated Activity Company to:

- Settle Miss R's claim to the policy limit of £3,000 (less the policy excess of £50, leaving a net settlement of £2,950).
- Pay Miss R £200 for distress and inconvenience.

Chaucer Insurance Company Delegated Activity Company must pay the compensation within 28 days of the date on which we tell them Miss RC accepts my final decision. If they pay later than this they must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss R to accept or reject my decision before 22 May 2024.

Paul King
Ombudsman