

## **The complaint**

N's complaint is about a claim it made on its U K Insurance Limited trading as NIG ('UKI') motor trade policy, which UKI declined.

N's complaint is brought by Mr R, but I shall refer to all submissions as being N's own for ease of reference.

N says UKI treated it unfairly.

## **What happened**

N's business is an MOT test station. Following the loss of its MOT license, N made a claim on its motor trade policy for reimbursement of the business losses it suffered as a result.

UKI considered its claim and concluded that N did not meet the policy condition which required it to take all reasonable precautions to prevent loss occurring or take steps to observe and comply with all statutory or public authority laws, obligations and requirements. As such it declined N's claim. This was because UKI said N had lost its license because it failed the standards set out by the Driver and Vehicle Standards Agency (DSVA) following a visit by a DVSA mystery shopper, which led to N passing a vehicle which had a number of known faults.

Unhappy N complained to the Financial Ombudsman Service. Our investigator considered N's complaint and concluded that it should not be upheld. She thought that UKI were entitled to decline N's claim in the way that they had. N does not 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 agree with the conclusions reached by the investigator for the reasons set out below. Before setting those out I acknowledge the various submissions made by N in its complaint. Whilst I won't be addressing them all, I have considered them when reaching my conclusions in this complaint. That's not intended to be disrespectful. Rather it represents the informal nature of the Financial Ombudsman Service. Instead, I've concentrated on the crux of N's complaint; namely whether UKI's decision to turn down cover was fair.

This is a specialist insurance policy intended to cover N in particular circumstances. N's policy provides the following type of cover which N was seeking to claim on:

*"If during the period of Insurance the Insured's MOT Licence is suspended or withdrawn by the Department of Transport and as a consequence the Business carried out by the Insured at The Premises is interrupted or interfered with the Company will pay to the Insured the amount of loss resulting from such interruption or interference in accordance with the basis of cover shown in the Schedule and described in this Section."*

Cover is provided subject to the following condition:

*“1. The Insured shall take all reasonable:*

*(a) precautions to prevent a loss under this Section occurring*

*(b) steps to observe and comply with all statutory or Public Authority laws obligations and requirements”.*

UKI says N did not take all reasonable care in preventing a loss because its license was revoked following a mystery shopper exercise by the DVSA where N passed the MOT on a vehicle with a number of known faults. As such UKI says the policy condition applied and that it was entitled to decline N's claim. I agree with this interpretation. Whether the vehicle passed or failed the MOT was within N's gift. N's business was to carry out MOTs with reasonable care and skill. It failed to do this in the instance which led to its license being revoked. UKI have chosen to exclude cover for claims in circumstances such as these when drafting their policy. It's not for this Service to determine what an insurer should and shouldn't cover when deciding which risks to take on from the outset, and in this case, I think it's clear that UKI intended not to cover this type of situation and drafted its policy to reflect that. And there's nothing in the term that I've seen that suggests it was not clearly worded.

N says the position UKI have taken is unfair. It's made considerable submissions about the assessment of the DVSA which led to its license being revoked. I can't comment on the conclusions of the DVSA and whether they were fair because the DVSA doesn't fall within my remit. I can only address whether the actions of UKI were fair.

I know N feels that UKI's decision is too harsh in the circumstances given the error in passing the vehicle was caused by genuine human error with extenuating circumstances on the day. Whilst that might be the case, the determination of the DVSA led to N's license being revoked and the errors in passing a vehicle that was not considered to be roadworthy were sufficient for them to reach this conclusion. This in itself is enough for me to be satisfied that N did not take reasonable care when passing the vehicle in question, irrespective of the circumstances. Whilst there might have been reasons underlying why this was, this doesn't change the fact that on balance, reasonable care wasn't taken and as such I don't think UKI did anything wrong in turning down N's claim.

N has raised examples of several situations in which the DVSA can take disciplinary action against an MOT test centre and questioned whether the policy would pay out in each of those. The point N has made is that if UKI declines cover in each of those cases, they would be declining claims unfairly because the scope of how they apply the condition would be arbitrary. N has also questioned when the cover would pay out at all. In response to N's query, UKI has said the cover would pay out in circumstances where the license is lost due to circumstances out of a policyholder's control or due to a clerical error. I'm satisfied that this explanation accords with the policy condition applicable in this case and that UKI didn't need to consider how the terms would apply to different situations.

Finally, I know N is taking further action to challenge the decision of the DVSA. If N is successful, it is of course entitled to make a further claim on its UKI policy. I can't comment on how UKI should deal with that claim because it will be specific to the outcome of that challenge. If N remains dissatisfied with how UKI handles its claim at that point, it can complain to them again.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 27 January 2025.

Lale Hussein-Venn  
**Ombudsman**