

The complaint

M, a company, complains that U K Insurance Limited ('UKI') declined to cover a claim it made under its business protection insurance policy. UKI voided M's policy following this.

M is unhappy with this and feels that UKI treated it unfairly.

The complaint is brought by Mr W, a director on behalf of M. For ease of reference, I shall refer to all submissions as being M's own in this decision.

All references to UKI include their claims handlers and agents.

What happened

M made a claim on its business protection insurance policy to defend a claim against it in relation to a claim for damage caused as a result of a leak where M was the installer.

UKI accepted the claim in the first instance and instructed loss adjusters to review the position and investigate whether cover would engage. The loss adjusters reported that Mr W had four County Court Judgments ('CCJs') against him, four of which were satisfied and one of which remained outstanding. The judgments were for Orders obtained in 2018 and 2019.

UKI said that when M took the policy out it was asked whether anyone with a financial interest in the business including Mr W, or his family or any partner, principal or director, had received any CCJs regarding a debit, either as an individual, or in connection with the business, and M had answered 'no' to this. UKI said that if M had answered 'yes', cover would not have been offered. As a result, UKI voided the policy.

Unhappy M complained to the Financial Ombudsman Service. M said that it was not aware that CCJs had been obtained against Mr W by anyone and only discovered this when UKI drew this to its attention. M says that all but one of the CCJs had in any event been satisfied and that it had relied on a free online checker to ascertain whether any CCJs had been made against it, and these didn't reveal anything.

Our investigator considered M's complaint and concluded it should not be upheld. She said that M, or Mr W as its Director, ought to have been aware of the existence of the CCJs made against Mr W, and the fact that three of these had been satisfied made no difference because the question asked of M on taking the policy out was whether anyone with a financial interest in M had received a judgment against it. M doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I don't uphold M's complaint for broadly the same reasons set out by the investigator in her view.

The relevant law that applies to this complaint is the Insurance Act 2015, under which there's a duty to make a "fair presentation" of the risk. This duty applied when M took out the policy and each subsequent renewal if there were any. When buying or renewing the policy the party seeking insurance – in this case, M – was required to disclose every circumstance they knew, or should have known, which would influence a prudent insurer in deciding whether to underwrite a risk or what premium to charge.

In addition to the legal position, the documents provided to M made clear how important it was to provide relevant information. M was specifically asked to confirm that whether anyone with a financial interest in it had received any CCJs regarding debt either as an individual, or in connection with a business. Taking into account the statement in the form that M was asked to confirm, the warnings about disclosing information and the need to say if anything was incorrect, and the wider legal duty to disclose anything that would influence the insurer's decision about offering cover, my judgment is that M knew (or should have known) that UKI would have wanted to be told about the four CCJs against Mr W, whether or not three of those had been satisfied. So, this should have been disclosed.

When reaching this conclusion, I've taken into account M's submissions that Mr W was not aware of the CCJs made against him and that he had carried out due diligence by using a free credit checking tool before taking out the insurance. I've looked at the print outs M has provided showing no results on a credit checking tool, but I can't tell from those whether the tool was used for M or Mr W directly. And if it had been used for Mr W directly, I would have expected the CCJs to show up in the results of the search, as these are a matter of public record. And given CCJs had been obtained against Mr W, I think it's most likely he would have had considerable notice of these in writing, whether or not they were put through a debt collection agency rather than the Claimants in those cases directly. So, I think that Mr W and M ought to have been aware of those judgments and disclosed them to UKI when taking out the insurance.

By not telling UKI about this, M misrepresented the risk and failed to meet its legal duty – whether the duty of "utmost good faith" or the duty make a "fair presentation" of the risk. If the insured party fails to disclose this kind of circumstance, and the insurer can show it would not have offered the policy if it had been disclosed, it's entitled to void the policy. And if the breach was deliberate or reckless, it doesn't have to refund the premium to the insured.

I've considered whether UKI has shown the failure to disclose the judgments obtained against Mr W would have made a difference. The underwriting evidence shows the starting point in these circumstances is that the risk would be considered unacceptable, and the underwriter has confirmed this. So, cover wouldn't be offered. And it's up to UKI to decide what circumstances its prepared to insure. Looking at the underwriting evidence, I'm satisfied what the underwriter has said is consistent with the guidance UKI was following when it discovered the judgments against Mr W. So, I think it's reasonable to rely on their evidence.

I appreciate that M might think its failure to disclose the judgments against Mr W might simply be a mistake and there wasn't a deliberate or reckless breach of duty. UKI has considered the breach to be either deliberate or reckless. Having considered this carefully I agree this was reckless. CCJs against individuals are, in my view, significant enough that a Director of a company ought to have been aware of them and the impact they might have on their credit history whether or not they were satisfied, so I don't think they were something one would overlook and it's likely that these judgments would have had some impact on Mr W's ability to obtain credit in the five or six years since they were put in place.

In my judgment, it's something M must have been aware of, and failing to disclose it in these circumstances was reckless. So UKI doesn't have to repay the premiums.

Taking account of the relevant law, the policy terms and all the circumstances, I think UKI's decision was fair.

My final decision

For the reasons set out above, I don't uphold M's complaint against U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 5 December 2024.

Lale Hussein-Venn
Ombudsman