

## **The complaint**

Mr S complains that The New India Assurance Company Limited unfairly declined a claim under his business combined insurance policy.

Where I refer to New India, this includes the actions of its agents and claims handlers for which it takes responsibility.

Whilst Mr S is represented in his complaint, for ease of reading, I'll refer to all submissions having been made by him directly.

## **What happened**

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

In November 2022, there was a storm which caused damage to a commercial premises which I'll call 'W'. Mr S made a claim under his insurance policy.

New India declined the claim. It said Mr S has no insurable interest in W; either in the building itself or the business that operates out of it. So any loss or damage as a result of the storm isn't Mr S's.

Mr S didn't think this was fair because he's the sole director of both the limited company that owns the building and the limited company that operates out of it. He says he took the policy out in his name trading as W because he was having an issue at the time which had caused his company to be temporarily struck off Companies House.

Mr S raised a complaint, which he's brought to our Service. He's provided a legal opinion and case law to support his assertion that he has an insurable interest in W and that he should be covered by the policy.

Our Investigator didn't uphold the complaint. He said that as Mr S' companies are limited companies, they're separate entities to him and whilst he may be the director of both, he has no insurable interest in W in his personal capacity – which is the name he's taken the policy out in.

As Mr S didn't agree, the complaint has been passed to me to decide.

## **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'd like to reassure Mr S that whilst I may have condensed what he's told us in far less detail and in my own words, I've read and considered all his submissions in full. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point

individually, or possibly in the level of detail he'd like, in order to reach my decision. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

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, Mr S must have some financial interest in W, i.e. he must have something to lose if the building itself or the business which operates out of it suffers harm.

To clarify, it's not my role to decide whether Mr S 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 was fair in the circumstances based on the information it had at that time.

From the information provided, it appears the building is owned by a limited company, and they are listed on the legal title. It would be this company, as the legal owner/entity, who has an insurable interest as it would have something to lose as a result of the building suffering harm.

The business that operates out of the building is also a limited company. It has a lease agreement with the building owner. It would be this company who has an insurable interest in any contents, or interruption to the operation of the business.

I appreciate Mr S is the sole director of both of these limited companies. And, because of this, he says he "*will suffer loss in the event of any damage to the subject matter*". But, in his personal capacity, he doesn't have anything to lose if the building itself or the business which operates out of it suffers harm because his liability is limited to that of his businesses.

I do understand why Mr S felt it necessary to take the policy out in his name. However, I note that the problems with Companies House were resolved within the policy period. Mr S didn't seek to amend his policy at any point afterwards, including at renewal which took place several months prior to the storm which caused the damage. It was his obligation to ensure the information on his policy was correct and, as a commercial customer, he was required to give a fair presentation of the risk.

For these reasons, I'm not satisfied Mr S has demonstrated to New India that he has an insurable interest. And I haven't seen anything to persuade me that it would be reasonable to depart from the established legal principle of insurable interest. So I can't fairly conclude that New India's decision was wrong or unfair in the circumstances.

New India has told us that it voided the policy from inception and the premiums have been returned to Mr S' broker. As Mr S would never have been covered under this policy, I don't think it's fair for cover to remain in place or for Mr S to be out of pocket for the premiums. So I'm satisfied New India's actions here were reasonable.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 November 2024.

Sheryl Sibley  
**Ombudsman**