

## The complaint

D, a limited company complains about what American International Group UK Limited (AIG) did after it made a claim on its business protection insurance policy.

## What happened

D took out cover with AIG in September 2021 and the policy renewed the following year. In June 2023 there was a theft of stock from storage premises D was using. It claimed for the loss on its policy with AIG. A complaint about delay in the handling of that claim has previously been considered by our service. Our investigator said AIG should pay £300 compensation for issues up until January 2024 and expedite the handling of the claim.

AIG declined the claim and avoided the policy in May 2024. It said when taking out the policy D said its stock had a value of £5,000. But when making its claim it had said the stock value was £75,000. And if the correct value had been provided it wouldn't have offered cover based on the alarm system that was in place at the storage premises. It also highlighted that D said its business didn't operate out of a warehouse but that wasn't the case.

It thought D's failure to disclose information was deliberate or reckless and so it would be refusing the claim, avoiding the policy and retaining the premium which the Insurance Act allowed it to do. However, it accepted there had been some further delay in that decision being reached for which it paid an additional £200.

In his most recent view our investigator thought D had been asked a clear question about the value of its stock when the policy was first taken out. And it had selected the minimum amount (up to £5,000) in response. A schedule and 'Statement of Fact' provided at policy renewal in September 2022 showed the stock value at that level. Our investigator didn't think that accurately reflected the value of the stock D had at that time and it should have provided AIG with clear information about this. And he was satisfied if the correct value had been declared AIG wouldn't have offered the policy at all. He also thought it was fair of AIG to treat this as a deliberate or reckless misrepresentation and act as it had in relation to policy coverage and avoidance. And he said the £200 AIG had paid for further delays was fair.

D didn't agree. It provided very detailed comments and additional information in response to our investigator's view and in summary said:

- The reasons for AIG's decision on its claim had shifted during the course of its investigation and this raised concerns about the consistency and validity of its position.
- A reference AIG had made to the 'Statement of Fact' saying D didn't have more than £5,000 on the premises at any one time and amounts over £500 were locked in a safe overnight clearly referenced cash holdings and not stock so wasn't relevant here.
- When taking out the policy the value of its stock did not exceed £5,000 which is why it had selected cover at that level. And the documents AIG provided didn't say that total value of stock must not exceed the selected level of cover. And they didn't contain a requirement to update AIG with changes on stock values during the policy term.

- It hadn't been provided with any information by AIG at policy renewal in September 2022 which would have prompted it to disclose any change in the value of its stock or let it know an increase in the value required the installation of a different alarm system.
- The comment it had made during a telephone interview with AIG's investigator about the reasons for selecting the £5,000 stock level had been interpreted subjectively and were made under duress and without independent oversight. It thought the investigator had a conflict of interest because they were acting as both a loss adjuster and a claims investigator.
- The screenshot showing the question it would have been asked when taking out the policy wasn't contained in the policy document or the 'Statement of Fact'. It thought the screenshot could easily have been manipulated. And it highlighted other changes that had been made to questions to show how these had evolved over time.
- The policy wording set out the cover that should be provided and that didn't contain any 'total stock value' restrictions. Nor did the 'Statement of Fact' make clear that the £5,000 sum insured should correspond to the total value of the stock. And this should be the primary reference point.
- If AIG's position was that a better alarm was required for higher value stock that should have been disclosed to it when taking out the policy. It thought this was an after the event justification for policy avoidance. And it said the storage facility's alarm system did meet modern security requirements and it could obtain verification of the specific grade if required.
- Prior to this claim it made one for theft which was declined because there wasn't evidence of forcible or violent entry to the premises. However, no issues with stock value had been highlighted at that time (despite the fact the claim exceeded the sum insured under the policy). It asked why it had taken AIG so long to decline the second claim given it had the evidence it needed to do so from the outset. And it set out how it thought AIG should have acted differently in the handling of the claim.

So I need to reach a final decision.

### **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.

First, I appreciate AIG has referenced a number of different points in its decisions on this claim which include both the answers D gave to questions contained in the 'Statement of Fact' and the issues with stock value. But the question I need to consider is whether AIG had fair and reasonable grounds for acting as it did in relation to the claim D made.

So I've considered first the alleged misrepresentation in relation to the value of the stock; if that in itself provides grounds for AIG to have taken the steps it did then I don't need to consider the other points it referenced in correspondence with D. However, while I have seen all the comments D made in response to our investigator's view (including the detailed submissions received earlier this month) I don't think it's appropriate or in line with the informal nature of our service to respond to every point. Instead, I've sought to focus on what seem to me to be the key issues; those that would impact the outcome of the complaint.

And the relevant rules and industry guidelines say AIG has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably. In addition, as AIG's reasons for declining the claim (and voiding the policy) relate to information it says D should have provided when taking out the policy I've also taken into account the relevant law in relation to that which is the Insurance Act 2015. The Act says when taking out the policy D had a duty to make a fair presentation of risk. So it had to disclose:

- everything it knew, or ought to have known, that would influence the insurer's judgment in deciding whether to insure the risk and on what terms; or
- enough information to put the insurer on notice that it needed to make further enquiries about potentially material circumstance

In considering whether a policyholder made a fair presentation of risk I think it's reasonable to take into account whether an insurer sought any particular information from them. So I think it's relevant to consider what questions AIG asked and how clear and specific those questions were.

In this case the 'Statement of Fact' contains a question relating to having more than £5,000 on the premises at any time. But I agree with D that relates to cash sums and I don't think it would reasonably encompass stock. However, AIG has provided details of the sales journey it says D would have completed when taking out the policy. And the screenshots it's provided say as part of that D would have been asked "*How much would it cost to replace all of your stock?*"

D says those screen shots could have been manipulated. That's possible but I haven't seen anything to suggest that happened in this case; the screenshots appear to have been taken directly from the website of the broker D took out cover through. I appreciate different questions may now be asked but that doesn't mean the screen shots AIG provided don't reflect the question D was asked when taking out cover. D also says information about this wasn't contained in the policy documentation (including the schedule). That may be correct but I think it would have been clear to D from the question it was asked that AIG wanted to know how much it would cost to replace all of its stock and so what the total value of this was. I think that's something D should reasonably have disclosed in answer to that question.

I've gone on to think about whether it did so. D says when taking out cover in September 2021 it included a figure of £5,000 because that represented the value of its stock at the time. But I don't think that's right. When making its subsequent claim it said the value of its stock was £75,000. I appreciate the value at risk could have been increased during that period but D's audited accounts for the year ending 31 October 2021 say the value of its stock was around £26,600. So it should have chosen the option which reflected that amount.

D also had an opportunity to correct the position at renewal in September 2022 and didn't (the audited accounts for the year ending 31 October 2022 give a similar value for its stock). D says it wasn't provided with any information which would have prompted it to disclose a change in the value of its stock. But I don't think that's right because it doesn't seem to be in dispute it had access to the policy schedule (it subsequently provided that to us) which said cover for material damage to stock was £5,000. And I've already concluded D would have been aware that AIG wanted to know what the total cost of replacing that stock was.

D says the policy didn't require it to update AIG with changes to the value of stock or explain that the value given should correspond to that. But while the policy may not specifically require that it does say (in line with the requirements of the Insurance Act) "*It is essential that all information provided by you is accurate and true to the best of your knowledge and belief. If any of the information is inaccurate or untrue it may entitle us to avoid the policy,*

*may impact the terms of the cover or may mean that a claim is not paid or is not paid in full”.*

*And “You have a duty to disclose all material information or sufficient information to put a prudent insurer on notice that further enquiries are needed. A material fact is one which will influence the judgement of a prudent insurer in determining whether to take the risk and if so on what terms. If you are in any doubt as to whether information is relevant and should be disclosed you should contact your broker”.*

So I think a change in the value of stock at renewal is something D should have told AIG about. In any event the issue isn't that D didn't tell AIG about changes to that value but it didn't give the correct value either when taking the policy out or at renewal. And while I understand some information on stock value was provided when it made its previous claim given that claim was obviously caught from the outset by a policy exclusion I don't think it was something which should reasonably have prompted AIG to inquire into further. For the reasons I've explained, I'm satisfied D didn't make a fair presentation of risk to AIG.

Where that's the case an insurer has a remedy for a breach of the duty of fair presentation only if it can show it wouldn't have entered into the contract of insurance or would have done so on different terms (so there's been a 'qualifying breach'). In this case I've seen underwriting criteria which satisfy me that for the policy D took out cover would have been declined if the correct stock level (as shown in D's accounts) had been provided with the type of alarm it said was present at the storage premises. These are terms which apply to all policies like the one D took out and I've seen no evidence to show they were created after the event to justify policy avoidance.

D has made reference to policy terms in relation to material damage and stock but that's not the issue here; if AIG would never have offered cover in the first place the policy wouldn't have been in place at all. D also says it may now be able to show the alarm at the storage premises did meet AIG's requirements. However, AIG has shown the system that would have been required was a professionally installed one linked to an alarm receiving centre (which was continuously monitored). The 'Statement of Fact' says the installed system was *“Bells Only (Audible)”*. D has provided no other evidence to show the storage facility did have an alarm system that met AIG's requirements. So I don't think it was unreasonable of it to conclude there had been a 'qualifying breach' in this case.

If an insurer can show a qualifying breach was deliberate or reckless it can avoid the contract, refuse all claims and doesn't need to return the premiums paid. The Insurance Act says a breach is deliberate or reckless if the insured knew that it was in breach of the duty of fair presentation or did not care whether or not it was in breach of that duty.

I've already established D's stock value when it took the policy out (based on its audited accounts) was around £26,000 against a declared value of up to £5,000. That's a significant discrepancy and I don't think it's one that could likely be attributed to a mistake by D when completing its application. I appreciate that when making the claim D says it reported a loss of £39,000 and it wouldn't make sense for that claim to exceed the maximum payout under the policy. I'm not clear why D acted as it did but it's possible it may simply have forgotten the amount it provided for stock when taking out the policy.

In any event the other evidence also indicates D made a clear choice about the amount of stock to declare when taking out the policy. I've seen the notes of the telephone interview between D's director and the claims investigator which record him as saying he *“took out insurance as needed when at [storage facility] so just picked the lowest figure that he could as didn't think he needed insurance while at [storage facility]”*. That suggests D selected a stock figure it knew to be inaccurate.

D says those notes have been interpreted subjectively and were made under duress and without independent oversight. I appreciate that being interviewed about the claim may have been a stressful experience for D's director but I'm not clear why that would have led him to provide inaccurate information about the reasons for selecting the stock cover he did. And I've reviewed the notes as a whole and I don't think AIG has interpreted these subjectively.

Nor have I seen other evidence to show the claims investigator did have a conflict of interest. Even if he did I don't think that would mean the contemporaneous notes he made didn't accurately record what D's director said. I don't think it was unreasonable of AIG to give weight to these notes and conclude the breach by D in this case was deliberate or reckless. In those circumstances the Insurance Act entitles AIG to avoid the contract, refuse all claims and doesn't need to return the premiums paid. I don't think it was unfair of it to do that.

D has also drawn attention to the time taken by AIG to deal with the claim. I don't think it's in dispute that did take too long. As part of our previous investigation we concluded that was the case and awarded compensation for that. Those issues don't form part of this decision but I agree there was then further delay by AIG in reaching an outcome following its previous complaint response. I accept that will have caused D some unnecessary inconvenience but I think the additional £200 AIG has already paid does enough to put things right here.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 21 February 2025.

James Park  
**Ombudsman**