

The complaint

P, a limited company, complains Markel International Insurance Company Limited turned down a claim it made on its business protection insurance policy.

What happened

P provides residential care services. In March 2023 there was a fire at a property it rented. As P didn't have alternative accommodation residents were relocated by the local authority. P made a claim to Markel for its loss of income resulting from that. After investigating Markel said business interruption cover was only provided where there was damage to the premises listed in the policy schedule. As that wasn't the case here it turned down the claim.

P said when the policy was taken out it had only been asked for details of properties for which 'Property Damage' cover was required which it provided. The business interruption section of the proposal form didn't ask for details of premises to be insured and there was nowhere on the form to include properties for which damage cover wasn't required. And it had provided details of the income and turnover for the whole company (which included all of the properties it either owned or rented) when providing business interruption information.

Our investigator agreed with Markel that, under the terms of the policy, business interruption cover was only provided for premises that were listed on the policy schedule. And the property which this claim relates to wasn't one of those. Taking into account the requirements of the Insurance Act 2015 she thought it would have been reasonable for P to have included all properties it wanted cover for when taking out the policy or at a subsequent renewal. So she didn't think Markel acted unfairly in turning down the claim it made.

P didn't agree. It said the proposal form only asked for information about addresses for which property damage was required (and a head office). It provided details of those but didn't include rented properties because it didn't require property damage cover for them. If this was something Markel required for business interruption cover to be provided it should have asked about that. But the only section of the form that asked for additional properties to be included was 'Property Damage'. And it wasn't reasonable to say this was something it should have known to provide given the form Markel asked it to complete was specifically tailored to the needs of its industry sector.

I issued a provisional decision on the complaint last month. In summary I said:

The relevant rules and industry guidelines say Markel has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of P's policy. This does cover business interruption if an event listed in the policy has taken place. I think the only one that could apply to the claim P made is 'Damage at the premises'. That covers "accidental loss, damage or destruction, at the premises, to property that is used by you for the purpose of your business". And the business interruption section of the policy defines "premises" as "the buildings together with its land and outbuildings at the address shown in the policy schedule and which are owned or occupied by you (or in part by you)".

I don't think it's in dispute the property where the fire took place was being used by P for the purposes of its business and there was damage to it. But for cover to be provided the premises need to be listed in the policy schedule. And that isn't the case here. So I'm satisfied Markel correctly concluded this claim isn't one P's policy covers.

However, I also need to consider what's fair and reasonable in all of circumstances of the case. And I don't think it would be fair of Markel to turn down the claim on the basis this property wasn't listed in the schedule if the reason for that was because of something it got wrong. As that involves considering what happened when the policy was first taken out I think it's appropriate to consider the relevant law which, as this is a commercial policy, is the Insurance Act 2015.

Under the Act a commercial customer has a duty to make a fair presentation of the risk to the insurer. In order to fulfil a fair presentation of risk, the Act says a commercial policyholder must disclose everything they know, or ought to know, that would influence the judgment of an insurer in deciding whether to insure the risk and on what terms. But the Act also says the duty of fair presentation does not require the insured to disclose a circumstance if "it is something as to which the insurer waives information."

In considering how that applies I think it's reasonable to take into account whether an insurer sought any particular information from their policyholder. So I think it's appropriate to consider what questions Markel asked and how clear and specific those questions were. I also think it's reasonable to consider what information Markel produced about the policy which could also have influenced the information P provided.

I can see prior to taking out the policy P completed a proposal form. Markel has confirmed it was responsible for that form and the questions it contained. Under 'Property Damage' the form asks "Is cover required for accidental damage (including theft) to your building or contents". Where cover is required the form asks for the "Address of the premises to be insured" and says "if more than three premises please show addresses, sums insured etc of all additional premises in the 'Additional Information' at the end of this proposal form".

P provided details of two properties it required property damage cover for. It didn't provide details of any rented properties but this section of the form didn't ask about that. It clearly asked for "Address of the premises to be insured" and that was within a section specifically referring to 'Property Damage'. I don't think the reasonable reader of that section would have thought they should include properties that didn't need to be insured for property damage.

I've gone on to review the questions asked within the business interruption section of the proposal form. That says "Is cover required for loss of revenue, rent receivable or additional cost of working". And it asks for details of the required sums insured and indemnity period for revenue, rent receivable and additional costs of working. P has completed that section. But there's no reference within it to the need for properties not insured under property damage to be included (and no space for that to take place in any event).

I've also reviewed the 'Additional Information' section at the end of the proposal form. That says "Please provide additional information as requested within the proposal quoting the question number to which your comments refer". P hasn't provided any information in that section. But I don't see there was anything in the form which would reasonably have prompted it to do so in relation to its rented properties given no information had been requested about this.

I've also considered a 'Key Facts' document about the policy which Markel has produced to see whether that should have led P to volunteer information about the rented properties. Under 'Business Interruption' it says this "covers your loss of revenue and/or increase in cost of working for an agreed period due to interruption in your business (rent receivable and/or additional cost of working can be included) following...damage which is insured, or would have been insured if you were responsible for insurance under the property damage section"

I think that makes clear business interruption coverage could extend to a rented property which had been damaged and which would have been insured if the policyholder was responsible for it. But it doesn't explain (as it could have done) that details of any rented property would need to be included on the policy schedule in order for cover to be provided. And I've already concluded Markel didn't request information about this in the proposal form.

I've therefore gone on to consider whether this is nevertheless information P should reasonably have been expected to provide to Markel (taking into account the fair presentation of risk requirements contained in the Insurance Act 2015 but also that an insured isn't required to disclose something to which the insurer waives information).

*I'm aware case law has established an insurer can by implication waive an insured's duty to disclose information by virtue of the questions it asked. For example in *Economides v Commercial Union Insurance Co plc* (which I appreciate dealt with an issue of policy avoidance) the judge found "Where, as here, material facts duly are dealt with by specific questions in the proposal form and no sustainable case of misrepresentation arises, it would be remarkable indeed if the policy could then be avoided on grounds of non-disclosure".*

*In *Young v Royal and Sun Alliance Insurance plc* the judge commented "The significance of a proposal form is that by directing the insured to provide material information by the means of answering specific questions the insurer has taken control over the process of communicating information between it and the proposer. It has chosen the matters as to which it wishes information by asking questions directed at that information and, by implication, the matters as to which it does not wish information, by not asking questions which are so directed".*

In addition, I understand 'Chitty on Contracts' says "... the question which the insurer may ask the assured (usually in a proposal form) may be so framed as to indicate that the insurer does not require further information on the matters in question, thus relieving the assured from doing more than answering the specific questions."

I appreciate in this case the proposal form did reference the duty to make a fair presentation of risk and said 'if you are in any doubt as to whether a circumstance is material you should disclose it to us'. I also recognise the income from the rented property appears to have comprised a reasonably significant proportion of P's overall revenue.

But I think also relevant is that the proposal form itself was detailed (running to some 20 pages), was targeted at the sector in which P operated and contained specific questions relevant to that area.

Given that I think P could reasonably have thought the answers it supplied to those questions were sufficient to provide Markel with the information it needed. And because Markel didn't ask questions about other matters (specifically the addresses of any rented properties) I think P could also have reasonably concluded it didn't need to provide further details of those to enable Markel to decide whether to insure the risk and on what terms.

It therefore follows that I don't think it is fair of Markel to turn down the claim P made on the grounds the property which the business interruption claim relates to wasn't listed in the policy schedule. It will therefore need to reassess the claim in line with the remaining policy terms. If having done so P is entitled to indemnity under the policy Markel will be entitled to deduct from that amount any additional premium it would have charged to insure the relevant property from the date the policy was taken out.

I've also considered whether I should make an award for the inconvenience P was caused as a result of its claim being wrongly turned down. However, it hasn't made reference to this in its submissions to us. And I'm mindful of the fact it's claim and complaint were pursued with Markel through its broker which I think lessens any direct impact on P. Given that I think the remedy I've already set out does enough to put things right in this case.

Responses to my provisional decision

P agreed with the outcome I'd reached. Markel didn't. It said it wasn't standard practice to ask under the business interruption section of a proposal form about business premises where property cover wasn't required but business interruption cover was. And as the policy was arranged through an insurance broker they should have had known what its requirements were and notified it if P's needs were different to that.

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 Markel feels P's broker should have told it about any needs P had that weren't covered by its proposal form. However, in this decision I'm not considering the actions of the broker but whether it was fair of Markel to decline the claim P made. And I explained in my provisional decision why I didn't think that was the case.

In response Markel said it isn't standard practice for the business interruption section of the proposal form to ask about premises for which property cover isn't required. That may be the case but as I set out in my provisional decision the proposal form was detailed (running to some 20 pages), was targeted at the sector in which P operated and contained specific questions relevant to that area. I've taken into account the fair presentation of risk requirements contained in the Insurance Act 2015 but also that an insured isn't required to disclose something to which the insurer waives information.

Having done so it remains my view that P could reasonably have thought the answers it supplied to the questions in the proposal form were sufficient to provide Markel with the information it needed. And because Markel didn't ask questions about other matters (specifically the addresses of any rented properties) I think P could also have reasonably concluded it didn't need to provide further details of those to enable Markel to decide whether to insure the risk and on what terms.

Because of that I continue to feel it wasn't fair of Markel to turn down the claim P made on the grounds the property which the business interruption claim relates to wasn't listed in the policy schedule. It will therefore need to reassess the claim in line with the remaining policy terms. If having done so P is entitled to indemnity under the policy Markel will be entitled to deduct from that amount any additional premium it would have charged to insure the relevant property from the date the policy was taken out.

My final decision

I've decided to uphold this complaint. Markel International Insurance Company Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 18 October 2024.

James Park
Ombudsman