

The complaint

V, a limited company, complains about what Hiscox Insurance Company Limited did after it made a claim on its business insurance policy. V is represented by its director, Mr U.

What happened

In February 2024 V suffered a flood at its business premises causing damage to equipment and materials and preventing it from trading. It claimed on its policy for losses it had incurred. Hiscox appointed loss adjusters who attended the premises and spoke to Mr U.

Having reviewed information they provided Hiscox said when taking out the policy V had said its business was “*sales agent*” and the use of its business premises was “*office*”. However, that wasn’t correct because V in fact supplied and installed cold rooms and refrigeration equipment and carried out repairs to white goods. And the use of its premises was as a small warehouse or storage unit. It said if it had been aware of the correct position it wouldn’t have offered cover so would be avoiding the policy and declining the claim V made. It accepted there had been no deliberate attempt to provide incorrect information so said it would refund the premium V paid.

Our investigator thought it was reasonable of Hiscox to say V had provided inaccurate information about both its business and use of its premises. He didn’t think it had made a fair presentation of risk (in line with the requirements of the Insurance Act 2015). He accepted V hadn’t deliberately or recklessly provided inaccurate information but he was satisfied if it had been provided with correct information Hiscox wouldn’t have agreed to cover V. So he thought Hiscox acted in line with the remedies set out in the Insurance Act in avoiding the policy (and refusing the claim) but refunding the premium V paid.

V didn’t agree. In summary it said:

- Hiscox initially accepted its claim and progressed it meaning it must have thought the claim was valid and made in good faith. And there had then been delays in it being progressed prior to Hiscox deciding to avoid the policy and decline the claim (which had taken place without prior warning or consultation).
- The description of its business activities was a misunderstanding rather than a deliberate misrepresentation. V had always operated as a refrigeration business and Hiscox didn’t ask further questions about that. It had a duty to investigate further when provided with partial information and had ample opportunity to clarify any discrepancies in relation to business activities before issuing the policy. And during the application process it explained its location was a warehouse setup but would function mainly as an office.
- Under the Insurance Act where misrepresentation wasn’t deliberate or reckless an insurer should consider providing cover on adjusted terms or reducing the settlement amount. It thought that’s what Hiscox should have done in this case given the misrepresentation was minor and not reckless. It highlighted case law which it said supported its position on this.

- It drew attention to the impact the flooding incident had on it and the financial consequences of its claim not being paid. And it said Hiscox hadn't refunded the premiums it paid for the policy.

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.

I appreciate this has been a difficult experience for V and for Mr U personally. I was sorry to learn of the impact the initial flooding incident and the decline of the claim had on him. I understand the financial impact of that and why this matter is so important to him. But the question I need to consider is whether Hiscox did anything wrong when dealing with the claim V made.

In its submissions V has referenced case law which I've reviewed. However, I don't think those judgements are directly relevant to the outcome of this complaint. The focus of both of those cases was on what remedies were open to an insurer where an insured had been fraudulent. There's no suggestion that's what happened here. However, I do agree that, in line with the relevant rules and industry guidelines, Hiscox has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

And as Hiscox's reasons for declining the claim relate to inaccurate information it says V 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 V 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 Hiscox asked and how clear and specific those questions were. In this case I understand those questions are reflected in the Statement of Fact issued initially in July 2023 (and subsequently reissued following a change in V's business address). The question it contains include

- *What is your organisation's primary trade?*
- *What is your organisation's business description?*

I think those questions would have been clear to V and in answer to both it said "*sales agent*". In relation to V's premises it was asked "*What is the primary use of the premises*". That question was answered "*Office*".

However, V has confirmed that it always operated as a refrigeration business. And a later signed statement from Mr U described the nature of the business as "*installation of cold rooms, supply and installation of refrigeration cold rooms, domestic repairs to white goods, commercial repairs. The company also sell parts online via eBay for white goods*". The loss adjusters described the business premises as "*commercial unit, small warehouse, consisting of three storage areas, toilet at rear*". I think it was reasonable of Hiscox to say that was different to the information V had provided about both the nature of its business and the use

of its premises when the policy was taken out (and that hadn't been amended when the policy was updated following its change of address)

V says the Insurance Act places a duty on Hiscox to investigate further when provided with partial information. In fact it says the required disclosure must be such that it *"gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances"*.

I don't think the information in this case would have done that. V had given clear answers to the questions it was asked and the Statement of Fact said *"You must check that all of the facts set out within this Statement of Fact are true, accurate and complete"*. And *"You must contact your broker or, if you do not have a broker, you must contact us as soon as possible if any of the facts set out below or any of the information provided to us: is not true, accurate and complete; or no longer remains true, accurate and complete during your period of insurance."*

As V didn't make any corrections to the information provided (including to the description of its business premises as an office) I think the answers it gave were something Hiscox was entitled to rely on. I don't think it could reasonably have been expected to make further enquiries based on the information it had been given. I'm satisfied V didn't make a fair presentation of risk when taking out this policy.

The Insurance Act says an insurer only has a remedy against an insured for a breach of that duty if it can show it wouldn't have entered into the contract of insurance or would have done so on different terms. In this case I've seen underwriting evidence which satisfies me that if Hiscox had been aware of, in particular, the nature of V's business, and taking into account its declared turnover it wouldn't have offered the policy. So there has been a qualifying breach here.

V has argued this resulted from a misunderstanding and wasn't a deliberate or reckless attempt to mislead. I don't think there's any suggestion it was; Hiscox has accepted the qualifying breach wasn't deliberate or reckless. V says it should therefore use the provisions of the Insurance Act which allow it to provide cover on different terms or reduce the settlement amount.

The remedies for a qualifying breach are set out in Schedule 1 of the Insurance Act. That includes what an insurer can do where it would have entered into the contract on different terms. However, that doesn't apply here because Hiscox has shown it wouldn't have entered into the contract at all. Where that's the case the Act says *"the insurer may avoid the contract and refuse all claims, but must in that event return the premiums paid"*. That's the approach Hiscox has taken here which is line with the provisions of the Act. I don't think that was unfair in the circumstances of this case.

V says Hiscox hasn't returned the premiums it paid. However, our investigator checked and Hiscox says a refund was issued to V in December last year. So I don't think it needs to do anything more here. If that hasn't been received by V it may wish to contact Hiscox to establish why that is.

Turning to the handling of the claim I appreciate Hiscox did initially progress this. But I don't think it would reasonably have been aware of the issues with how V had described its business activities and premises until after the loss adjuster had visited and discussed matters with it. However, following V's claim notification in mid February it did then take until the start of May for Hiscox to explain its position on the information provided when the policy was taken out.

But I don't think that timeframe was unreasonable in the circumstances of this case. Amongst other things loss adjusters needed to be appointed, a site visit had to be arranged and take place, underwriting evidence had to be obtained and issues needed to be clarified with V. And when Hiscox did then contact V at the start of May it gave it an opportunity to provide comments before a decision to decline the claim was taken. So I think V was able to have its points considered before that took place.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask V to accept or reject my decision before 20 June 2025.

James Park
Ombudsman